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1. The lease is valid. In Texas, a lease for a term exceeding one year must be in writing in order to satisfy the statute of frauds. The only "essential" terms of a written lease are the names of the parties, the duration or term of the lease, and the amount (or reasonable approximation of) and time rent is due. Early termination events and designation of responsible parties for repairs are not considered "essential" terms of a written lease. Thus, their exclusion from the written lease here does not affect its validity. Texas generally does not require a lease to be witnessed, notarized, or recorded. Therefore, the fact that this lease was not witnessed, notarized, or recorded does not impact its validity.

2. The landlord is not required to fix the drainage problem at his expense because the tenant caused the problem. Specifically, the tenant disrupted the plumbing when he tried to relocate the shower on his own. Therefore, since the tenant caused the problem, the landlord is not statutorily responsible for fixing the drainage problem. The landlord would probably be required to repair the leaks, replace the smoke detectors, and maybe the window latches because these problems could be considered safety issues and the landlord has a duty to repair any known unsafe conditions. The broken smoke detectors would definitely be an unsafe condition. The window latches could be considered a safety issue and the roof may be considered a safety issue. Additionally, the landlord knows of the conditions because the tenant notified him of them. The fact that the tenant carelessly broke the latches wouldn't have any bearing on whether or not the condition was dangerous and known to the landlord in this situation. The landlord would not have a duty to repaint the smoke-stained walls because that is a purely cosmetic repair and not a safety issue. The landlord generally has no duty to repair cosmetic problems.

3. The tenant would not have any right to recover all of the condemnation award paid by the city. But, the tenant would have a right to recover a portion of the condemnation award for the sewer line easement if the easement interferes with his use and enjoyment of the property. The tenant could also elect, in the alternative, to have the landlord reduce his rent in an amount necessary to reflect the interference with his use and enjoyment of the property resulting from the easement.

4. Buyers generally can terminate a Tenant's lease based on an unexcused failure to pay rent. A buyer can also terminate a Tenant's lease where the tenant causes damage, through their own fault, to the property. The tenant must be at least negligent and the damage must be severe in that it substantially reduces the value of the property.

5. The Buyer will probably not succeed in terminating the lease and evicting the Tenant because the Buyer is purchasing the property with notice and knowledge of the lease encumbering the property. So long as the lease between the Tenant and Seller is valid and enforceable and the Tenant is current on all rent and obligations, the Buyer will probably have a hard time terminating the lease and evicting the Tenant. The Tenant's interest in the property is a current possessory property interest and, although a lesser interest than that of the buyer's ownership interest, cannot be infringed upon for no reason or without cause. The Buyer also probably wouldn't be successful in evicting the Tenant for reasons related to the Tenant's damaging of the property. In order to be evicted for damaging the property, the tenant's actions or omissions must, at the very least, be negligent. Further, the resulting damage to the property must be severe, in that they substantially reduce the value of the property. The broken window latches, even though broken because of the Tenant's negligence, would certainly not substantially reduce the value of the property. Therefore, the lease would not be terminated and the tenant evicted because of the window latches. The Buyer's best bet for terminating the lease and evicting the tenant would be for the drainage problem, but more facts are needed to decide this. Although the tenant's attempted relocation of the shower on his own was negligent because he does not appear to be a contractor or plumber, the resulting drainage problem probably wouldn't be

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considered severe because the facts don't state that the property value has been substantially reduced due to the improper repair. But, if the drainage problem was severe, and therefore substantially reduced the value of the property, the lease could be terminated and the tenant evicted because the tenant was, at least, negligent in the shotty repair.

**END OF EXAM**

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1. The lease is valid. In Texas a lease for more than one year must be in writing and signed by the lessee and lessor. Here the lease is for a period of five years, is in writing, and is signed by the lessee and lessor. The fact that it is not witnessed, notarized or recorded is immaterial. A written lease is not required to be witnessed or notarized in Texas. Further it is not necessary that it be recorded in order to be valid. Therefore the lease is valid.

