



Josh Stein North Carolina Attorney General

LANDLORDS' MAINTENANCE AND REPAIR DUTIES:

YOUR RIGHTS AS A RESIDENTIAL TENANT IN NORTH CAROLINA

INTRODUCTION

Each year the Office of the Attorney General receives hundreds of complaints and inquiries from tenants regarding disputes they are having with their landlords. The laws governing the relationship between a landlord and a tenant are complex and come from several sources. Those sources include the law of contracts (leases are a type of contract), the law of negligence, the North Carolina General Statutes, local health, safety and building codes, federal laws and regulations governing subsidized rental housing, and the Constitutions of the United States and the State of North Carolina.

What follows is not a complete discussion of North Carolina landlord-tenant law. Instead, it is a discussion of the problems involving the landlord's failure to maintain or repair the rental property. Available from the North Carolina Real Estate Commission are brochures discussing other aspects of North Carolina landlord-tenant law related to [renting residential real estate](#), [tenant security deposits](#), and [lease termination by military personnel](#). They are posted on the Real Estate Commission's website at <https://www.ncrec.gov/Publications/Pubs>, can be obtained by phone by calling 919-875-3700 or by mail by writing PO Box 17100, Raleigh, NC 27619-7100. Additionally, the North Carolina Human Relations Commission enforces North Carolina law prohibiting discrimination by landlords, and more information about that law can be found on its website at <https://ncadmin.nc.gov/citizens/fair-housing>, by phone by calling 919-431-3036, or by mail by writing 1318 Mail Service Center, Raleigh, NC 27699-1318.

THE RESIDENTIAL RENTAL AGREEMENTS ACT

[The North Carolina Residential Rental Agreements Act](#) was passed by the General Assembly in 1977 to define the duties of both the landlord and the tenant with respect to the maintenance and repair of the premises. It has been amended several times since then to address additional duties.

DUTIES OF THE TENANT

The tenant must pay all rent legally due under the lease and perform certain day-to-day maintenance duties in order to enforce the landlord's duties under the Residential Rental Agreements Act. The tenant's duties under the Act are as follows:

North Carolina General Statute 42-43(a)

- (1) Keep that part of the premises which he occupies and uses as clean and safe as the conditions of the premises permit and cause no unsafe or unsanitary conditions in the common areas and remainder of the premises which he uses;
- (2) Dispose of all garbage and other waste in a clean and safe manner;
- (3) Keep all plumbing fixtures in the dwelling unit or used by the tenant as clean as their condition permits;
- (4) Not deliberately or negligently destroy, deface, damage, or remove any part of the premises, nor render inoperable the smoke alarm or carbon monoxide alarm provided by the landlord, or knowingly permit any person to do so;
- (5) Comply with any and all obligations imposed upon the tenant by current applicable building and housing codes;
- (6) Be responsible for all damage, defacement, or removal of any property inside a dwelling unit in the tenant's exclusive control unless the damage, defacement or removal was due to ordinary wear and tear, acts of the landlord or the landlord's agent, defective products supplied or repairs authorized by the landlord, acts of third parties not invitees of the tenant, or natural forces.
- (7) Notify the landlord, in writing, of the need for replacement of or repairs to a smoke alarm or carbon monoxide alarm. Unless the landlord and the tenant have a written agreement to the contrary, the tenant shall replace the batteries in a battery-operated smoke alarm and a battery-operated carbon monoxide alarm as needed during the tenancy, except where the smoke alarm is a tamper-resistant, 10-year lithium battery smoke alarm.

DUTIES OF THE LANDLORD

The landlord's maintenance and repair duties under the Residential Rental Agreements Act are as follows:

North Carolina General Statute 42-42(a)

- (1) Comply with the current applicable building and housing codes;
- (2) Make all repairs and do whatever is necessary to put and keep the premises in a fit and habitable condition;
- (3) Keep all common areas of the premise in safe condition;
- (4) Maintain in good and safe working order and promptly repair all electrical, plumbing, sanitary, heating, ventilating, air conditioning, and other facilities and appliances supplied or required to be supplied by the landlord provided that

notification of needed repairs is made to the landlord in writing by the tenant except in emergency situations.

