Memorandum

TO: Della Gregson, Partner
FROM: TBE Examinee
DATE: July 26, 2016
RE: Barbara Whirley possible options for breach of tenantability and possible remedies

Barbara Whirley ("Whirley") has several potential options with regard to each of the unrepaired conditions she has encountered. Possible options for each of the unrepaired conditions are described below individually, as well as possible remedies she may have available against her landlord, Sean Spears ("Spears") for each unrepaired condition.

1. Options with regard to the leaking toilet

Whirley can possibly pursue several options to repair the toilet and can also likely recover damages from Spears for his failure to repair the condition.

Franklin Civil Code ("FCC") §540 requires that a landlord leasing a building intended for human occupation "must put it into a condition fit for such occupation and *repair all subsequent conditions that render it untenantable*" (emphasis added). Here, Whirley has leased a home from Spears that is intended for human occupation. Therefore, Spears place the building in a condition fit for human occupation and must repair all subsequent conditions that render it untenanantable.

The leaking toilet likely makes Whirley's dwelling untenantable. An untenantable dwelling is defined in FCC §541 as one lacking any of the following: "(1) Effective waterproofing and weather protection of roof and exterior walls, including unbroken windows and doors; (2) *Plumbing or gas facilities . . . maintained in good working order*; (3) Heating facilities . . . maintained in good working order; . . . ; (7) Electrical lighting, wiring, and equipment . . . maintained in good working order; (8) Floors, stairways, and railings maintained good repair; (9) Interior spaces free from insect or vermin infestation" (emphasis added). Here, a toilet is leaking in Whirley's dwelling. A toilet would likely constitute "plumbing facilities" for the purposes of FCC §541(2). Therefore, since the leaking toilet is a plumbing facility that is not being maintained in good working order, the leaking toilet likely makes Whirley's dwelling untenantable.

Whirley can likely receive remedies under FCC §542(a) since Whirley, her dog, and her guests are not responsible for the leaking toilet. A tenant may not receive the remedies under FCC §542(a) if the condition was caused by the violation of FCC §543, which requires tenants: (1) To keep the part of the premises which the tenant occupies and uses clean and sanitary as the condition of the premises permits; (2) To properly use and operate all electrical, gas, and plumbing fixtures and keep them as clean and sanitary as their condition permits; (3) Not to permit any person or animal on the premises to destroy, deface, damage, impair, or remove any part of the dwelling unit or the facilities, equipment, or appurtenances thereto. In Shea v. Willowbrook Properties LP, the Franklin Court of Appeals held that failure to prove the Tenant was not at fault for the damage and that the landlord was at fault meant recovery for damages under FCC §542(a) was barred by FCC §543. Here, Whirley, her pet, and her guests are not responsible for the leaking toilet. Moreover, Whirley has attempted to prevent the leaking toilet from further rendering the premises unclean or unsanitary by using towels and plastic buckets to keep the water from spreading to other areas of the bathroom and dwelling. Therefore, Whirley has not violated FCC §543 and can receive remedy under FCC §542(a).

Whirley has 3 potential options which she may pursue as remedies for Spears' breach of the statutory requirement to render her premises tenantable. If a landlord neglects to repair conditions that render a dwelling untenantable "within a reasonable time after receiving written notice from the tenant of the conditions," the tenant for each condition may under FCC §542(a): "(1) if the cost of such repairs does not exceed one month's rent of the premises, make repairs and deduct the cost of repairs from the rent when due; (2) if the cost of repairs exceeds one month's rent, make repairs and sue the landlord for the cost of repairs; (3) vacate the premises, in which case the tenant shall be discharged from further payment of rent or performance of other conditions as of the date of vacating the premises; or (4) withhold a portion or all of the rent until the landlord makes the relevant repairs, except that the tenant may only withhold an appropriate portion of the rent if the conditions substantially threaten the tenant's health and safety." A tenant making repairs more than 30 days after giving notice is deemed to have acted after a reasonable time. FCC §542(c). Here, since Whirley gave written notice to Spears on February 19 by email, Spears is held by statute to have failed to repair her dwelling within a reasonable time after receiving written notice since it has been more than 30 days since he received notice of the condition. Since the cost of repairs will be $200, and Whirley's one month's rent is $1200, option (2) is not applicable. Therefore, Whirley can pursue remedies under FCC §542(a)(1),(3) and (4).

