Proactive or Reactive? Defining Landlord Duties in *Terry v. Public Service Company of North Carolina*[*]

In 1977, North Carolina passed the Residential Rental Agreements Act, which recognized the implied warranty of habitability, provided new protections for tenants, and changed the obligations of landlords. For decades after, the Supreme Court of North Carolina failed to provide a clear standard for assessing common-law negligence liability when a defect on a rental property injured a tenant. In particular, the scope of a landlord's duty to maintain rental properties remained unresolved, with two competing options for determining liability. One option was to hold landlords to a duty of reasonable care that is typical in negligence law, which could require that landlords proactively maintain rental properties under some circumstances. Alternatively, landlord duties could be framed in reactive terms: requiring notice or knowledge of a particular defect to trigger a landlord's obligations to maintain a property. In Terry v. Public Service Company of North Carolina, *the Supreme Court of North Carolina took up this issue and described landlord duties in reactive terms. In assessing an injured tenant's common-law negligence claim against a landlord who had not inspected a rental property for nearly eleven years, the court required that landlords receive notice of defects before facing common-law negligence liability. This Recent Development examines the background of that decision and argues that* Terry *disincentivizes landlords from proactively maintaining rental properties and taking precautionary measures.*

INTRODUCTION

In 2005, Stephanie Terry leased a home in Durham, North Carolina, from William Lucas.[1] Stephanie Terry lived in the home for over a decade with her husband, Anthony Terry.[2] During the tenancy, a hole appeared in the bathroom floor, and directly below, a gas pipe corroded underneath the home.[3] In 2017, there were signs of potential gas leaks around the home, but the landlord was not notified.[4] On April 13, 2017, Anthony Terry turned on a light in the bathroom, causing an explosion that left him with significant injuries.[5] The

1. Terry v. Pub. Serv. Co. of N.C., Inc., 385 N.C. 797, 799, 898 S.E.2d 648, 650 (2024).
2. *See id.*
3. *Id.* at 799–800, 898 S.E.2d at 650–51.
4. *Id.* at 799, 898 S.E.2d at 650.
5. *Id.*

landlord had not inspected the property once while the Terrys lived at the home.[6] Anthony Terry sued Lucas, bringing several claims.[7]

One of Terry's claims—common-law negligence—implicated unclear and inconsistent precedent regarding the duties of landlords in maintaining rental properties.[8] The uncertainty began after 1977, when the North Carolina General Assembly granted more protections to tenants by passing the Residential Rental Agreements Act ("RRAA" or "the Act").[9] Some state court decisions following the Act seemed to imply that landlords had an affirmative duty to maintain rental properties, which could require proactive maintenance in some circumstances, and a breach of this duty would constitute negligence.[10] Others signaled that landlord duties are purely reactive, preventing negligence liability in the absence of notice or knowledge of a defect.[11]

The North Carolina Court of Appeals ruled in Terry's favor on this claim, allowing the claim to proceed past summary judgment.[12] The court applied a typical negligence standard, holding landlords to a standard of "reasonable care" with respect to the property and implying that landlords have an affirmative obligation to maintain rental properties, which could have been breached in this case.[13]

But on appeal, the Supreme Court of North Carolina reversed, ruling in favor of the landlord.[14] The court analyzed landlord obligations in purely reactive terms: sidestepping discussions about a landlord's obligations to proactively maintain rental properties and requiring notice of a defect from the tenant before triggering a landlord's duty to make repairs.[15] Since the landlord did not have notice of defects on the property, summary judgment was granted to the landlord.[16]

This Recent Development proceeds in three parts. Part I gives an overview of North Carolina's old common-law doctrine of *caveat emptor* that

6. *Id.* at 800, 898 S.E.2d at 650.

7. *Id.* at 800, 898 S.E.2d at 651.

8. *See id.* at 799, 898 S.E.2d at 650; Brooks v. Francis, 57 N.C. App. 556, 559–60, 291 S.E.2d 889, 891 (1982); Prince v. Wright, 141 N.C. App. 262, 270–71, 541 S.E.2d 191, 198 (2000); DiOrio v. Penny, 331 N.C. 726, 730, 417 S.E.2d 457, 460 (1992).

9. Act of June 28, 1977, ch. 770, 1977 N.C. Sess. Laws 1006 (codified as amended at N.C. GEN. STAT. §§ 42-38 to 42-44).

10. *See Brooks*, 57 N.C. App. at 559–60, 291 S.E.2d at 891; *Prince*, 141 N.C. App. at 270–71, 541 S.E.2d at 198.

11. *DiOrio*, 331 N.C. at 730, 417 S.E.2d at 460.

12. Terry v. Pub. Serv. Co. of N.C., Inc., 287 N.C. App. 362, 366–67, 883 S.E.2d 196, 199 (2022), *rev'd*, 385 N.C. 797, 898 S.E.2d 648 (2024).

13. *Id.* (quoting Bradley v. Wachovia Bank & Tr. Co., 90 N.C. App. 581, 585, 369 S.E.2d 86, 88 (1988)).

14. Terry v. Pub. Serv. Co. of N.C., Inc., 385 N.C.797, 799, 898 S.E.2d 648, 650 (2024).

15. *Id.* at 804, 807, 898 S.E.2d at 653, 655.

16. *Id.* at 807, 898 S.E.2d at 655.

preceded the RRAA, briefly explains the development of the implied warranty of habitability, and introduces North Carolina's Residential Rental Agreements Act. Part II provides the factual background of *Terry* and explains the court's decision on common-law negligence liability for landlords. Part III argues that *Terry* incentivizes landlords to avoid proactive maintenance of rental properties, fails to consider barriers that prevent tenants from providing notice of defects, and runs contrary to the tort law goal of deterrence.

