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1. What arguments may Lois reasonably raise in support of the lawsuit against Tammy for breach of her lease and special damages?

Tenancy at common law

At common law, a tenant and landlord may enter an agreement to rent an apartment, the tenant is responsible for paying rent and not to commit waste. The landlord is responsible of giving possessory rights to the tenant in receipt of rent payments. A tenancy that has terms stating the end of the agreement is known as a periodic tenancy. Upon the end of the term under the agreement, the tenant must give up possession and no notice is required.

Here, the facts state that the agreement between Tammy and Lois was for a nine month lease beginning on June 1 with payment monthly. Therefore, Tammy is responsible for all lease payments on a month to month basis for the total of nine months and at common law, even if the building is destroyed, Tammy will be liable for payments, Tammy also has a duty not to commit any waste which means that if the apartment due to her using it causes waste she must repair it.

Modern

In most of the jurisdictions today, the duty of habitability applies to the landlord, meaning that when given reasonable notice, if the apartment becomes inhabitable the landlord must repair within a reasonable time. The duty of habitability is breached if the tenant does not receive the use and enjoyment of the apartment because the apartment plumbing, or appliances are not in working order or if the neighbors are substantially loud to interfere with the use and enjoyment of the tenant.

Possession was late

Here, the facts state that Tammy moved in late because Ralph had possession, the previous tenant on June 1 when she was supposed to take possession. So, the lease started late because Lois evicted Ralph on June 15. Tammy moved in on June 16 and is now in possession. At common law this is of no effect to Tammy, because she needed to sue Ralph for possession to receive compensation for the time he was in possession but modernly, she has 15 days of rent payments where she did not have possession.

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Therefore, Tammy has 15 days of payment of rent which in a modern jurisdiction she would be entitled to at least offset any damages to Lois.

#### Noise complaints

Tammy was a medical student, if Lois knew this, then the noise of the upstairs neighbor, Coco, would have breached the duty of habitability because, Tammy needed a quiet place to study. The fact that the neighbors were a rock band, this would substantially interfere with the use and enjoyment of Tammy's apartment. If Lois knew at the time of the lease agreement signing, it may be that Tammy can have the contract rescinded (discussed below). Tammy did complain and modernly, Lois had a duty to stop the noise. The noise continued from June 15 until July 15 and ended when the Gyrationists were arrested in Coco's apartment.

#### The plumbing

At common law, Tammy must repair and seek reimbursement. Modernly, Tammy must give reasonable notice of the plumbing problem. Here, Tammy gave Lois notice immediately that the water was cold on July 16. Lois promptly hired a plumber to fix the problem, but the fix only worked for a week. Tammy needed to give Lois notice again but she did not.

#### The stove not working

On August 30, the stove stopped working and Tammy, disgusted with her apartment and all the events that had occurred gave up the apartment on August 31. Tammy failed to give reasonable notice of the stove not working. In addition, she did not renew the notice that the plumbing was not working after the plumber fix failed a week later.

Therefore, since Tammy is terminating the tenancy early, she is breaching her duty to remain as a tenant until the end of the lease agreement, Lois has a right to sue for damages.

#### Remedies

With a landlord/tenant breach, landlord has a right under the contract to receive the benefit of the bargain, with a duty to mitigate (common law, duty to mitigate is not required).

Damages must be the standard measure of damages under the contract

Here, the money damages will be the remainder of the rent owed for the remaining 7

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months on the lease agreement, since the lease started in June and was for nine months. However, in a modern jurisdiction, Lois must mitigate which means Lois should attempt to find another person to rent the apartment.

#### Special damages

#### Consequential damages

These are the ones foreseen, actual and unavoidable at the time the parties contracted in writing. The moving out may have been foreseeable, see the discussion below under constructive eviction. If Tammy does not prevail in the defense, then Lois will be entitled to any damages that were foreseeable at the time of contracting.

#### Incidental

Those that arouse because of the breach by the tenant leaving early, advertising for a new tenant, cleaning, etc.

#### Mitigation

Lois has a duty to mitigate damages, and find a new renter. If unable then this will not apply.

#### Defenses

#### Constructive eviction

Constructive eviction is allowed only if a duty of habitability is breached and after notice the landlord fails to make the repairs

Here, the facts of all the habitability issues, it could be unreasonable for Lois to rent a place that is quiet to a medical student if a band is playing in the apartment above. It is also unreasonable for the water and stove issue. Also, the possessory interest not being conveyed until late by 15 days may show that landlord is not acting in a reasonable manner in keeping the substantial breach in duty of habitability issues raised may be a defense for Tammy. The problem is the impression Tammy gives stating, "This place is a zoo, I wouldn't live here if you paid me."

#### Notice requirement regarding habitability

The fact that Tammy, made notice about Ralph, the complaint about the noise, the complaint about the plumbing, does not excuse the notice requirement for the plumbing breaking again or the stove breaking.

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Therefore, she does not have an excuse under Constructive eviction and will be liable for all rents owed that Lois was unable to mitigate by finding another tenant.

Notice requirement upon eviction/termination

Because this was a tenancy under a specified period in the contract, termination could only happen at the actual expiration of the lease at the end of the nine months. Tammy giving notice on August 31 is not valid.

Payment of rent for days she did not possess the apartment.

Lois did not give possession on June 1, but was unable to until after the eviction of Ralph on June 15. Therefore, this amount should be at least credited to Tammy on the remaining 7 months owed.

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**END OF EXAM**