Of these options, Whirley should pursue the option under FCC §542(a)(1). Under that option, Whirley may make the repairs herself and deduct the cost of repairs from rent when it comes due if the cost of the repairs is less than one month's rent. Since the cost of repairs for the leaking toilet are quoted at $200, this is the best option for Whirley to pursue.

The option under FCC §542(a)(3) is not really an option for Whirley since she does not want to vacate the premises, though she may pursue that option as a last resort. If she does pursue the option to vacate, she would no longer be required to pay rent or performance of any other conditions under the Lease as of the date she vacates.

Her last option is to withhold rent under FCC §542(a)(4) which is not her best option given Spears' failure to remedy the leaking toilet for over 5 months. Under this option, Whirley may withhold an appropriate portion of rent until the landlord makes the relevant repairs if the conditions substantially threaten her health and safety. The leaking toilet likely constitutes a condition substantially threatening her health and safety.This is not as good an option as FCC §542(a)(1) since there is no guarantee that Spears will make the repairs simply because Whirley withholds rent.

Therefore, with respect to the leaking toilet, Whirley has several options which she may pursue to remedy the toilet, which renders her dwelling untenantable in its current condition. Her best option is to make the repairs and deduct the cost of the repairs from the rent due.

2. Options with regard to the sliding door/carpet

Whirley can possibly pursue several options to repair the sliding door, carpet water damage, and mold and may recover damages from Spears for his failure to repair the condition if she is able to prove that the sliding door was not damaged by her guests.

Franklin Civil Code ("FCC") §540 requires that a landlord leasing a building intended for human occupation "must put it into a condition fit for such occupation and *repair all subsequent conditions that render it untenantable*" (emphasis added). Here, Whirley has leased a home from Spears that is intended for human occupation. Therefore, Spears place the building in a condition fit for human occupation and must repair all subsequent conditions that

render it untenanantable.

The broken sliding door, carpet water damage, and the mold resulting from it likely makes Whirley's dwelling untenantable. An untenantable dwelling is defined in FCC §541 as one lacking any of the following: "*(1) Effective waterproofing and weather protection of roof and exterior walls, including unbroken windows and doors*; (2) Plumbing or gas facilities . . . maintained in good working order; (3) Heating facilities . . . maintained in good working order; . . . ; (7) Electrical lighting, wiring, and equipment . . . maintained in good working order; *(8) Floors, stairways, and railings maintained good repair*; (9) Interior spaces free from insect or vermin infestation" (emphasis added). Here, a sliding door is broken and leaking water into Whirley's dwelling. The broken door itself would render her dwelling untenantable under FCC §541(a)(1). The water damage to the carpet and the mold likely render her dwelling untenantable under FCC §541(a)(8). Therefore, Whirley's dwelling is likely untenantable because of the broken door, carpet water damage and mold.

Whirley can only receive remedies under FCC §542(a) if Whirley can show her guests are not responsible for the damage to the sliding door. A tenant may not receive the remedies under FCC §542(a) if the condition was caused by the violation of FCC §543, which requires tenants: (1) To keep the part of the premises which the tenant occupies and uses clean and sanitary as the condition of the premises permits; (2) To properly use and operate all electrical, gas, and plumbing fixtures and keep them as clean and sanitary as their condition permits; (3) Not to permit any person or animal on the premises to destroy, deface, damage, impair, or remove any part of the dwelling unit or the facilities, equipment, or appurtenances thereto. Further, in Burk v. Harris, the Franklin Court of Appeals held that premises not properly waterproofed by a leaking roof from the outside elements constituted a substantial and entitled the Tenant to judgment on the defense of breach of the warranty of tenantability. In Shea v. Willowbrook Properties LP, the Franklin Court of Appeals held that failure to prove the Tenant was not at fault for the damage and that the landlord was at fault meant recovery for damages under FCC §542(a) was barred by FCC §543. Here, it is clear from the facts that Whirley is not herself responsible for the damage to the sliding door, nor does it seem like her pet is responsible either. Therefore, whether Whirley will be able to receive the remedies under FCC §542(a) will depend on if she can prove the broken door could not have been broken by her guests. Since there is a gap between the door and the door frame, the door may have slipped off it's track when a guest opened it. The gap may also be the result of a defect in the door itself - that is, the door may be too small for its frame. Assuming that Whirley's guests are not responsible, Whirley has attempted to prevent the leaking door from damaging the carpet further by using plastic along the door frame to keep moisture from coming in, though her attempts have proved ineffective. Therefore, Whirley may receive remedies under FCC §542(a) if her guests are not responsible for damage to the door and she can prove the landlord is at fault.

