

Question MEE 4 – February 2024 – Selected Answer 1

1a. Whether Tom could have terminated the lease if the court applied a physical possession requirement on the landlord.

If a court were to hold that Tom could have rightfully terminated the lease because Helen held over on January 1, the court would have applied a physical possession requirement on the landlord not just legal possession given to the tenant.

Legal possession refers to the right to possess or occupy an apartment or land. But actual or physical possession requires a landlord to give the tenant the actual ability to enter the apartment or property being leased, not just the mere right to do so. A lot of courts apply this requirement in residential leases particularly. A breach of this kind would be a material breach and warrant immediate termination of the lease.

If a court ruled Tom could terminate because Helen held over then it would likely be because the landlord did not deliver actual possession to Tom of the apartment because Helen was still occupying it. Tom may have had the right to be in the apartment but no actual way to occupy it when Helen was still holding over.

The rationale of the court would likely be that residential leases especially, a landlord has the duty to give legal and actual possession because otherwise the tenant is paying for nothing and gets no where to live. The tenant has no real recourse and is often the party most negatively impacted but with the least amount of control and responsibility over remedying the situation. The landlord is better positioned to give actual possession to a tenant because they have more power over the hold over tenant and oftentimes resources as well.

Likely the court, if they had ruled Tom could terminate for Helen holding over, would follow the rationale that Tom was renting an apartment to live in and not getting actual possession defeated the entire purpose and was a material breach. Additionally that the landlord was better positioned.

B. If court determined Tom no right to terminate, the issue is what rule would the court be applying.

Some states require a landlord to only deliver legal possession not actual possession to a tenant. The rationale or idea being that the landlord gave the tenant the right to access the property and thus the tenant can then do whatever is necessary to get into the apartment.

If a court held Tom could not terminate based on Helens hold over, the court likely would have been applying this above rule that requires only legal possession not actual possession. Thus, Tom had the legal right to be in the apartment and landlord did not have to also then give the actual ability to immediately be in the apartment. Thus leaving the responsibility on the Tenant to gain actual possession and proceed against the hold over.

2. Whether the landlord rightfully refused to consent to Tom's proposed assignment of his lease.

A landlord and tenant can freely assign or sublease unless the lease states otherwise. It is allowed for a lease to restrict the assignment of a lease or to limit that assignment based on landlord's consent. If based on consent then the landlord must have a reasonably accepted reason or rationale, not merely personal distaste or unreasonable measures to determine when to grant consent. A tenant that would unreasonably increase the landlord's risk of payment is a valid and acceptable reason to deny consent of an assignment. The landlord can not really stop the tenant from making an assignment or sublease in violation but if done in violation the landlord could then immediately terminate the lease and seek a suit for damages breach of the lease.

Here, the lease required the consent of the landlord before transfers would be made and thus landlord's consent was required before a transfer or assignment could be made in accordance with the lease. The landlord ran a background check and discovered the friend had very low credit. Upon that discovery then the landlord declined to accept the assignment. The decision was not made arbitrarily or randomly or based on a personal issue with people like Friend, but based on a reasonable and commonly accepted factor such as credit score or financial history. This would have a big increase on the landlord's likelihood of getting rent from friend and thus is a commercially reasonable consideration. Thus, it was rightful for the landlord to refuse to consent to the assignment of the lease based on his reasonable ground of credit score concerns.

3. Whether landlord can bind Tom to a new periodic tenancy.

When a tenant holds over after a lease has expired, the landlord has two options. They can either evict the tenant and begin eviction process or landlord can bind the tenant to a new periodic lease. A periodic lease is a lease based on a set "period" such as monthly and it renews automatically each month until either party sends notice to terminate prior to the next period starting. A landlord can bind a hold over who has remained in the premises, but not a tenant who left a few items or was only a few hours late in leaving. The landlord can state that the terms are the same of the prior

lease including rules and restrictions and rent. but if the prior lease was for years, then the new term should still only be a periodic shorter period lease.

