

EXAMINERS' ANALYSIS OF QUESTION NO. 2

The Michigan summary proceedings act (the "act") governs civil actions to recover possession of real property. MCL 600.5701 et seq. However, the act specifically precludes entry of a judgment of possession in certain instances that amount to retaliation by the plaintiff landlord in response to particular actions by the defendant tenant to advance rights under the tenancy. With respect to Sarah's specific retaliation allegation, MCL 600.5720(1)(b) provides:

- (1) A judgment for possession of the premises for an alleged termination of tenancy shall not be entered against a defendant if 1 or more of the following is established:

* * *

- (b) That the alleged termination was intended primarily as a penalty for the defendant's complaint to a governmental authority with a report of plaintiff's violation of a health or safety code or ordinance.

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The burden of proving that a retaliatory termination does not exist falls on the plaintiff landlord where the defendant complained to a governmental authority about health or safety code violations within 90 days from the summary proceedings filing since such an occurrence creates a presumption that the termination action is retaliatory. By the same token, however, a presumption that a termination action is not retaliatory is established if no such governmental complaint of code violations against the landlord is filed within that 90-day window, and thus the burden of proof is borne by the defendant tenant to prove the retaliation defense. MCL 600.5720(2).

If the retaliatory eviction law was applicable to this scenario, Sarah would bear the burden of overcoming the presumption that the termination was not retaliatory since Sarah's complaint occurred 6 months ago, way beyond the 90-day retaliatory termination presumption window. Even more importantly, though, is that this retaliatory termination law does not even apply to the factual scenario presented because the fixed term lease between

Cassie and Sarah expired by its own terms and thus, party motivation is irrelevant. *Frenchtown Villa v Meadors*, 117 Mich App 683, 689 (1982). According to *Frenchtown* "the retaliatory eviction defense does not extend to summary proceedings instituted at the expiration of a fixed-term lease." *Id.* As the court explained:

[A] tenancy for a fixed term of years pursuant to a lease is ordinarily terminated on the expiration of the term of the tenancy as fixed by the lease. Thus, a tenant's right to possession of leased premises expires or terminates pursuant to the lease absent the securing of an extension. (citation omitted). As a result, a landlord seeking repossession of premises upon the expiration of the term of a fixed lease does not terminate the tenancy, but merely seeks repossession pursuant to the termination that has otherwise taken place. Because the landlord has not independently caused the termination, his motivation in seeking repossession or declining to renew the lease agreement is irrelevant to the operation of MCL 600.5720; MSA 27A.5720. [*Id.*]

Thus, Sarah's retaliatory eviction/termination of tenancy defense is without legal merit in Michigan.

Additionally, if Cassie obtains a judgment of possession of the property and Sarah has not voluntarily vacated by the date stated in the judgment, Cassie may enforce the judgment by seeking to obtain a writ of restitution, also known as an order of eviction. MCL 600.5741; MCR 4.201(L)(1). Generally, a writ of restitution "must not be issued until the expiration of 10 days after the entry of the judgment for possession." MCL 600.5744(5). Such order would direct an authorized person (e.g. sheriff, court officer, etc.) to restore full possession of the premises to Cassie. MCL 600.5744(1).