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LANDLORD-TENANT ISSUES

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TENANT'S DUTIES AND LANDLORD'S REMEDIES

A lessee's covenant to pay rent is dependent on lessor's performance of covenants that were a significant inducement to the consummation of the lease or to the purpose for which the lessee entered into the lease. (Temporary or minor breaches by lessor don't count.) *Richard Burton Enterprises, Inc. v. Tsern*, 928 P.2d 368 (Utah 1996). *See, also*, UCA § 57-22-6.



HYPOTHETICAL

- Lessee enters into a lease for a house with a large built-in workshop. Lessee explains to lessor that he was attracted to the property because he builds fine furniture and the house includes a large workshop. Lessor assures lessee that the workshop will be “ideal” for that purpose. Upon moving in, lessee discovers that the workshop space is not heated, has no electrical power, and has a leaky roof. Lessee tenders less than full rent. Justified?

Same fact pattern, but the breach involves a non-functional electrical outlet in the workshop. However, a second outlet operates as it should. The non-functional outlet was not disclosed at the time parties entered into the lease. Lessee withholds rent. Justified?



PRACTICE POINTER 1:

- Temporary or minor breaches of a lease covenant by a landlord don't count.
This applies to both commercial and residential leases.

HYPOTHETICAL

- Teresa Tenant enters into a lease at a large apartment complex. Her apartment soon becomes known as “party central,” among certain complex tenants, while other, more sedate tenants complain about the noise and disruption of their quiet enjoyment. Without a written warning, Landlord evicts Tenant by knocking on her door and telling her “You are creating a nuisance. I want you out of here within three days.” Landlord provides no written notice to Teresa Tenant. Is Landlord’s eviction effective?

PRACTICE POINTER 2

- In a word, no. Landlord must provide Teresa Tenant with a three-day notice to vacate for nuisance. UCA § 78B-6-1101. Tenants in Utah may only be evicted by judicial process. UCA § 78B-6-814. A landlord who evicts a tenant by means of force, fraud, intimidation, or violence is liable to tenant for damages. See *Freeway Park Bldg., Inc. v. Western States Wholesale Supply*, 451 P.2d 778 (Utah 1969).

PRACTICE POINTER 2(A)

- Same fact pattern as above, except that the party throwing the parties is a non-tenant. Teresa Tenant's cousin, Felicity Freeloader, comes to "visit," and never leaves. Adding insult to injury, she refuses to pay any rent. It is Felicity Freeloader who invites neighbors over for parties during the daytime, while Teresa Tenant is at work. Upon receiving numerous complaints, Landlord knocks on the door and tells Felicity Freeloader that she must find other accommodations. She refuses to leave.
- **Q:** What should Landlord do?
- **A:** Call the police. Law enforcement will determine whether FF is a tenant or a long-term guest. If a long-term guest, the police can remove FF from the premises. They also can arrest her for criminal trespass. See UCA § 76-6-206.4. If the police determine that FF is a tenant, then Landlord can start an eviction proceeding.

LANDLORD REMEDIES

- If Tenant remains in possession of the property after the expiration of the term or after failing to pay rent, Landlord must provide Tenant with a written Three-Day Notice to Pay or Vacate before Landlord may proceed with the eviction process. UCA § 78B-6-802(1)(c)). If Tenant fails to pay rent and remains on property beyond the three days allowed, Landlord may commence the eviction process by filing a summons and complaint.

HYPOTHETICAL AND PRACTICE POINTER 3

- Larry Landlord has completed the above processes but decides that Robbie Renter is going to destroy the rental unit before Landlord can commence the eviction process. Consequently, LL shuts off all the utilities going into RR's unit in the hope that RR will find the apartment uninhabitable and vacate without any further prompting.
- **Q:** Is Landlord guilty of forcible entry? UCA § 78B-6-801.
- **A:** Yes. Self-help evictions are not allowed. Interestingly, however, under Utah Code Ann. § 78B-6-814, there are no specific penalties provided, such as the provision of tenant's court costs or tenant's right to stay on the premises.

HYPOTHETICAL AND PRACTICE POINTER 4

- Teresa Tenant rents an apartment in a multi-unit housing complex from Larry Landlord. She soon discovers multiple issues: the electrical outlet sparks when she plugs in her hairdryer, the drain in the kitchen sink backs up every time she attempts to wash dishes, and bats have taken up residence in the attic. She reports the issues to Larry Landlord, who says he will get to the issues “when he has time.” After several weeks with no action on LL’s part, she reports the matter to the local health department. LL subsequently gives her a Three-Day Notice to Vacate.
- **Q:** Does she have any recourse?
- **A:** Yes, provided TT’s complaints are in good faith and she is not in default under the lease, a landlord may not retaliate for tenant’s report of housing code violations to authorities. *Building Monitoring Sys. v. Paxton*, 905 P.2d 1215 (Utah 1995). Interestingly, however, Utah is one of a relatively small number of states that doesn’t have a statute prohibiting landlord retaliation.

