LANDLORD- TENANT
FINAL EXAMINATION
Professor Peter M. Malaguti
Spring 2004 Semester

INSTRUCTIONS

Please do not turn to the next page until you are instructed to do so.

Please take four (4) blue books. Write "One," "Two," "Three" and "Scrap" on the four blue books. Please write your social security number on all four blue books.

This is a closed-book examination; other than writing implements, you are not to have any materials on your table or at your feet. Please place all books, knapsacks, briefcases, etc. at the side or front of the room.

Please do not use your own scrap paper. The only thing you may use as scrap paper is the "scrap" blue book. Please turn in your scrap blue book with your exam blue books and this exam booklet. I will not accept any blue books after you have turned in your exam materials; no exceptions.

This examination consists of six (6) short essay questions that count equally. The suggested time for each essay is thirty (30) minutes. Do not exceed four (4) single-spaced pages for each essay answer. Do not test me on this; I will not read beyond the fourth page on either essay.

Please put your first two essays into Book One, your next two essays into Book Two and your last two essays into Book Three.

Unless the facts of the questions suggest otherwise please use Massachusetts law. You will receive additional credit for discussing "multistate" law where it differs from Massachusetts law.

This is a comprehensive examination designed to test your ability to analyze and apply the concepts we covered over the entire semester. You will score points only for a proper recitation of the relevant law and a proper application of the law to the presented facts in a cogent, efficient manner. This is not a brain dump; you will not receive any points for merely regurgitating memorized law. You should not waste precious time spouting irrelevant law, esoterica or minutiae. Please assume I know the facts, but nothing else. I will not guess that you know concepts you have not explained.

Please make your answers legible. I cannot grade what I cannot read.

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Question One

Moe, the owner of a 30 unit apartment house in Bucolic, Massachusetts, hired Larry to serve as the "superintendent" of the premises. Moe and Larry agreed orally that Larry would provide janitorial, repair and maintenance services for the entire complex for at least 40 hours a week. Moe agreed to pay Larry $450 a week for the services, and to provide health insurance benefits as well as a standard one-bedroom apartment in the complex. The value of the apartment was $800 a month. After six months, Curley, another tenant, began to complain that Larry was throwing wild, noisy parties two or three nights a week. Moe investigated and determined that Curley’s complaints were accurate. Seven months after Larry Moved in, Moe fired him and told him to vacate the apartment within 3 days. Larry has refused to leave.

Please discuss the rights, duties and liabilities of the parties.

Question Two

Louise owned a 100 unit apartment complex in Urbantown, Massachusetts. The apartment complex contained a mixture of low income housing, moderate income housing and luxury units. Louise was able to obtain low interest loans from the Commonwealth of Massachusetts to purchase the apartment complex because she dedicated a percentage of the units to low and moderate income housing.

Rutherford Chesterfield Butterworth rented one of the luxury apartments for $3,100 a month. His next-door neighbor in the complex was Pete Parsimony, who rented a low income apartment. Pete, a welfare recipient, and Rutherford, a high-income insurance industry executive who had recently transferred to Urbantown from another city, did not get along, largely as a result of differences in their cultural and economic backgrounds. Their biggest dispute was about Pete’s chain smoking. Rutherford was a health enthusiast and could not tolerate second-hand smoke. Pete always started and ended his day with a cigarette in his mouth, and throughout the day lit new ones with those that were about to go out. Rutherford, on the other hand, began his day with a run on the treadmill in his apartment, and ended it with several sets of weightlifting.

Rutherford smelled smoke in his apartment constantly, and it bothered him greatly. He developed a cough, which he attributed to smoke emanating from Pete’s apartment. His complaints to Pete brought scorn. About a month ago, Rutherford began complaining to Louise at least twice a week. Louise did look at Pete’s state-approved lease and determined that she could only evict Pete for “cause.” As much as she sympathized with Rutherford’s dilemma, she believed that Pete probably had a right to smoke in his own home and she lacked “cause” to evict him.