Assuming that Whirley can prove her guests did not damage the sliding door, Whirley has 3 potential options which she may pursue as remedies for Spears' breach of the statutory requirement to render her premises tenantable. If a landlord neglects to repair conditions that render a dwelling untenantable "within a reasonable time after receiving written notice from the tenant of the conditions," the tenant for each condition may under FCC §542(a): "(1) if the cost of such repairs does not exceed one month's rent of the premises, make repairs and deduct the cost of repairs from the rent when due; (2) if the cost of repairs exceeds one month's rent, make repairs and sue the landlord for the cost of repairs; (3) vacate the premises, in which case the tenant shall be discharged from further payment of rent or performance of other conditions as of the date of vacating the premises; or (4) withhold a portion or all of the rent until the landlord makes the relevant repairs, except that the tenant may only withhold an appropriate portion of the rent if the conditions substantially threaten the tenant's health and safety." A tenant making repairs more than 30 days after giving notice is deemed to have acted after a reasonable time. FCC §542(c). Here, since Whirley gave written notice to Spears on May 26 by email, Spears is held by statute to have failed to repair her dwelling within a reasonable time after receiving written notice since it has been more than 30 days since he received notice of the condition. Since the cost of repairs will be $1800, and Whirley's one month's rent is $1200, option (1) is not applicable. Therefore, Whirley can pursue remedies under FCC §542(a)(2),(3) and (4).

Of these options, Whirley should pursue the option under FCC §542(a)(2). Under that option, Whirley may make the repairs herself and sue Spears for the cost of repairs. Since the cost of repairs for the sliding door and carpet are quoted at $1800, this is the best option for Whirley to pursue since her other options are likely inadequate for her needs.

The option under FCC §542(a)(3) is not really an option for Whirley since she does not want to vacate the premises, though she may pursue that option as a last resort. If she does pursue the option to vacate, she would no longer be required to pay rent or performance of any other conditions under the Lease as of the date she vacates.

Her last option is to withhold rent under FCC §542(a)(4) which is not her best option given Spears' failure to remedy the sliding door and carpet for over 2 months. Under this option, Whirley may withhold an appropriate portion of rent until the landlord makes the relevant repairs if the conditions substantially threaten her health and safety. The mold resulting from the water damage to the carpet because of the sliding door likely constitute a condition substantially threatening her health and safety. This is not as good an option as FCC §542(a)(1) since there is no guarantee that Spears will make the repairs simply because Whirley withholds rent.

Therefore, with respect to the sliding door, carpet water damage, and mold, Whirley has several options which she may pursue to remedy the conditions which render her dwelling untenantable in its current condition, but she may only do so if she can prove the sliding door was not originally damaged by one of her. If she is able to establish that she is not at fault for the broken sliding door, her best option is to make the repairs to the door and carpet and sue Spears for the cost of the repairs.

3. Options with regard to the sprinkler system

Whirley likely cannot can pursue any options to repair the sprinkler system.

Franklin Civil Code ("FCC") §540 requires that a landlord leasing a building intended for human occupation "must put it into a condition fit for such occupation and *repair all subsequent conditions that render it untenantable*" (emphasis added). Here, Whirley has leased a home from Spears that is intended for human occupation. Therefore, Spears place the building in a condition fit for human occupation and must repair all subsequent conditions that render it untenanantable.

