

EXAMINERS' ANALYSIS OF QUESTION NO. 12

Regaining Possession

Danielle's original lease created a tenancy for years. At the expiration of her lease, Danielle became a holdover tenant. *Glocksine v Mallek*, 372 Mich 115, 119 (1963); *Auto Parts v Jack Smith Beverages*, 309 Mich 735, 744 (1944); *Benfey v Congdon*, 40 Mich 283 (1879). The Landlord's acceptance of Danielle's rental payments allows the creation of a new tenancy for years or an at will tenancy to be inferred. *Id.* Under Michigan law, self-help evictions are not permitted, MCL 600.2918; MCL 600.5711, and Landlord may not lock Danielle out of the studio. *Ann Arbor Tenants Union v Ann Arbor YMCA*, 229 Mich App 431, 438 (1998); *Deroshia v Union Terminal Piers*, 151 Mich App 715 (1986). Written notice to Danielle is required to terminate the new tenancy.

Applicants should recognize that because rental payments were due monthly, Landlord may begin the process to regain possession of the property by giving Danielle a 1-month (i.e. the time equal to the payment intervals) written notice to quit as a consequence of her failure to pay rent. MCL 600.5714(1)(c)(iii); MCL 554.134(1). Danielle's failure to make rent payments also permits Landlord to terminate the tenancy by giving Danielle a 7-day written notice to quit. MCL 554.134(2). Under that scenario, Danielle has the option of either paying the rent or moving from the property. Following a 7-day written demand for possession or 1-month notice to quit, Landlord would be entitled to seek a judgment from the court for possession if Danielle has not complied with the notice demands. MCL 600.5714; MCL 600.5741. Following a judgment for possession in Landlord's favor, the court may issue a writ commanding law enforcement to restore possession of the premises to the Landlord. MCL 600.5744.

Fixtures

Fixtures are items of personal property that are annexed or attached to real property and become regarded as part of the real property. *Wayne Co v William G Britton & Virginia M Britton Trust*, 454 Mich 608, 615 (1997); *Kent Storage Co v Grand*

Rapids Lumber Co, 239 Mich 161, 164 (1927). Michigan courts apply a three-part test when determining whether property is a fixture. Property is generally considered a fixture if it is (1) annexed, or attached, to the property; (2) if the property is adapted to the real property; and (3) if there is some intention to make the article a permanent accession to the real property. *Britton Trust*, 454 Mich at 601-21; *Morris v Alexander*, 208 Mich 387 (1919).

Unlike standard fixtures, tenants are permitted to remove trade fixtures. A trade fixture is a type of fixture that has been annexed to the leased property by a tenant to enable the practice of the tenant's trade or business. *Britton Trust*, 454 Mich at 612 n 2; *Outdoor Sys Adver, Inc v Korth*, 238 Mich App 664, 667 (1999); *Michigan Nat'l Bank, Lansing v Lansing*, 96 Mich App 551, 555 (1980). While installation of mirrors and bars indicates a level of integration and permanence suggesting they are fixtures, they enabled the space to function as a dance studio and are likely considered trade fixtures. Accordingly, Danielle would be permitted to remove both the mirrors and practice bar.