2. The landlord has a statutory duty to repair the roof leaks, the smoke detectors, and the window latches. The landlord has no duty to repair the drainage problem or the painting in the kitchen. In Texas a landlord has a statutory duty to repair all conditions which materially affect the health and safety of the tenant. Here the roof leaks, inoperative smoke detectors and window latches are conditions which materially affect the tenant's health and safety. Since the tenant was negligent in breaking the window latches the landlord can seek reimbursement for any costs associated with replacing the latches, but the landlord is still required to replace them.

The landlord does not have a duty to repair the drainage problem unless it materially affects the tenants health and safety. If the drainage problem left standing water in the tenant's apartment then the landlord would have a statutory duty to repair and could seek reimbursement for the defendant's negligence. If, however, the drainage problem merely caused water to drain slowly but still drain completely then the landlord would not have a duty to repair.

The landlord does not have a duty to repair the paint in the kitchen because it is due to ordinary wear and tear and is not a situation that materially affects the tenant's health and safety. Since the lease is silent regarding the responsibility for repairs and maintenance the landlord also has not duty under the lease to repair a condition caused by ordinary wear and tear. Therefore the landlord is not responsible for repairing the paint in the kitchen.

3. The tenant does not have a right to recover all or any portion of the condemnation award paid by the city for the sewer line easement. Normally a tenant is entitled to be compensated if a portion of the tenant's leased property is taken in whole or in part by condemnation. If part of a tenant's leased property is taken by condemnation then the tenant is entitled to a portion of the condemnation award representing the rental value of the property that was condemned. Where the condemnation is merely for an easement that will temporarily deny usage of a portion of the property the tenant is only entitled to the rental value for that portion for the time period for which the tenant is excluded from that portion of the property. Here the city has taken an easement for the purpose of a sewer line. It is likely that the tenant will be unable to use the property on which the easement is located only during the portion of time it takes the city to install the sewer line. If the sewer line is placed underground then the tenant will only be temporarily prohibited from using the property subject to the easement. In that case the tenant would be entitled to the reasonable rental value of the property that was condemned but only for the portion of the time he is prohibited from using it. If the sewer line was placed above ground for some reason then the tenant would be entitled to a portion of the condemnation award representing the rental value of the property which the tenant is now unable to use because of the condemnation.

4. The buyer can terminate the tenant's lease only for failure to pay rent or another breach of a lease covenant. The buyer also may be able to terminate a tenancy if it can be shown that the tenant was destroying or damaging the property in such a way as to substantially reduce its value. Here neither case seems applicable. The facts state that the tenant is current on all rent obligations. There is nothing else in the facts that would show that the tenant has breached any other lease covenant. Also, although the facts state that the tenant has been somewhat negligent in taking care of the property there is nothing to show that the tenant has been wilfully destroying or damaging the property. Therefore the buyer will be unable to terminate the lease for these reasons.

The buyer may also be able to terminate the tenant's lease if the contractor whom the tenant

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hired to install a new shower files a mechanic's and materialmen's lien on the property. A contractor that provides materials or services in the construction or improvement of real property can file an affidavit of lien if the contractor is not paid for the materials or services provided. If a lien is validly recorded then the contractor can bring suit to foreclose on the lien and seek damages for the nonpayment. If the contractor files an affidavit of lien on the property and the tenant fails to have the lien removed then the buyer may be able to terminate the lease.

The buyer also perhaps could have terminated the lease if the buyer purchased the property without knowledge of the lease. Here the facts state that the lease was not recorded, therefore the Texas recording statute would allow a subsequent purchaser for value to be protected and take the property free of the lease if the purchaser were unaware of the lease and the lease was not recorded in the real property records. Here, however the buyer is aware of the lease so the recording statute would not allow the buyer to take the property free of the lease.

5. It is unlikely that the buyer would succeed in terminating the lease and evicting the tenant. As stated above the tenant is current on all rent obligations and appears not to be in breach of any other lease covenant. Further, although the tenant has been negligent in caring for the property it has not risen to such a degree that the buyer would be entitled to evict the tenant. Also, although the contractor could file a lien on the property, the facts do not state that this has been done yet. Finally, although the lease was not recorded, the buyer has knowledge of the lease and therefore would not be protected as a subsequent purchaser for value under the Texas recording statute. Therefore it is unlikely that the buyer would succeed in terminating the lease and evicting the tenant.

**END OF EXAM**

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