

**COUNCIL OF LEGAL EDUCATION
NORMAN MANLEY LAW SCHOOL**

**LEGAL EDUCATION CERTIFICATE
FIRST YEAR EXAMINATIONS, JULY 2020**

LANDLORD AND TENANT

MONDAY, JULY 6, 2020

Instructions to Students

- (a) Duration: **24 hours**
- (b) Students shall enter their Examination ID Number **only**, not their names, on the cover page, the Academic Integrity Statement and on every separate page of the examination script.
- (c) The examination should be answered on letter-sized (8.5 x 11) paper only.
- (d) The examination should be submitted in Arial font 12 line spacing 1.5.
- (e) Students should clearly indicate the names of any cases with the citation and legislative provision/s (section number and Act) on which they rely to support their arguments. Consider using italics and/or bold text to make references prominent. (For example, *Rylands v Fletcher* [1868] UK HL1; **s.69 Real Property Act**). Sufficient detail is required to allow the examiners to understand the source of law that is being cited.
- (f) Footnotes, endnotes and bibliography are not required.
- (g) Students shall number the pages of their examination script as follows: Page 1 of 12, Page 2 of 12, etc.
- (h) In answering the question, a candidate may reply in accordance with the law of a Commonwealth Caribbean territory zoned for this school, **but must state at the beginning of the answer the name of the relevant territory.**
- (i) Each Student **must** ensure that their Anonymous ID in TWEN is changed to their four digit Examination ID Number, prior to submitting their examination script.
- (j) The examination script, with the cover page and Academic Integrity Statement saved in **ONE PDF DOCUMENT**, must be submitted in **ELECTRONIC** format via the **Year I JULY 2020 EXAMINATIONS, LANDLORD AND TENANT DROP BOX** on TWEN by **Tuesday, July 7,**

2020, NOT LATER THAN 9:00 a.m. (Jamaica) 8:00 a.m. (Belize) and 10:00 a.m. (Eastern Caribbean).

- (k) To upload the examination script which has been saved as one pdf document which includes the cover page and Academic Integrity Statement, you must follow these steps:
- Go to ***www.lawschool.westlaw.com***.
 - Log in using your username and password credentials and select the **TWEN** button.
 - Click on the link for “**Assignments and Quizzes**” located on the left-hand side of the navigation screen.
 - Select the relevant examination and the examination drop box as follows:
 - Year I students with Examination ID numbers between 1100 -1176 must upload script, cover page and Academic Integrity Statement to folder titled “***Drop Box A Year I - 1100-1176***”.
 - Year I students with Examination ID numbers between 1177 -1252 must upload script, cover page and Academic Integrity Statement to folder titled “***Drop Box B Year I - 1177-1252***”.
 - Year I students with Examination ID numbers between 1253 -1326 must upload script, cover page and Academic Integrity Statement to folder titled “***Drop Box C Year I - 1253-1326***”.

Archie is the owner of all the units in a gated, residential complex (Complex) in the Capital, Jurisdiction. Archie developed the Complex in 2018 and it is not subject to Strata/Condominium legislation.

The Complex comprises two stand-alone, four-bedroom, town homes (Units 1 and 2) and two attached two-bedroom townhouses (Units 3 and 4). Each of Units 1 and 2 have one bedroom and bathroom located off the side of the carport with separate access apart from the main door to the Unit. There is a walking track encircling the large lawn area in the Complex and a small gym, available for use by all occupants of the Units. Archie developed the Complex for the purposes of providing a residence for his family and earning rental income. Archie and his family live in one of the stand-alone units, Unit 1, and the other Units are currently occupied by Brian, Collin and Erin, on terms agreed between each of them and Archie.

Rent Restriction legislation applies to the Units and each Unit has been assessed for the maximum rent allowed under the legislation. The rental charged by Archie does not in any case, exceed the maximum allowable rent.

Archie has been experiencing great difficulty in relation to the occupancy of the Units. He is also having a problem with George, a temporary employee whom he permitted to occupy a room in Unit 1 during the term of his employment to Archie.

Archie's former attorney-at-law recently retired from practice, and so Archie has come to see you. Archie has provided the following background information, and the primary areas of concern to him, relating to the occupancy of each unit.

Re: Unit 2

Archie let Unit 2 to Brian, an Economist with the Global Aid Fund (GAF). GAF is an international organization that provides funding for small developing economies. Following a visit to the premises in January, 2019, Brian agreed to lease Unit 2 from Archie as a residence for himself and his family for two years, from February 3, 2019. Brian insisted on the agreement being reduced to writing, primarily because he was entitled to an allowance to cover the cost of reasonable accommodation, from GAF.

On January 30, 2019, Brian and Archie signed the lease document prepared by Archie's former attorney-at-law, as a deed, and Brian paid the first month's rent and security deposit to Archie. Brian and his family moved into the house on February 3, 2019.

The terms of the lease contain, *inter alia*, the following provisions:

"...