I. LANDLORD LIABILITY AND NORTH CAROLINA'S RESIDENTIAL RENTAL AGREEMENTS ACT

A. *The Doctrine of* Caveat Emptor

Before the 1970s, landlords in North Carolina were generally not required to maintain or repair rental units.[17] This common-law doctrine is known as *caveat emptor*, under which "landlords ha[d] no duty, in the absence of express covenants, to provide residential tenants with habitable premises"[18] or "make repairs."[19] This was the law of most jurisdictions before 1969.[20]

Under this regime, if tenants were injured by defects on rental properties, landlords only faced liability in unique situations—since they lacked a duty to maintain or repair rental units.[21] For example, a landlord would be held liable if they knew about a latent defect, failed to warn the tenant, and "the tenant was not aware of the danger and could not have discovered it through the exercise of ordinary care."[22] Or a landlord could be liable if they took it upon themselves to perform a repair and did so negligently.[23]

17. *See* Theodore O. Fillette, III, *North Carolina's Residential Rental Agreements Act: New Developments for Contract and Tort Liability in Landlord-Tenant Relations*, 56 N.C. L. REV. 785, 785–88 (1978); *see also* Mark Andrew Stafford, Note, Miller v. C.W. Myers Trading Post*: North Carolina Adopts Expansive Tenant Remedies for Violations of the Implied Warranty of Habitability*, 66 N.C. L. REV. 1276, 1279 (1988).

18. John V. Orth, *Confusion Worse Confounded: The North Carolina Residential Rental Agreements Act*, 78 N.C. L. REV. 783, 785 (2000). The doctrine of *caveat emptor* was "formulated at a time when the economy was primarily agrarian, was based on the premise that the tenant had ample opportunity to inspect the leased property, at least for major defects, and if any hidden defects were later discovered, they were generally reparable by hand by the tenant himself." RESTATEMENT (SECOND) OF PROPERTY: LANDLORD & TENANT § 5.1 cmt. b (AM. L. INST. 1977).

19. Orth, *supra* note 18, at 792 (quoting Robinson v. Thomas, 244 N.C. 732, 736, 94 S.E.2d 911, 914 (1956)). *Caveat emptor* "placed the burden on the . . . tenant, to inspect the premises and determine their suitability." *Id.* at 790. *Caveat emptor* is also referred to as *caveat lessee* in the landlord-tenant context. Edward H. Rabin, *The Revolution in Residential Landlord-Tenant Law: Causes and Consequences*, 69 CORNELL L. REV. 517, 521 (1984).

20. Rabin, *supra* note 19, at 521.

21. *See* Orth, *supra* note 18, at 792; Fillette, *supra* note 17, at 785–86.

22. Fillette, *supra* note 17, at 803 (citing Robinson v. Thomas, 244 N.C. 732, 94 S.E.2d 911 (1956)).

23. *Id.* (citing Livingston v. Essex Inv. Co., 219 N.C. 416, 14 S.E.2d 489 (1941)).

However, in the 1970s, the United States underwent a period of "rapid change" in "tenants' rights," during which many states "recogniz[ed], either as a matter of common-law development or by legislative enactment, an implied covenant of habitability in residential leases."[24] This covenant is "an 'implied warranty' made by the landlord to the tenant that the premises are fit and will be *maintained* for their intended use as a residence," including "a duty [of the landlord] to repair all defects, regardless of when they arise."[25] The warranty has been described as "the basis of a duty on the landlord to maintain the property in a habitable condition."[26]

B. *A Duty of Reasonable Care for Landlords*

As many states recognized the implied warranty of habitability, landlords faced the possibility of new liabilities.[27] In negligence cases, some states began to hold landlords to a duty of reasonable care in maintaining rental properties.[28] A duty of reasonable care, also referred to as "ordinary care" or "due care," is akin to the typical standard of care in negligence cases.[29] It can be defined as a duty of the landlord to "exercise ordinary care in the maintenance of the premises under all the circumstances," with a breach of this duty giving rise to negligence liability.[30]

Some courts expressly predicated expansions of landlord liability on newly recognized duties to maintain rental premises under the implied warranty of habitability.[31] For example, after adopting the implied warranty of habitability, the Wisconsin Supreme Court recognized a duty of "ordinary care" for landlords in *Pagelsdorf v. Safeco Insurance*.[32] The court held that "[i]t would be

24. Orth, *supra* note 18, at 788–89; Fillette, *supra* note 17, at 785, 787 & n.16. "By 1977 . . . thirty-eight states had joined the District of Columbia in recognizing . . . an implied covenant of habitability." Orth, *supra* note 18, at 789. This was part of a movement "to reverse the landlord's historical dominance of the landlord-tenant relationship." David A. Super, *The Rise and Fall of the Implied Warranty of Habitability*, 99 CALIF. L. REV. 389, 393 (2011).

25. Rabin, *supra* note 19, at 522 (emphasis added).

26. *See* RESTATEMENT (SECOND) OF PROPERTY: LANDLORD & TENANT, *supra* note 18, § 17.6 cmt. a.

27. *See infra* note 28 and accompanying text.

