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**1) Arguments Lois may raise against Tammy and Counterclaims and Defenses
Tammy may raise**

Term of Years

A term of years lease is one that has a set start date and set end date.

Here, Lois leased an apartment to Tammy for nine months set to start in June 1 and set to end in nine months from then on March 1 of the following year.

Therefore, Tammy had a term of years lease.

Duty to Pay Rent

A tenant owes the landlord a duty to pay rent for the term of the lease. When a tenant fails to pay rent, the landlord may assert a claim against the tenant to recuperate lost rent.

Here, on August 31, Tammy returned her key to Lois, stopped paying rent, and never returned to the apartment. Tammy only paid rent for a period of three months and failed to pay for the remaining seven months of the lease period. Because of the early termination of the lease, Tammy owes Lois the rent for those months unless she has a defense.

Therefore, Tammy owes Lois rent unless she can assert a defense.

Termination of Lease

A term of years lease may be terminated by providing the landlord with a written notice of the intent to terminate the lease with a one months notice.

Here, the facts do not indicate that Tammy wrote Lois a notice that she was terminating the lease nor that she properly gave such notice. Tammy disgusted with all the events going on in the apartment simply knocked on Lois's door, gave the key to Lois and said "This place is a zoo; I wouldn't live here if you paid me!"

Therefore, Tammy did not properly terminate the lease.

Consent

A landlord may relieve a tenant of their responsibilities under the lease where they consent to the termination of the lease.

Here, Tammy will argue that Lois consented to the termination of the lease when upon returning her key Lois took the key and said, "sure, okay, if that's how you feel." However, it is not clear whether this is sufficient to terminate the lease and obligations under the lease.

Duty to Provide Premises

A landlord has the duty to provide the premises on the start date of the lease.

Here, on the beginning of her lease term, Lois arrived on June 1 to the apartment and the prior tenant Ralph was still occupying the apartment and Tammy did not take possession until June 16, over two weeks later.

Therefore, Tammy can bring a counterclaim for breach of duty to surrender the premises at the start of the lease.

Implied Covenant of Quiet Enjoyment

Implied in every lease is the covenant that the tenant will not be disturbed in their use and enjoyment of the residence.

Here, Tammy will argue that the implied warranty of quiet enjoyment was breached when the apartment above hers was occupied by Coco a member of the band Gyration because the band rehearsed daily. They interfered with Tammy's studies as she was a medical student. Tammy complained to Lois repeatedly about the continuing noise. The level of noise disturbance was extreme as evidenced by them being arrested at the apartment for disturbing the peace on July 15, a month into Tammy's lease. It was only then that Tammy was spared the noise. Such loud noises constitute an interference with the use and enjoyment Tammy had in the apartment.

Therefore, Tammy can bring an action against Lois for breach of the implied covenant of quiet enjoyment for that month.

Implied Warranty of Habitability

Implied in all residential leases is the warranty that the premises are fit for human residence. The warranty includes access to hot water and a working stove.

Here, beginning on July 16, a month into Tammy's stay, the shower in Tammy's

apartment delivered only cold water. Tammy had complained to Lois and Lois promptly hired a plumber to fix the problem. However, the repair only worked for a week. Additionally, Tammy's stove on August 30 stopped working which triggered her response to abandon the lease.

Therefore, Tammy can assert a breach of the warranty of habitability against Lois.

Constructive Eviction

An actual eviction occurs when a landlord actually evicts a tenant from the all or part of the premises. A constructive eviction occurs when because of a breach on the warranty of habitability, a tenant is essentially evicted from all or part of the premises because of not being able to use it. A tenant has the right to demand the landlord fix the defect, and if the landlord does not fix it within a reasonable time, the tenant was fix it themselves and deduct the repair costs from the lease or they may terminate the lease and move out promptly.

Here, Tammy will argue that she was int he right to terminate the lease the way that she did because she was constructively evicted. Not being able to have hot water and do regular things like dishes and shower and not having a functioning stove act as a constructive eviction as those parts of the apartment are unusable and necessary. Although Tammy had informed Lois of the cold water problem and Lois did hire a plumber to go and fix it, the repair only worked for a week. However, Tammy failed to inform Lois that the repair only worked for a week and that she only had cold water. Additionally, Tammy never informed Lois of the stove not working and in fact abandoned the lease one day after the stove not working.

Because Tammy never notified Lois of the on going water situation nor give her sufficient time to fix the stove, Tammy may not assert constructive eviction as a defense to her termination of the lease without notice.

Duty to Mitigate

A landlord has a duty to mitigate damages where a lease is terminated by the tenant prior to the lease term by making an effort to re-lease the premises.

Here, the facts do not indicate that Lois made an effort to mitigate damages by trying to re-let the apartment and cannot sue for past do or prospective rent unless her efforts really failed to produce a new tenant.

Therefore, Lois breached her duty to mitigate damages.

Conclusion

In conclusion, Tammy has a some counterclaims against Lois but no affirmative defenses to her failure to pay rent and terminating the lease early.

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END OF EXAM