Things You Might Not Know About the Residential Rental Agreements Act

Small claims magistrates are by now thoroughly familiar with GS Ch. 42, Art. 5, the Residential Rental Agreements Act (RRAA). Claims arising under the Act are routinely raised and determined in small claims court. Even so, there are a few aspects of the Act about which I often receive questions.

A Quick Overview

In 1977 North Carolina joined many other states in enacting legislation creating an implied warranty of habitability in every residential lease.The law requires landlords to furnish "fit and habitable" premises that comply with applicable housing codes and to maintain and repair premises as necessary to keep the premises in satisfactory condition. GS 42-42. The obligation of tenants to keep premises clean, safe, and undamaged (aside from normal wear and tear) is also detailed in the Act. GS 42-43. Notably, the Act specifies that the tenant's obligation to pay rent and the landlord's obligation to maintain the premises are "mutually dependent," reversing the common law rule. GS 42-41. The rights and obligations created by the Act "are enforceable by civil action," GS 42-44(a). which includes "recoupment, counterclaim, defense, setoff, and any other proceeding including an action for possession." GS 42-40(1).

What's Covered – and What's Not

The RRAA does not apply to temporary lodging such as that available in hotels, nor does it apply to vacation rentals. Interestingly, it also does not apply to dwellings furnished without charge. GS 42-39. The Act does apply to mobile homes *and mobile home spaces,* and "grounds, areas, and facilities normally held out for the use of residential tenants." GS 42-40(2). In Pierce v. Reichard, 163 NC App 294 (2004), the Court of Appeals found that a landlord's failure to remedy a dangerous situation created by storm damage to a tree violated the RRAA, noting that "the yard surrounding a rental unit is deemed part of the premises" and thus warranted to be fit and habitable.

Who's Covered – and Who's Not

The obligations imposed by the RRAA apply to the property owner and may apply to a property manager as well. GS 42-40(3) includes in the definition of "landlord" anyone "having the actual or apparent authority of an agent to perform the duties imposed by" the Act. In Surrat v. Newton, 99 NC App 396 (1990) the Court of Appeals rejected a real estate agent's argument that his liability for violation of the Act should be limited to the amount of his commission, holding instead that as a "landlord" under the statute, the measure of damages to which tenant was entitled was independent of how much the agent was paid for his work.

A List of Unsuccessful Arguments About Why the Act Should Not Apply

The tenant waived the right to habitable housing by accepting the premises in "as-is" condition: The Act's requirements of fit and habitable housing apply to all residential leases as a matter of law, and tenants do not have the power to release them from those requirements. GS 42-42(b). This means that a tenant's explicit written statement that he has inspected the premises, is aware of their defective condition, understands that the rent has been reduced accordingly, and knowingly waives all rights under the RRAA is of no legal effect.

The tenant's didn't give written notice: Obviously, a landlord is not responsible for failing to repair defects the landlord doesn't know about, but the Act requires written notice in only one set of circumstances, set out in GS 42-42(a)(4)(maintenance and repairs of listed group of facilities and appliances), and even that requirement is subject to exception. Generally speaking, the Act requires only that the landlord be notified of defects and given a reasonable opportunity to repair them. In the case of defects in existence at the time the rental began, landlords are assumed to be aware of them and no further notice by the tenant is required. Dean v. Hill, 171 NC App 479 (2005).

The landlord made reasonable efforts: The RRAA requires a landlord to "do whatever is necessary to put and keep the premises in a fit and habitable condition." A landlord's good faith but unsuccessful efforts to accomplish this mandate are not a defense to violations of the Act. Creekside Apts. V. Poteat, 116 NC App 26 (1994).

The rent was reduced to a fair price due to the defects: The purpose of the RRAA is to establish a minimum standard of habitability in residential rental housing, not to ensure fair pricing for sub-standard housing. For this reason, the measure of damages in an action for rent abatement requires determination of the difference between the fair rental value of the property in compliance with the Act and fair rental value of the property in its actual condition. Note that the actual contract rent is not part of this formula (although it may be relevant evidence of "as warranted" value in some circumstances). Von Pettis Realty, Inc. v. McKoy, 135 NC App 206 (1999).

The tenant unilaterally withheld rent: When the RRAA first became law, there was considerable confusion about two apparently inconsistent provisions in the legislation. GS 42-41 states that "The tenant's obligation to pay rent under the rental agreement . . . and the landlord's obligation to comply with [the provisions of the Act] shall be mutually dependent." GS 42-44(c), on the other hand, states that "The tenant may not unilaterally withhold rent prior to a judicial determination of a right to do so." Legal scholars and appellate judges have discussed at some length how, consistent with the rules of statutory construction, both provisions might be read together in a way giving meaning to each. Space does not allow a thorough discussion of the legal reasoning and eventual resolution of this issue, but it is clear under current law that a landlord's violation of the Act may be an effective defense against a summary ejectment action even when that action is based on tenant's nonpayment of rent. For additional information, see Joan Brannon's NC Small Claims Law p. 197-199; Webster's Real Estate Law in NC, Sec. 6.05[1][b]; Von Pettis Realty,

supra; Miller v. C.W. Myers Trading Post, 85 NC App 362 (1987).

Conclusion

The implied warranty of habitability in residential rentals is an important, complicated, and often misunderstood aspect of landlord—tenant law, and one that is sometimes given short shrift when raised by tenants in summary ejectment actions. Typically, the evidence in eviction actions is short and to-the-point, and these cases, although numerous, are quickly disposed of. When a tenant raises a habitability defense, the various players may be caught off-guard by the abrupt change in pace. The evidence related to such a defense must address at a minimum: (1) the existence of the defect; (2) whether the type of defect violates the Act; (3) the landlord's awareness of the defect; (4) the duration of the defect; and the fair rental value of the property (5) with and (6) without the defect. When the defense involves multiple defects – which is often the case—the evidentiary phase of the trial lengthens accordingly. Furthermore, the evidence in many cases may require time to consider—there are often photographs, timetables, copies of correspondence, repair bills, etc., in addition to testimony. When a tenant has not filed a counterclaim, the landlord may be surprised by the defense and unprepared to rebut tenant's claims. A magistrate may be surprised as well and concerned about the numerous cases on the calendar still waiting to be heard. For all these reasons and more, magistrates may sometimes have to continue and/or reserve judgment in these cases, in order to reach a fair and just result in accordance with the law.