

PROPERTY PRACTICE QUESTIONS

ANSWER 14

Gerry W. Beyer

Governor Preston E. Smith Regents Professor of Law



Caveat: The outline of the answer below provides guidance regarding the main issues which you should address in your answer. The answer is *not* designed to be a model answer.

Sarah v. Alex

- **Fair Housing Act prohibits discrimination based on race, color, religion, sex, family status, national origin and handicap**
 - The test employed to detect discrimination in advertising is the “**ordinary reasonable reader**” test
 - The ad does not need to say “required” to be considered discriminative. Words “preferred” are sufficient for a cause of action
 - This ad “preferred” women of a certain age with no children
 - It discriminated based on sex, age, and family status (pregnancy counts)
 - Sarah who was not of the “preferred” age and was pregnant was told that the house was rented when in fact it was not
 - Sarah will probably win on her claim that Alex violated the Fair Housing Act

Laura v. Alex

Failure to Put Laura in Possession of the Premises

- Depending on the jurisdiction, there are two views on who is responsible for putting the tenant into actual possession of the premises
 - **English Approach**

- The landlord is obligated to put tenant into *actual possession*
- **American View**
 - Landlord supplies *legal possession* only
- Because Texas follows the English approach, it was the landlord's responsibility to remove the holdover tenant from the premises
- Laura will prevail on this cause of action

Failure to Repair the Premises

- In 1979 Texas recognized the landlord's duty to repair
 - The landlord Alex breached this duty
 - Laura's remedies included:
 - Withholding rent
 - Making repairs and deducting them from the rent
 - Filing a suit
 - Constructive eviction
 - Laura chose one of the acceptable remedies, she sued for damages
- Because Alex breached his duty to repair, Laura will probably prevail on this cause of action

Retaliatory Eviction

- Retaliatory eviction occurs when the tenant gets evicted for reporting a violation of the code to the appropriate housing or rental authorities
- Laura reported Alex's violations of the code:
 - Failure to put Laura in actual and timely possession of the premises
 - Not repairing the premises
- Alex untimely terminated Laura's lease without any other apparent cause
 - It is unlikely that the damage to the ceiling will be found to be sufficiently wasteful to terminate the lease
- Laura will probably prevail on this action

Alex's Cross-Claims

Failure to Repair the Ceiling

- Tenant can add fixtures and then remove them, but if this process damages the premises, the tenant must repair or pay for the damages
- Ceiling fan is a fixture and Laura damaged the premises while installing it
- Because Laura did not repair the damage, she is liable to the landlord for the cost of the repairs to the ceiling

Was Laura Ever a Tenant at Sufferance?

- Tenant at sufferance is a holdover tenant who remains on the premises after the tenancy has ended
- Laura's lease still had another two months until it expired
- Thus the only way Laura's lease would have been invalid during the last two weeks of her stay, is if the landlord had other legitimate reason for evicting Laura
- If it is found that Laura's eviction was retaliatory, and did not have any valid explanation, then Laura's tenancy was still valid during the last two weeks of her stay
- If Laura's tenancy was still valid, she was not a tenant at sufferance
- If the court finds that the landlord had no legitimate reason for evicting Laura, the landlord will probably lose on this issue