

FINAL DRAFT

COUNCIL OF LEGAL EDUCATION

NORMAN MANLEY LAW SCHOOL

LEGAL EDUCATION CERTIFICATE
FIRST YEAR EXAMINATIONS, 2007

LANDLORD AND TENANT

(WEDNESDAY, MAY 16, 2007)

Instructions to Students

- (a) Time: **3 ½ 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.
- (e) Answers should be written in ink.

PLEASE REMAIN SEATED UNTIL YOUR SCRIPT HAS BEEN COLLECTED.

QUESTION 1

Your client, Anna Thomas, consults you. She tells you that she has been a monthly tenant for the past nineteen years at the Rose Cottage, Bayfarm. Last year November (2006) she got notice from her landlord that the house was up for sale, that he was increasing the rent by 10% as of January 2007 and would be making all outstanding repairs. The premises is not subject to rent restriction legislation.

Anna tells you that she began paying the increased rent in January 2007, but no repairs have been done and in February (2007) she received a notice to quit the premises served on behalf of the purchasers, expressly with the consent of the landlord.

When she contacted her landlord, however, he denied giving his consent to the notice as the premises had not yet been sold. In fact he offered to sell her the premises but they could not agree on a price.

Anna further tells you, that in April 2007, she received a new notice to quit by persons who said they are the new owners and who stated that she is to vacate the premises in two months time - June 2007 and that in the interim she is to send the rent to them by a banker's cheque.

Last week, however, before the rent was due to be paid her landlord telephoned her instructing her to pay the rent to him on the due date. In addition, her efforts to find somewhere else have so far proved futile.

She now seeks your advice as to -

- (i) whom she should pay the rent; and

(ii) her legal position should she be unable to find somewhere else by June.

Advise Anna Thomas.

QUESTION 2

In June 2006, the Holy Church Ltd inherited an apartment complex from one of its devoted communicants.

The complex consists of ten one bedroom apartments and ten studio apartments.

Holy Church Ltd decided to use ten of the studio apartments to accommodate the theological students it sponsors at the Theological Seminary and to offer paid accommodation to other young working adults who are Church members.

Your client, Juan Gonzalez, who was a member of the church until April this year (2007) had entered into an agreement to rent a one bedroom apartment. The agreement is set out below. He tells you that he had a disagreement with the Board of the Church and as a result he left the Church. The Church has now given him one week's notice to quit the apartment.

The agreement executed by himself and the Board of the Church provides *inter alia* -

“RESPONSIBILITIES OF RESIDENTS

- a) To pay the rent (which includes a flat rate for water and electricity that is subject to review each semester) and the security deposit on or before the agreed date. All other charges are to be paid separately.

- b) To keep their surroundings clean at all times: the interior of the premises, the porch area, the garden and yard area must be clean and tidy at all times; windows must be washed regularly. The owners will undertake the cleaning of all common areas. If for any reason the common areas need to be cleaned beyond ordinary, the residents will be charged for the additional cleaning.
- c) In the event of any damage to the premises or furniture specified in the attached inventory (fair wear and tear excluded) caused by a resident or his/her guest(s), the resident will forfeit his/her security deposit. If the cost of repairs exceeds the deposit, the resident must pay the difference.
- d) Not to alter the structure of the premises or carry out any redecoration without the approval of the Administrative Assistant (this includes the erection of shelving). Wall hangings may be done using only mapping pins.
- e) **To ensure that no disturbance or inconvenience is caused to fellow residents by any anti-social behaviour such as allowing guests to invade the common areas in a fashion that causes annoyance or impedes the usage of other residents. Noise must be kept at a minimum especially at nights.**
- f) Not to assign or part with anything belonging to the owners.
- g) **Not to accommodate any guest(s) of either sex overnight on the premises. All guest(s) must sign in and out and must vacate the premises by 10:30 p.m. No exceptions.**
- h) To use electricity and water conservatively. All lights must be turned off when not in use.
- i) Not to do or allow to be done any action which results in the owners insurance policy being made void or the premiums increased.
- j) Not to smoke inside any of the buildings or rooms.
- k) Not to keep animals on the premises.
- l) To give at least one month's notice of intent to terminate tenancy.

- m) **Anyone found in violation of these regulations will be asked to leave with immediate effect and will forfeit all sums paid.**

OBLIGATIONS OF THE OWNERS

- a) To pay all water, electricity and taxes and assessments due for the premises.
- b) To maintain and repair the structure and fabric of the premises, including drains, plumbing water and electrical installations.
- c) To respect the residents' right to reasonable privacy.
- d) **The owners reserved the right to periodically inspect the residences to ensure compliance with rules.**
- e) Where there is a clear breach of the Tenancy Agreement on the part of the residents, the owners will seek repossession of the premises by serving the tenants a formal written notice stating the ground under which repossession is sought. The period of notice will usually be one month unless circumstances require immediate repossession."

