

By a writing, a homeowner leased his home to a law student for a term of three years, ending December 31 of last year, at the rent of \$1,000 per month. The lease provided that the law student could sublet and assign.

The law student lived in the home for one year and paid the rent promptly. After one year, he leased the home to a graduate student for one year at a rent of \$1,000 per month.

The graduate student took possession of the home and lived there for six months but, because of her unemployment, paid no rent. After six months, on June 30, the graduate student abandoned the home, which remained vacant for the balance of that year. The law student again took possession of the home at the beginning of the third and final year of the term but paid the homeowner no rent.

At the end of the lease term, the homeowner brought an appropriate action against both the law student and the graduate student to recover \$24,000, the unpaid rent.

In such action, the homeowner is entitled to a judgment against whom?

- A. The law student individually for \$12,000, and against the law student and graduate student jointly and severally for \$12,000.
- B. The law student individually for \$18,000, and against the law student and graduate student jointly and severally for \$6,000.
- C. The law student individually for \$18,000, and against the graduate student individually for \$6,000.
- D. The law student individually for \$24,000, and no judgment against the graduate student.

Explanation:

A landlord and tenant have a legal relationship based on both:

privity of contract – their shared interest in the lease agreement *and*

privity of estate – the landlord's successive right to possess the property (ie, the tenant's current right of possession is immediately followed by the landlord's future right of possession).

Unless the lease states otherwise, either party can freely transfer his/her interest under the lease. **Subletting** is a **partial transfer of a tenant's interest** to a third party (sublessee) for **less than the remainder** of the tenant's lease term. Despite that transfer, a **sublessee is not liable** to the landlord for a **breach of the lease** because:

no lease agreement exists between the landlord and the sublessee (no privity of contract) and

the original tenant will regain possession of the property before the landlord does (no privity of estate).

Therefore, the **original tenant is individually liable** for the landlord's **entire harm** arising from a breach of the lease by the sublessee.

Here, the homeowner leased his home to the law student for three years at \$1,000 per month. After one year, the law student sublet the home to a graduate student for one year (less than the remainder of the lease). Since the graduate student was a sublessee (no privity with homeowner), she is not liable to the homeowner. However, the law student—the original tenant—is individually liable for the homeowner's entire harm arising from a breach of the lease (**Choices A, B & C**). And since no rent was paid for the final two years of the lease (breach), the homeowner is entitled to a judgment against the law student for the full amount (\$24,000).

Educational objective:

A tenant who sublets—ie, transfers his/her interest to a third party (sublessee) for less than the remainder of the lease term—is individually liable for the landlord's entire harm arising from a breach of the lease by the sublessee. However, the sublessee has no liability to the landlord.

References

Restatement (Second) of Property: Landlord & Tenant § 15.1 (Am. Law Inst. 1977) (right to transfer lease interest).

Restatement (Second) of Property: Landlord & Tenant § 16.1 (Am. Law Inst. 1977) (tenant remains liable after sublet based on privity of contract and privity of estate).

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Privity with landlord