28. Several states indicated that landlords would not be held to a typical negligence standard. *See, e.g.*, Pitcock v. Worldwide Recycling, Inc., 582 N.E.2d 412, 414–15 (Ind. Ct. App. 1991); Tighe v. Cedar Lawn, Inc., 649 N.W.2d 520, 529–31 (Neb. Ct. App. 2002); Broughton v. Maes, 378 N.W.2d 134, 136 (Minn. Ct. App. 1985). Other states held landlords to a duty of reasonable care or an analogous standard that is typical in negligence law. *See, e.g.*, Pagelsdorf v. Safeco Ins. Co. of Am., 284 N.W.2d 55, 60–61 (Wis. 1979); Sargent v. Ross, 308 A.2d 528, 534 (N.H. 1973); Brennan v. Cockrell Invs., Inc., 111 Cal. Rptr. 122, 125–26 (Cal. Ct. App. 1973); Stephens v. Stearns, 678 P.2d 41, 50 (Idaho 1984).

29. *See Pagelsdorf*, 284 N.W.2d at 60.

30. *Id.* at 61.

31. *See, e.g.*, *id.* at 60; *Sargent*, 308 A.2d at 533–34.

32. 284 N.W.2d 55, 56, 60 (Wis. 1979).

anomalous indeed to require a landlord to keep his premises in good repair as an implied condition of the lease, yet immunize him from liability for injuries resulting from his failure to do so."[33] As such, "a landlord owes his tenant . . . a duty to exercise ordinary care," allowing tenants "to recover from the landlord under general negligence principles."[34] The court noted that it would consider whether a tenant provided notice of a defect as a factor in determining whether the landlord exercised reasonable care.[35]

C. *The North Carolina Residential Rental Agreements Act*

North Carolina was swept up in this wave of reform in 1977, passing the Residential Rental Agreements Act, which "codified the implied warranty of habitability"[36] by imposing several requirements that ensure a tenant's residential dwelling is suitable for habitation.[37] The Act's stated purpose is to "determine[] the rights, obligations, and remedies under a rental agreement for a dwelling unit within this State."[38] In managing residential rental units, the RRAA requires that landlords "comply with . . . building and housing codes,"[39] "[m]aintain" specific appliances in a rental unit,[40] and "[m]ake all repairs *and do whatever is necessary to put and keep the premises in a fit and habitable condition*."[41] The Act has subsequently been amended to provide certain affirmative duties for landlords, like maintenance of smoke alarms and carbon monoxide detectors.[42]

At the time it was passed, the RRAA's precise implications for landlord negligence liability in North Carolina were uncertain.[43] It was unclear whether landlords could be held liable for common-law negligence for failing to

33. *Id.* at 60.

34. *Id.* at 61.

35. *Id.* ("Issues of notice of the defect, its obviousness, control of the premises, and so forth are all relevant only insofar as they bear on the ultimate question: Did the landlord exercise ordinary care in the maintenance of the premises under all the circumstances?"). Similarly, in New Hampshire, under *Sargent v. Ross*, 308 A.2d 528 (N.H. 1973), "landlords as other persons must exercise reasonable care not to subject others to an unreasonable risk of harm." *Id.* at 534.

36. Terry v. Pub. Serv. Co. of N.C., Inc., 385 N.C. 797, 802, 898 S.E.2d 648, 652 (2024); *see also* Orth, *supra* note 18, at 789; Fillette, *supra* note 17, at 787.

37. *See* N.C. GEN. STAT. §§ 42-38 to 42-46 (2025).

38. *Id.* § 42-38.

39. *Id.* § 42-42(a)(1).

40. *Id.* § 42-42(a)(4) (providing that landlords must "[m]aintain 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.").

41. *Id.* § 42-42(a)(2) (emphasis added).

42. *Id.* § 42-42 (a)(5), (a)(7).

43. *See* Fillette, *supra* note 17, at 803–06. However, the statute clearly states that "[a] violation of this Article shall not constitute negligence per se." N.C. GEN. STAT. § 42-44(d) (2025).

proactively "put and keep the premises in a fit and habitable condition"[44] or only for failing to repair the premises in response to notice or knowledge of a defect.[45]

D. *Precedent in North Carolina on Landlord Duties*

Some precedent from the North Carolina Court of Appeals after the RRAA's passage indicated that landlords owed a duty of reasonable care—akin to that in typical negligence cases—in maintaining rental properties, which might require proactive maintenance in some circumstances.[46] These decisions used broad language to describe a landlord's duties, implying a duty of care similar to that articulated by the Wisconsin Supreme Court in *Pagelsdorf*.[47]

For example, in *Brooks v. Francis*,[48] a North Carolina Court of Appeals case, steps of a rental home collapsed, injuring a plaintiff-tenant who claimed that the defendant-landlord failed to "repair" the steps and keep them safe for use.[49] The court, "[a]pplying ordinary rules of negligence," held that "[a] violation of the duty to *maintain* the premises in a fit and habitable condition is . . . evidence of negligence."[50] Without requiring notice to the landlord of the defect, the court stated that evidence could show that the defendant "knew, *or in the exercise of ordinary care should have known*, that the steps were in disrepair, but failed to exercise ordinary care to correct the unsafe condition."[51]

Similarly, in *Prince v. Wright*,[52] a fire at a rental home resulted in two deaths, and the plaintiff "allege[d] the fire was caused by unsafe conditions in

44. N.C. GEN. STAT. § 42-42(a)(2) (2025).

45. *Id.* § 42-42(a)(8).

46. *See* Brooks v. Francis, 57 N.C. App. 556, 559–60, 291 S.E.2d 889, 891 (1982); Prince v. Wright, 141 N.C. App. 262, 270–71, 541 S.E.2d 191, 198 (2000).