Please discuss the rights, duties and liabilities of the parties.
Question Three

Lloyd, the owner of a 10 unit apartment house in Bowfornk, Massachusetts, leased an apartment to Toliver on January 1, 2003. Although the apartment would have been worth $1,500 a month in satisfactory condition, the parties reached an agreed rent of $1,000 a month because the apartment suffered from a severe ventilation problem. The defective ventilation forced tenants to keep the bathroom door shut and to run the fan continuously.

Toliver thought he could tolerate the ventilation problem in order to obtain an apartment he otherwise could not afford, but soon found the situation intolerable. The constant running of the fan led to a fire in the apartment. Furthermore, the apartment constantly suffered from moisture and foul odor problems. Toliver started to complain to Lloyd about the problem within a week of moving in. Several of these complaints were in writing, and the complaints continued through June 2003. Lloyd did make several attempts to correct the problem – he installed a dehumidifier, sealed the foundation, repainted some of the surfaces, etc. – but these efforts were ineffective. Complete correction would have required the installation of several new windows and a sophisticated ventilation system all of which would cost in excess of $10,000.

In April, 2003, after paying three months’ rent, Toliver stopped paying his rent and told Lloyd that he would not pay again until the ventilation problem was corrected. In June, 2003, after failing to receive any rent for the prior three months, Lloyd served notice to quit for failure to pay rent. He intends to start an eviction action against Toliver if Toliver does not vacate. Toliver intends to assert his defenses and file a counterclaim against Lloyd if Lloyd proceeds with an eviction.

Please discuss the rights, duties and liabilities of the parties, including appropriate damages, if any.

Question Four

On January 1, 1997, Lincoln and Tetley entered into a commercial, written lease for a period of ten years in Lincoln’s strip mall. The lease required Tetley to pay the rent on the first day of each month and was silent about whether Tetley could assign or sublease. In February, 1998, Tetley assigned to Apache without Lincoln’s permission. In July, 1998, Apache subleased to Bubka without Lincoln’s permission. And, in August 2003, Bubka assigned to Capulet without Lincoln’s permission. In January 2004, Capulet stopped paying rent, and no one has paid rent since. Lincoln would like to bring an action for rent against as many parties as possible. Please discuss the rights, duties and liabilities of the parties.

Question Five

Louie and Tony orally agree that Tony would lease an apartment from Louie for a term of one year. The occupancy began on January 1, 2003. Tony did not pay his February
rent until Louie served a notice to quit on February 23, 2003. Tony did not pay his May 2003 rent until Louie served a notice to quit on May 18, 2003, and did not pay his June 2003 rent until Louie served a notice to quit on June 29, 2003. Tony has not paid his May 2004 rent and Louie served notice to quit on May 10, 2004. Tony has just tendered the May rent to Louie, but Louie no longer wants Tony as a tenant because he believes that Tony is a deadbeat. Please discuss the rights, duties and liabilities of the parties.

Question Six

Landlord and Tenant entered into a one year written lease for residential premises that began on January 1 and was to end on December 31. The lease provided a monthly rent of $1,000. At the time of the commencement of the lease, Landlord took a "security payment" from the tenant in the amount of $3,500, which Tenant delivered in cash. The parties did not discuss why that amount was taken. The lease provided that "Landlord will not be responsible for paying interest to Tenant for any security payments taken hereunder." The parties did not inspect the apartment together. Within a week after the commencement of the tenancy, Landlord wrote a note to tenant stating that he had deposited the "security payment" into the joint checking account he maintained with his wife. Landlord and Tenant exchanged no other paperwork.

Six months into the lease, Tenant told Landlord that he was experiencing financial difficulties and asked Landlord whether Landlord would return the security deposit. Landlord came over to Tenant's apartment to discuss the matter and saw that someone had ripped the dining room chandelier from the ceiling in Tenant's apartment. Landlord left immediately without discussing the security payment issue. Tenant subsequently demanded that Landlord return the entire security payment. Landlord has commenced an eviction action because of the chandelier incident.

Please discuss the rights, duties and liabilities of the parties.

END OF EXAM

ENJOY YOUR SUMMER