



***Battle v. O'Neal: a recent Court of Appeals opinion contains valuable lessons for landlords and property managers***

In August of 2018, Wayne Battle, the owner of a single-family home in Charlotte, entered into an agreement to lease that home to Ricardo O'Neal for a two-year term. The lease called for rent payments of \$870.00 per month. Mr. O'Neal (hereinafter referred to as "Tenant") made rent payments in August and September but did not pay rent in October. As a result, on October 18, 2018, Mr. Battle (hereinafter referred to as "Landlord") filed a summary ejectment action seeking to evict Tenant from the property. On October 29, a Magistrate in Mecklenburg County entered an order in favor of Landlord evicting Tenant and ordering Tenant to pay the rent that was in arrears. Tenant appealed that order to the District Court.

A hearing in District Court was scheduled for January 22, 2019. On January 14, Tenant (who was being represented by Legal Aid of North Carolina) filed an answer to Landlord's complaint and also filed a counterclaim that asserted two claims against Landlord: one for breach of Landlord's implied warranty of habitability, and one for Landlord's unfair or deceptive trade acts or practices in violation of the North Carolina Unfair and Deceptive Trade Practices Act ("UDTPA").

The District Court hearing took place as scheduled. Landlord appeared without an attorney. After hearing Landlord's evidence, Tenant's attorney made an oral motion to dismiss Landlord's complaint. District Judge Karen McCallum ruled that because plaintiff failed to present evidence that he had made a demand for payment, and then waited 10 days prior to filing his summary ejectment action, his summary ejectment claim should be denied and his complaint should be dismissed.

After hearing Tenant's evidence, Judge McCallum ruled that by failing to put and keep the leased premises in a fit and habitable condition, Landlord had breached the implied warranty of habitability owed to Tenant. She ruled that because of that breach, Tenant was entitled to the difference between the fair rental value of the premises in warranted condition and the fair rental value of the premises in its unfit condition, limited by the amount of rent paid by Tenant. Her judgment included a finding that the fair rental value of the premises in a warranted condition was \$1250.00 per month.

Judge McCallum ruled that because Landlord made a reasonable effort to repair the premises, Landlord's actions did not constitute unfair and deceptive trade practices in violation of the UDTPA. As a result, she denied Tenant the treble damages and attorney fees that can be awarded pursuant to that statute.

Both parties appealed from the District Court's order. Landlord appealed from the dismissal of his summary judgment action and the from the judgment awarding damages to Tenant for breach of the

implied warranty of habitability. Tenant appealed from the denial of his counterclaim for violation of the UDTPA.

As it turns out, the decision of the Court of Appeals was even more favorable to Tenant. Not only were the District Court's rulings in favor of Tenant upheld, the Court of Appeals reversed the dismissal of the Tenant's UDTPA claim, and remanded the case back to the District Court for entry of an order awarding damages on that claim. The opinion of the Court of Appeals provides several valuable lessons for landlords so that the mistakes made by Mr. Battle are not repeated.

### **Lesson 1: landlords and property managers need to check the correct box!**

On appeal, Landlord argued that the District Court had mistakenly concluded that he was required to make a demand for payment, and then wait 10 days, before filing his summary ejectment complaint. He noted that the forfeiture clause in his lease allowed him to file his complaint without the necessity of making a demand for payment. The Court of Appeals rejected Landlord's argument noting that when Landlord filed his action, he did not seek to evict Tenant using the lease terms but instead pled, as grounds for eviction, that "the defendant failed to pay the rent due on the above date and the plaintiff made demand for the rent and waited the 10-day grace period before filing the complaint."

Landlords and property managers who have filed complaints seeking summary ejectment are likely familiar with the above-quoted language. It appears next to one of four check boxes on the summary ejectment complaint form created by the Administrative Office of the Courts. Landlords and property managers who use leases, like NC REALTORS®' Standard Form 410-T, that entitle landlords to immediate possession upon Tenant's failure to pay rent, should NEVER check that box. Instead, they should check the box next to the following language: "The defendant breached the condition of the lease described below for which re-entry is specified."

The Court of Appeals concluded that because Landlord had checked the box referencing a demand for rent, Tenant did not have notice of a claim based on the lease agreement. The court noted that in the absence of a claim based on the lease language, there is a North Carolina statute that controls: NCGS § 42-3. That statute requires the Landlord to make a clear and unequivocal demand that the lessee pay all past due rent, and then wait 10 days before filing suit. Since Landlord had not done that, dismissal of his claim was required.

### **Lesson 2: if a tenant sues for rent abatement, landlords should introduce evidence that the rent agreed to is fair market rent**

On appeal, Landlord argued that Tenant should not have been awarded any damages due to the condition of the property. He also argued that the amount of damages awarded to Tenant was too high.

As the Court of Appeals noted, it is settled law in North Carolina that (a) a tenant is entitled to file suit against a landlord requesting rent abatement for breach of the implied warranty of habitability, and (b) the proper measure of damages in such a rent abatement action is the difference between the fair rental value of the property in its warranted condition and the fair rental value in its unfit condition, provided that the damages do not exceed the total amount of rent paid by the tenant.

The Court of Appeals affirmed the District Court's finding that the fair rental value of the leased premises in its warranted condition was \$1250.00 per month even though this figure was substantially

higher than the \$870.00 per month rent set forth in the lease. How did this happen? Because Landlord presented evidence that the rental value of the premises in a fit condition was \$1200.00 per month. This was a mistake that had substantial consequences. Had the landlord instead testified that the lease rate was the fair market rate, Tenant's damages would have been based on the difference between the lease rate of \$870.00 per month and the \$350.00 per month that the Judge McCallum determined was the fair rental value of the premises in its actual (and unfit) condition. The lesson here is that landlords facing a claim for rent abatement should never contend that the fair market rent is higher than the rental rate set forth in the lease.

### **Lesson 3: landlords and property managers face substantial risk if they continue to collect rent if the leased premises are in an unfit condition**

As noted above, Tenant filed a cross-appeal asserting that the District Court had erred in dismissing his claim based on the UDTPA. He argued that the dismissal was inappropriate because the District Court had found that Landlord had continued to charge rent despite his failure to repair the home and, in particular, his knowledge of a dangerous code violation – the lack of an operable smoke detector.

The Court of Appeals agreed with Tenant's argument. The basis for the court's decision was a 2005 decision issued by the Court of Appeals in the case of *Dean v. Hill*. That case held that evidence that (a) a residential rental premises was uninhabitable; (b) the landlord knew the premises needed repair; and (c) the landlord failed to correct the defects and continued to demand rent payments, was sufficient to support a finding that the landlord committed an unfair and deceptive trade practice.

Property managers should keep in mind that "landlord" is defined in the landlord and tenant statute (NCGS § 42-1 et seq.) to include any rental management company having the actual or apparent authority to act as the owner's agent. In other words, property managers face the same financial risk as property owners when it comes to compliance with the requirements of Chapter 42. This means that property managers face the risk of a claim for treble damages and attorney fees if they seek to collect rent after knowing that the leased premises are uninhabitable while failing to correct the defects.

In conclusion, the *Battle v. O'Neal* provides some valuable lessons for property managers, both in managing properties for their clients, and in pursuing eviction actions on their clients' behalf.

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