

A tenant entered into a one-year agreement to lease a two-bedroom home from a landlord for \$1,000 per month, with rent due at the beginning of each month. The lease further provided that either party could properly terminate the lease by giving at least 30-days' notice. For eight months, the tenant paid rent on a timely basis. At the beginning of the following month, the tenant failed to pay rent. The landlord immediately contacted the tenant and demanded payment, but the tenant refused to pay. Pursuant to the terms of the lease, the tenant gave 30 days' notice of his intent to vacate the premises. The landlord subsequently sued the tenant for damages. In the meantime, the landlord re-rented the home for the remaining three months of the lease to another tenant for \$800 per month.

Under the majority rule, what is the most that the landlord could potentially collect from the tenant?

- A. Nothing, because the landlord did not give the tenant the opportunity to cure before re-renting.
- B. \$1,000, because the lease was properly terminated and the tenant is not obligated to pay future rents.
- C. \$1,600, because the tenant is liable for any deficiency resulting from his early termination of the lease.
- D. \$2,000, because the tenant is liable for the current month and rent that accrues during his 30-day notice period.

Explanation:

Landlord's remedies for tenant's failure to pay rent

Sue for rent	Can sue for rent as it comes due, several accrued rents, or entire amount at end of lease term Majority rule – cannot recover future rents unless lease contains acceleration clause Minority rule – can recover future rents minus (1) reasonable rental value of premises for remainder of lease <i>or</i> (2) actual rent collected on re-rental
Terminate & evict	Majority rule – must give tenant notice & opportunity to cure before terminating lease or evicting tenant Minority (common law) rule – cannot evict tenant for failure to pay rent

A tenant's primary duty is to pay rent. If the tenant breaches this duty by failing to pay rent as it comes due, then the landlord can sue the tenant for damages. In determining the landlord's damages, the majority rule is that the **doctrine of anticipatory repudiation does not apply to leases**. This means that the landlord is **not entitled to damages for future rents** that would have been due under the lease.*

Therefore, under the majority rule, the most the landlord could potentially collect from the tenant in this scenario is the one month's rent that the tenant failed to pay—ie, \$1,000.

*Some leases contain rent-acceleration clauses, which allow the landlord to declare all future rents immediately due and payable if the tenant fails to pay rent. But there is no indication that this lease contains such a clause.

(Choice A) Notice and an opportunity to cure are only required when a *landlord* attempts to evict a tenant. But here, the *tenant* sought termination of the lease.

(Choices C & D) In the minority of states that apply the doctrine of anticipatory repudiation to leases, a landlord is generally entitled to the difference between future rents that would have been due for the remainder of the lease and either:

the reasonable rental value of the premises for that period *or*

the actual rent collected on a re-renting of the premises for that period.

Here, the reasonable rental value of the premises is not stated. However, the tenant would have owed \$4,000 for the remaining four months of the lease (\$1,000 per month × 4), and the actual rent collected during that time is expected to be \$2,400 (\$800 per month × 3). So had this jurisdiction followed this doctrine, the landlord could have recovered a total of \$1,600 (\$4,000 - \$2,400) in past and future rents.

Educational objective:

A landlord can sue a tenant for damages if the tenant fails to pay rent as it comes due. But since the doctrine of anticipatory repudiation does not apply to leases (majority rule), the landlord is not entitled to damages for any *future* rents that would have been due under the lease.

References

49 Am. Jur. 2d Landlord and Tenant § 615 (2020) (time to sue in actions for recovery of rent).

Copyright © UWorld. All rights reserved.