

Six years ago, a landlord and a tenant entered into a 10-year commercial lease of land. The written lease provided that if a public entity under the power of eminent domain condemned any part of the land but not all of it, the lease would terminate and the landlord would receive the entire condemnation award. Thereafter, the city condemned approximately two-thirds of the land.

The tenant notified the city and the landlord that an independent appraisal of the value of the tenant's possessory interest established that it substantially exceeded the tenant's obligation under the lease and that the tenant was entitled to share the award. The appraisal was accurate.

In an appropriate action among the landlord, the tenant, and the city as to the right of the tenant to a portion of the condemnation award, for whom will the court likely find?

- A. The landlord, because the condemnation superseded and canceled the lease.
- B. The landlord, because the parties specifically agreed as to the consequences of a partial condemnation.
- C. The tenant, because otherwise the landlord would be unjustly enriched.
- D. The tenant, because the landlord breached the landlord's implied warranty of quiet enjoyment.

Explanation:

A **taking** of all or part of a leasehold under the power of **eminent domain** generally entitles the tenant to a share of the **condemnation award**. The **tenant's share** of the award is equal to the **fair market value** of the condemned leasehold **plus** any amount necessary to **compensate the tenant** for any continued obligation to pay rent that may be required under the lease.

However, the parties **can expressly agree to alternative provisions** in the lease, and courts will typically enforce those agreed-upon provisions. Here, the parties specifically agreed that a partial condemnation would terminate the lease and that the landlord would receive the *entire* condemnation award. Since the lease controls, the tenant is not entitled to any portion of the condemnation award.

(Choice A) The condemnation would have canceled the lease had the city condemned *all* the land for the entire lease term. Since the city condemned only two-thirds of the land, the lease was terminated in accordance with the landlord and tenant's lease agreement.

(Choice C) Although the landlord may be enriched by the condemnation award, it is not unjust because the parties agreed to the lease provision.

(Choice D) A landlord's implied warranty of quiet enjoyment provides that the tenant's possession and enjoyment of the leased premises will not be disturbed by the landlord or someone with superior title. The taking of leased land under the power of eminent domain does not breach this warranty because the condemnation occurred through no fault of the landlord.

Educational objective:

Unless otherwise provided under a lease, a taking of all or part of a leasehold under the power of eminent domain entitles the tenant to a share of the condemnation award. The tenant's share is equal to the fair market value of the condemned leasehold plus compensation for any continued obligation to pay rent.

References

Restatement (Second) of Property: Landlord and Tenant §§ 8.1–8.2 (Am. Law Inst. 1977).

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Taking of leased property by eminent domain