47. *See Brooks*, 57 N.C. App. at 559–60, 291 S.E.2d at 891; *Prince*, 141 N.C. App. at 271, 541 S.E.2d at 198.

48. 57 N.C. App. 556, 291 S.E.2d 889. The North Carolina Court of Appeals relied on *Brooks* in its opinion in *Terry*. *See* Terry v. Pub. Serv. Co. of N.C., 287 N.C. App. 362, 366–67, 883 S.E.2d 196, 199–200 (2022).

49. *Brooks*, 57 N.C. App. at 557, 558–60, 291 S.E.2d at 890–91.

50. *Id.* at 559, 291 S.E.2d at 891 (emphasis added) (citing O'Neal v. Kellett, 55 N.C. App. 225, 284 S.E.2d 707 (1981)).

51. *Id.* at 560, 291 S.E.2d at 891 (emphasis added). The plaintiff claimed that she informed the landlord of the issues with the stairs. *Id.* at 557, 291 S.E.2d at 890. The court stated that because the RRAA expressly stated that a violation of the Act "does not constitute negligence per se, the General Assembly left intact established common law standards of ordinary and reasonable care." *Id.* at 559, 291 S.E.2d at 891 (citing Lenz v. Ridgewood Assocs., 55 N.C. App. 115, 119–20, 284 S.E.2d 702, 705 (1981)). However, due to contributory negligence, the court affirmed summary judgment for defendants. *Id.* at 560–61, 291 S.E.2d at 891–92.

52. 141 N.C. App. 262, 541 S.E.2d 191 (2000). In *Prince*, the North Carolina Court of Appeals held that the trial court erred in dismissing the plaintiff's negligence claim against a landlord. *Id.* at 271, 541 S.E.2d at 198.

the home which defendant-landlords knew *or should have known existed*."[53] The North Carolina Court of Appeals stated that "'[a] landlord owes a duty to an invitee to use reasonable care to keep the premises safe.'"[54] This "'standard of due care is always the conduct of a reasonably prudent person under the circumstances.'"[55]

For decades, the Supreme Court of North Carolina did not squarely address whether landlords have a duty of reasonable care in maintaining rental properties—as articulated in *Brooks* and *Prince*.[56] But it was given an opportunity to do so in *Terry*.[57]

II. THE INTERPRETATION OF LANDLORD DUTIES IN *TERRY*

A. *Factual Background of* Terry

Beginning in 2005, Stephanie Terry leased a "single detached residential property" in Durham, North Carolina, from William Lucas.[58] Underneath a bathroom in the home, the water heater and furnace were accessible by a crawl space.[59] Stephanie Terry and her husband, Anthony Terry, lived in the home for years.[60] In 2017, there were several incidents involving suspected natural gas leaks at the home, but the tenants never informed Lucas.[61]

On April 13, 2017, Anthony Terry walked into the home's bathroom and "turned on the light," which led to an instant explosion.[62] The explosion left Anthony Terry with "serious burns all over his body, requiring extensive

53. *Id.* (emphasis added). According to the plaintiff's allegations, the landlords had not "warned the tenants of the potential fire hazard" and "failed to advise the tenants to vacate the premises because of the hazardous conditions," which was enough to overcome a motion to dismiss. *Id.*

54. *Id.* (quoting Clary v. Alexander Cnty. Bd. of Educ., 19 N.C. App. 637, 639, 199 S.E.2d 738, 739 (1973)). "A tenant is normally seen as an invitee." *Id.* (quoting Shepard v. Drucker & Falk, 63 N.C. App. 667, 669, 306 S.E.2d 199, 201 (1983)).

55. *Id.* (quoting Collingwood v. Gen. Elec. Real Est. Equities, Inc., 324 N.C. 63, 68, 376 S.E.2d 425, 428 (1989)).

56. After the RRAA passed, there was some discussion of whether the Act created landlord "liab[ility] for ordinary negligence by failing to deliver and maintain fit premises." *See* Fillette, *supra* note 17, at 804.

57. *See* Terry v. Pub. Serv. Co. of N.C., Inc., 385 N.C. 797, 801–08, 898 S.E.2d 648, 651–56 (2024).

58. *Id.* at 799, 898 S.E.2d at 650.

59. *Id.*

60. *See id.*

61. *Id.* In January 2017, Anthony Terry's brother-in-law told him that the fire department and Public Service Company of North Carolina ("PSNC") were "investigating a neighbor's report of smelling natural gas near [Terry's] home." *Id.* In March 2017, there were multiple incidents, including Anthony Terry smelling natural gas in the yard, a neighbor informing the tenants that she smelled gas near the home, and another incident in which the fire department and PSNC came to the home after a "report of the smell of natural gas . . . in the area surrounding [Terry's] home." *Id.*

62. *Id.*

medical treatment."[63] Following the incident, a property inspection showed that a natural gas pipe leading to the furnace was "severely rusted and corroded."[64] During the Terrys' occupancy, a hole had formed on the bathroom floor, directly "above the furnace," which likely caused dripping water to corrode the gas pipe.[65] Anthony Terry and Lucas spoke "frequently" during the lease, without mentioning this specific issue.[66] Lucas did not inspect the furnace before the Terrys moved into the home in 2005 and had not inspected the property at all in the interim.[67]

After the incident, Anthony Terry brought suit against Lucas on four claims: "common law negligence, negligence per se, violation of the North Carolina Residential Rental Agreements Act . . . and breach of the implied warranty of habitability."[68] The trial court granted summary judgment for Lucas on each of Terry's claims.[69]

B. *The Decision by the North Carolina Court of Appeals*

Terry appealed to the North Carolina Court of Appeals, which reversed and remanded the case, determining that summary judgment was improper on each of Terry's claims.[70] In evaluating Terry's common-law negligence claim, the North Carolina Court of Appeals embraced a similar approach to *Brooks* and *Prince*, stating that landlords owe a duty of reasonable care to their tenants.[71] The court explained that common-law negligence typically holds individuals liable if they "knew, *or in the exercise of ordinary care should have known*," that a dangerous condition existed.[72] The court stated that it was not creating a "duty to inspect" rental properties but was "reaffirming the existing and repeatedly recognized common law duty that landlords must 'use reasonable care in the inspection and maintenance of leased property.'"[73] Whether a landlord breached

63. *Id.*

64. *Id.* at 800, 898 S.E.2d at 650.

