

Question 5 – July 2013 – Selected Answer 1

1. Landlord did not have a duty to repair the apartment. The issue is whether Landlord had a duty to repair, even though Jack assented to the lease without seeing it first. Generally, a tenant is responsible for making repairs to the leased property, but the Landlord has the duty to provide tenant with a habitable premises. The leaky ceiling, broken windows, broken door, rats, and roaches made the apartment uninhabitable. In Texas, a tenant has the right to breach a lease under conditions that make living unsafe, or are a danger to the tenant's health. Here, Landlord breached the implied covenant of habitability which provided Jack with two alternatives. Upon realizing that the apartment was uninhabitable, Jack had the right to either fix the problems himself and deduct the costs of remedying the problems from the rent, or terminate the lease. Jack chose to terminate the lease, which relieved Landlord of the duty to repair. Because Jack terminated the lease immediately upon seeing the apartment was uninhabitable; Landlord no longer had a duty to repair the premises.

2. Yes, landlord was required to return Jack's security deposit immediately upon the termination of the lease by Jack. The issue is whether Jack's termination of the lease operated as a forfeiture of the security deposit. In Texas, a security deposit on a leased premises acts as a reservation of the lease and as security for any damages caused to the property by the tenant. Because Jack terminated the lease immediately, Landlord had no further right to the deposit as there was no purpose for the security.

3. Yes, Landlord had the right to change the lock on the apartment. The issue is whether Jack had any interest in the apartment that was violated by the change of the locks. Because Jack terminated the lease, he no longer had an interest in the apartment, and had given up his rights to the apartment. Therefore, the act of changing the locks did not violate any rights Jack had.

Question 5 – July 2013 – Selected Answer 2

1. Did the Landlord have a duty to Jack to repair the apartment? Landlord did not have a duty to Jack to repair the apartment once Jack terminated the lease and because Jack did not demand repair, rather, he demanded to be let out of the lease due to the lack of habitability of the apartment. A landlord has a duty to deliver habitable premises to the tenant. This habitable condition must not present any dangerous conditions or defects in the property that would harm the health or safety of an average tenant. The apartment in this case undoubtedly violated that standard. Living amongst rats and roaches is a health hazard for even the most healthy tenant. The broken windows and broken front door also endanger the safety of a tenant, who has a right to a secure premises. Therefore, if Jack had demanded repair, Landlord would have owed Jack to duty to repair and to present Jack with a habitable premises in which to live. However, in lieu of demanding that the Landlord repair the premises, Jack refused the premises and demanded to be released from the lease, which he was.

2. Was the Landlord required to return Jack's security deposit, and, if so, under what time frame and conditions? The landlord is required to return Jack's security deposit. Under the Texas Property Code, a Landlord may retain a security deposit for any damages incurred as a result of liability of a tenant. However, even in reserving the security deposit for this purpose, the Landlord can only keep as much of the deposit as is necessary to recoup his losses as a result of the tenant's breach or damages to the property. Because Jack rightfully terminated the lease because of a breach by Landlord, Landlord has suffered no damages that are recoverable against Jack. In this case, the Landlord is required to give the entirety of Jack's deposit back to Jack in a timely manner after Jack has vacated the premises. Since Jack

has vacated the premises, terminated his lease, and requested the delivery of his security deposit in full, Landlord must deliver the full amount of the security deposit to Jack immediately.

3. Did Landlord have the right to change the lock on the apartment? Yes, Landlord had a right to change the lock. Under the Texas Property Code, a Landlord accepts surrender of a property when he releases a tenant from a lease and takes back possession of the property and relets it to a subsequent tenant. Because Landlord accepted Jack's surrender of the premises, Landlord was entitled to rent the property and change the locks on the doors. Again, Landlord was under a duty to deliver a habitable premises to the new tenant, which also requires providing for the new tenant's safety. Here, changing the locks is necessary for the new tenant's safety, not only as a remedy of repairing the door that was previously damaged, but to protect the new tenant against previous tenants who may not have returned their keys to the premises. In order to deliver a habitable premises to his new tenant, after having accepted the surrender of a former tenant, Landlord was entitled to change the lock on the apartment door.

Question 5 – July 2013 – Select Answer 3

1. Landlord did not have a duty to Jack to repair the apartment. Although Landlord breached the warranty of quiet enjoyment Landlord was not required to repair the apartment because Jack told Landlord he would not move in. The issue is whether a leaky ceiling, 2 broken windows lacking in safety latches, a broken entry door, a family of rats, and a roach infested kitchen constitute a breach of the warranty of quiet enjoyment. A landlord has a duty to give possession of the premises to the tenant and the warranty of quiet enjoyment. In states other than Texas there is also a warranty of habitability. The landlord must give to the tenant a place that is habitable. In Texas there is no warranty of habitability but the tenant does have an obligation to ensure that the premises will not substantially impair the standard tenant's physical health. Although Landlord gave Jack possession of the apartment the landlord clearly violated the warranty of quiet enjoyment. The ceiling was leaky, there were 2 broken windows lacking safety latches, a broken entry door, a family of rats living in the apartment and a roach infested kitchen. A few roaches are permitted but several thousand of roaches constitute a breach of constructive possession of quiet enjoyment. If Jack had moved in knowing the defects and waited a couple of months to complain then Jack would have waived his right to demand reimbursement and his right to quiet enjoyment. However this was not the case here. Jack properly refused to move in and sent Landlord a detailed written notice of termination listing the conditions and demanding return of his payment. Because Jack had notified Landlord that he was not moving in due to the breach, Landlord did not have an obligation to repair the apartment for Jack but he did have an obligation to release Jack from the lease and return the security deposit because Landlord breached the contract. Landlord could have repaired the apartment if Jack requested he do that but Jack did not indicate that he wanted the apartment repaired.

2. Landlord was required to return Jack's security deposit because Landlord breached the warranty of quiet enjoyment and breached the agreement. Landlord was required to promptly return the security deposit after Jack notified Landlord of Landlord's breach. A landlord has a duty to give possession of the premises to the tenant and the warranty of quiet enjoyment. In states other than Texas there is also a warranty of habitability. The landlord must give to the tenant a place that is habitable. In Texas there is no warranty of habitability but the tenant does have an obligation to ensure that the premises will not substantially impair the standard tenant's physical health. Although Landlord gave Jack possession of the apartment the landlord clearly violated the warranty of quiet enjoyment. The ceiling was leaky, there were 2 broken windows lacking safety latches, a broken entry door, a family of rats living in the apartment and a roach infested kitchen. A few roaches are permitted but several thousand roaches

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3. Landlord had the right to change the lock on the apartment. Since Jack had been released from the lease, landlord had the authority to change the lock to the apartment. The issue here is whether there is still an existing contract between Landlord and tenant since landlord has refused to return the security deposit. There is no longer a contract so Landlord may change the lock on the apartment.