The broken sprinkley system likely does not make Whirley's dwelling untenantable. An untenantable dwelling is defined in FCC §541 as one lacking any of the following: "*(*1) Effective waterproofing and weather protection of roof and exterior walls, including unbroken windows and doors; (2) Plumbing or gas facilities . . . maintained in good working order; (3) Heating facilities . . . maintained in good working order; . . . ; (7) Electrical lighting, wiring, and equipment . . . maintained in good working order; (8) Floors, stairways, and railings maintained good repair; (9) Interior spaces free from insect or vermin infestation" (emphasis added). Here, a sprinkler system has been broken and Whirley has had to manually water her flower beds as required under her lease. Since the broken sprinkler system likely does not fit into any of the categories above, Whirley's dwelling is likely not rendered untenantable by the broken sprinkler system.

Whirley can therefore only pursue remedies under a breach of contract theory under the lease, but such an option also falls short. The Lease provides that "Unless prohibited by ordinance or other law, Tenant will water the yard at reasonable and appropriate times and will, at Tenant's expense, maintain the yard." The Lease also provides the Tenant, at Tenant's expense, shall (1) keep the property clean." Since Whirley is still able to water the yard, she cannot sue

the Landlord for breach of contract under the Yard Maintenance provision. If she is to recover anything, it would be that the sprinkler system malfunction prevents her from keeping the property clean. However, this seems unlikely since she is still able to water the plants. Therefore, Whirley likely cannot sue for breach of contract.

Therefore, with respect to the sprinkler system, Whirley has no options which she may pursue to force Spears to fix the sprinkler system or receive remedies. She may only fix the sprinkler system at her expense.

4. Options with regard to the washer/dryer

Whirley likely cannot pursue any options to repair the baseboard and wall near the washing machine and cannot recover damages from Spears for his failure to repair the condition since her pet was responsible for the condition. Whirley must repair the condition under the Lease at her own expense.

Franklin Civil Code ("FCC") §540 requires that a landlord leasing a building intended for human occupation "must put it into a condition fit for such occupation and *repair all subsequent conditions that render it untenantable*" (emphasis added). Here, Whirley has leased a home from Spears that is intended for human occupation. Therefore, Spears place the building in a condition fit for human occupation and must repair all subsequent conditions that render it untenanantable.

The broken sliding door, carpet water damage, and the mold resulting from it likely makes Whirley's dwelling untenantable. An untenantable dwelling is defined in FCC §541 as one lacking any of the following: "(1) Effective waterproofing and weather protection of roof and exterior walls, including unbroken windows and doors; (2) Plumbing or gas facilities . . . maintained in good working order; (3) Heating facilities . . . maintained in good working order; . . . ; (7) Electrical lighting, wiring, and equipment . . . maintained in good working order; *(8) Floors, stairways, and railings maintained good repair*; (9) Interior spaces free from insect or vermin infestation" (emphasis added). Here, the damage to the baseboard and wall likely render her dwelling untenantable under FCC §541(a)(8). Therefore, Whirley's dwelling is likely untenantable because of the damaged baseboard and wall.

Whirley cannot receive remedies under FCC §542(a) since Whirley's pet was responsible for the damage. A tenant may not receive the remedies under FCC §542(a) if the condition was caused by the violation of FCC §543, which requires tenants: (1) To keep the part of the premises which the tenant occupies and uses clean and sanitary as the condition of the premises permits; (2) To properly use and operate all electrical, gas, and plumbing fixtures and keep them as clean and sanitary as their condition permits; (3) Not to permit any person or animal on the premises to destroy, deface, damage, impair, or remove any part of the dwelling unit or the facilities, equipment, or appurtenances thereto. Here, it is clear from the facts that Whirley's pet is responsible for the damage to the baseboard and wall near the washing machine. Therefore, Whirley may not receive damages under FCC §542(a).

Whirley likely must repair the baseboard and wall under the Lease at her own expense. The Lease provides that the "Tenant, at Tenant's expense, shall (1) keep the property clean . . . ." Spears can likely argue that Whirley's failure to repair the baseboard and wall after Whirley's pet damaged the wall is a violation of the Lease. Therefore, Whirley must repair the baseboard and wall under the Lease at her own expense.

5. Conclusion

To conclude, Whirley can likely pursue remedies for Spears' failure to fix the toilet and the sliding door. However, Whirley likely cannot pursue any remedies for the broken sprinkler system or the damage to the baseboard and wall and likely must repair those at her own expense under the Lease.

