Legal Issue Analysis – Spraker Defense

Mr. Spraker likely has a strong defense against non-payment of rent because the blown-out windows and leaking pipe constitute a breach of the Implied Warranty of Habitability (IWH). Under New York law, the IWH gives three standards and a condition: (1) the premises must be fit for human habitation; (2) the premises must be fit for the uses reasonably intended by the parties; (3) the occupants will not be subjected to conditions that are dangerous, hazardous or detrimental to their life, health, or safety. *Solow v. Wellner*, 658 N.E.2d 1005, 1008 (N.Y. 1995). However, when the standards are violated by the misconduct of the tenant or persons under his direction or control, it will not constitute a breach of the IWH. *Id.* Breach of the IWH can be a defense for nonpayment of rent. *Newkirk v. Scala*, 935 N.Y.S.2d 176, 178 (App. Div. 2011); *Highview Assocs. v. Koferl*, 477 N.Y.S.2d 585, 567 (Dist. Ct. 1984). The first covenant of the IWH can be conflated into the second (*Solow*, 658 N.E.2d at 1008) andto establish breach a plaintiff must only show that one of the covenants has been violated. The warranty does not guarantee every amenity of the property. *Solow v. Wellner*, 658 N.E.2d 1005, 1007 (N.Y. 1995). The malfunctioning jacuzzi jets would not constitute a breach as it does not prevent the apartment from being used for intended purposes or create a hazard. This analysis will address breaches of the second and third standard of the IWH from the blown-out windows and leaking pipe and show Mr. Spraker has a strong defense for non-payment of rent.

1. **Mr. Spraker has a viable defense because the apartment is unfit for the uses reasonably intended by the parties due to the missing windows which create a vacuum effect sucking everything out of the room.**

A landlord has a responsibility to ensure that the apartment is fit for its intended uses. *Solow v. Wellner*, 658 N.E.2d 1005, 1008 (N.Y. 1995). The warranty imposes a high standard of care on landlords, who can be found in breach for conditions outside of their control. *McBride v. 218 E. 70th St. Assocs.*, 425 N.Y.S.2d 910, 911 (App. Term 1979) (finding landlord in breach for flooding despite inability to control heavy rain or improve inadequate municipal sewer drainage). However, the landlord’s failure to provide every amenity as expected will not breach the warranty; instead, the warranty requires only those deemed as essential to a residence. *Newkirk v. Scala*, 935 N.Y.S.2d 176, 178 (App. Div. 2011) (holding overpoweringly odorous tap water unusable as residents could not use the water to eat, shower, or wash clothing and was ruled as breach of the IWH); *Solow v. Wellner*, 658 N.E.2d 1005, 1008 (N.Y. 1995) (ruling that an elevator in a high-rise building is an essential function for tenants to reach their apartment).Strong odors can also make a tenement unfit for the reasonably intended uses. *Kekllas v. Saddy*, 389 N.Y.S.2d 756, 759 (Dist. Ct. 1976) (finding landlord in breach for failing to remove overpowering odor of cat urine which caused nausea and burned the eyes of the tenants).

Mr. Spraker has a claim the apartment is unfit for the intended uses because of missing windows which cause anything in the room to be sucked out of the apartment when the wind blows due to the vacuum. Like in *Newkirk*, where the strong odor made the tap water unusable, here the inability to be in or keep anything in the living room also prevents it’s use. As in *Solow*, where an elevator was deemed essential, here the living room is similarly important. Living rooms are a central space of many apartments and act as a connection to the rest of the apartment. At the time of blow out there was loud music playing in the apartment, but it is likely that this was not the cause of blow out as no other glass shattered in the apartment, including the sensitive wine glasses. If the wine glasses had shattered, it could be shown that the windows shattered from misconduct on the part of the tenant and those under his control, which would absolve Mr. Greco of liability. Like the landlord in *McBride*, Mr. Greco does not need to be aware of the faults in the windows to be liable for any violations of the IWH caused by them. Just as in *Solow*, Mr. Spraker would likely have a claim of breach because the living room will likely be deemed as essential and unusable.

