

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

**LEGAL EDUCATION CERTIFICATE
FIRST YEAR EXAMINATIONS, MAY 2022**

LANDLORD AND TENANT

MONDAY, MAY 2, 2022

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 a bibliography are not to be used.
- (g) Where word limits have been given, the actual word counts must be included at the end of your answer. Students who have exceeded the word limits will be penalised.
- (h) Students shall number the pages of their examination script as follows: Page 1 of 12, Page 2 of 12, etc.

- (i) In answering any Part, 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.**
- (j) 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.
- (k) 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 MAY 2022 EXAMINATIONS, LANDLORD AND TENANT DROP BOX on TWEN** by **Tuesday, May 3, 2022 NOT LATER THAN** 9:00 a.m. (Jamaica), 8:00 a.m. (Belize) and 10:00 a.m. (Eastern Caribbean).
- (l) 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 - 1185** must upload script, cover page and Academic Integrity Statement to folder titled **“Drop Box A Year I – 1100 - 1185”**.

- Year I students with Examination ID numbers between **1186 - 1271** must upload script, cover page and Academic Integrity Statement to folder titled “**Drop Box B Year I - 1186 - 1271**”.
- Year I students with Examination ID numbers between **1272 - 1357** must upload script, cover page and Academic Integrity Statement to folder titled “**Drop Box C Year I - 1272 - 1357**”.

Aaron, your client, is a businessman who operates a medium-sized supermarket in the rural community of Waterwell in the jurisdiction.

According to your instructions:

Aaron owns three residential properties: a three-bedroom bungalow in Waterwell (“Bungalow”); a three-bedroom Townhouse in the capital (“Townhouse”); and a 20-year-old house also situated in the capital (“Big House”).

Aaron also holds a lease for 15 years, of a property in Waterwell (“Supermarket Property”). The lease commenced on March 1, 2012.

Aaron and his family live in the Bungalow and have been living there since 2012 when they moved to Waterwell.

Aaron let the Townhouse to Evan on a yearly periodic tenancy shortly after Aaron and his family moved to Waterwell.

Aaron renovated the Big House and converted it into two units, a lower floor unit (“Unit 1”), and an upper floor unit (“Unit 2”). Aaron took out a mortgage to finance the renovation and conversion of the Big House.

Rent restriction legislation applies to all the residential properties (i.e. the: Bungalow, Townhouse and each unit in the Big House). Each of them has been assessed in keeping with relevant rent restriction legislation. The rent agreed in each case (including any agreed increases) does not exceed the maximum allowable rent. In the case of the Big House, each unit was separately assessed. The maximum allowable/standard rent for Unit 1 (lower floor) was assessed at

\$80,000 per month, and for Unit 2 (upper floor) \$120,000 per month. The standard rent for the Townhouse was set at \$100,000 per month.

The Supermarket Property does not fall within the scope of rent restriction legislation.

Big House

Following the completion of the renovations and conversion of the Big House, Aaron began to pay monthly instalments on the mortgage used to finance the work, in September 2021.

Over the next several months Aaron posted advertisements in the leading daily newspaper in the jurisdiction, offering Unit 1 for rent. He retained Unit 2 for occupation by himself and his family, and they developed the routine of spending weekends and public holidays there, and sometimes spent time there during the week. Although he had several responses to the advertisements, none resulted in a tenancy for Unit 1.

On January 2, 2022, Dwight contacted Aaron in response to one of the advertisements, and they agreed to meet at the Big House so that Dwight could look at Unit 1. Dwight expressed an interest in renting it for his parents to occupy. He told Aaron that his parents were planning to return to the jurisdiction having recently retired from their jobs overseas. Aaron asked Dwight when he would need the place and Dwight told him that although he expected his parents to return over the next month or so, they had not yet confirmed exactly when they would return. Dwight asked Aaron whether he would hold Unit 1 for him, until he received confirmation of his parents' expected return dates. Aaron said he would do so, provided Dwight paid him the sum of \$150,000 to hold the place. They agreed on a monthly rent of \$80,000.

The following day, Dwight paid Aaron the sum of \$150,000 as agreed, by wire transfer to Aaron's account. Aaron confirmed receipt of the sum, and issued a receipt to Dwight which said:

January 3, 2022

Received from Dwight the sum of \$150,000 being "holding fee" for rental of Unit 1, Big House, Capital, Jurisdiction.

Aaron

Following the arrangements made with Dwight, Aaron did not advertise any further.

The following week, on January 15, Aaron received a phone call from Frank and Gertrude who had apparently seen one of the advertisements several weeks before. They asked whether the place was still vacant and Aaron said that it was, but that he had promised it to someone. Since he was already in the capital for the weekend, he was persuaded to allow Frank and Gertrude to view the place that afternoon. They met him and said they liked the place very much. They immediately offered to rent it for a term of five years, at \$80,000 per month, and even offered to increase the rent at the end of each year by 5%.