1. *The Tenant shall:*

1.1 *pay the rent in the sums set out below, monthly, on the third day of each month, by direct deposit to the Landlord's account described in the Schedule;*

The rent payable during the term is as follows:

Year 1 - \$180,000 (per month)

Year 2 - \$192,000 (per month)

1.2 *pay a security deposit in the sum of \$360,000 (being the equivalent of two months' rent for Year 1) on or before the commencement of the lease;*

...

1.6 *use the premises for the purposes of a private single family dwelling only;*

1.7 not at any time to assign, sublet or part with possession of all or part of the demised premises;

1.8 keep the premises in repair

...

2. *The Landlord shall:*

2.1 permit the Tenant peaceably to hold and enjoy the demised premises during the term without any interruption or disturbance from or by the Landlord or any person claiming under or in trust for him;

...

2.3 insure the premises;

...”

Archie instructs you that for the first year of the term, the relationship worked well, but that things have deteriorated since then. His main concerns are that:

- Brian has continued to pay rent in the sum of \$180,000 per month and not the \$192,000 per month agreed for the second year of the term which began on February 3 this year. Archie explained that Brian told him that several developed country sponsors of the GAF had cut their contributions to the Fund and that this had negatively impacted his housing allowance.

Brian also claims that it is unlawful for Archie to charge different sums for rent during the term of a lease and therefore Archie cannot compel him to pay the increased monthly rental.

- Sometime around the middle of April, 2020, Brian began playing the saxophone, routinely, at nights between 9:00 pm – 10:00 pm and then 5:00 am – 6:00 am. Further, that Brian began to conduct (paid) music lessons for a few colleagues who said that they had always wanted to learn to play the saxophone, on a Saturday between 7:00 am and 2:00 pm.

The playing of the saxophone at night has affected Archie’s and his householders’ ability to sleep. His tenants, Collin and Erin, have complained of similar problems and they have also threatened to sue Archie and terminate their respective tenancies if the playing does not stop immediately.

- He learned recently that Brian had sublet the bedroom and bathroom situated off the carport, to Horatio, Brian’s colleague from GAF, who was assigned to work on a short-term project in the jurisdiction. Archie charges Horatio \$50,000 per month as rent. Horatio’s wife and infant son have apparently, over the last few days, joined Horatio and they plan to stay until Horatio’s tour of duty ends.

- At his wits' end Archie is ready to give Brian written notice to leave but has decided to seek legal advice before doing so.

In the meantime, Archie instructs you that, in order to express his displeasure with Brian's conduct and encourage him to leave, he (Archie) has parked one of his cars in Unit 2's carport to prevent Brian and his wife from using the carport. They are forced to park in the visitors' parking lot.

Re: Unit 3

Unit 3 is let to Collin, a freelance computer applications designer and Ph.D. candidate with the National University (University), for a term of three years from March 16, 2020.

Collin had been living in campus accommodation on the University's campus, but had been asked to leave in the wake of the COVID-19 pandemic. Collin was happy to have found accommodation near to the University, so that he could continue to access the special collections at the University's Main Library. He also liked Archie's complex because it was noticeably quiet and would facilitate his research and work from home.

The agreed rent was \$100,000 per month and Archie demanded a security deposit of \$100,000 (being the equivalent of a month's rent). Although Archie asked for the security deposit to be paid along with the first month's rent, prior to the commencement of the lease, Collin was able to negotiate with Archie for extra time to pay the security deposit. They agreed that Collin would pay it no later than April 16, 2020.

Collin and Archie signed the lease prepared by Archie's former attorney-at-law, as a deed, and Collin paid the first month's rent. The lease commenced and Collin moved in on March 16, 2020. The terms of the lease were the same as those in the lease between Archie and Brian, with differences only in the tenant's details and the description of the demised premises; the term of the lease and its commencement; and the security deposit and monthly rent payable.

There was a period of heavy rainfall and strong winds in the Capital during the week of April 21. Part of the roof of Unit 3 was damaged as a result and water invaded the second bedroom which Collin used as a study. The water caused parts of the wooden flooring to lift and this caused unevenness in the flooring in the room generally. In addition, the bedroom door became swollen as a result of the associated damp, and Collin's antique desk became watermarked.

Collin complained to Archie, demanding that he (Archie) repair the roof and floor, replace the door and refurbish his desk. He contended that the premises were not in the state in which he rented them and therefore not what he bargained for and that Archie needed to address this. Archie said that it appeared that Collin felt bolstered in his position because the cause of damage was an Act of God.

Archie, however, has taken the position that all repairs arising during the tenancy were Collin's responsibility, since Collin agreed as a term of the lease, to:

"keep the premises in repair"

Collin participated in a 'walk-through' of the house with Archie and an engineer appointed by Archie, to view the damage. The engineer also inspected the roof.

Following the visit, the engineer reported that the extent of the damage to the flooring would not have occurred had it been properly laid at the time the house was built. He further reported that it was necessary to effect the remedial work to resolve that inherent defect in the flooring and estimated the cost of doing so at \$100,000.

