

In September, a college student signed a one-year written agreement to lease a fully furnished apartment from a landlord. The student paid rent on a timely basis for four months. In December, the student discovered a crack in the kitchen floor after cutting his foot on the broken tile. Although the student notified the landlord of the crack, the landlord failed to repair the floor. Fed up with the landlord, and after being offered a scholarship to study abroad for the spring semester, the student moved to Europe in January and ceased paying rent on the apartment. Upon discovering that the student had abandoned the apartment, the landlord took possession of the apartment and re-rented it to a visiting professor.

Based upon these facts, which of the following statements is true?

- A. The lease has been terminated, because the apartment was re-rented to a visiting professor.
- B. The lease has been terminated, because the student justifiably abandoned the lease.
- C. The lease has not been terminated, and the student is liable for any future rents.
- D. The lease has not been terminated, because the student was not constructively evicted.

Explanation:

A tenant may *justifiably* abandon leased property if the landlord's action or inaction results in a constructive eviction. A constructive eviction occurs when the landlord breaches a duty to the tenant (eg, by failing to make a repair) that substantially interferes with the tenant's use and enjoyment of the leased premises.

In contrast, a **tenant unjustifiably abandons** leased property by leaving the property with the intent to terminate the lease without legal justification. Intent is generally evidenced by the tenant's refusal to pay rent. An unjustifiable abandonment is treated as an **offer to surrender rights** under the lease. If the **landlord accepts the offer**, the lease is **terminated** and the tenant is **not liable for any future rent**. The offer can be accepted by: **express agreement** (not seen here) *or*

retaking possession of the property coupled with (1) the **landlord's own use** of the premises or (2) **re-renting the property** to a third party.

Here, the student's abandonment was *not* justified because, unlike a broken heating system or a lack of running water, a cracked tile does *not* amount to a substantial interference for constructive eviction (**Choice B**). The student's unjustifiable abandonment of the premises should be treated as an offer to surrender his rights under the lease. The landlord accepted this offer by retaking possession of the apartment and re-renting it to a visiting professor. As a result, the lease has been terminated, and the student is *not* liable for future rent (**Choices C & D**).

Educational objective:

Unjustifiable abandonment of leased property is treated as an offer to surrender rights under the lease. The landlord can accept the offer by (1) express agreement or (2) retaking possession plus either using the property for the landlord's own use or re-renting it. Acceptance terminates the lease, and the tenant is not liable for future rent.

References

Restatement (Second) of Property: Landlord & Tenant § 12.1(3) (Am. Law Inst. 1977) (discussing the effect of the tenant's abandonment on the obligation to pay rent).

49 Am. Jur. 2d Landlord & Tenant § 606 (2020) (explaining the effect of a landlord's acceptance of a tenant's abandonment).

Unjustifiable abandonment of leased property

