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### Breach of Lease

A term lease occurs where a landlord and tenant agree to rent a premises for a specific period of time and the tenancy ends at the end of the term. A valid lease must be in writing. Where a written lease does not exist, a court will imply a month to month lease with the terms to the tenancy such as amount of rent charged, and periods of time dependent upon the actions of the parties. A month to month tenancy ends at the end of the month.

Here, T and L agreed to a term of 9 months and T pre-paid the first month. If there is not a written contract, the court will infer a month to month tenancy. The facts do not provide that there was a written agreement, therefore the court will infer a month to month tenancy and the court will interpret the terms of dates and rent based upon T's paid rent and attempt of possession on June 1 and actual possession on June 16. While the court will find a tenancy existed, L will assert that T breached the lease by moving out or vacating the premises.

### Failure to deliver Premises

A landowner owes a duty to deliver possession of a premises. The majority view is that this duty arises at the start of the tenancy and the tenant is not responsible to evict the prior tenant nor is the tenant required to pay rent for premises that they do not have possession of. While failure to deliver possession may invalidate the lease, Courts will enforce a lease from the date of possession where the tenant does take possession.

Here, T and L agreed that the tenancy was to commence on June 1 and she pre-paid rent for the month of June, however, she did not receive possession until June 16. As it took L 15 days to evict the prior tenant and T did not have possession during that time, L is liable to T for 15 days of rent. The court is unlikely to find the lease terminated as L did eventually give possession to T, and T did take possession. The court is further likely to infer that the month to month tenancy begins on the 16th of each month.

### Warranty of Quiet Enjoyment of Land

A landlord owes a tenant a warranty of quiet enjoyment of the land. A breach of this warranty occurs where the L fails to keep the premises free of unreasonable interference to the use of the property. Typically, the landlord must control the actions of other tenants to not interfere with the right to enjoyment by other tenants. The tenant

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must notify the landlord of any breach of this right, and L must fix the problem within reasonable time. If the landlord fails to stop with the unreasonable interference, T may immediately terminate the lease by vacating the premises under the theory of constructive eviction and T will not be liable for further rent.

Here, T will argue that as a landlord of an apartment building, L had control over the actions of other tenants as they were in privity of estate and contract. T will further argue that as a medical student, she was renting the apartment for a quiet place to study and rest in between classes and she could not do so due to the daily rehearsals which would defeat the purpose of her tenancy. The rehearsals made it impossible for her to use her apartment as a place of relaxation and study. L will argue that she eventually fixed the problem. However, a court is unlikely to find L's argument persuasive. T will be successful due to the fact that she 1) repeatedly complained to L, 2) it took one month for the band to stop rehearsing, and 3) the stoppage of rehearsals was not due to the acts of L stopping them but rather the band's arrest.

#### Constructive Eviction

Where a landlord fails to maintain the premises free of unreasonable interference, the landlord will be found to have constructively evicted the tenant, and the tenant may end the lease and vacate the premises and not be liable for rent.

Here, L is liable for a breach of the warranty of quiet enjoyment because of the band's continued interference, however, as T continued living there she was liable for rent and did not terminate the lease. T's failure to vacate the premises will be the key factor in the court finding the the tenancy did not terminate.

#### Duty of Habitability

A landlord owes a tenant a duty to provide a habitable premises. This duty includes that the premises have working heat, water, sewage, and working doors. A breach of this duty makes a premises uninhabitable and the tenant may 1) demand the landlord make necessary repairs within a reasonable amount of time and withhold rent until the landlord makes the repairs 2) make necessary repairs themselves and deduct the expense from the rent or 3) in extreme cases where the premises is unsafe to human health, vacate the premises, the tenant will not be liable for further rent upon vacating the premises. Where, the tenant withholds rent, a court will allow them to keep the rent where the tenant 1) puts the rent in an escrow account and 2) it determines that the premises was indeed uninhabitable for that time period.

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Here, T will argue that because the hot water stopped working twice, and that the stove stopped working as well, L did not provide a habitable premises. However, the courts main concern will be whether the conditions made the premises unfit for human habitability. Factors court weigh heavily are health concerns, and typically a broken stove and cold water in the shower does not rise to a level of a health hazard. While both are inconveniences, they do not amount to the levels of danger to health that the court looks for as one can take a cold shower or find other avenues for food. Furthermore, L will argue that 1) she promptly fixed the shower and 2) she was unaware of the stove breaking and the hot water stopping a second time. Due to the lack of notice to L about the broken stove and lack of hot water and most importantly both defects not rising to the levels of hazard to human health that the court looks for, T is unlikely to be able to raise a breach of the duty of habitability defense to L's claim of breach of lease and her termination was not lawful.

As such, T will be liable to L for August's rent through the 16th.

#### Duty to mitigate rent

Where a tenant has breached their lease, the landlord must make a reasonable attempt to relet the premises to another tenant to mitigate their losses. Here, T may raise this as a defense if L does not make an attempt to lease the apartment again and attempts to sue T for these losses.

In conclusion, a court is likely to find that a month to month tenancy existed with the term ending on the 15th of each month and T will be liable for rent until August 15th.

Question #3 Final Word Count = 1209

**END OF EXAM**