65. *Id.* at 800, 898 S.E.2d at 650–51.

66. *Id.* at 800, 898 S.E.2d at 650.

67. *Id.*

68. *Id.* at 800, 898 S.E.2d at 651. Terry also brought claims against the PSNC, which were dismissed. *Id.* This Recent Development does not discuss the claims for negligence per se, a violation of the RRAA, or a breach of the implied warranty of habitability at length.

69. *Id.*

70. *Id.*

71. *See* Terry v. Pub. Serv. Co. of N.C., Inc., 287 N.C. App. 362, 366–67, 883 S.E.2d 196, 199 (2022), *rev'd*, 385 N.C. 797, 898 S.E.2d 648 (2024).

72. *Id.* at 366, 883 S.E.2d at 199 (quoting Brooks v. Francis, 57 N.C. App. 556, 560, 291 S.E.2d 889, 891 (1982)).

73. *Id.* at 366–67, 883 S.E.2d at 199 (quoting Bradley v. Wachovia Bank & Tr. Co., 90 N.C. App. 581, 585, 369 S.E.2d 86, 88 (1988)).

this duty is a jury question, and the North Carolina Court of Appeals believed that a jury could find that the defendant did not exercise reasonable care.[74]

C. *The Supreme Court of North Carolina's Approach to Negligence in* Terry

Terry appealed to the Supreme Court of North Carolina, which determined that the state court of appeals erred, holding that summary judgment for the landlord was proper on all of Terry's claims.[75] In discussing the common-law negligence claim, the Supreme Court of North Carolina faced a choice: frame landlord obligations in reactive terms and require notice before imposing liability for a property defect or—as the court of appeals did—hold landlords to a standard of reasonable care that is typical in negligence law and might require proactive maintenance. The court chose the former.[76]

In Justice Barringer's majority opinion, the court rejected the common-law negligence claim against the landlord, concluding that negligence requires that a defendant had a duty, and the defendant had "no common law duty and the RRAA did not create a duty."[77] The court stated that "[t]he common law . . . is changed only where the RRAA's departure from common law is clearly expressed."[78] And the RRAA "softens—but does not completely abrogate—the

74. *Id.* at 367, 883 S.E.2d at 199. In particular, the North Carolina Court of Appeals pointed to evidence that the defendant did not inspect the property during the entire eleven years that the plaintiff resided at the property and was upset with the plaintiff on at least one occasion about how the property was maintained. *Id.* at 366, 883 S.E.2d at 199. In addition, when the prior tenants moved out, the defendant did not inspect the crawlspace containing the furnace and pipes. *Id.* The dissent argued that the majority's standard created a duty to inspect rental properties, which would leave a series of unanswered questions regarding the details of such a requirement, making this a task "better suited for the Legislature." *Id.* at 380, 883 S.E.2d at 207 (Carpenter, J., dissenting).

75. Terry v. Pub. Serv. Co. of N.C., Inc., 385 N.C. 797, 799, 898 S.E.2d 648, 650 (2024). The negligence per se claim was based on a subsection of the RRAA which requires landlords to "[c]omply with the current applicable building and housing codes." N.C. GEN. STAT. § 42-42(a)(1) (2025). The plaintiff alleged that the defendant was in violation of applicable housing codes. *Terry*, 385 N.C. at 808, 898 S.E.2d at 656. The claim for a breach of the implied warranty of habitability is similar to the claim for a violation of the RRAA, as "[t]he RRAA provides an affirmative cause of action to a tenant for recovery of rent due to a landlord's breach of the implied warranty of habitability." Stikeleather Realty & Invs. Co. v. Broadway, 242 N.C. App. 507, 516, 775 S.E.2d 373, 378 (2015). In evaluating Terry's claim for a violation of the RRAA, the Supreme Court of North Carolina interpreted the RRAA narrowly, concluding that landlords have "no duty to inspect . . . and no duty to repair . . . prior to the tenant providing notice to the landlord or the landlord acquiring actual knowledge of the needed repair." *Terry*, 385 N.C at 804, 898 S.E.2d at 653. The court held that Terry could not show an RRAA violation, as he "presented no evidence that he notified [Lucas] . . . or that [Lucas] had any actual knowledge of any such issues." *Id.* at 809–10, 898 S.E.2d at 656. In her dissent, Justice Riggs focused on whether the RRAA creates a duty to maintain specific appliances. *See id.* at 811–16, 898 S.E.2d at 657–60 (Riggs, J., dissenting). A detailed discussion of this portion of the statute, as well as the other claims that Terry brought, is outside the scope of this Recent Development.

76. *See id.* at 805–07, 898 S.E.2d at 653–55.

77. *Id.* at 807, 898 S.E.2d at 655.