Advise Juan.

QUESTION 3

Mr. Walter Rodrigo has come to see you. He tells you that in 2005, he became the tenant of a furnished bedroom and bathroom in a house in Hibiscus Gardens for a fixed term of three years. There were other tenants in the house who together shared a kitchen. The house was supplied with water and electricity in the name of the landlord but paid for by the tenants. The premises is not subject to rent restriction legislation.

In March 2007, the house was bought by Cyrene Matthews at an auction sale but without any inspection on her part. Soon thereafter Cyrene discovered that there were outstanding water and electricity bills. She met with the tenants and requested that they should pay the bills as they had used the services. The tenants, however, pointed out that they had already paid over the sums owed to the former landlord who obviously had not paid them over to the utility companies.

Cyrene, however, stated that having only collected one month's rent from the tenants so far, she was unable to pay the utility companies. She has therefore proposed that the tenants each pay two months rent in advance in addition to a 20% increase in rent she is now requiring of them. In the alternative she will have no option but to terminate their tenancies at the end of May.

Rodrigo further tells you that last week the water company disconnected supplies thus posing a sanitary problem and two days ago the electricity company did likewise.

Rodrigo now seeks your advice.

Advise him.

QUESTION 4

Your client, Rudi Zedi, who is a diplomat with the embassy of Zenobia, comes to see you in great distress.

He tells you that three months ago he leased townhouse No. 5 in a townhouse complex for a term of three years from Damion Smythe. Damion is a property

developer and owns three townhouses Nos. 3, 5 and 7 in the complex which he had developed some years ago.

Zedi further tells you that at the time of the demise, townhouse No. 3 and No. 7 were unoccupied. One month ago, however, a family moved into No. 3 with a pair of terrier dogs which are the children's pets. These dogs although small in size, are highly excitable and ought properly to be kept on a large property. They are kept mainly on the back porch of the house with the result that when they bark at night, which they often do for hours on end, Zedi is unable to sleep. He is now therefore suffering from acute sleep deprivation.

To compound matters he tells you that last week workmen started working on townhouse No. 7 which is in a state of disrepair as a result of a fire that occurred sometime ago. The noise from this activity begins at 7 a.m. and goes on until 6 p.m. Monday to Saturday much to the consternation of Zedi's wife and 2 year old daughter. However, it is the smoking of ganja by the workmen that is his greatest concern as the smoke often blows over to his townhouse.

He shows you his lease which you note does not include any covenant on behalf of the landlord for quiet enjoyment.

In these circumstances Zedi seeks your advice.

Advise him.

QUESTION 5

In January 2007, Marie leased from Nicky, for two years, a two bedroom apartment in a four-storey block of apartments, which is part of a condominium/strata complex. The apartment is on the ground floor and is not subject to rent restriction legislation. The lease stated that Marie was entitled to the use of a parking space in the residents' parking area.

The lease also contained, *inter alia*, a covenant by the tenant –

“to keep the interior of the leased premises and all the leased fixtures, fittings and glass therein in good tenantable repair”.

There was no covenant on the part of the landlord to carry out any repairs.

Marie tells you that soon after she went into possession, she noticed moisture and flaking and discolouring on the ceiling of the bedroom, bathroom and kitchen. Approximately two weeks later water began to drip from all three ceilings.

Last week, she spoke to Nicky who told her that it was not her responsibility to repair the various leaks as they were coming from the apartment above and that she should discuss the matter with Bill, who was the owner and occupier of that apartment.

She therefore spoke to Bill who told her that the water dripping in the bedroom and the bathroom in the apartment she occupied came from an abandoned pipe running between the horizontal-dividing wall between the two apartments. Bill further explained that the management corporation had nine months earlier, abandoned the use of all the old pipes in the building, but that pipe had not been properly sealed, hence the leaks. The management corporation, however, was

of the view that the pipe was no longer their responsibility, but that of the two owners.

With respect to the leak in the kitchen Bill explained that as far as he was aware that leak came from the pipe leading from the landlord's solar water heater, located on the roof and which runs down and into the ceiling and therefore was a problem with respect to that apartment only.

Marie also tells you that she is unable to park her car in the parking area designated for residents which is a secured area but has to park in the visitors' parking area which is unsecured.

Marie now seeks your advice.

Advise Marie.

QUESTION 6

Your client, Mall Ltd, is the owner of a five storey building on Broad Avenue. The building is constructed on registered land and was designed and is currently used for mixed residential and commercial use. The building is not subject to rent restriction legislation.