Memorandum

To: Della Gregson, Partner
From: Examinee
Re: Barbara Whitley matter

Summary of Applicable Franklin Law

A. Landlord-Tenant relationships are subject to the implied warranty of tenantability and statutory requirements of tenantability.
In Franklin, landlords and tenants are subject to the implied warrantly of tenantability first announced in *Gordan v. Centralia Properties* in 1975 by the Franklin Supreme Court. In that case, the court held that in every residential lease there is an implied warranty of tenantability. They further held that a tenant that proves the landlord has breached the duty is entitled to maintain possession and to a reduction of rent corresponding to the reduced value of the premises during the breached period. However, a tenant is not entitled to a reduction in rent for minor violations that do not affectt the tenant's health and safety. This is a codified law now in §540 of the Franklin Civil Code. Under that statute, a tenant may raise the breach of warranty as a defense to eviction proceedings and if the court finds a substantial breach by the landlord - it shall order the landlord to make the repairs, correct the conditions, reduce the monthly rent, and award tenant possession. §550(b).

Franklin Civil Code §540 requires all landlords to provide a building for human occupancy to be in a condition fit for occupation and repair conditions that render it untenantable. Tenantability is a fact question informed by statute that enumerates conditions that are untenantable. Under §541, a dwelling is untenantable if it lacks waterproofing and weather protection from both the roof and walls, plumbing or gas facilities that are not maintained in working order, heating facitilities in nonworking order, electrical in nonworking order, interiors free of bugs and rodents, and floors, stairways and railings in good repair. In *Burk v. Harris*, a leaky shower, non-functioning thermostat and leaky roof and windows were substantial and affected the tenant's health and safety.

However, the landlord duties available in §540 or §541 do not arise if the conditions are the fault of the tenant. §543(1) specifically gives the tenant the affirmative obligation to "not permit any person or animal on the premises to destroy, deface, damage, impair, or remove any part of the dwelling unit or the facilities, equipment, or appurtenances thereto."

B. A Tenant must provide notice of the condition needing repair and allow landlord reasonable time to repair. If the landlord fails to do so, the tenant has four remedies.
A tenant must provide landlord with written notice of the conditions needing repair. In *Shea v. Willowbrook*, the court explained that if a tenant is responsible for the issue, then they are obligated to repair the issue themselves. If the tenant believes the landlord to be responsible, then the tenant has a duty to promptly notify the landlord to give the landlord the opportunity to resolve the problem.

§542(a) If a landlord fails to repair the substantial untentable conditions within a reasonable time, the tenant may (1) make repairs and deduct costs from rent; (2) make repairs and sue landlord for the costs (if exceeds one month's rent); (3) vacate the premises and be discharged from future rent payments due under the lease; or (4) withhold rent until landlord makes repairs, but only a proportion relative to the untenantable conditions. §542(a)(1)-(4).

If the landlord fails to make the repairs within thirty days and the tenant then acts, the tenant is presumed to have waited a reasonable time for the landlord to make repairs. §542(c).

Under *Burk*, the court has two options in reducing the value of rent as a remedy. First, it may measure the difference between the fair rental value of the premises if in warranted, working condition and the fair rental value of the condition in unsafe or unsanitary conditions. Or, second, the court may reduce the tenant's rental obligation by a percentage that related to the relative reduction in the use of the premises caused by the breach.

Franklin Law as applied to Ms. Whitley's Case

The conditions of bathroom toilet leak, carpet and sliding door in the guest bedroom constitute substantial breach of the warranty of tenantability. The conditions of malfunctioning sprinkler system and laundry room baseboards are not substantial breach of warranty, because they are the affirmative duties of the tenant under the lease and under the statute.

