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LOIS V. TAMMY- BREACH OF LEASE

CONTRACT

A lease is a contract requiring offer, acceptance, and consideration. An offer is the manifestation of intent to be bound. Acceptance must be the mirror image of the offer. Consideration is bargained for legal detriment.

Here, Lois and Tammy engaged in a offer for Tammy to rent the apartment from Lois for nine months beginning June 1st. Tammy accepted when she prepaid the first months rent. The consideration for the contract was Tammy paying rent and Lois providing the apartment.

Therefore, there is a valid lease contract.

MONTH TO MONTH LEASE

A month to month lease is a lease for a period of six to eleven months.

Here, Tammy and Lois engaged in a month to month lease for a period of nine months beginning June 1st.

Therefore, there is a month to month lease.

LANDLORD'S DUTIES

A landlord has the duty to provide a habitable premises for the tenant. The landlord must make reasonable repairs as necessary to the property (typically regularly scheduled maintenance and anything the tenant notifies the landlord about).

Here, Tammy will argue that Lois violated her duties as a landlord which will allow Tammy to breach her lease agreement.

HOLDOVER TENANT

A holdover tenant is a tenant from a prior lease that still inhabits the apartment.

Here, Ralph's rental term ended on May 15th and he was still in the apartment when Tammy arrived on June 1st.

Therefore, Ralph would be considered a holdover tenant.

CURRENT TENANT'S REMEDIES FOR HOLDOVER TENANT

A current tenant's remedies for a holdover tenant are to let the landlord know. The tenant also has the ability to pursue a legal eviction to remove the holdover tenant from the property.

Here, Tammy complained to Lois about Ralph still occupying the apartment. Lois pursued a legal eviction and Ralph was out of the apartment by June 15th. Tammy will argue that she is not liable for rent from June 1st to June 15th because she did not have actual possession of the apartment. However, Lois will argue that the options were limited as Tammy is in a month to month lease and that she did what a reasonable landlord would do which is to engage in an evictions; even though she was under no legal duty to have the eviction (it was Tammy's). Lois will argue that she acted as fast as she reasonably could to evict Ralph.

Therefore, Tammy's does not have any remedies for the holdover tenant.

BREACH OF HABITABILITY-PRIVATE NUISANCE

Tammy will argue that The Gyration's daily rehearsal constituted a private nuisance. A private nuisance is an action that prohibits an individual from the full use and enjoyment of her land.

Here, Tammy will argue that the daily rehearsals interfered with her studies as a medical student which prohibited her from the full use and enjoyment of her apartment. However, Lois will be able to successfully counter that there is nothing to indicate the band is in violation of their lease and that Tammy can pursue action against the band because the noise is not within Lois's ability to repair. Further, as a student Tammy is extra sensitive regarding noise interfering with her studies. There is no indications that these rehearsals were occurring at odd hours which would interfere with the ability to sleep. Tammy is the only tenant in the apartment complex that is repeatedly complaining about the band's noise. Lois will also point out that the Band was arrested for disturbing the peace on July 15th. After July 15th the nuisance was essentially abated. Tammy will argue that this also violated the duty of habitability because she could not use her home to study. However, without a showing of more evidence this argument will be unsuccessful. Especially because the noise is no longer on the premises.

Therefore, there is no private nuisance because the nuisance has been abated.

BREACH OF WARRANTY OF HABITABILITY- COLD WATER

A Landlord has a duty to keep the premises habitable. They are required to fix conditions that will affect the health and safety of the tenant.

Here, the shower in Tammy's apartment delivered only cold water. Access to hot water is a condition that can affect the health and safety of the tenant. However, Tammy notified Lois who hired a plumber who fixed the issue. Tammy did not notify Lois that the water stopped working again.

Therefore, Lois is not responsible for fixing the condition because she had no notice.

BREACH OF WARRANTY OF HABITABILITY- STOVE

Here, the stove stopped working. The stove falls under the condition of habitability because it is necessary for cooking.

Tammy will argue that the stove stopping to work is breach of habitability. However, Tammy did not report this to Lois to give her an opportunity to fix the condition.

Therefore, Lois can not be responsible for fixing the condition because she has no notice.

Conclusion: There are no indications that Lois violated her duties as a landlord. There is ever indication that upon notice of a problem on the premises that Lois took prompt action to fix the problem. This is shown through her making repairs to the water in Tammy's apartment and evicting Ralph.

Therefore, Lois did not violate any of her landlord duties.

TENANT'S REMEDIES

Assuming that Lois breached her duties has a landlord as a tenant Tammy as remedies. Tammy can withhold a portion of the rent and use that portion to make repairs on the premises. Tammy can move out of the apartment under the theory of constructive eviction. Tammy can withhold rent and sue Lois.

Here, Tammy chose to leave the apartment. She did not withhold rent and sue, nor did she take it upon herself to conduct repairs to the apartment. Tammy went so far as to not even notify Lois of repairs that needed to be undertaken at the apartment. Lois will argue that she had no duty to fix what she did not know was broken; nor could she have fixed what she did not know needed to be fixed. Further she will argue that Tammy could not rightfully use any remedies against her because of the lack of notice.

CONSTRUCTIVE EVICTION

A constructive eviction occurs when the premises is so uninhabitable that a tenant is essentially forced to move out because she cannot utilize the property.

Here, Tammy will argue that she was constructively evicted twice. The first time when Ralph was the holdover tenant because he was living in the apartment she did not have the ability to move into the apartment. This forced her to find other housing until Ralph could be evicted. The second time she will argue was when the stove stopped working because looking at everything that occurred during the course of her time in the apartment there was one occurrence after another which prevented her from using her property to the fullest. However, Lois will argue that the second constructive eviction was improper because the entire circumstances of Tammy's stay in the apartment is not examined when deciding whether she is forced to move out. Lois made every repair that Tammy notified her of and addressed every complaint that Tammy has lodged with her relating to the apartment. Lois would have promptly had the stove repaired had Tammy given her notice and a chance to fix the stove.

Therefore, there is no constructive eviction.

Therefore, Tammy did not assert any of the tenant's remedies relating to her apartment.

TENANT'S DUTIES

A tenant has a duty to pay rent, notify the landlord of major repairs that need to be made, engage in minor repairs in the apartment, and follow the terms set forth in the lease.

Rent

A tenant has a duty of pay rent.

Here, Tammy stopped paying rent after she left the apartment. This was on August 31st. The time frame of Tammy's lease was nine months from June 1st. Tammy still had six months left of her lease and she did not properly assert her remedies for issues upon the land.

Therefore, Tammy breached her duty.

Notice

A tenant must notify a landlord of major repairs that need to be made.

Here, Tammy did not notify Lois the second time her apartment began delivering cold

water, further her only notification to Lois that her stove stopped working was when she appeared at Lois' door and gave her key back to Lois. Lois will argue that any repair or complaint that she had been notified of had been promptly addressed and fixed. Lois cannot fix what she doesn't know is broken.

Therefore, Tammy breached her duty.

Therefore, Tammy breached her duty to pay rent and notify Lois of major repairs that needed to be made.

Therefore, Lois will be able to successful sue Tammy for breach of her lease and special damages for past due and prospective rent for the rest of the lease.

Question #3 Final Word Count = 1481

END OF EXAM