- (5) **Provide** operable **smoke alarms**. The landlord shall replace or repair the smoke alarms within 15 days of receipt of notification if the landlord is notified of needed replacement or repairs in writing by the tenant. The landlord shall ensure that a smoke alarm is operable and in good repair at the beginning of each tenancy. Unless the landlord and the tenant have a written agreement to the contrary, the landlord shall place new batteries in a battery-operated smoke alarm at the beginning of a tenancy.
- (6) If the landlord is charging for the cost of providing water or sewer service and has actual knowledge that water being supplied to tenants within the landlord's property exceeds a maximum contaminant level, provide notice that water being supplied exceeds a maximum contaminant level.
- (7) For units with a fossil-fuel burning heater, appliance or fireplace, or an attached garage, provide a minimum of one operable carbon monoxide alarm per rental unit per level. The landlord shall replace or repair the carbon monoxide alarms within 15 days of receipt of notification if the landlord is notified of needed replacement or repairs in writing by the tenant. The landlord shall ensure that a carbon monoxide alarm is operable and in good repair at the beginning of each tenancy. Unless the landlord and the tenant have a written agreement to the contrary, the landlord shall place new batteries in a battery-operated carbon monoxide alarm at the beginning of a tenancy. A carbon monoxide alarm may be combined with smoke alarms if the combined alarm emits an alarm in a manner that clearly differentiates between detecting the presence of carbon monoxide and the presence of smoke.
- (8) Within a reasonable period of time based upon the severity of the condition, **repair** or remedy any of the following imminently dangerous condition on the premises after acquiring actual knowledge or receiving notice of the condition:
 - (a) **Unsafe wiring;**
 - (b) **Unsafe flooring or steps;**
 - (c) **Unsafe ceilings or roofs;**
 - (d) **Unsafe chimneys or flues;**
 - (e) **Lack of drinkable water;**
 - (f) **Lack of operable locks** on all doors leading to the outside;
 - (g) **Broken windows** or lack of operable locks on all windows on the ground level;
 - (h) Lack of operable **heating** facilities capable of heating living areas to 65° when it is 20° outside from November 1 through March 31;
 - (i) Lack of an operable **toilet;**
 - (j) Lack of an operable **bathtub or shower;**
 - (k) **Rat infestation** as a result of defects in the structure that make the premises not impervious to rodents;

- (l) **Excessive standing water, sewage, or flooding** problems caused by plumbing leaks or inadequate drainage that contribute to mosquito infestation or mold.

Notwithstanding the landlord's repair or remedy of these imminently dangerous condition, the landlord may recover from the tenant the actual and reasonable costs of repairs that are the fault of the tenant.

DUTY TO KEEP ALL COMMON AREAS AND FACILITIES IN A SAFE CONDITION

Common areas and facilities, such as hallways serving several apartment units, parking lots, play areas, laundry rooms, swimming pools open to tenants, sewage or plumbing systems serving more than one rental unit, and similar areas and facilities on the grounds of multi-family rental properties, must be maintained in a safe condition by the landlord. Injuries caused by landlords' failure to safely maintain such areas and facilities have entitled tenants to recover money from their landlords in lawsuits. In situations where landlords' failures to maintain these facilities have not caused injury, courts have allowed tenants to reduce the amount of monthly rent due under their leases.

DUTY TO COMPLY WITH APPLICABLE LOCAL BUILDING AND HOUSING CODES.

In most North Carolina cities and large towns, landlords have additional duties to maintain the rental premises because of the requirements of local building and housing codes. Failure by the landlord to comply with these codes gives a tenant the right to take legal action under the Residential Rental Agreement Act. These local codes also allow the tenant to seek the help of local authorities who can use their own legal powers to force a landlord to comply with the requirements of the codes.

Housing Codes. Most local building and housing codes contain a long list of maintenance and safety requirements for rental property. Under these codes, owners of such property must provide safe and properly functioning heating and plumbing systems. Heating systems in many communities must be capable of heating every habitable room in a dwelling to at least 65°-70°. Most local codes also require that all walls, doors and windows be weather tight. Walls, ceilings and floors must be free of holes, cracks, and peeling paint, according to many local codes. Similarly, most local codes require landlords to rid multi-family (but not necessarily single family) dwellings of infestations of rodents or bugs. Under many codes, all doors and windows opening to the outside of the dwelling must have locks on them, and unless the dwelling has air conditioning, most codes require that all windows in the dwelling be equipped with screens.

Fire Codes. Malfunctioning heating systems, electrical systems, or appliances may pose a fire hazard, which may be a violation of the local fire code in addition to violating the housing code. Anything giving off shocks, sparks, or smoke should be reported to the landlord

immediately, and if not fixed promptly, reported to the local fire safety inspector. Such officers usually have legal authority to force the landlord to repair such problems quickly.

Health Codes. Malfunctioning sewage disposal systems can also constitute violations of local health codes. County or city health departments usually can force landlords to fix malfunctioning sewage disposal systems or clean contaminated well water systems.