LANDLORD'S DUTY TO MITIGATE

HYPOTHETICAL AND PRACTICE POINTER 5

- Tommy Tenant, 22, recently graduated from college, got his first job, and rented his first apartment. Three months into his one-year lease, he informs Larry Landlord that he doesn't like the adult world and wants to move back into his parents' basement. He says he will move out at the end of the month. LL rejects the offer and sternly advises him to "Grow up! You're going to be on the hook for all of the remaining rent. In fact, I won't even help you by advertising that the apartment is available!"
- **Q:** Is Larry Landlord within his rights?
- **A:** No. If a tenant abandons and the landlord rejects the tenant's offer of surrender, the landlord may sue the tenant for the remaining rent but is required to mitigate the damages by making a commercially reasonable effort to find a replacement tenant. UCA § 78B-6-816. See, also, *Reid v. Mutual of Omaha Ins. Co.*, 776 P.2d 896 (Utah 1989).

Same fact pattern, except fast-forward several months after TT has moved back into his parents' basement. Fearing legal action, he continues to timely pay his rent to LL, which LL continues to accept. TT is unaware that, in fact, LL relet his former apartment the day after he moved out.

Q: Is LL within his right?

A: No, if a landlord can recover the full rent from a tenant, the old, abandoning tenant owes no further rent or damages. *Fashion Place Assoc. v. Glad Rags, Inc.* 754 P.2d 940 (Utah 1988).



TORT LIABILITY OF LANDLORD

HYPOTHETICAL AND PRACTICE POINTER 6

- After Teresa Tenant moves out of the complex owned by Larry Landlord, Tommy Tenant moves into her former apartment. Although LL has been meaning to get around to fixing the issues with that space, he hasn't done so yet. Consequently, during the first week of TT's occupancy, he (i) shocks himself; (ii) floods the kitchen when the sink backs up; (iii) is bit by a wayward bat. As a result of his very bad week, he threatens to sue LL.
- **Q:** Does TT have a cause of action?
- **A:** Yes, if a landlord knew or had reason to know of the dangerous condition (or, as in this case, conditions) and failed to correct them within a reasonable time, the landlord is liable. *Gregory v. Fourthwest Investments, Ltd.*, 754 P.2d 89 (Utah App. 1988).

Same fact pattern, except that Tommy Tenant, a lifelong lover of the Caped Crusader, decides to prop open the trapdoor into the attic to allow the bats to freely circulate in his apartment. Prior to that time, the bats had no access from the attic. However, as a result of his action, Tommy Tenant was bit by his newly adopted pet bat, "Robin," and had to undergo several weeks of painful rabies treatment as a precaution. He threatens to sue Larry Landlord for negligence.

Q: Is LL liable?

A: No, not if the tenant created the dangerous condition. *English v. Kienke*, 848 P.2d 153 (Utah 1993).



HYPOTHETICAL AND PRACTICE POINTER 7

- Tina Tenant moves into an apartment, coincidentally also managed by Larry Landlord. Several days after moving in, she informs LL that her unit is in violation the Utah Fit Premises Act, Utah Code Ann. §§ 57-22-1 to -7. She further informs LL that the Act requires owners to maintain residential rental units in a habitable condition. She gives written notice to LL, alleging that the numerous violations including “insufficient” hot water, garbage cans that are “too small,” and a furnace that is “exceedingly noisy.”
- **Q:** Does she have a claim against LL? If so, what should he do in response?
- **A:** Section 57-22-4(1) of the Act requires an owner to maintain a residential rental unit “to protect the physical health and safety of the ordinary renter.” LL might argue that none of Tina Tenant’s complaints rise to the level of a deficient condition or dangerous condition (as defined in the Act). Nonetheless, if LL has learned anything from his past experiences, he will make repairs, as necessary, before Tina Tenant has the right to asset the remedies in the Act. See § 57-22-6.
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Same Fact Pattern as above, except that before providing LL with notice to make repairs, TT decides to “take matters into her own hands,” and stop paying rent.

Q: Does this affect the viability of her claim?

A: Yes. By failing to remain current in her rent payments, she loses the right to start the claim process by sending a notice to the landlord. See § 57-22-5. Furthermore, she must provide either a Three-Day Notice for habitability issues, such as lack of power or water; or a Ten-Day Notice (for less serious issues). She must also wait for the Landlord to fix the problems within the notice period. If LL fails to do so, then she may file a claim under the Act and either (i) move out; or (ii) fix the problem and deduct the costs from the rent payment.



FINAL HYPOTHETICAL AND PRACTICE POINTER

- Tina Tenant and Larry Landlord at last resolve their differences. However, while Tina is at work one day, a “precision earthquake” strikes the apartment complex and entirely destroys all of the units. Tina is understandably shaken and moves to Kansas, where she presumes earthquakes are less common. However, LL continues to send her bills for the rent. On the grounds that she no longer has a place to live, she refuses to pay.
- **Q:** Is she within her rights?
- **A:** Yes, if the lease of space is in a larger building, destruction of the building automatically terminates the lease. *Utah Optical Co. v. Keith*, 56 P. 155 (Utah 1899).

Questions? Comments?