



Flooded Apartment Component 3 Scoring Guide

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Flooded Apartment Source Material

You are a solo practitioner. Through your local bar's volunteer lawyers program, you have agreed to take on a pro bono case in which you represent a woman whose apartment has flooded.

The following is an excerpt from your notes from the initial interview with the client:

- One month ago, during a major storm, an inch of water entered the client's apartment. The water streamed in through closed windows. The apartment has carpet throughout, which became completely soaked with water.
- The property manager refuses to do anything about the flooding and said that the lease the client signed makes it clear that the landlord is not responsible for any repairs.
- The property manager also claims that the client did not take proper precautions before the storm because the client did not close the exterior shutters.
- After the storm, the property manager told the client that it was her responsibility to rent a wet/dry vacuum and some large fans to dry out the carpet.
- The client paid several hundred dollars to rent a wet/dry vacuum and fans, but the carpet is still wet and feels uneven when the client walks on it.
- When the client reported this to the property manager, the property manager told the client that the client had the option to not renew her lease.
- The client asked a contractor friend of hers to look at the apartment and offer other suggestions for what she could do. The friend said that, at a minimum, the carpets would all need to be replaced.
- The client is on a limited budget and cannot afford to continue to try to repair the carpet.
- The client cannot keep living in these conditions but cannot afford to move out of the apartment complex. The complex is close to a bus route that goes directly to the client's workplace.
- The client is in a yearly lease, which ends in two months, and the client would like to renew her lease. Pursuant to the lease, the client pays rent monthly and makes the checks out to "[the property manager's name]."
- The lease identifies "Rentals LLC," a limited liability company, as the landlord. The lease was signed by both the client and the property manager, who signed as "Managing Member of Rentals LLC."

End of excerpt

The lease includes the following provision:

Condition of the Premises

Landlord makes no covenants or warranties about the condition of the leased premises and disclaims all responsibility for the condition of the leased premises. Tenant agrees to be solely responsible for maintaining the condition of the leased premises. Tenant waives any and all rights to the contrary, including but not limited to a right to bring a claim related to the habitability of the leased premises.

End of excerpt

You determine that your jurisdiction has a residential landlord-tenant statute that applies to the lease. The following is an excerpt from that statute:

§ 6-20-5 Landlord's Duty to Maintain Premises; Prohibited Conduct

(a) Subject to subsections (d) and (e), a landlord has a nonwaivable duty to maintain the premises in a condition fit for human habitation.

(b) A dwelling unit is uninhabitable if it substantially lacks any of the following:

- (1) effective waterproofing and weather protection of the roof and exterior walls, including unbroken windows and doors;
- (2) plumbing facilities in good working order, including hot and cold water connected to a sewage disposal system;
- (3) clean and sanitary buildings, grounds, and appurtenances free from accumulations of debris, filth, rubbish, garbage, rodents, and vermin;
- (4) adequate facilities for garbage disposal;
- (5) floors, stairways, and railings maintained in good repair;

. . .

(c) A tenant has a cause of action for breach of the duty indicated in subsection (a). This cause of action supplants any common-law claims for breach of the landlord's implied warranty of habitability.

(d) A landlord's duty in subsection (a) is relieved if the uninhabitable condition of the premises was caused by an unreasonable act or omission of the tenant, the tenant's immediate family member, or the tenant's guest.

(e) If the premises are substantially damaged by fire, water, or a natural disaster and continued occupancy of the unit is unlawful or dangerous or requires repairs that can be

made only if the tenant vacates the premises, the landlord may terminate the lease by giving the tenant reasonable written notice.

(f) Any provision in a lease that purports to waive the landlord's duty in subsection (a) is unenforceable. If the landlord attempts to enforce such a provision, the tenant has a cause of action in the amount of three times the periodic rent. This cause of action accrues irrespective of any claim the tenant may have for breach of the duty described in subsection (a).

End of excerpt

Component 1: Given the facts now known, which of the following is an accurate application of § 6-20-5 of the landlord-tenant statute to the client's situation?

