

An elderly man and a landlord entered into a one-year agreement to lease a one-bedroom apartment. Six months into the lease, the man accidentally fell down a flight of stairs and broke his hip. As a result, he was no longer able to care for himself, and his family moved him into a nursing home. The man ceased paying rent for the next two months. When the landlord finally reached the man at the nursing home, the man informed the landlord that he had left the apartment two months earlier and did not intend to return. The landlord notified the man that he did not accept the man's abandonment of the lease, and for the remaining four months of the lease, the landlord did not take any steps to re-rent the abandoned apartment despite receiving multiple inquiries about the apartment.

The landlord has sued the man for breach of contract to recover damages for unpaid rent.

What amount of damages will the court likely hold the man liable for?

- A. Two months' rent, because the man is not liable for future rent after he provided notice of abandonment to the landlord.
- B. Four months' rent, because the landlord affirmatively rejected the man's abandonment of the lease.
- C. Six months' rent, because the landlord did not have a duty to mitigate damages upon the man's unjustifiable abandonment.
- D. None, because the man's abandonment of the lease was justifiable due to necessity.

Explanation:

A **tenant's unjustifiable abandonment** of leased property is treated as an **offer to surrender** rights under the lease. The landlord can then accept or reject the tenant's offer. If the **offer is rejected**, the lease continues and the tenant must continue paying rent. However, in a majority of jurisdictions, the landlord has a **duty to mitigate damages** by making a **reasonable effort to re-rent** the property.* If the landlord fails to do so, then the landlord's damages will be reduced by what the landlord could have reasonably received by re-renting the property.

Here, the man stopped paying rent for two months before informing the landlord that he had abandoned the leased apartment. Although the man abandoned the lease because of his medical needs, a tenant's personal circumstances rarely justify abandonment (**Choice D**). Therefore, the man is liable for those two months of unpaid rent.

The landlord then rejected the man's offer to surrender his rights under the lease, so the man remained obligated to pay rent for the four months left under the lease. But since the landlord failed to take any steps to re-rent the apartment pursuant to his duty to mitigate damages—even after receiving multiple inquiries about the apartment—the court will likely find that the man is *not* liable for the remaining four months of rent (**Choices B & C**).

*A landlord who re-rents the premises for less than the price in the lease may hold the tenant liable for any deficiency.

Educational objective:

If a landlord rejects a tenant's offer of abandonment, the tenant is obligated to pay rent for the remainder of the lease. However, in most jurisdictions, a landlord has a duty to mitigate damages by making a reasonable effort to re-rent the property and the tenant's liability for rent will be reduced accordingly.

References

49 Am. Jur. 2d Landlord & Tenant § 609 (2020) (discussing a landlord's duty to mitigate damages).

Unjustifiable abandonment of leased property