Mr. Spraker will not likely have a claim that the smell from the leaky pipe is a breach of the IWH. The smell from the water is non-permanent, and much weaker than in other cases. Contrasted with the odor in *Newkirk*,which was so strong tenants couldn’t wash clothes in the water as the clothing would be ruined entirely, the clothing of Mr. Spraker’s friend only had a minor odor, which can be dry cleaned. The odor is also weak and localized as contrasted to *Kekllas*,where it was so powerful and prevalent it made tenants nauseous and burned their eyes. The odor from the leaking pipe has neither of these qualities. As the odor is of such a lesser degree, it would likely not bolster Mr. Spraker’s defense.

1. **Mr. Spraker has a viable defense because the windows and leaking pipe make the apartment hazardous to life, health and safety by creating a fall hazard and mold.**

Landlords must ensure that the premises are not hazardous or detrimental to the health and safety of tenants. *Solow v. Wellner*, 658 N.E.2d 1005, 1008 (N.Y. 1995). To breach the IWH the threats to tenants’ health and safety must be of a serious nature. See *Park W. Mgmt. Corp. v. Mitchell*, 391 N.E.2d 1288, 1293 (N.Y. 1979) (finding landlords in breach for lack of sanitation and extermination services which resulted in noxious odors, rats, roaches and other vermin during a worker strike leading to a declared health emergency); *Kekllas v. Saddy*, 389 N.Y.S.2d 756, 759 (Dist. Ct. 1976) (finding a landlord in breach for strong odor that caused nausea and burned eyes). Landlords must take reasonable action to protect safety of their tenants and prevent hazards. *Highview Assocs. v. Koferl*, 477 N.Y.S.2d 585, 586 (Dist. Ct. 1984) (holding landlord in breach for taking no action to prevent burglaries). The landlord need not be the cause of the violation to be liable. *McBride v. 218 E. 70th St. Assocs.*, 425 N.Y.S.2d 910, 911 (App. Term 1979).

Mr. Spraker has a claim for breach of the IWH because the blown-out windows create an environment that is hazardous to the health and safety of anyone in the room. In *Newkirk* and *Kekllas*,a strong odor was determined to be a serious health hazard. Here, missing windows in a high-rise apartment building create a larger hazard as they could result in death or injury due to falling. As the *Newkirk* and *Kekllas* courts held the landlords in breach for strong odors, Mr. Greco would be likely held liable as it is a more serious hazard because as it could result in the death of a tenant. The windows act a barrier between tenants the ground below and the powerful air currents outside the building. The same vacuum effect that pulls objects out of the apartment could also increase the risk of falling. The windows are a safety hazard which should be serious enough to show breach of the IWH and help Mr. Spraker’s a defense of non-payment of rent.  
 Mr. Spraker a viable claim because the water from the leaking pipe has led to the growth of mold, which can be hazardous to health and safety. In *Highview*, landlords took no steps to prevent burglaries, culminating in the tenant fleeing the apartment in fear for her safety. Here, Mr. Greco didn’t take steps to prevent the leak from creating conditions conducive to mold growth, a serious health concern. As the landlords in *Highview* were held liable for not taking steps to prevent a hazard they were aware of, so should Mr. Greco be liable as he was notified of the leak by Mr. Spraker. In *Park W. Mgmt. Corp.,* conditions existed that fostered rats, roaches, and other vermin, creating a health emergency. Here, the conditions lead to the growth of mold, which would likely be found to be of a similarly serious nature. Mr. Spraker therefore has a valid claim because the mold could have been prevented by Mr. Greco and is a serious health hazard.

Mr. Spraker likely has a strong defense against non-payment of rent because the blown-out windows and leaking pipe which constitute a breach of the IWH. The blown-out windows in the apartment have made it unfit for its intended uses and a safety hazard to Mr. Spraker and his guests; they prevent use of the central room and present hazard if used because of the vacuum effect which sucks everything out of the room. The odor caused by the leaky pipe does not prevent the apartment from used as intended, however the leak creates a health hazard as it caused mold to grow in the closet. These problems are not caused by Mr. Spraker and so are a breach of the IWH, even if Mr. Greco had no fault.Mr. Spraker has a strong defense for non-payment of rent because these defects violate both promises within the IWH.