78. *Id.* at 802, 898 S.E.2d at 652 (citing ANTONIN SCALIA & BRYAN A. GARNER, READING LAW: THE INTERPRETATION OF LEGAL TEXTS 319 (2012)).

common law concept of *caveat emptor* regarding repairs."[79] According to the statute's language,[80] "[t]he RRAA expressly abrogates the common law" by requiring landlords to repair rental properties, but that duty only arises when there is "notice" or "actual knowledge" of the defect, "depending on the nature of the necessary repair."[81]

The court reasoned that "the tenant bears the burden to 'inform the [landlord] of the need for repair'"[82] because tenants are "'in a much better position to know about the condition' of the property."[83] Absent "a showing of notice or defendant's knowledge," the landlord's duty to the tenant "had not yet arisen" under the statute.[84] Thus, the state supreme court held that the court of appeals "erred in reversing summary judgment in favor of defendant" on the common-law negligence claim.[85]

The court relied heavily upon a previous case from the Supreme Court of North Carolina—*DiOrio v. Penny*.[86] In *DiOrio*, a plaintiff-tenant alleged, in part, that the defendant-landlord was negligent in "fail[ing] to repair a dangerous staircase" on which the plaintiff fell and sustained injuries.[87] The court held that "a landlord must have knowledge . . . of a hazard's existence before being held liable in tort."[88] And, since there was no evidence that the tenant "notified" the landlord of the issue, the court affirmed summary judgment for the landlord-defendant.[89]

In *Terry*, the court analogized the case to *DiOrio*, stating that Anthony Terry likewise never notified the landlord of any defects.[90] The court in *DiOrio* similarly focused on a landlord's reactive, statutory duties to *repair* a rental property and whether those duties arise without notice.[91] But *DiOrio* did not

79. *Id.* at 805, 898 S.E.2d at 653.

80. *See id.* at 806, 898 S.E.2d at 654 ("Subsection (a)(2) of the RRAA refers to '*all* repairs' . . . . When read harmoniously, '*all* repairs' encompasses the specific repairs of subsections (a)(4) and (a)(8). Under subsection (a)(4), besides emergencies, the landlord's duty to repair arises upon receipt of written notice from the tenant. Under subsection (a)(8) the landlord's duty arises upon the landlord receiving notice from the tenant or acquiring actual knowledge."); N.C. GEN. STAT. § 42-42(a)(2), (a)(4), (a)(8) (2025).

81. *Terry*, 385 N.C. at 804, 807, 898 S.E.2d at 653, 655.

82. *Id.* at 805, 898 S.E.2d at 654 (quoting DiOrio v. Penny, 331 N.C. 726, 730, 417 S.E.2d 457, 460 (1992)).

83. *Id.* (quoting Robinson v. Thomas, 244 N.C. 732, 737, 94 S.E.2d 911, 915 (1956)).

84. *Id.* at 807, 898 S.E.2d at 655.

85. *Id.*

86. 331 N.C. 726, 417 S.E.2d 457; *see Terry*, 385 N.C. at 805, 898 S.E.2d at 653–54.

87. *DiOrio*, 331 N.C. at 729, 417 S.E.2d at 459. The court stated that "[u]nder N.C.G.S. § 42–42(a)(4), the duty to repair only arises once the tenant notifies the landlord of the need for repairs." *Id.* at 730, 417 S.E.2d at 460.

88. *Id.* at 729, 417 S.E.2d at 459 (citing N.C. GEN. STAT. § 42-42(a)(4) (1984)).

89. *Id.* at 729–30, 417 S.E.2d at 459–60.

90. *Terry*, 385 N.C. at 805–07, 898 S.E.2d at 653–55.

91. *DiOrio*, 331 N.C. at 728–30, 417 S.E.2d at 459–60.

directly address the first-order question of whether a landlord owes any proactive obligations under a duty of reasonable care in *maintaining* a rental property over time, prior to and regardless of a tenant notifying them of the need for a repair.[92]

III. IMPLICATIONS OF *TERRY*

Terry's notice-based approach to common-law negligence liability for landlords has several shortcomings. First, it could incentivize landlords to avoid proactive maintenance of rental properties, as proactive steps that result in notice of a defect could trigger a duty to make repairs. Second, the court failed to address potential roadblocks to tenants providing notice of defects. Finally, the negligence framework embraced in Terry runs contrary to the tort law goal of deterrence.

A. Terry*'s Incentives for Landlords*

The court in *Terry* discussed landlord duties in reactive terms, unwilling to state that the landlord *could* have breached a duty by failing to inspect the property for eleven years.[93] While the RRAA's language requires landlords to "[m]ake all repairs *and* do whatever is necessary to put and *keep* the premises in a fit and habitable condition,"[94] there appears to be no duty under negligence law to hold landlords liable for failing to proactively *maintain* or "*keep*" properties in a fit condition—unless the landlord has notice or knowledge of a defect.

The natural conclusion of the Supreme Court of North Carolina's holding in *Terry* is that a landlord cannot be held liable for common-law negligence for failing to maintain rental units unless a tenant gives notice of issues or the landlord otherwise gains knowledge of defects. The RRAA's language and case law interpreting it are unclear, so this reading is not clearly mistaken.