That evening, Aaron discussed the offer made by Frank and Gertrude with his wife, Jill, as he had done with Dwight's offer. Together they decided that Frank and Gertrude's offer of a five-year term with annual increases would offer some stability and help greatly with servicing the mortgage. They agreed that if Frank and Gertrude would pay the first month's rent of \$80,000, and a security deposit of \$160,000, Aaron should rent it to them. Jill was confident that since Aaron and Dwight had not signed any document relating to their arrangements, other than the receipt for the "holding fee", there should be no problem once Aaron returned the fee Dwight had paid, in full.

Aaron called Frank and Gertrude the following Monday, January 17, and they agreed the terms that had been previously discussed. In addition, they agreed to pay \$240,000 comprising the first month's rent of \$80,000 and the security deposit of \$160,000, as Aaron had discussed with Jill. Since there was a single water meter for the entire Big House, Aaron said he would ensure that Unit 1 was supplied with water, but that Frank and Gertrude would pay, each month, 50% of the total bill. Finally, they agreed that it would be a term of the lease that Frank and Gertrude would be assigned a specifically

marked parking space for their exclusive use. Frank and Gertrude agreed with these additional terms and paid the \$240,000 by wire transfer. Aaron confirmed receipt of the sum. They agreed the lease should commence on January 20, 2022. With Aaron's consent, Frank and Gertrude arranged with their attorney-at-law to prepare a simple lease document. The document was prepared in time for January 20 and after reviewing it Aaron, Frank and Gertrude executed it as a deed on that day. Aaron also gave them the keys to Unit 1 on that day.

Aaron called Dwight on the evening of January 20 and told him that he had rented the place to someone else and that he would instruct his bank to return the \$150,000 to Dwight's account. The sum was returned.

Aaron said that, no more than a week after Frank and Gertrude moved in, they began to complain to Aaron about the noise made by Aaron and his family when they were at Unit 2. Specifically, all their domestic noises were being heard. Because of the consistent complaints, Aaron arranged for his friend, an engineer, to inspect both Units and the inspection revealed that the Big House had deficient soundproofing which was the reason that the ordinary noises of Aaron and his family could be heard in Unit 1. Aaron produced a copy of the report his friend had prepared. The report said the soundproofing was consistent with building codes 20 years ago when Big House was built.

Frank and Gertrude have also complained that, since April, whenever Aaron was at Unit 2, he had been parking in the space which had been allotted to Frank and Gertrude according to the terms of their lease. As a result of this, they were forced to park on the adjacent main road.

In addition, they complain that since the beginning of February they are without water at least three days a week because of problems associated with the supplier's filtration system, which causes the main pipe which feeds the Big House and other premises in the area to become blocked, requiring it to be cleaned.

Aaron's concerns are that:

- (i) Frank and Gertrude have threatened to sue Aaron if he does not deal with these issues so that they can enjoy the home they bargained for.
- (ii) The day before visiting your office, he received a letter from an attorney-at-law acting for Dwight. The letter indicates that the attorney-at-law has instructions to commence proceedings against Aaron if he does not deliver possession of Unit 1 to Dwight, and accept him as his tenant of the unit.

Required:

Advise Aaron:

- (a) what, if any, liability he has to Frank and Gertrude; and
- (b) whether he is liable to give Dwight possession of Unit 1, Big House, giving reasons.

Townhouse

Aaron let the Townhouse, unfurnished, to Evan on a yearly periodic tenancy, commencing on December 10, 2020. Evan has lived in the Townhouse since then. He has always paid the rent on time, in full, and in the manner agreed in their lease. He has never called on Aaron for any reason since the lease commenced. The lease was properly set out in writing, and executed as a deed. The lease contained, *inter alia*, the following provisions:

LEASE

...

...

1. The Tenant shall:

1.1 pay the rent in the sums set out below, in advance, by direct deposit to the Landlord's account described in the Schedule.

The rent payable during the term is \$100,000 per month.

1.2 pay a security deposit in the sum of \$200,000 (being the equivalent of two months' rent) on or before the commencement of the lease – receipt is acknowledged;

1.3 ...

1.6 keep the premises in repair ...

1.7 permit the lessor or his agent with or without workmen or others at all convenient times and after reasonable notice (which shall be for a period of no less than 24 hours) to enter on the leased premises and examine their condition;

...

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;

...

Although Evan appeared to be a very good tenant, providing a secure income stream, Aaron and Jill decided to sell the Townhouse. They had hoped that the sale proceeds would be able to pay down the mortgage undertaken to convert and renovate the Big House, especially now, given a recent decline in the supermarket business.

At the time of letting to Evan (December 2020) the Townhouse was valued at \$25,000,000.

Aaron telephoned Evan to arrange a meeting at the Townhouse to discuss the plans for sale. Evan eventually agreed to a meeting on March 25, 2022.

