

COUNCIL OF LEGAL EDUCATION
NORMAN MANLEY LAW SCHOOL

LEGAL EDUCATION CERTIFICATE
FIRST YEAR EXAMINATIONS, 1995

LANDLORD AND TENANT

(Monday, May 22, 1995)

Instructions to Students

- (a) Time: 3 1/2 hours
- (b) Answer FIVE questions.
- (c) In answering any question, a student 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 territory.
- (d) It is unnecessary to transcribe the questions you attempt.

PLEASE REMAIN SEATED UNTIL YOUR SCRIPT HAS BEEN COLLECTED.

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QUESTION 1

- (a) On May 10, 1994, Sonny entered into a contract to grant a lease of his apartment to Raymond for a term of 9 years at a monthly rent of \$2,000 payable in advance, to commence on June 1, 1994. On May 12, 1994, Sonny had to leave the country urgently to take his wife to New York for an operation. Prior to leaving he gave the keys for the apartment to Raymond and allowed him into possession, and also gave him permission to paint the interior of the apartment even though the lease for the apartment had not been executed.

Sonny was away for 8 months, during which time he was forced to sell the apartment in order to pay for the operation. He has now returned and has served Raymond with one month's notice to quit the apartment. Raymond has paid all rent due to Sonny.

Advise Raymond.

- (b) On April 1, 1992, Marlene entered into an agreement in writing with Celeste to lease Greenacre to her for the term of "one, three, five or seven years" for the annual rent of \$1,200 payable in advance in equal monthly instalments.

Celeste used Greenacre as a vegetable garden. On September 6, 1994, Celeste served notice on Marlene that she intended to quit on April 1, 1995. On April 1, 1995, Celeste, unable to find a suitable alternative property, tendered the rent which Marlene accepted.

On May 10, 1995, Marlene died leaving her property on trust for sale, and her trustees, who desire to sell the property, seek your advice on the rights of Celeste.

Advise them.

QUESTION 2

Lisa, the owner of a block of apartments, not subject to rent restriction/control legislation, granted Tracy a five-year lease of a one-bedroom apartment. The lease did not contain a covenant for quiet enjoyment.

- (a) Lisa has started to construct a swimming pool in an open space in front of Tracy's apartment for the use of all the tenants. Tracy cannot swim and she complains that the noise and the dust created by the construction are intolerable.
- (b) Lisa regularly uses a duplicate key to enter and inspect, in her absence, Tracy's apartment.
- (c) Pavo Roti, who is a member of a world famous singing trio, is the tenant of the apartment immediately above Tracy's. Tracy complains that Pavo's evening rehearsals disturb her and that water from a defective bath in Pavo's apartment recently began penetrating into her apartment.

- (d) Rats and cockroaches from a storeroom controlled by Lisa and located below Tracy's apartment have been infesting her apartment.

Advise Tracy with respect to the above.

QUESTION 3

In 1993, Simone leased for five years residential premises from Curtis. The premises were located in an exclusive residential area and she covenanted, inter alia, to use the premises for residential purposes only. The house is set in a beautiful landscaped garden.

Soon after she went into possession, Simone permitted her cousin to hold her wedding reception at the premises. The reception went off very well due in part, it was said, to the wonderful facilities in the house and the garden.

A number of persons at the reception approached Simone with the possibility of their holding wedding receptions and dinner parties at the house for a small fee. Simone agreed mainly because she had recently lost her job.

Thereafter, functions were regularly held on weekends, often involving hundreds of persons.

Last week Simone came to see you. She told you that recently large cracks had appeared in the concrete flooring and columns of the front balcony and that she had informed the landlord of this

disrepair and reminded him of his repairing covenant in the lease which states as follows -

"The landlord covenants to carry out all structural repairs to walls, ceilings, roof and floors of the demised premises."

Curtis' response, however, was that she was in breach of her covenants with respect to user and to use the premises in a tenant-like manner and that the reason why the cracks had appeared was because large numbers of persons were often on the balcony which was not designed to accommodate such numbers. He therefore had no intention of carrying out any repairs and was in fact considering bringing an action against her.

Simone's response to this was that other residents in the neighbourhood regularly entertained large numbers of guests so she was doing nothing out of the ordinary. Furthermore, she says, had Curtis insured the premises (even though not required by the lease to do so), he would have been able to make a claim against the insurers for the repairs.

In the circumstances, Simone has sought your advice.

Advise her.

QUESTION 4

National Co., a supplier of petrol and petroleum products, granted Lex Ltd. a ten-year lease of a petrol filling station with effect from January 1, 1992. The lease contains, inter alia, the following -

- (i) a covenant by the tenant to pay the rent quarterly in advance;
- (ii) a full repairing covenant including structural repairs by the tenant; and
- (iii) a covenant stipulating that the tenant should purchase all of its petrol supplies from the landlord.

Last year, Lex Ltd. was unable to pay any rent, due to financial difficulties and so on January 1, 1995, it assigned the remaining seven years of the lease to Vinroy Garages. National Co. consented to the assignment but was not a party to the deed of assignment.

On March 1, this year (1995), National Co. sold its reversion to B. B. Lubricants Ltd.

Vinroy Garages have refused to pay the second quarter's rent to B. B. Lubricants Ltd. because they claim that the premises are in need of repair and they have also refused to accept supplies of petrol from B. B. Lubricants Ltd.

