

COUNCIL OF LEGAL EDUCATION
NORMAN MANLEY LAW SCHOOL

LEGAL EDUCATION CERTIFICATE
FIRST-YEAR SUPPLEMENTARY EXAMINATIONS, 1998

LANDLORD AND TENANT

(Friday, August 14, 1998)

Instructions to Students

- (a) Time 3½ hours
- (b) Answer **FIVE** questions.
- (c) In answering any question, a candidate may reply by reference to the law of any Commonwealth Caribbean territory, **but must state at the beginning of the answer the name of the relevant territory.**
- (d) It is unnecessary to transcribe the questions you attempt.

PLEASE REMAIN SEATED UNTIL YOUR SCRIPT HAS BEEN COLLECTED.

QUESTION 1

In March 1994, Arthur leased 0.25 hectares of land on High Street to Krispy Fried Chicken for a period of fourteen years at a rental of \$12,000 per annum for the first seven years; thereafter increased rental to be agreed between the parties.

Between April and October 1994, Krispy erected a restaurant and car park at a cost of \$1,000,000. On completion of the restaurant and with effect from November 1, 1995, Krispy entered into an agreement with Arthur to manage and operate the restaurant on the terms and conditions as therein set out.

This agreement contained various clauses dealing with the operation and maintenance of the restaurant and provided, *inter alia*, that the licensee should pay an annual licence fee of \$60,000 for the use of the restaurant, that he should have quiet enjoyment thereof and that the agreement could be terminated for any cause whatever by either party giving to the other one month's notice in writing to that effect.

Last month Arthur received a letter from Krispy giving him one month's notice to quit with effect from August 30, 1998. The notice, the letter said, was in accordance with Clause 6 of the agreement. Clause 6 states as follows -

"This Agreement may be terminated for any cause whatever by either party hereto on giving to the other one month's notice in writing to that effect such notice expiring at the end of the calendar month."

Arthur has consulted you with respect to his rights in this matter.

Advise Arthur.

QUESTION 2

- (a) Sponge occupies on an oral monthly tenancy, a super studio apartment in a complex owned by Coral Ltd. (The apartment is not subject to rent restriction/control legislation.) Sponge has been erratic in the payment of his rent and is now \$20,000 in arrears, representing three months rent. Coral Ltd. has properly commenced action for recovery of possession, arrears and mesne profits.

Sponge's defence is that he has been withholding rent because of structural defects to the adjoining apartment which have caused damage to his belongings.

Advise Sponge on the validity of this defence.

- (b) In June 1997, Joe leased a two-bedroom cottage for five years from Doe under a lease which provided *inter alia* that the tenant was "not to sublet or part with possession of the premises without the landlord's previous consent in writing which shall not be unreasonably withheld".

In April 1998, having been relocated by his employer to another country, Joe assigned the lease to Bowe, but without first obtaining the landlord's consent.

Doe has therefore sought your advice. Advise him.

QUESTION 3

In 1992, Annan leased a house at 10 Bacolet Row to Oniel by deed for seven years at a rent of \$8,000 per annum payable quarterly. In the lease, Oniel covenanted, *inter alia*, not to use the property for any purpose other than residential.

In June 1993, Oniel assigned the lease to Chelsea who nine months later sublet to Delia for the remainder of the term, less one day. In 1995, Annan conveyed the reversion to Rob who has now discovered that the rent is two years in arrears and that Delia has started to operate a club and discotheque in the house.

Advise Rob.

QUESTION 4

In 1994, Cory leased premises on Deen St. from Paradise Ltd. He uses the premises for the manufacture of straw items. The rent of \$1200 is payable

on the first day of each month, in advance, and Cory is also responsible for payment of all utility bills.

On December 21, 1997, Paradise served Cory with notice to quit for non-payment of rent that he agrees has been in arrears for three months. He claims, however, that the premises have been in a bad state of repair for years and that during recent heavy rains, water seeped in through the defective roof causing damage to the inside walls and flooring and to straw which he stored on the premises for his business. As a result, he decided to withhold the rent. He also wishes to claim compensation from Paradise who has denied liability.