Here, the landlord could bind Tom because he held over by a couple of days after his prior lease expired. This means he was not merely a few hours late moving stuff out or forgot a few items behind, but had stayed 4 days after his lease had ended on the 1st and was bound on the 4th of that January to the new lease. The landlord properly bound Tom to a periodic tenancy with all the other same terms of the original lease agreement. Thus, landlord could then treat Tom as a periodic tenant under the new periodic lease. The period was for a month and that is commonly accepted and thus was proper for landlord to do.

Question MEE 4 – February 2024 – Selected Answer 2

1a. If a court were to hold that Tom could have rightfully terminated the lease because Helen held over on January 1, 2021, what rule would apply and what would be the rationale for that rule.

The court would have applied the English rule with respect to the landlord's duty to deliver actual and legal possession to the tenant.

Under real property laws, jurisdictions that adopt the English rule require that the landlord provide actual and legal possession to the tenant upon the start of the lease. Under such jurisdictions, if there is a holdover tenant that remains when the new tenant's term is in force, the landlord must actually evict the holdover and make the property available for tenant's possession at his own expense. The rationale would be that the landlord is in a better position to control possession and should anticipate having to remove a holdover tenant.

Here, the term of years was set to begin on January 1, 2024 and landlord would have been required to make the apartment available for Tom on that day - a failure of which would allow Tom to terminate the lease.

1b. If a court were to hold that Tom could not have rightfully terminated the lease because Helen held over on January 1, 2021, what rule would apply and what would be the rationale for that rule.

The court would have applied the American rule with respect to the landlord's duty to deliver only legal possession, not actual, to the tenant.

Under real property laws, jurisdictions that adopt the English rule only require that the landlord provide legal possession of the property, not actual possession. In such an instance, the new tenant would be responsible for suing and evicting the holdover tenant, not the landlord. The rationale is that the landlord would be in not better position to remove the holdover tenant than the landlord, and that the new tenant can sue to evict the holdover tenant.

Here, the term of years was set to begin on January 1, 2024 and landlord would not be required to evict Helen, the holdover tenant, as under this rule it would be Tom's responsibility. Tom could then seek compensation in the form of a reduced rent, but could not declare the lease terminated because of the American rule.

2. Did the landlord rightfully refuse consent to Tom's assignment of the lease to his friend.

Yes, because the written term of years lease expressly provided that Tom, as tenant, could not assign or sublet the apartment without the landlord's prior consent, which is not an unreasonable restraint.

Generally, leases are freely assignable and may be sublet, subject to express terms in the lease that are not unreasonable.

Here, the prohibitions on assignment and subletting are subject to prior written consent by the landlord. This contractual feature is not an unreasonable restraint and does not limit the power to assign, but rather the right do so. Further, the facts show the landlord refused the assignment offered by Tom because of the prospective assignee's poor credit rating, which is a reasonable basis.

Therefore, landlord did rightfully refuse Tom's requested assignment.

3. Following Tom's failure to vacate, could the landlord rightfully treat Tom as a periodic tenant, subject to the provisions of the expired lease.

Yes, because a periodic tenancy will arise after a holdover tenant wrongfully remains on the property.

A term of years has a definite end date. When that date passes and the tenant has yet to vacate, he is then deemed a holdover tenant, and the landlord may sue to evict or relet the premises to the tenant under a periodic tenancy, or landlord may also do nothing and later sue for damages.

When a periodic tenancy follows a term of years in the residential lease setting, most courts will treat the amount of rent as simply carried over from the term of years, but will assess the duration of the periodic tenancy usually as month-to-month. Only commercial leases for longer than one year that later have a holdover tenant will bind for periods of more than a month. When the tenant elects to hold the holdover tenant to a periodic tenancy, the payment of rent will be binding as it was in the earlier lease, subject to the tenant receiving notice.

Here, Tom's holdover occurred upon him wrongfully remaining in possession beyond the term of years. Since the landlord notified him that the landlord would hold Tom to a periodic tenancy with the rent remaining the same, Tom will be bound to this new periodic tenancy for at least month-to-month, and some courts may hold the periodic tenancy to six months (with rent payable at the \$1300 rate).

Regardless of the jurisdiction, Tom will be a periodic tenant at the rate of \$1300 per month