

A manicurist entered into a one-year agreement to lease a nail salon from a landlord. During the first six months of the lease, the plumbing in the building functioned properly. During the seventh month, a pipe under the bathroom sink began leaking over a three-day weekend, causing flooding throughout the nail salon. The manicurist took reasonable steps to mitigate damages, including turning off the water to the bathroom sink and cleaning up the excess water to prevent water damage to the floors. The manicurist was still able to operate the nail salon despite the leaking pipe but not at full capacity. She notified the landlord about the leaking pipe, but the landlord refused to repair the faulty plumbing. The manicurist refused to pay the following month's rent, and the landlord has filed a breach-of-contract action against her.

For whom is the court likely to decide?

- A. For the landlord, because he did not have a duty to repair the plumbing.
- B. For the landlord, because the implied covenant of quiet enjoyment does not apply to commercial leases.
- C. For the manicurist, because she took reasonable steps to mitigate damages.
- D. For the manicurist, because the leaking pipe resulted in a constructive eviction.

## Explanation:

### Landlord's duty to repair leased premises

Type of lease	Common law	Majority rule
<b>Residential</b>	No duty to repair unless statute or contract requires	Duty to repair substantial defects under implied warranty of habitability
<b>Commercial</b>	No duty to make ordinary repairs unless statute or contract requires	

At common law and in most jurisdictions, courts are **reluctant to impose** the **implied warranty of habitability** on **commercial leases**. Therefore, absent some statutory or contractual obligation, a commercial **landlord** has **no duty to make repairs** *unless*:

the **repair is so substantial** that it would not ordinarily fall within the tenant's common-law duty to repair *or*

the repair would **primarily benefit** the **value** of the **landlord's property**.

This duty to repair most commonly arises in cases of **major structural damage** (eg, repairing a roof or damaged exterior wall).

Here, there is no indication that a statute or the commercial lease agreement required the landlord to make repairs to the nail salon. Additionally, the leaking pipe required an *ordinary* repair that primarily benefited the manicurist's use of the property (as opposed to the landlord's property's value). Therefore, the landlord did *not* have a duty to repair the plumbing, and the court will likely decide in his favor.

**(Choice B)** Every commercial and residential lease contains an implied covenant of quiet enjoyment, which promises that the landlord will not interfere with the tenant's *possession* of the leased premises. Since the landlord did not interfere with the manicurist's possession of the nail salon, this covenant does not apply.

**(Choice C)** The fact that the manicurist took reasonable steps to mitigate damages is irrelevant. The landlord had no duty to repair the plumbing, and even if he did, the manicurist would have a duty to mitigate only if she were statutorily or contractually obligated to do so.

**(Choice D)** When a landlord breaches a duty to a tenant that substantially interferes with the tenant's use and enjoyment of the leasehold (eg, fails to provide heat or water), this constructive eviction excuses the tenant's obligation to pay rent. Here, no constrictive eviction occurred because the landlord did not breach a duty to the manicurist and the leak did not *substantially* interfere with the manicurist's ability to operate the nail salon.

## Educational objective:

Absent a statutory or contractual duty, a commercial landlord has no duty to make repairs unless the repair (1) is so substantial that it falls outside the tenant's common-law duty to repair or (2) would primarily benefit the value of the landlord's property.

**References**

49 Am. Jur. 2d Landlord & Tenant § 443 (2020) (stating that the implied warranty of habitability does not apply to commercial leases).

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