

## GRADER'S GUIDE

### \*\*\* QUESTION NO. 8\*\*\*

#### SUBJECT: REAL PROPERTY

**1. Did Deborah breach her duties as a landlord under the Alaska Uniform Residential Landlord and Tenant Act with respect to the condition of the building and Paul's apartment at the time of his move in? [40 points]**

Deborah has breached her duties as a landlord. At common law a landlord has a duty to provide safe and habitable premises. Alaska has adopted the Uniform Residential Landlord and Tenant Act, AS 34.03.010 et seq. The URLTA establishes specific statutory duties for landlords (and tenants).

Alaska Statute 34.03.100 requires that landlords maintain their premises to certain standards, including:

- (1) make all repairs and do whatever is necessary to put and keep the premises in a fit and habitable condition;
- (2) keep all common areas of the premises in a clean and safe condition;
- ...
- (5) supply running water and reasonable amounts of hot water and heat at all times . . .
- (6) if requested by the tenant, provide and maintain locks and furnish keys reasonably adequate to ensure safety to the tenant's person and property.

Here, Deborah failed to maintain the building to the standards of AS 34.03.100 in at least three ways, possibly four. First, Deborah failed to provide hot water for a period of ten days. Failing to supply hot water violates AS 34.03.100(5); it is also a violation of AS 34.03.180(a)(Wrongful failure to supply heat, water, hot water, or essential services) because hot water is considered an essential service.

Second, Deborah failed to keep the common areas of the apartment building in a clean and safe condition because she refused to replace the burned out lights in the entryway. See AS 34.03.100(1) & (2); Sullivan v. Subramanian, 2 P.3d 66, 69 (Alaska 2000). The burned out lights created a tenant safety and security hazard.

Third, Deborah failed to maintain the locks on the main entrance which also created a security hazard for the tenants. AS 34.03.100(6).

Finally, Deborah may have failed to keep Paul's apartment in a fit and habitable condition because the interior door was broken. AS 34.03.100(1). Although the facts do not specify how the door was broken, it is possible that the door could create a safety issue for Paul or his guests. It is also possible that the door was broken in a minor, non-dangerous way such that it did not create a significant habitability issue for Paul.

Deborah's failure to plant flowers in the flower beds would not be a breach of her duties as a landlord under AS 34.03.100 or any other provision of the URLTA.

In sum, the various broken and non-functioning items in the building and Paul's apartment put Deborah in violation of AS 34.03.100 at the time of Paul's move in.

Some examinees will discuss common law duties of the landlord. The call of the question does not ask for such a discussion. However, under the common law a landlord does have a duty to keep the premises safe and habitable.

Some examinees may also note that Paul provided Deborah oral and written notice of the deficiencies. Such notice would require Deborah to cure the conditions within ten days pursuant to AS 34.03.160.<sup>1</sup> The call of the question however asks whether Deborah was in breach of her statutory duties at the time of move in.

**2. What remedies does Paul have available to him under the URLTA with respect to the condition of the building and his apartment and what must he do to preserve those remedies? [30 points]**

Paul has several remedies available to him by statute. AS 34.03.160(a) requires a landlord to remedy any noncompliance with AS 34.03.100 within ten days of receiving written notice of the deficiencies or the tenant may terminate the rental agreement within twenty days.

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<sup>1</sup> AS 34.03.160(a): "[T]he tenant may deliver a written notice to the landlord specifying the acts and omissions constituting the breach and specifying that the rental agreement will terminate upon a date not less than 20 days after receipt of the notice if the breach is not remedied in 10 days."

AS 34.03.160(b) provides that a tenant “may recover damages and obtain injunctive relief for any noncompliance by the landlord with the rental agreement or AS 34.03.100, 34.03.210, or 34.03.280.”

AS 34.03.180 provides that if a landlord fails to supply any essential services, including hot water, a tenant upon giving written notice may immediately “procure reasonable amounts of hot water . . . and deduct [the] actual and reasonable cost from the rent,” “recover damages based on the diminution in the fair rental value,” or “procure reasonable substitute housing in which case the tenant is excused from paying rent.”

In order to preserve his remedies Paul needed to, and did, give written notice to Deborah of the deficiencies.

**3. Can Deborah lawfully evict Paul for withholding the \$50 from his rent? [30 points]**

Deborah probably cannot lawfully evict Paul for withholding the \$50. AS 34.03.310 prohibits a landlord for retaliating against a tenant for:

- (1) complain[ing] to the landlord of a violation of AS 34.03.100; [and]
- (2) [seeking] to exercise rights and remedies granted the tenant under this chapter.

AS 34.03.180 provides that a tenant may “procure reasonable amounts of hot water . . . during the period of the landlord’s noncompliance and deduct the[] actual and reasonable cost from the rent.”

Here, under AS 34.03.180, Paul has the right to withhold the \$50 for Deborah’s failure to provide hot water for ten days. The facts specify that \$50 was the total of his costs for washing his clothes and showering. Some applicants may argue that \$50 is not a reasonable amount for hot water. In any case, however, Paul was “[seeking] to exercise rights and remedies granted” him by Alaska Statute. See McCall v. Fickes, 556 P.2d 535, 540 (Alaska 1976)(“We think it clear that AS 34.03.310 is designed to prevent retaliation by the landlord for tenant’s conduct which might be deemed harmful to the landlord.”); cf. Vinson v. Hamilton, 854 P.2d 733, 736 (Alaska 1993)(“[I]n any action for possession, a tenant may raise the defense that the landlord has terminated the lease in retaliation for the tenant’s assertion of his rights under the law or under the rental agreement.”). Even if \$50 is determined to be an unreasonable amount to withhold from his rent, the attempted eviction would probably still be determined to be an impermissible retaliation in response to Paul exercising his statutory rights.

Furthermore, although Deborah stated her eviction was based upon the withholding of the \$50, it is possible that a trier of fact could conclude that Deborah impermissibly evicted Paul for “complain[ing] to the landlord of a violation of AS 34.03.100.”