

Property Exam 6

Larry Landlord rented an apartment to Tommy Tenant. "I will rent you this beautiful apartment year to year for the low low price of \$12,000 per year," Said Larry. "I accept," said Tommy.

During the year Tommy only had one problem with the apartment – the door bell didn't work. Tommy asked Larry to fix the doorbell. At first Larry refused claiming he was not obligated to fix anything. After sufficient begging from Tommy, Larry tried to fix the doorbell. Unfortunately, Larry made the doorbell much worse and the next person to use the doorbell, Ivan the Innocent, was electrocuted.

After the first year, Tommy did not have anyplace to go so he stayed in the apartment for another month. Larry came by one day asking for another \$12,000. Tommy told Larry that he was just about to move out and didn't want to stay for another year. "You can't," said Larry, "you're on the hook for another year, pay-up!"

Tommy didn't want to stay and did not know if Larry could force him to pay. Oh how Tommy wished he had paid more attention in property class. Tommy decided the best option was to find a new renter for the apartment. Tommy found Nancy New Tenant who agreed to move into the apartment. If the three times Tommy showed up for property class taught him anything it was that an assignment of the lease would be better than subletting it. Although he wasn't sure why. Actually he wasn't sure if he was right, but he demanded that the lease be assigned to Nancy. Larry agreed. No money was exchanged, but Nancy promised to get Larry the \$12,000 rent "soon."

A few weeks after Nancy moved in Larry started blasting loud sirens at random times of the day and night. When Nancy complained that the noise was unbearable, Larry told her she would thank him in the event of a real emergency.

One day Nancy was vacuuming the floor when she accidentally smashed the vacuum through the drywall. Behind the drywall Nancy discovered a dangerous mold infestation. The mold started making Nancy very, very sick. And the loud sirens every 45 minutes did not help either.

Nancy left the apartment without ever paying Larry the \$12,000. Larry called up Tommy and told him he needed to come up with the \$12,000. Tommy told Larry to get a new tenant and hung up the phone. Larry decided he was too lazy to find a new tenant and would just keep trying to collect from Tommy.

What type of lease was created between Larry Landlord and Tommy Tenant?

Does Nancy owe Larry Landlord \$12,000? Does Tommy owe Larry Landlord \$12,000? What defenses do they have (if any)?

Did Larry Landlord have to repair the door bell? What about the Mold?

Who (if anyone) is liable for Ivan the Innocent's injury?

Example Answer:

What type of lease was created between Larry Landlord and Tommy Tenant?

Term of lease created

There are two basic lease terms, a term for years and a periodic tenancy. In a term for years the lease begins and ends on specific dates. In a periodic tenancy the lease is for a specific period (e.g. week, month, or year) which is repeated until landlord or tenant gives notice.

Here Larry rented the apartment “year to year” with a rent of “\$12,000” per year. Since this creates a lease for a specific periodic, i.e. for one year, this is a periodic tenancy.

Larry and Tommy have entered into a year to year periodic tenancy for \$12,000 per year.

Does Nancy owe Larry Landlord \$12,000? Does Tommy owe Larry Landlord \$12,000?

Holdover tenancy

Is Tommy a “holdover tenant” subjecting him to an additional lease term after the first one year term?

A holdover tenant is one who remains in possession of a leased premises after the expiration of a lease. The Landlord may eject tenant or hold the tenant to another lease term.

Here Tommy gave no notice that he wanted to vacate the premises and Tommy did not vacate the premises more than one month after the original periodic tenancy ended. Tommy is a holdover tenant. Larry had two options with Tommy. Larry could have ejected Tommy or held Tommy to a second one year term. Larry opted to hold Tommy to a second one year term.

Under these facts, Tommy is on the hook for a second periodic tenancy and the \$12,000 in rent.

Subletting of property/ Assignment of Property

Does the fact that Tommy assigned the property rather than subletting it extinguish this duty to pay \$12,000?

Tommy could not remember from property class which was the “better” option, subletting or assigning to Nancy. These options, however, are not “better” or “worse” they are simply different. Neither option would extinguish Tommy’s duty to pay the \$12,000.

Subletting is the transfer of a portion of the lease while retaining a reversionary interest. There is no privity of estate between the landlord and the sub-tenant. Only the original tenant is directly liable to landlord through privity of contract and estate.

An assignment is the transfer by the tenant of all remaining interest in the lease. Assignee is in privity of estate with landlord and is directly liable to landlord. Original tenant, however, remains directly liable to landlord through privity of contract.