1. The second Bathroom Toilet leak is an untenantable condition.
As outlined specifically in §541, a dwelling is untenantable if it lacks plumbing maintained in good working order. Ms. Whitley first gave Mr. Spears notice on February 19, 2016 of the toilet leak. After many missed phonecalls and voicemails and a missed appointment, it is now more than three months later and the toilet has not been repaired, nor has Mr. Spears made any effort to physically repait the toilet. Ms. Whitley has given the landlord adequate written notice and the landlord has failed to act within thirty days. Under §542(c), Ms. Whitley has waited a reasonable amount of time to permit the landlord to undertake the repairs. Ms. Whitley not has the right to remedy the condition herself and either deduct the costs from rent if it is less than the monthly rent. Ms. Whitley's rent is $1,200/month. The estimated cost of the toilet repair is $200 from the estimate. Ms. Whitley should undertake the repair, keeping all receipts, and deduct the cost from next month's rent. This option is the most advantageous because it keeps Ms. Whitley out of court - Mr. Spears is unlikely to sue Ms. Whitley for the rent difference of only $200 since he does not have to undertake the repair himself. Also, Ms. Whitley has expressed her desire to stay in the rental home. This option will do this and will be unlikely to expose her to eviction proceedings.

Ms. Whitley may also be eligible for relief from the total amount of rent due to this condition. However, the limited use of one bathroom might not result in that much of a reduction in rent plus Ms. Whitley has already paid the full amount of rent due for the three months of the toilet malfunction. This option is not a great one for Ms. Whitley and her desires.

There is one other option available under §542 but it is likewise not a great option for Ms. Whitley. She may vacate the premises and be discharged of future rent payments. This is not a good option because Ms. Whitley has expressed her desire to stay in the dwelling.

2. Outdoor Sprinkler System Malfunction is the responsibility of the tenant to repair.
In order for a landlord to have breached the warranty of untenantability, or the statutory conditions, the breach must be substantial or on the enumerated list. Arguable, the outdoor sprinkler system is a plumbing system and would fall under the §542 list of items. However, this malfunction does not affect the habitability of the home - rather it affects the tenant's duties under the lease to maintain and water the yard at her expense. Thus, as specifically stated under the lease, tenant is responsible for watering and maintaining the lawn at her expense. Ms. Whitley is responsible for maintaining the sprinkling system in working order to uphold her end of the lease. It is not the responsibility of the landlord to maintain this.
Even if this were a plumbing system under §542, Ms. Whitley has given adequate written notice to the landlord and time to repair. Ms. Whitley first mentioned this issue on March 31, 2016. It is now July, which is beyond a reasonable time for the landlord to repair.
However, it is a plumbing issue that is specifically addressed under the lease and the responsibility of watering the yard is on Ms. Whitley. She must maintain the watering systems as this does not substantially affect the habilitability, it is merely a hassle. Ms. Whitley, if she does not want to continue watering the plants by hand, must undertake this repair and will not be able to deduct the repair from the rent as it doesn't fall under the §540 duties of a landlord to repair.

3. Carpet Odors in the Guest Bedroom caused by the leaking sliding glass door have resulted in untenantable conditions.
As outlined in §541, a dwelling is untenantable if it lacks effective waterproofing of the roof or exterior walls, including unbroken windows and doors. Ms. Whitley's door in the guest bedroom is leaking and the carpet is now in poor condition. This leakage is ineffective waterproofing and qualifies as an untenantable condition under §541. After giving Mr. Spears notice of the leak on May 26, 2016, Mr. Spears failed to undertake any repairs. It has been more than thirty days, so Ms. Whitley may remedy the condition herself or take other appropriate action. Ms. Whitley has the four options outlined above, two of which are viable options.
Ms. Whitley may take on the repairs herself and then sue Mr. Spears for the cost of repair under §542(a)(2). She may not deduct the cost from rent because the cost of repair, $1,800, exceeds the monthly rent, $1,200. So, if Ms. Whitley has the cash, may pay for the repairs and sue Mr. Spears for the cost. She must keep detailed records of her payments as in *Shea v. Willowbrook*, the tenant was unable to recover his claimed expenses because he did not have the documentation of all expenses. Ms. Whitley may be required to prove that the damage is not the result of any of her guest's misuse of the room - the facts are not yet complete, further investigation is needed.
Ms. Whitley may also withhold rent under the landlord makes the repairs, but only in proportion to the untentable spaces. Here, the third bedroom is unusable because of the lack of waterproofing and the resulting damp carpet and smell. The rental value of a two bedroom home in the area is $1000. This, Ms. Whitley may deduct $200 per month in rent to compensate for the loss of use of the third bedroom. This may not be the most satisfying result for Ms. Whitley especially if the smell and lack of waterproofing is impacting her social life and her general happiness. This may be a good option for Ms. Whitley if she does not have $1800 to spare to make the repairs until she can be compensated by Mr. Spears in the resulting suit. Thus, she could save herself $200 a month for the remainder of the lease (if Mr. Spears fails to repair in that time) or just seek damages by suit after repair.
Ms. Whitely also has the option to leave the premises and be discharged or her future rent payments under the lease. As mentioned above, this is not an option that Ms. Whitley is likely to be amenable to because she has expressed a desire to stay in the home as it is convenience for work and in an area with little options for her to move to.