It is undoubtedly difficult to balance the obligations of landlords and tenants to optimize incentives, and tenants should be incentivized to notify landlords of issues. Nevertheless, the court's decision in *Terry* could create poor incentives for landlords. In *Terry*, the home had a visible defect (a hole in the floor) and a less-visible defect (a corroding pipe under the house).[95] The landlord failed to inspect the property in the tenants' eleven years there.[96] Yet, a simple inspection likely would have revealed the hole and, possibly, issues

92. *See id.* This resembles Justice Riggs' critique of the court's analogy to *DiOrio*, but she focused on *DiOrio's* lack of a discussion about specific maintenance obligations under N.C. GEN. STAT. § 42-42(a)(4). *See Terry*, 385 N.C. at 814, 898 S.E.2d at 659 (Riggs, J., dissenting).

93. *Terry*, 385 N.C. at 805, 898 S.E.2d at 654.

94. N.C. GEN. STAT. § 42-42(a)(2) (2025) (emphasis added).

95. *See Terry*, 385 N.C. at 800, 898 S.E.2d at 650–51.

96. *See id.* at 800, 898 S.E.2d at 650.

with the gas pipe, providing the landlord with knowledge of the defect and giving rise to a duty to repair. So, not visiting the property might have been the best way for the landlord to avoid liability.

The court's reasoning in *Terry* could provide perverse incentives for landlords to avoid precautionary measures. If a landlord visits a property and finds an issue, they will likely have to provide a repair and pay any associated costs. But if they never visit and do not receive notice of a defect, they cannot be held liable for common-law negligence. The effect of this decision could be to encourage landlords, absent notice, to look the other way and avoid visiting or monitoring leased properties, even over long periods. This could discourage preventive maintenance, which protects against future harms.

B. *Notice of Defects*

The court in *Terry* also failed to confront potential obstacles to tenants providing notice of defects. While the court in *Terry* acknowledged the tenant's right to a repair after providing notice to the landlord, this overlooks the degree to which tenants in North Carolina might lack information or face deteriorating housing conditions that need ongoing maintenance. Thousands of rental units in North Carolina have "[s]ubstandard housing conditions."[97] And localities often do not have reliable information for renters on the safety of prospective housing, making it difficult for tenants to discover a "hazard until it causes injury."[98] Tenants also might lack the same knowledge and experience as landlords to identify necessary repairs.

Terry's negligence framework also assumes that tenants can freely provide notice when they identify an issue and hold landlords accountable for the failure to repair properties, but this picture is incomplete. In reality, tenants often lack legal representation[99] that can inform them of their rights or bring claims against landlords who fail to make repairs after receiving notice. Nationally, eighty-three percent of landlords have legal representation in eviction

97. WILLIAM ROHE, TODD OWEN & SARAH KERNS, UNIV. OF N.C. CTR. FOR URB. & REG'L STUD., EXTREME HOUSING CONDITIONS IN NORTH CAROLINA 1–3 (2017), https://nchousing.org/wp-content/uploads/2017/02/Extreme-Housing-Conditions-in-North-Carolina-1.pdf [https://perma.cc/7YJE-BGVJ]. "Substandard housing conditions" are "rental units that lack complete kitchen and/or bathroom facilities." *Id.* at 1.

98. *See* Emily A. Benfer & Allyson E. Gold, *There's No Place Like Home: Reshaping Community Interventions and Policies to Eliminate Environmental Hazards and Improve Population Health for Low-Income and Minority Communities*, 11 HARV. L. & POL'Y REV. S1, S20 (2017), https://journals.law.harvard.edu/lpr/wp-content/uploads/sites/89/2013/11/BenferGold.pdf [https://perma.cc/F8YG-9JWB].

99. *See* Emily A. Benfer, Peter Hepburn, Valerie Nazarro, Leah Robinson, Jamila Michener & Danya E. Keene, *Disrupting the Eviction System: Tenant Right to Counsel*, EVICTION LAB (Apr. 25, 2025).

proceedings, compared to only four percent of tenants,[100] posing an obstacle to tenants seeking to vindicate their rights.[101]

Under *Terry*, depending on the property defect, if there is no documentation showing that notice of a defect was provided to the landlord, landlords might be able to assert a lack of notice or knowledge to quickly dispose of the case and absolve themselves of liability. This could be difficult to counter without representation. And tenants without counsel will have little recourse if they struggle to impose liability on neglectful landlords who fail to make repairs.

C. Terry *and Deterrence*

The negligence framework embraced in *Terry* also runs contrary to the tort law goal of deterrence. In addition to compensating victims for harm,[102] scholars often identify the "deterrence of unreasonable risk" as a "primary objective of tort liability."[103] Such liability can prevent harm by reducing risks and "incentiviz[ing] actors to take the requisite precautions."[104] The Supreme Court of North Carolina has recognized this proposition, previously stating that "[b]y preserving remedies in tort, we 'deter certain kinds of conduct by imposing liability when that conduct causes harm.'"[105]

Tort theorists have argued that a typical, common-law negligence framework that employs a standard of "due care" is "designed to bring about

100. *See id.*

101. *See* Nicole Summers, *The Limits of Good Law: A Study of Housing Court Outcomes*, 87 U. CHI. L. REV. 145, 150–51 (2020) ("[T]enants are more likely to benefit from the warranty of habitability when they have legal representation."); *see also* Mike Cassidy & Janet Currie, *The Effects of Legal Representation on Tenant Outcomes in Housing Court: Evidence from New York City's Universal Access Program*, 222 J. PUB. ECON. 1, 19 (2023) (finding better legal outcomes for tenants with legal representation). Also, while the doctrine of retaliatory eviction intends to protect tenants who raise issues, it has been criticized as ineffective in protecting impoverished tenants from evictions. *See* David A. Dana, *An Invisible Crisis in Plain Sight: The Emergence of the "Eviction Economy," Its Causes, and the Possibilities for Reform in Legal Regulation and Education*, 115 MICH. L. REV. 935, 949 n.35 (2017) ("Technically, a renter who is not yet behind in her rent could complain about conditions and be protected from a retaliatory eviction but once the conditions were repaired and the tenant fell behind in her rent at some point in the future, the landlord would be free to evict her . . . . Knowing that, even tenants who are not yet in arrears have good reason to view themselves as subject to eviction for complaining.").