Here, if Tommy would have sublet the property he would have been the one and only person on the hook for the \$12,000. Since he assigned the property both he and Nancy are on the hook for the rent. (He is on the hook through privity of contract with the landlord, Nancy is on the hook through privity of estate with the landlord).

The fact that Tommy assigned the property does not extinguish his duty to pay the \$12,000 in rent. Under our facts (an assignment) both Tommy and Nancy are liable for the \$12,000 rent.

What defenses do they have (if any) to the payment of rent?

Constructive eviction

Can Nancy argue she was constructively evicted due to the sirens which blasted every 45 minutes.

A tenant is entitled to the quiet enjoyment of the leased property. A constructive eviction occurs when the landlord’s actions or inactions interfere with the tenants quiet enjoyment of the premises.

Here Larry Landlord blasted loud sirens at random times of the day and night. A reasonable person would not be able to utilize property were such a distraction occurred every 45 minutes. While the “quiet” in “quiet enjoyment” is not specifically referring to sound, the disturbance caused by the landlord would disrupt a tenant’s use and enjoyment of the leased property.

Nancy can argue she was constructively evicted due to the sirens which blasted every 45 minutes. If a tenant is constructively evicted he or she no longer owes rent for the leased property. It is likely that a court would find Nancy and Tommy liable for the time they occupied the apartment, but not for the full \$12,000.

Implied warranty of habitability

Can Nancy argue that Larry breached the implied warranty of habitability due to the dangerous mold in the apartment?

Putting aside the scientific question as to whether mold is truly dangerous, this answer will assume that the mold is dangerous as the facts state it is dangerous.

A landlord must convey a habitable premises complying with local housing codes. A landlord who breaches the implied warranty of habitability can be sued for damages and specific performance and ordered to correct the deficiencies.

Here dangerous mold was discovered which made Nancy sick. A reasonable person would find that a premises was not habitable if it contained dangerous mold which was making him or her sick.

Nancy can argue a breach of the implied warranty of habitability due to the dangerous mold. If Nancy choose to stay in the apartment she could have forced the landlord to remediate the mold. Since Nancy choose to leave, it is likely a court would find she no longer owes future rent. As stated above, it is likely that a court would find Nancy and Tommy liable for the time they occupied the apartment, but not for the full \$12,000.

Surrender of premises

Can Tommy argue that he surrendered the premises?

A surrender of the premises requires that both the landlord and tenant agree to end the tenancy. A surrender stops duty to pay rent only if landlord accepts the surrender.

Here Tommy did attempt to surrender the premises, but there is no indication that Larry accepted the surrender. Under these facts, Tommy's attempted surrender would not eliminate his duty to pay the rent for the premises.

Mitigation of damages

Can Tommy and Nancy argue that Larry did not mitigate his damages?

If tenant vacates premises, landlord must use reasonable efforts to re-let the premises in order to mitigate their damages.

Here, Larry decided he was too lazy to find a new tenant and would just keep trying to collect from Tommy.

Under these facts, Tommy and Nancy will be able to show that Larry did not attempt to mitigate his damages. Nancy and Tommy will still be liable for the rent while they were occupying the premises. They will also owe some amount of rent for the time it would take a re-let the premises using reasonable efforts.

Did Larry Landlord have to repair the doorbell? What about the Mold?

Repair of property

A Landlord owes no duty to maintain or repair property. An exception to this rule, however, is a latent defects where a reasonable inspection by tenant would not have revealed defect and landlord should have know of defect.

Doorbell

Here, the doorbell was broken. Since a doorbell is out in the open a reasonable person could have inspected the doorbell simply by trying it. Larry had no duty to repair the doorbell.

Mold

Here, the mold was hidden behind wall. It is not reasonable that someone renting an apartment would tear up drywall looking for mold. There is nothing in the facts indicating water damage or any other visible defect which might indicate to a reasonable person the possible presence of mold. The unknown in this fact pattern is whether the landlord should have known of the mold behind the wall. there are no facts which indicate what, if anything, the landlord knew about the mold.

If the landlord should have known about the mold then the landlord would be required to repair this latent defect. Even if the landlord did not originally know about the mold, since the presence of the mold is a breach of the warranty of habitability (discussed above) the landlord would still need to repair the mold.

Who is liable for Ivan the Innocent's injury?

Tort liability

A tenant, as occupier of the premises, is liable to third parties injured on the premises. However, a landlord can be liable if the landlord attempts to repair property, but makes condition worse.

Here, Larry's repair to the door bell caused the dangerous condition which ended up electrocuting Ivan.

Under these facts both Tommy, as occupier of the premises and Larry as faulty repairer of the premises might be liable to Ivan (or more precisely, Ivan's estate).