

A landlord and a tenant entered into a valid written agreement to lease a single-family residence for a period of one year at \$1,200 per month. Among the provisions in the agreement was a waiver of the implied warranty of habitability. Two months into the lease, the electricity stopped working through no fault of the tenant. The tenant notified the landlord, but after one week, the landlord had done nothing to remedy the problem. When the next month's rent came due, the tenant refused to pay it because the landlord had still not fixed the electricity. The landlord has filed an action for breach of contract against the tenant for failure to pay rent.

Who is likely to prevail?

- A. The landlord, because the tenant waived the implied warranty of habitability in the lease.
- B. The landlord, because there is no duty to repair under a residential lease.
- C. The tenant, because the landlord's failure to repair the electricity violated the implied covenant of quiet enjoyment.
- D. The tenant, because the tenant notified the landlord of the problem and gave him a reasonable opportunity to correct it.

Explanation:

Landlord's duty to repair leased premises

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

In most jurisdictions, **landlords** of leased **residential properties** have a **duty to repair substantial defects** that are not caused by the tenant. Failure to make such repairs **violates** the **implied warranty of habitability**, which ensures that residential properties satisfy basic safety and living conditions. If the warranty is violated, the **tenant may**:

refuse to pay rent until the necessary repairs are made
remedy the defect and offset those costs against the rent *or*
defend against eviction (eg, by asserting constructive eviction).

However, the tenant must **notify the landlord** of the problem AND give the landlord a **reasonable opportunity to correct it** before exercising these remedies.

Here, the electricity in the leased residence stopped working two months into the lease through no fault of the tenant. The tenant notified the landlord of this defect and gave him one week, a reasonable opportunity, to correct the problem. The landlord did nothing. Therefore, the tenant was entitled to withhold rent and is likely to prevail in this breach-of-contract action.

(Choice A) The implied warranty of habitability cannot be waived by a tenant, either by express language in the lease or by taking possession of the property with knowledge of the conditions.

(Choice B) At common law, a landlord had no implied duty to make repairs under a residential lease. However, landlords *do* have an implied duty to repair in most jurisdictions today.

(Choice C) The implied covenant of quiet enjoyment is a promise by the landlord not to interfere with the tenant's possession of the leased premises. Here, the landlord did not violate this covenant since the failure to repair the electricity did not interfere with the tenant's right to possess the leased residence.

Educational objective:

In most jurisdictions, a residential landlord must repair substantial defects not caused by the tenant. Breach of this duty violates the implied warranty of habitability and allows the

tenant to withhold rent, remedy the defect and offset the costs, or defend against eviction—
if the landlord had a reasonable opportunity to correct the defect after notice.

References

Restatement (Second) of Property: Landlord & Tenant § 5.5 (Am. Law Inst. 1977)
(landlord's duty to repair).

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