DUTY TO PUT AND KEEP PREMISES IN A FIT AND HABITABLE CONDITION.

This part of the Residential Rental Agreements Act requires the landlord to have the premises in good and fit condition when the tenant first moves in, and it also requires the landlord to maintain the premises so that they stay that way. This is a “catch-all” requirement that covers repair and maintenance duties not specifically described elsewhere in the Residential Rental Agreements Act.

DUTIES OF THE LANDLORD CANNOT BE WAIVED

North Carolina General Statute 42-42(b) states that a landlord cannot excuse himself from these duties through a special clause inserted into the lease. As discussed below, many leases contain such clauses, and tenants should not be fooled into thinking that such clauses are binding.

A landlord and a tenant can enter into an agreement separate from the lease through which the tenant will perform the landlord’s maintenance duties, but only if the tenant is to receive reasonable and just compensation for it. Such would be the case when a carpenter, plumber or painter rents from the landlord, and the landlord wants to hire that tenant to help with the upkeep and repair of the rental property.

NOTIFYING THE LANDLORD THAT REPAIRS ARE NEEDED

The landlord’s duty to repair or remedy certain imminently dangerous conditions begins when the landlord obtains actual knowledge of the problem or receives notice of the problem. But the landlord’s duty to repair promptly all plumbing, heating, air conditioning, and other appliances and facilities that are not listed in the statute as imminently dangerous conditions does not begin until the tenant has given written notice to the landlord of needed repairs, except in emergency situations.

The other duties of the landlord under the Residential Rental Agreements Act do not depend upon the receipt of written notice of a problem. These other duties involve routine maintenance and repair obligations that exist prior to or throughout the tenancy, or are the subject of local health and building codes, or concern “common areas” of apartments or condominium projects.

As a practical matter, the best thing to do when repairs are needed is to call or visit the landlord immediately to report the problem. Follow up the conversation with a note or letter to the landlord which mentions the earlier oral request for repairs. For instance, "Dear Landlord: This is just a reminder of the request I made by phone this morning for repairs to the furnace at 344 Center Drive." Sign and date the note and **keep a copy**. If you have to hire a repair person yourself because the landlord will not do anything, a copy of the written notice will be very helpful if you go to Small Claims Court seeking reimbursement for the repair bill you paid.

OBTAINING GOVERNMENT HELP ON CODE VIOLATIONS

To obtain the assistance of local building inspectors, fire marshals, or county health officers, little more than a phone call to the local city hall, fire department, or county health department is required.

LEGAL REMEDIES AGAINST LANDLORDS WHO WILL NOT REPAIR

If your landlord will not make repairs required under these codes and the Residential Rental Agreements Act, **DO NOT WITHHOLD RENT PAYMENTS**. Many other states have laws allowing tenants to put their rent payments in a special "escrow" account until their landlords make needed repairs. North Carolina law does not allow tenants to withhold rent payments in this or any other way, with two exceptions: when the landlord consents to it **in writing** or when a judge or civil magistrate allows you to withhold rent pursuant to a court order.

Some landlords really will consent to a tenant's withholding rent payments, or at least part of their rent payments. Consent usually comes through **written** agreements such as this: "Send me a receipt for whatever you paid the plumber to fix the drains and then deduct that amount from next month's rent;" or, "knock 10% off your next month's rent payment because of the problems with the broken air conditioner."

COURT ORDER TO REDUCE FUTURE RENT BASED ON NEED FOR REPAIRS

Too often a landlord will not make repairs and will not consent to the withholding of part of the next rent payment. In this situation, a tenant may want to file a small claims suit against the landlord requesting the court's permission to withhold part of the next month's rent payment to cover the costs paid by the tenant for repairs or to compensate the tenant for the reduced rental value of the dwelling.

In seeking the court's permission to withhold the amount of money paid by the tenant to have repairs done, the tenant will need to show the following:

- (1) that the tenant has either a written or oral lease agreement with the landlord;
- (2) that the problem needing repair was the responsibility of the landlord under the Residential Rental Agreements Act, local building codes, and/or the lease

agreement. (Remember, lease provisions excusing landlords from their repair and maintenance responsibilities under the Residential Rental Agreements Act are **not** enforceable.);

- (3) if necessary based on the Residential Rental Agreements Act's provision concerning the problem needing repair, evidence that the landlord had actual knowledge of the problem, received notice of the problem, or received written notice of the need for repair, and that the landlord then failed to make the needed repairs within a reasonable amount of time;
- (4) copies of the bill given the tenant by the repair service, plus a receipt or canceled check showing that the bill was paid by the tenant;
- (5) if the landlord denies that the problem even required repairs or claims that the cost of the repairs were too expensive, the tenant should make arrangements to bring the repairman to Small Claims Court.
- (6) some sort of evidence (usually the tenant's own testimony) showing how much the rental value of the house or apartment was reduced by the landlord's failure to make required repairs.