The ground floor is leased to Bling Ltd under a five year lease with an option to renew, which was entered into in December 2005. The four upper floors are divided into twelve apartments, three on each floor and are all leased for ten years and all of which started in 2000.

The lease to Bling Ltd contains the following covenants.

“(6) not to do or suffer or permit to be done or suffered on the premises anything which may be or become an annoyance, inconvenience or nuisance to the lessors or the other owners or occupiers of any adjoining or neighbouring property or to the neighbourhood or which may infringe any legislation for the time being in force.

(7) not to carry on or permit upon the premises or any part thereof any noisy or dangerous trade business or manufacture or occupation or any nuisance nor use the same or allow the same to be used for any illegal or immoral purpose”

The lease also contained the following proviso for forfeiture and re-entry –

“provided that if the rent hereby reserved or any part thereof is at anytime in arrears and unpaid for 21 days after it is due, whether legally demanded or not, or if there shall be any breach of any of the covenants on the part of the tenant contained herein, then it shall be lawful for the landlord at any time thereafter to re-enter the demised premises and thereupon the term shall absolutely cease and determine”.

In July 2006 Bling Ltd with the consent of your client Mall Ltd, sub-let the basement floor to Overweight Ltd for use as a gymnasium and health club for a term of three years. The covenants in this lease were all identical to those in the headlease but there was no proviso for forfeiture and re-entry.

In February this year (2007) a number of the residential tenants complained to Mall Ltd that Overweight Ltd have allowed the club to be used for illegal and immoral purposes and in particular that they have employed as masseuses on

the premises women who for reward commit lewd and immoral practices at the request of customers of the business. These activities have brought the premises as a whole into disrepute.

Further a large number of persons seeking such services attend at and loiter near the building thus causing nuisance and annoyance to the residential tenants.

Mall Ltd through its chairman comes to see you. It admits that it had heard rumors about the activities at the Club but had put it down to the conservative nature of the tenants. Further when they sought confirmation from Bling Ltd they denied any such knowledge. Recent checks, however, have confirmed the complaints of the tenants.

Mall Ltd now seeks your advice.

Advice Mall Ltd.

QUESTION 7

Jason is the landlord of a dwelling house with an annex leased by him to Bruce for ten years at a yearly rent of \$180,000 payable by equal monthly instalments. Bruce resides on the premises from where he carries on his business as a transport operator.

Bruce has been in arrears of rent for the last eight months. Two days ago, at about 8:05 a.m. Jason and his bailiff entered the house through the front door which was closed but not locked. On seeing Jason and the bailiff, Bruce told his

wife Sophia to “take the microwave and run, don’t let the bailiff get it”. Thereupon Sophia grabbed the microwave oven and ran out through the door.

The bailiff seized from the living room a DVD player rented from Appliance Rentals Ltd and a living room suite. Jason and his bailiff then broke down a bedroom door and seized therefrom a bed, two new suits belonging to Bruce and a plasma television set which was then being watched by Bruce’s son. They then entered the annex which was sub-tenanted to Shelly-Ann a hairdresser, and seized a hairdryer and a ‘Razor’ cellular phone. On their way out they also seized one of Bruce’s trucks, which was parked on the roadside in front of the house.

Advise Bruce, Shelly-Ann and Appliance Rentals Ltd.

QUESTION 8

- (a) Your client, Karen Carter, has complained to you that during recent heavy rains and as a result of a leaking roof, some of her furniture and clothing were damaged. She tells you that she has been living at the premises (which are subject to rent legislation) for five years and that every time it rains the roof leaks very badly and she has to shift her furniture to prevent them from getting wet.

However, on this occasion she was overseas and could not protect her property, hence the damage.

The following day she telephoned her landlord and told him what had happened and reminded him that she had complained to him before. His

response was that he was very sorry to learn of the damage but as there was no written lease obliging him to carry out any repairs it was up to her to do what was necessary to protect her property. She was naturally very angry with his response and has therefore sought your advice.

Advise her.

- (b) Dr. P. Singh comes to see you. He tells you that two years ago he came to your jurisdiction as a neuro-surgeon to work in a rural hospital. He was provided with accommodation at the hospital but because he is a devout Hindu he choose to rent an apartment in the capital city which has the only Hindu temple in the jurisdiction. In addition he has many friends in the city which enabled him to have a good social life. The apartment is subject to rent restriction legislation.

Last week Dr. Singh received a notice to quit from his landlord on the ground that he (the landlord) needs the apartment for his own use. The landlord has also offered him alternative accommodation of a commodious house currently occupied by the landlord and which is located on the way to the hospital at which he (Dr. Singh) works.

Your client however wishes to remain in the city for the reasons he has already given. He therefore seeks your advice.

Advise him.