B. B. Lubricants Ltd. now wish to -

- (a) recover the year's unpaid rent from Lex Ltd.;
- (b) recover the second quarter's rent from Vinroy Garages;
- (c) enforce the repairing covenant;
- (d) enforce the covenant to supply petrol to Vinroy Garages.

B. B. Lubricants Ltd. have now consulted you.

Advise them.

QUESTION 5

By a lease under seal made between Adam and Eve, Adam leased residential premises known as "Belvedere" to Eve for a term of ten years beginning on April 1, 1985, at a monthly rental of \$5,000 subject to the usual covenants, conditions and agreements contained in residential leases.

The lease also contained the following clauses -

- (i) On payment of the sum of \$30,000 on signing hereof the lessee shall be granted the option to purchase the demised premises for the sum of \$300,000, such option to be exercised on or before March 31, 1995.
- (ii) In the event the lessee being prepared to lease the demised premises for a further term of ten years at the expiry of the term hereby created the lessee shall have the right of first refusal to lease the demised premises for a term of ten years commencing from the expiry of the term hereby created such first refusal to be exercised by the lessee on or before the expiry of the present term.

On executing the lease, Eve paid to Adam the sum of \$30,000 in consideration of the option. On April 1, 1995, Eve informed Adam verbally that she intended to exercise her option to renew and that as she had been a good tenant he could not refuse to do so, but Adam rejected this request.

On May 1, 1995, Eve therefore tendered a cheque to Adam for the sum of \$300,000 and said that it was for the purchase price of the premises. Adam, however, refused to accept the cheque and instead requested that Eve vacate the premises as the tenancy had expired and the premises were in the process of being sold.

On April 15, 1995, Adam executed an agreement for sale with Steve who has contracted to purchase "Belvedere" for \$2.75 million.

- (a) Eve has now sought your advice. Advise her.
- (b) Would your answer be any different if Adam had entered into a lease with Steve on May 1, 1995, at a rental of \$20,000 per month?

QUESTION 6

On April 9, 1992, Lionel granted a lease of a building (not subject to rent restriction/control legislation) to Terricita for 10 years, at a rent of \$12,000 a year payable in advance.

Clause 3 of the lease contained the following covenants, inter alia, by the tenant -

- (5) not to use the demised premises otherwise than as a private residence;
- (6) not to underlet the demised premises or any part thereof without the previous consent in writing of the landlord such consent not to be unreasonably withheld.

The lease also contained a forfeiture clause for non-payment of rent or other breaches of covenants.

In February 1995, Terricita, without applying for or obtaining Lionel's consent, sublet a room in the demised premises to Rufus who used it as his residence. Lionel became aware of the subletting in March 1995.

On April 2, 1995, Lionel served Terricita with a notice requiring her to remedy the breach of covenants contained in paragraphs (5) and (6) of the lease within 28 days. The rent which was payable on April 9, 1995, had not been paid and by letter dated April 20, 1995, Lionel demanded payment within 7 days, the demand being expressed to be without prejudice to any breach of covenant.

The rent was tendered after 7 days and Lionel refused to accept it. Terricita ignored the notice served.

Lionel has instituted proceedings for forfeiture of the lease for breach of covenants contained in clauses (5) and (6) and for non-payment of rent.

Advise Terricita.

QUESTION 7

On June 10, 1992, Harvey granted Sheila, a seamstress, a monthly lease of premises situate at Backrow at \$1,000 per month payable in arrears. Sheila is now 8 months in arrears of rent. Harvey, 'fed-up' with the situation, served notice to quit on Sheila for non-payment of rent. On receiving the notice, Sheila paid Harvey \$4,000 which represented 4 months rent which Harvey accepted. However, he still wants to get Sheila out of the premises so he commences proceedings for recovery of possession.

Before the matter comes up for hearing, Sheila moves most of her possessions to her mother's residence but continues to occupy the premises.

On discovering this, Harvey instructs a bailiff to levy distress for arrears of rent on Sheila's possessions at her mother's premises. The bailiff impounds a sewing machine, a refrigerator, some dresses given to Sheila by customers to be worked upon, and a valuable antique lamp which belonged to her grandmother.

Sheila is concerned.

Advise her.

QUESTION 8

- (a) Your client, Lupie, is a happily married man with three children and is a lay preacher in his church. He has discovered that one of his tenants, Tenny, who has rented a dwelling house from him (which is subject to rent restriction/control legislation) is living in the house with his mistress and their two children although Tenny is married.

In the circumstances, Lupie is very distressed and has sought your advice as to whether he can terminate the tenancy.

Advise Lupie.

- (b) In 1993 Missy inherited a dwelling house (which is subject to rent restriction/control legislation) from her uncle. The house, which was in a poor state of repair and had been so for many years, is let to Tara and her two children.

Earlier this year (1995) Missy got an estimate to carry out repairs to the building and these repairs were carried out between February and April. The following repairs were carried out -

- (i) new flooring and ceiling in front bedroom;
- (ii) the roof on the verandah was replaced and rails were put around the verandah;
- (iii) most of the flooring in the living room, dining room and third bedroom was replaced;
- (iv) large cracks in the walls were filled in;
- (v) a new kitchen built of hollow blocks was erected in place of the original kitchen, the walls of which had fallen down;
- (vi) both the interior and exterior walls of the building were painted.

The repairs having been completed at a cost of \$100,000, Missy now wishes to increase the rent of the premises to recover the money spent. She has sought your advice.

Advise Missy.
