



A recent court opinion highlights the risk of managing a property that is not “fit and habitable”

From time to time, property managers are asked to manage a property that does not fully comply with the local building code, or has other issues that raise concerns for tenant safety. A decision issued by the Court of Appeals of North Carolina in March of 2019 is a reminder that property managers and their owner clients run the risk of substantial legal liability if they fail to rectify these kinds of problems.

What should a property manager do if the opportunity to manage this type of property arises. Advising the property owner of their legal obligations is a good first step. One way to do that is to initiate a discussion about the standard Exclusive Property Management Agreement created by the North Carolina Association of REALTORS® (Standard Form 401). That discussion should include a detailed review of paragraph 10 of that form entitled “Responsibilities of Owner”.

Paragraph 10(a) of Standard Form 401 states that the property owner shall be responsible for “all costs and expenses associated with the maintenance and operation of the Property in accordance with the requirements of: (i) NC General Statutes Section 42-42..., (ii) any other local, state or federal law or regulations and (iii) tenant leases, and advance to Agent such sums as may be necessary from time to time to pay such costs and expenses.”

North Carolina General Statute Section 42-42 is entitled “Landlord to provide fit premises.” A copy can be accessed [here](#). It states, in part, that the “Landlord”¹ must comply with the applicable building and housing codes, and must make all repairs and do whatever is necessary to put and keep the premises in a fit and habitable condition. The statute defines the term “imminently dangerous condition” to include such things as unsafe wiring, unsafe flooring, unsafe steps, lack of potable water, broken windows, and lack of operable heating facilities capable of heating “living areas” to 65 degrees when it is 20 degrees outside during the period from November 1 through March 31. Landlords are required to repair or remedy any imminently dangerous condition within a “reasonable period of time based on the severity of the condition.”

The case of *Cronje vs. Johnston*, decided by the Court of Appeals on March 19, 2019, is an example of the potential financial consequences to a Landlord (including a property manager)

¹ "Landlord" is defined in Chapter 42 as follows: “any owner and any rental management company, rental agency, or any other person having the actual or apparent authority of an agent to perform the duties imposed by this Article.”

who fails to meet the requirements of NCGS § 42-42. That case involved a tenant named Linda Gail Johnston who rented a residence in Caldwell County from Maresa Cronje. After moving in, Johnston noticed that there was no operable source of heat. She also discovered defective wiring. Johnston notified Cronje of both issues, Cronje refused to make repairs and instructed Johnston to buy a space heater.

A few months later, the pump for the property's well stopped working. Without access to running water, Johnston was forced to carry water from the creek behind her property. Although Johnston notified Cronje of the problem, Cronje made no effort to fix the pump. Despite all of these problems, Johnston continued to pay her rent. Nevertheless, Cronje hand-delivered a notice demanding that Johnston vacate the premises. Approximately ten days later, Cronje filed a summary ejectment action. Not surprisingly, Johnston filed a counterclaim along with an answer to the complaint.

In February 2018, a magistrate in Caldwell County entered an order dismissing Cronje's summary ejectment action and awarding Johnston \$900 in damages on her counterclaim. Cronje appealed this ruling.

In March 2018, a District Court judge in Caldwell County conducted a bench trial. In April, he entered a judgment denying Cronje's claim for summary ejectment and awarding Johnston \$4,050 in damages on her counterclaims for breach of the implied warranty of habitability and for unfair and deceptive trade practices. Cronje appealed this ruling to the Court of Appeals. Johnston was represented in the appeal by Legal Aid of North Carolina.

In ruling to affirm the District Court's judgment, the Court of Appeals cited the landlord's obligations that are set forth in NCGS § 42-42. It then cited a 1990 decision by the Court of Appeals in a case entitled *Suratt v. Newton*. The Court in *Suratt* rejected the landlord's argument that a tenant has a duty to notify the landlord of defects in the home before the tenant could recover damages from the landlord. The Court expressly referenced the provision in NCGS § 42-42(b) that states that a landlord is not released from its obligation to provide a fit and habitable premises by a tenant's acceptance of uninhabitable living conditions.

For landlords and property managers, the scariest part of the *Cronje v. Johnston* decision is its discussion of North Carolina's Unfair and Deceptive Trade Practices Act. That Act, commonly referred to as the "UDTPA," appears in Section 75-1.1 of North Carolina's General Statutes. In upholding the trial court's ruling in favor of Johnston on her UDTPA claim, the *Cronje* Court cited another 1990 decision by the Court of Appeals, this one in the case of *Allen v. Simmons*. In *Allen*, the tenant had argued that her landlord had engaged in an unfair trade practice by virtue of his awareness of "deplorable" defects in the leased premises coupled with his failure to make the necessary repairs. The *Allen* court determined that the jury was totally within its right to find that the landlord's behavior had violated the UDTPA. A consequence of such a finding is that any award for a violation of the UDTPA is automatically tripled. Furthermore, a UDTPA violation gives the trial court the discretion to award attorney fees to the prevailing party.

As noted in the footnote above, Chapter 42 defines “Landlord” to include both a “rental management agency” and “any person having the actual or apparent authority of an agent to perform the duties imposed by (Article 42).” For this reason, the lessons of the Cronje v. Johnston decision are not limited to property owner landlords. **Property managers face the same financial risks as property owners when it comes to compliance with the requirements of Section 42-42.**

The *Cronje v. Johnston* case is a reminder of just how great the financial risks are for property managers when they are managing properties that fail to meeting the applicable building and housing codes or fail to meet the definition of “fit and habitable condition.” Before taking on the management of such a property, property managers would be wise to bring the financial risks to the attention of the property owner, and take steps to insure that the property owner addresses any defective conditions before allowing a tenant to rent the premises.

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