

A landlord leased an apartment to a tenant on a month-to-month basis beginning on the first of the month, with rent payable monthly. Five months into the lease, the tenant failed to pay rent. The landlord then sued the tenant for possession for nonpayment of rent. The tenant successfully defended this suit on the ground that the apartment was uninhabitable and that, accordingly, no rent was properly payable.

On May 7, immediately following the court order in the tenant's favor, the landlord served the tenant with a written but not notarized notice to terminate the tenancy and to vacate the apartment on or before June 30.

On July 1, the tenant was still in possession, nothing had changed, and the landlord brought an appropriate action for possession. The tenant prevailed.

What is the most likely reason for the court's decision?

- A. A six-month notice was required to terminate this periodic tenancy.
- B. The landlord did not give the tenant a notarized notice of termination.
- C. The landlord's notice to terminate was improper, because it was given to the tenant more than one month before the required termination date.
- D. The landlord was attempting to terminate the tenancy as a reaction to the tenant's defense in the previous lawsuit.

Explanation:

Prohibited landlord conduct

Retaliation Increasing rent or terminating lease because tenant exercised legal right—eg:

reporting housing code violation

organizing tenants' association

Discrimination Refusing to rent or negotiate lease based on tenant's race, ethnicity, religion, national origin, gender, familial status, or disability

(Fair Housing Act)

A periodic tenancy automatically continues for successive periods of time (eg, month to month) until either the landlord or tenant gives notice to terminate the tenancy. However, most jurisdictions **prohibit a landlord from terminating a residential lease** when:

the landlord is in the **business of renting** residential property

the tenant has **complied** with his/her **lease obligations** *and*

the landlord is **retaliating against the tenant** (eg, increasing rent, terminating a lease) for **exercising a legal right** in good faith and with reasonable cause.

Here, the landlord leased an apartment to the tenant (business of renting residential property) and later sued the tenant for unpaid rent. The tenant successfully defended that suit by challenging the apartment's habitability (exercise of a legal right). As a result, no rent was owed (compliance with lease obligations). The landlord then attempted to terminate the tenant's lease (retaliation). Therefore, the tenant likely prevailed in the landlord's action for possession because the termination was a retaliatory reaction to the tenant's defense in the previous lawsuit.

(Choice A) Six months' notice is required to terminate a year-to-year periodic tenancy. But a periodic tenancy with successive periods of *less than* one year (as seen here) can be terminated at the end of a period if notice is given before the period starts—eg, terminating a month-to-month periodic tenancy on June 30 requires notice by May 31.

(Choice B) Notice to terminate a periodic tenancy generally must be in writing but does not need to be notarized.

(Choice C) A month-to-month periodic tenancy can be terminated at the end of a month through notice given *any time* before the start of that month. Therefore, notice given on May 7 to vacate the premises by June 30 would have been proper had the termination not been retaliatory.

Educational objective:

Most jurisdictions prohibit a landlord from terminating a residential lease when (1) the landlord is in the business of renting residential property, (2) the tenant has complied with his/her lease obligations, and (3) the landlord is retaliating against the tenant for exercising a legal right in good faith and with reasonable cause.

References

Restatement (Second) of Prop.: Landlord & Tenant §§ 14.8–14.9 (Am. Law Inst. 1977) (listing remedies for retaliatory action by landlord).

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