In addition to the cost of that remedial work, the engineer estimated that it would cost \$80,000 to replace the damaged wood and re-lay it, \$28,000 for the door, and a further \$300,000 to reinstate the damaged part of the roof and make the roof whole again. Archie gave Collin the estimate from the engineer and demanded that he effect the repairs immediately.

The engineer, though not an expert on antique furniture, guessed that it would be about \$40,000 to refurbish the desk.

Archie says that Unit 3 was valued for insurance purposes at \$20,000,000 at the end of November, 2019.

Archie advised that during the walk-through, he noticed that Collin had installed air-conditioning units in both bedrooms. The installation would have required that Collin cut the wall and Archie said that there remains a hole in the wall to the right side of the air-conditioning unit in the second bedroom (study). At the end of the walk-through, Archie demanded that Collin immediately reinstate the walls to their original condition.

Archie is concerned that, to date:

- Collin is adamant that it is not his responsibility to repair the premises and has therefore not repaired the Unit. He has merely covered the damaged section of the roof with tarpaulin.
- Collin has not reinstated the walls.
- Collin has not paid the security deposit.

Re: Unit 4

Erin has taken possession of Unit 4. Archie has given the following background to the arrangement with Erin:

On June 16, 2020, Derrick responded to Archie's advertisement in the local newspaper for a two-bedroom townhouse available for rent, and viewed Unit 4 with Archie. Derrick

had been looking for a place because his landlord wanted the place Derrick had been renting, for her own use.

At \$100,000 per month the rent for Unit 4 was more than the \$80,000 he had budgeted, but Derrick liked the place and it was close to his office. Derrick thought he could stretch his budget to 'make it work' and therefore orally agreed with Archie to take the place for \$100,000 per month. Derrick also agreed to pay the first month's rent and a security deposit of \$100,000, before moving in. Archie said that the place was ready and asked Derrick when he wanted to move in. Derrick said he would have to confirm the exact date, but said that it would be sometime over the next few weeks. He explained that he would have to ask his current landlord for an early refund of the security deposit on the place he currently lived in, so that he could use that sum towards payment of the rent and security deposit that Archie required. He said that once he was able to settle this with his current landlord, he would pay Archie and confirm the exact date he wanted to move into Unit 4. Before leaving, Derrick paid Archie the \$80,000 in cash that he had with him, towards the first month's rent and security deposit, to 'seal the deal'.

A few days later, on June 20, 2020, a close friend of Archie's asked whether he had yet rented Unit 4 because his sister, Erin, needed a place to rent in the Capital. Archie told his friend that someone had already indicated an interest in it. Nevertheless, Archie said he would allow Erin to look at the place. Erin liked the place and offered to immediately pay the first month's rent and security deposit by direct deposit to Archie's bank account. Not having heard from Derrick since the day of their meeting, Archie agreed. Archie and Erin did not sign any documentation relating to their arrangements.

The following day, June 21, Erin moved into Unit 4, having paid the first month's rent and security deposit the day before. On June 22, Derrick returned to the Complex to pay Archie \$120,000 being the balance rent and security deposit, and to collect the keys to Unit 4. Archie told him that he had entered into an arrangement with someone else who had paid and taken possession of Unit 4.

Archie's concerns are:

- That Derrick is very upset and has threatened to sue him and says that he will ask the court for an order compelling Archie to immediately accept the \$120,000 from him and give him possession of Unit 4.
- Whether the arrangement with Erin is enforceable, there being no documentation in place relating to it.

Re: Unit 1

Earlier this year, Archie hired George as a driver to assist him during his period of recovery from a fractured leg. Archie allowed George, as part of his remuneration package, to occupy the bedroom and bathroom situated off the side of the carport of

Unit 1. The bedroom and bathroom had a separate access apart from the main door to the Unit. Archie and George agreed that the accommodation would last for the term of the employment, which was expressly agreed to be for a period of 3 months in keeping with Archie's doctor's advice.

George was required by the terms of his contract to take Archie to work at 7:45 am and collect him from work at 4:45 pm on weekdays. On Mondays, Wednesdays and Fridays, at 5:00 pm George was required to take Archie to football practice at the Orange District Primary School where Archie coaches the school's football team, and to collect him at 6:30 pm. Archie said that any other driving he required would be taken care of by his wife and his friends, and this was the case.

Two weeks ago, and exactly one week before the expiry of the three month contract with George, Archie reminded George that the contract would come to an end at the end of that week, and that he would have to move out by that time.

It has been one week since the contract expired and George still has not left. When asked about it George told Archie that he had no plans to leave until he was 'good and ready' and that as a tenant, Archie could not put him out.

Archie's wants to know:

- Whether there is any truth to what George is contending.
- What he can do to get George to leave.

Required:

Advise Archie as to his legal rights and obligations, any potential liability or remedies that he may have, and how he ought to proceed, as appropriate.

Note:

Your response must not exceed **4000 WORDS**.

END OF PAPER