4. Laundry Room Baseboard damage is a result of tenant's pet and is the responsibility of the tenant to repair.
The landlord duties under §540 or §541 do not arise if the conditions are the fault of the tenant. §543(1) specifically gives the tenant the affirmative obligation to "not permit any person or animal on the premises to destroy, deface, damage, impair, or remove any part of the dwelling unit or the facilities, equipment, or appurtenances thereto." The damage to the laundry room baseboards are the result of Ms. Whitley's dog, Bentley, finding a new chewing toy in the baseboards. These damages have only been noticed for about five days and are admittedly the cause of her pet. We do not yet have access to the pet addendum, but based on the language in the lease that does not permit pets and allocates the damages from any unauthorized pet to the tenant, the addendum may also do this. We need more information to know on which party the duty to repair falls under the lease. Even if they were considered a landlord's duty to repair under the statute because of their proximity to flooring, Ms. Whitley has not provided adequate notice or enough time to repair.
Using the statute, however, it is clear that Ms. Whitley is responsible for these repairs as they do not constitute a substantial breach nor are they enumerated under the statute as untenantable conditions. Ms. Whitley must undertake the repairs herself for $300 and may not deduct this from the rent payable in the future.

Conclusion: Barbara Whitley, tenant, is entitled to have the court order the landlord to make the necessary repairs under the statute and outlined above and may be eligible for a proportional reduction in rent.
As outlined above, Ms. Whitley is entitled to have Mr. Spears repair the toilet and the bedroom leaks and carpet because they constitute untenantable conditions and a substantial breach of tenantability. Ms. Whitley has several options as to repair, because Mr. Spears has not been responsive. Ms. Whitley's best options are: to undertake the repair to the toilet and deduct the repair ($200) from next months rent and, provided she has cash, take on the repair to the door and the carpet and sue Mr. Spears for the cost of repairs. Thus, Ms. Whitley should have the toilet repaired and pay only $1000 next month. Futher, if she chooses to not undertake the repair to the door, she can reduce her rent proportionally to the untenantable areas. Because the difference in rent is $200 for a three and two bedroom in the area, she can further reduce next month's rent by $200 and each subsequent month until either the repair is done by Mr. Spears or the lease ends on its own. The tenant, under the court, may also reduce the rent by a

fraction. There are eight rooms in the home and Ms. Whitely is unable to use two of them, or 1/4. Potentially the rent could be reduced by 1/4 ($300) if she chooses not to repair either room. Because Ms. Whitley has specifically said she does not want to leave the home, those options are not her best options. However, if she changes her mind, she may vacate under the statute or under the lease and will be discharged of any future rent due, even though the lease attempts to hold her for all rent payments due. There is another section of the lease that allows Ms. Whitely to abandon the premises without the rent liability if the property becomes such that it is "seriously impaired" - the leaking window and resulting unusable room would definitely qualifty. In that case, Ms. Whitley need only give three days written notice of intent to terminate the lease to Mr. Spears under the terms of the lease.

Ms. Whitley need not undertake the repair to the sprinkler, but if she does, it is her responsibility and she cannot seek contribution from Mr. Spears as it was allocated to the tenant in the lease. Further, the damage caused by her dog may not be deducted from the rent or otherwise remedied becuase it was speficially the tenant's duties to not cause damage by a person or animal on the premises under the statute and likely under the lease as well. Ms. Whitely, depending on the addendum, may leave these issues caused by her dog to be resolved by the security deposit upon the termination of the lease as well.