102. *See* Gary T. Schwartz, *Mixed Theories of Tort Law: Affirming Both Deterrence and Corrective Justice*, 75 TEX. L. REV. 1801, 1801, 1823 (1997).

103. Alan D. Miller & Ronen Perry, *The Reasonable Person*, 87 N.Y.U L. REV. 323, 328 (2012) (citing Ind. Harbor Belt R.R. v. Am. Cyanamid Co., 916 F.2d 1174, 1181–82 (7th Cir. 1990)) ("Imposing liability on negligent injurers forces potential injurers to take into account, or internalize, the externalities of inefficient conduct, thereby preventing such conduct."); *see also* Schwartz, *supra* note 102, at 1801–02.

104. Alex Stein, *The Domain of Torts*, 117 COLUM. L. REV. 535, 540 (2017).

105. Est. of Long v. Fowler, 378 N.C. 138, 140, 861 S.E.2d 686, 689 (2021) (quoting Haarhuis v. Cheek, 255 N.C. App. 471, 480, 805 S.E.2d 720, 727 (2017)).

the efficient (cost-justified) level of accidents and safety" by evaluating which party was the "cheapest accident preventer."[106] This framework "give[s] rational decisionmakers an incentive to incorporate the costs to others into their decisions about whether to engage in the activity" at issue.[107]

Unlike the unforgiving notice standard embraced by the court in *Terry*, which could deter precautionary measures, a typical negligence standard for landlords could provide more flexibility and help optimize deterrence. To be clear, a typical negligence standard of care is distinct from a duty to inspect, as the North Carolina Court of Appeals stated.[108] It would not require landlords to make themselves aware of all defects on the property or hold them liable for injuries resulting from any defect.

A duty of reasonable care would simply permit a factfinder to analyze the specific facts of the case and determine that a landlord could have most cheaply or efficiently avoided the accident under the circumstances, perhaps by visiting the property more frequently.[109] For example, a landlord with numerous rental properties and dozens of employees who regularly inspect properties could be the cheapest cost avoider under some circumstances. In other cases, the tenant could be the cheapest cost avoider. This framework could also consider whether a tenant provided notice in assessing the conduct of each actor.[110] And, in any case, contributory negligence would continue to act as a strong bar to landlord liability when a plaintiff "fail[s] to use ordinary care."[111]

D. *A Path Forward?*

Even if the RRAA's language does not impose a duty of reasonable care on landlords, as the Supreme Court of North Carolina ostensibly concluded, the North Carolina General Assembly could amend the statute to explicitly state that a landlord has a duty, absent notice or knowledge of a defect, to

106. *See* Richard A. Posner, *A Theory of Negligence*, 1 J. LEGAL STUD. 29, 38–39, 73 (1972).

107. Benjamin C. Zipursky, *Rights, Wrongs, and Recourse in the Law of Torts*, 51 VAND. L. REV. 1, 46 (1998).

108. Terry v. Pub. Serv. Co. of N.C., Inc., 287 N.C. App. 362, 366–67, 883 S.E.2d 196, 199 (2022), *rev'd*, 385 N.C. 797, 898 S.E.2d 648 (2024).

109. *See id.*

110. Pagelsdorf v. Safeco Ins. Co. of Am., 284 N.W.2d 55, 61 (Wis. 1979).

111. *See, e.g.*, Brooks v. Francis, 57 N.C. App. 556, 560, 291 S.E.2d 889, 891 (1982) (quoting Bogle v. Power Co., 27 N.C. App. 318, 322, 219 S.E.2d 308, 311 (1975)) (preventing a plaintiff-tenant from recovering due to contributory negligence when the plaintiff "knew of the condition of [defective] steps" and "considered them dangerous"). In North Carolina, "it is well established that 'a plaintiff's contributory negligence is a bar to recovery from a defendant who commits an act of ordinary negligence.'" Davis v. Hulsing Enters., LLC, 370 N.C. 455, 458, 810 S.E.2d 203, 205–06 (2018) (quoting Sorrells v. M.Y.B. Hospitality Ventures of Asheville, 332 N.C. 645, 658, 423 S.E.2d 72, 73–74 (1992)). The court in *Terry* never reached this issue, but contributory negligence could have barred recovery for the negligence claim, even if the court held that the landlord had a duty to maintain the property absent notice.

maintain rental units by exercising reasonable care. Permitting negligence claims independent of a notice requirement, without explicitly requiring inspections, could incentivize landlords to proactively maintain rental properties and prevent properties from deteriorating.

CONCLUSION

The Supreme Court of North Carolina in *Terry* took a narrow view of landlord duties, requiring notice or knowledge of defects before holding landlords liable for common-law negligence. Given the facts of *Terry*, the court concluded that a landlord does not owe a duty of reasonable care—akin to a typical negligence standard—in relation to rental properties. By taking this limited approach to landlord duties, the court reduced incentives for landlords to proactively maintain rental properties and rejected a more flexible approach to tort liability that could optimize deterrence of unwanted conduct. This could encourage landlords to ignore property deterioration and avoid taking precautions to prevent injuries to tenants.

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