

845.20 SUMMARY EJECTMENT—DAMAGES.<sup>1</sup>

*NOTE WELL: The issue of mitigation of damages may arise in a summary ejectment case. If so, give N.C.P.I. - Civil 503.90 - Defense (Offset) For Failure to Mitigate.*

This (*state number*) issue reads:

“What amount of damages, if any, is the landlord entitled to recover?”

You will answer this issue only if you have answered the (*state number(s) issue(s)*) in favor of the landlord.

On this issue the burden of proof is on the landlord. This means that the landlord must prove, by the greater weight of the evidence the amount of damages sustained as a result of [unpaid rent] [occupancy after the end of the term] [physical damage to the premises].

[Damages for unpaid rent may include the amount of rent which the tenant agreed to pay the landlord but did not.<sup>2</sup>]

[Damages for occupancy after the end of the term may include the fair rental value of the premises from the time the term ended until the tenant vacates the premises. Fair rental value is an amount which would be agreed upon as a fair rent by a landlord who wishes to rent, but is not compelled to do so, and a tenant who wishes to rent, but is not compelled to do so. (The contract rate of rent agreed upon by the landlord and tenant may be taken as some evidence of the fair rental value.)]

[Damages for physical injury to the premises may be recovered if the premises are not in substantially the same condition as originally delivered to the tenant, normal wear and tear excepted, because of the tenant’s negligent or intentional conduct or the negligent or intentional conduct of the tenant’s family or guest(s). (A tenant is not responsible

for an act of God.) The landlord is entitled to recover the difference between the fair market value of the property immediately before it was damaged and its fair market value immediately after it was damaged.<sup>3</sup> The fair market value of any property is the amount which would be agreed upon as a fair price by an owner who wishes to sell, but is not compelled to do so, and a buyer who wishes to buy, but is not compelled to do so.

*(If evidence is introduced regarding the actual or estimated cost of repair, the following paragraph should be used:* Evidence of [estimates of the cost to repair] [the actual cost of repairing] the damage to the plaintiff's property may be considered by you in determining the difference in fair market value<sup>4</sup> immediately before and immediately after the damage occurred.<sup>5</sup>)

Finally, as to this (*state number*) issue on which the landlord has the burden of proof, if you find, by the greater weight of the evidence, that the landlord was damaged, then it would be your duty to write that amount in the blank space provided.

If, on the other hand, you fail to so find, then it would be your duty to write a nominal amount such as "One Dollar" in the blank space provided.

---

1. North Carolina General Statute § 42-46 authorizes certain fees, costs, and expenses with respect to residential rental agreements.

2. All party's damages resulting from a single wrong must be recovered in one action, including landlord's damages for future rents under contract. *Chrisalis Properties v. Separate Quarters, Inc.*, 101 N.C. App. 81, 88, 398 S.E.2d 628, 633 (1990).

3. *Paris v. Carolina Portable Aggregates*, 271 N.C. 471, 484, 157 S.E. 2d 131, 141 (1967) (damages by blasting).

4. If no evidence of fair market value of the damaged property is introduced, then plaintiff may recover only nominal damages. *Heaton-Sides v. Snipes*, 233 N.C. App. 1, 6, 755 S.E.2d 648, 652 (2014); *Cockman v. White*, 76 N.C. App. 387, 391, 333 S.E.2d 54, 56 (1985).

N.C.P.I.-Civil. 845.20  
SUMMARY EJECTMENT - DAMAGES.  
GENERAL CIVIL VOLUME  
REPLACEMENT JANUARY 2023  
-----

---

5. *Smith v. White*, 213 N.C. App. 189, 192, 712 S.E.2d 717, 719 (2011) (citing *U.S. Fidelity and Guaranty Co. v. P. and F. Motor Express, Inc.*, 220 N.C. 721, 18 S.E.2d 116 (1942)). Both evidence of actual costs to repair and estimates of the cost to repair are competent evidence. As the Court notes in *Smith*, whether evidence of an estimate of the cost of repairs is as persuasive as evidence of the cost of the actual repairs is a question related to weight rather than its competency. *Id.* at 193, 712 S.E.2d 717.