Tenants needing information on how to file a small claims lawsuit can obtain a [Small Claims Court information package](#) similar to this one from the Consumer Protection Section of the North Carolina Attorney General's Office. It is posted on the Consumer Protection Section's website at <http://www.ncdoj.gov/Consumer>, can be obtained by phone by calling 919-716-6000 or by mail by writing 9001 Mail Service Center, Raleigh, NC 27699-9001.

Should the Small Claims Court Judge or Magistrate be satisfied that the tenant's case has been proved, he or she may enter a "rent abatement" order allowing the tenant to withhold part of the next month's rent, or part of the next several month's rent, to reimburse the tenant for the repair bills. A tenant should read the court order carefully to make sure it grants permission to withhold rent. Some Small Claims Court Judges will just award a money judgment against the landlord, which is not the same as permission to withhold future rent payments.

Where a problem has not been repaired by either the landlord or the tenant, the Court can enter an order allowing the tenant to withhold a percentage of future rent payments until the problem is repaired by the landlord. After hearing the evidence the Court will make a determination of how much the monthly rental value of the rental unit has been reduced by the problem needing repair. For example, if the monthly rent is \$600.00 and the Court determines that the problem reduces the value of the rental unit by one-third, the judge or civil magistrate will enter a "rent abatement" order allowing the tenant to reduce monthly rental payments to \$400.00 until the problem is corrected by the landlord.

COURT ORDER TO REFUND RENT BASED ON FAILURE TO REPAIR

If the landlord simply took a very long time to make repairs, but eventually got around to making them, the tenant may be able to bring a Small Claims Court lawsuit seeking a money judgment for the reduced rental value of the rental unit during the months that the problem went

unrepaired. This type of Small Claims suit, called a suit for “rent recoupment” (recovery of rent already paid), also requires that the tenant show the court the following:

- (1) that the tenant had a lease with the landlord when the problems occurred;
- (2) that the problem needing repair was the responsibility of the landlord under the Residential Rental Agreements Act, local building codes and/or the terms of the lease agreement;
- (3) if necessary based on the Residential Rental Agreements Act’s provision concerning the problem needing repair, evidence that the landlord had actual knowledge of the problem, received notice of the problem, or received written notice of the need for repair, and that the landlord then failed to make the needed repairs within a reasonable amount of time;
- (4) some sort of evidence (usually the tenant’s own testimony) showing how much the rental value of the house or apartment was reduced by the landlord’s failure to make required repairs.

OTHER LEGAL CLAIMS

In addition to the rent reduction and refund claims mentioned above, a tenant whose personal property (furniture, electronics, clothing, etc.) was damaged or destroyed by the landlord’s failure to maintain or repair the premises, as required by the Residential Rental Agreements Act, might be able to sue for either the value or the costs of repair of the damaged belongings. In some cases the tenant can recover moving expenses.

SHOULD YOU CONTACT AN ATTORNEY?

If at all possible, an attorney should be consulted before bringing such claims against a landlord. The attorney may come up with additional claims to pursue, or the attorney may say that some claims are not proper in a particular case. Unless personal injuries or substantial property damage was involved, however, it may be financially impractical for a tenant to hire the attorney for representation in a Small Claims Court suit. Suits against landlords usually involve only a few hundred dollars, and the attorney’s fee for representation in court may be equal to or greater than the amount of money a tenant is trying to recover from the landlord. Still, the advice an attorney can provide during a brief consultation can be important, and a brief service by an attorney, such as a letter or phone call to the landlord, may take care of the problem without requiring anyone to go to court.

Tenants having trouble locating an attorney for a consultation on landlord-tenant questions may want to try the North Carolina Lawyers Referral Service. Their website is <http://www.ncfindalawyer.org/> and their toll free number is 1-800-662-7660. The Lawyers Referral Service should be able to give you the name of an attorney to consult with on landlord-tenant matters for a relatively low consultation fee.

Legal Aid of North Carolina provides free assistance related to landlord-tenant issues for individuals who qualify for their services. Their website is <http://www.legalaidnc.org> and their toll free number is 1-866-219-5262.

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