The Company states that it is an express term of the lease that the tenant should maintain the premises in a tenant-like manner, fair wear and tear excepted. Cory is of the view that the landlord is responsible for all repairs although this is not expressly stated in the lease. Directors of the Company from time to time have visited the premises in order to purchase straw items and are therefore aware of the disrepair. Cory, who is being sued for repossession and arrears of rent, seeks your advice.

Advise him.

QUESTION 5

On September 25, 1992, Welcome Properties Ltd. let "Moonhill" (which is not subject to rent restriction/control legislation) to Brown for ten years on their standard terms of lease which included -

- a covenant by the tenant to keep the interior and exterior of the premises in good tenantable repair;
- a covenant by the tenant to permit the landlord, upon giving three days' notice, reasonable access to inspect the premises;
- a proviso for re-entry for breach of covenant or arrears of rent.

Three months ago Welcome inspected the property and found a number of dilapidations affecting the windows, water pipe, and floor panels. They immediately served a notice to repair on Brown. To date there has been no response from him. Welcome now seeks your advice as to their rights to re-enter and forfeit.

Advise Welcome.

QUESTION 6

Advise Black on the validity and effect of the notices to quit in the following cases -

- (a) He was let 14 Arcadia Drive on a tenancy agreement for one year from March 25, 1990 with option on giving three months notice to continue on a quarterly tenancy. The tenancy was so continued until near the end of 1997. On December 20, 1997, the landlord served notice to quit in the following terms -

"I hereby give you Notice to quit 14 Arcadia Drive on or before 25th March next."

- (b) In August 1992, he took premises at 10 Hyatt Avenue on a lease determinable by three calendar months' notice at any time. He has now been served with a notice to quit dated July 21, and delivered by post July 24, stating -
- "I hereby give three months' notice of termination of the lease you hold on 10 Hyatt Avenue."
- (c) He had made a quarterly letting of premises used as a motor repair shop to Hinge and Bracket who have now written to him stating -
- "We wish to give notice of our intention to leave at the end of the next full quarter if we find cheaper premises."
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QUESTION 7

Patsy is a tenant of a building with an annex let to her by Carlos Ryce at a monthly rent of \$3,000. She uses the premises partly as a residence and partly as a dental office. She rents the annex to Kimba, a nurse at the dental office, for \$800 per month which includes meals. The rent for the last two months has not been paid by Patsy.

Yesterday, at 6.00 a.m., a bailiff entered the premises through the back door, which was shut but not locked. On seeing Patsy who was attending to a patient named Lisa sitting on the dental chair, he said - "I have come to levy distress for arrears of rent". He then requested Lisa to get off the dental chair and seized it along with a stroller she had brought on the premises. He further seized and carried away a washing machine, a bed and a refrigerator.

He then forced open the door to Kimba's place and carried away her bed and dressing table. He then left but returned one hour later and drove away with Lisa's car that was parked on the roadway in front of the premises.

Advise Patsy, Kimba and Lisa.

QUESTION 8

Saleem, who lived in Toronto for many years, recently returned home with his wife to spend his retirement years. Shortly after he returned from Toronto, he purchased a house intending to convert it into his retirement home. The house is presently tenanted but Saleem says it is in need of substantial repairs, both internally and externally, as the tenant had failed to carry out any repairs. Saleem plans to convert the house to two self-contained apartments. Thereafter, he plans to occupy one of the apartments and rent the other. He now discovers that the house is subject to rent restriction/control legislation. He therefore seeks your advice and wishes to know -

- (i) whose responsibility it is to carry out the necessary repairs in the absence of a written lease;
- (ii) what procedure he must adopt in order to have the present tenant, who is a monthly tenant, vacate the premises;
- (iii) whether the apartment he intends to let will be governed by such legislation.

Advise Saleem.