When Aaron and Jill visited the Townhouse to meet with Evan, they were surprised to

find that several buckets had been set to catch water from an apparently leaking roof. In and around the areas where the buckets were stationed, there was evidence that the wooden flooring had begun to lift, rendering the floor uneven in parts. They saw that several window panes were broken in the bedroom windows. When asked about the state of the Townhouse, Evan said that he had been assisting several cousins who had moved to the jurisdiction, until they could find their own accommodation. Evan also said that in any event, these kinds of matters were for Aaron to fix. Aaron told him that according to the lease, Evan was responsible for repairs and that any necessary work was for his (Evan's) account. Aaron also told Evan that he (Aaron) would be asking a contractor to come to assess the damage and provide an estimate for the requisite work which would have to be paid for by Evan.

A few days later on April 1, Evan allowed Aaron and the contractor access to the Townhouse.

Remarkably, on Aaron's visit with the contractor, the buckets had been moved, and there was no evidence at all, of any lifting or unevenness of the wooden flooring as had been seen on Aaron's initial visit. Aaron described to the contractor what he had seen on his prior visit, but the contractor said that since he could not see anything wrong with the flooring, he could not provide an estimate for this.

The contractor said that he was available to do the work the following week.

The contractor's estimate included the following, as the cost for the remedial work:

Reliable Contractors – Estimate

April 1, 2022

...

Replace broken window panes	x 12	\$ 24,000.00
Repair roof		<u>\$150,000.00</u>
TOTAL		\$174,000.00

Aaron's concerns are that:

- (i) To date, Evan has not commenced the work because he contends that the work is for Aaron to do. Aaron is upset about this because he needs to offer the premises for sale and he cannot do so while the premises are in their current state.
- (ii) He has been advised that it is better to sell premises with vacant possession.

Required:

Advise Aaron, giving reasons, whether he can:

- (a) compel Evan to effect the remedial work;
- (b) use the security deposit to repair the flooring, if Evan fails to do so; and
- (c) terminate the relationship with Evan and regain possession of the Townhouse for the purposes of selling it.

Supermarket Property

Aaron started the supermarket business in Waterwell several years earlier, when he and his family moved to the community. Prior to that time, they lived in the Townhouse.

The Supermarket Property comprises half an acre of land. There is a large building on the land and two repurposed shipping containers. Both containers have been combined to make a single structure (“Container”). Otherwise the Supermarket Property comprises open land. The entire property is enclosed by a perimeter fence. Aaron uses the large building as a supermarket. He does not use the Container except on public holidays as a counter from which to serve cold treats to children from the community, when they visit the nearby beach. Beatrice is the owner of the Supermarket Property, and Aaron’s landlord.

The lease between Beatrice and Aaron was properly executed as a deed prior to its commencement on March 1, 2012.

The lease from Beatrice contains, *inter alia*, the following provisions: “...

1. The Tenant shall:

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

1.2 pay a security deposit in the sum of \$240,000 (being the equivalent of two months' rent for Year 1) on or before the commencement of the lease – receipt acknowledged;

...

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

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;

...

The lease does not make any express provision for forfeiture, neither does it provide an option to determine in favour of either party.

The business grew steadily for a number of years until some decline in 2020 due to the initial impact of the COVID-19 pandemic. Since January 2021, business improved and had returned to pre-pandemic levels. Following the opening of a new supermarket in Waterwell, in November, 2021, however, the business suffered substantial decline. Aaron paid the rent for December and January, late, and has not paid rent since.

He has taken the following steps to generate additional income:

1. Allowed the operator of a nearby French restaurant, Carl, to use part of the open land comprised in the Supermarket Property, as a parking lot for employees and patrons of Carl's restaurant, in return for a sum of \$30,000 per month at the end of each month.

Although there is no documentation of his arrangements with Carl, Aaron says the arrangements with Carl do not in any way limit or restrict Aaron's right to use the property (or to allow others to use it), including for the purposes of a car park for Aaron himself and his employees and customers. Their arrangements took effect on December 1, 2021. Aaron gives Carl receipts for all sums paid.

2. Permitted John, one of his customers, to use the Container for a year, for the purposes of operating a small sports bar on weekends. They agreed that, in return, John would pay Aaron \$35,000 per month, in cash, on the last day of the month. Aaron gave John the keys to the Container on April 1, 2022. They did not write down their arrangements.

Aaron received a letter from Beatrice's attorney-at-law, dated April 25, which said, that:

- (i) Beatrice was tired of waiting for Aaron to settle the arrears of rent;
- (ii) Aaron was in breach of clause 1.7 of their lease in relation to the arrangements made with Carl, and with John;
- (iii) she has heard that the Container is being used for unlawful gambling; and
- (iv) she has instructions to commence proceedings against Aaron if he does not immediately settle the arrears of rent and terminate his relationship with Carl and John.

Required:

Aaron wants to know whether he is liable to Beatrice on any of the matters referenced in the letter, and if so, on what basis, identifying the remedies a court is likely to grant.

Advise Aaron.

Note:

Your answer should not exceed **4,500 words**.

END OF PAPER