Select one response option.

- A. The section allows the landlord to enforce the lease provision and makes the client responsible for the full extent of the repairs.
- B. The section allows the landlord to enforce the lease provision but does not decide the issue of which party is responsible for the repairs.
- C. The section makes the lease provision unenforceable and makes the landlord responsible for the full extent of the repairs.
- D. The section makes the lease provision unenforceable but does not decide the issue of which party is responsible for the repairs.

Answer Explanation:

Solution: The correct answer is D.

Answer D is correct. Section 6-20-5(f) states that any provision in a lease covered by the statute that attempts to waive a landlord's duty to maintain the premises in a habitable condition is unenforceable. Therefore, the lease provision is unenforceable. It is unknown which party is responsible for the water damage because it is unknown whether the landlord failed to provide effective waterproofing for the premises or whether § 6-20-5(d) relieves the landlord from the duty.

Answer A is incorrect. As described in the explanation for answer D, the lease provision is unenforceable under § 6-20-5(f). Also, it is unknown whether the landlord failed to provide effective waterproofing or whether the client is responsible under § 6-20-5(d).

Answer B is incorrect. As described in the explanation for answer D, it is correct that the statute does not decide who is responsible for the repairs. However, it is not correct that the

landlord can enforce the lease provision. Section 6-20-5(f) makes the lease provision unenforceable.

Answer C is incorrect. Section 6-20-5(f) of the statute does make the lease provision unenforceable. However, the statute does not necessarily make the landlord responsible for the full extent of the repairs.

Content Scope Designation:

Content Scope: Skill A.6; Subject Matter: Real Property I.D.5: Habitability and suitability

You turn your attention to whether the client has a viable claim that the landlord violated the statutory duty of habitability.

Component 2: List two specific facts now known that support the position that the landlord violated the duty to maintain the premises in a habitable condition pursuant to § 6-20-5(b).

Provide one answer in each answer field. The length of each answer should be about one sentence.

Representative Correct Answers:

- Water entered the apartment through closed windows.
 - An inch of water came into the apartment through closed windows.
- The carpet is still wet/damp.
- The carpet/floor is uneven.

Content Scope Designation:

Content Scope: Skill B.10; Subject Matter: Real Property I.D.5: Habitability and suitability

You receive an email from the client. In the email, the client says, “I’m worried that the landlord is going to make me move. I can’t afford to move.” In your response to the email, you want to advise the client about actions the landlord may take that would cause the client to relocate. Before responding, you confirm that there is no relevant anti-retaliation statute in your jurisdiction.

You explain in your email to the client that the landlord does not have grounds to evict her.

Component 3: Pursuant to § 6-20-5 and the facts now known, list two specific actions—other than eviction—that the landlord could take that would cause the client to relocate.

Provide one answer in each answer field. The length of each answer should be about one sentence.

Representative Correct Answers:

- The landlord could decide not to renew the yearly lease, which concludes in two months.
- The landlord could terminate the lease pursuant to § 6-20-5(e) in order to repair the apartment.

Content Scope Designation:

Content Scope: Skill B.13; Subject Matter: Real Property I.D.1: Tenancy for years, periodic tenancy, tenancy at will, and tenancy at sufferance; Real Property I.D.2: Possession, rent, and actual and constructive eviction; Real Property I.D.5: Habitability and suitability

You continue to investigate the client's potential claims against the landlord. You turn your attention to § 6-20-5(f) of the statute and consider whether the client has a cause of action against the landlord under this subsection.

Component 4: Which of the following facts provide the most support to a cause of action under § 6-20-5(f)?

Select two response options.

- A. The client is on a limited budget.
- B. The flooding was caused by a major storm.
- C. The property manager told the client that it was her responsibility to rent a wet/dry vacuum and large fans.
- D. The property manager told the client that the client had the option to not renew her lease.
- E. The property manager told the client that the damage was caused by her failure to close the exterior shutters before the storm.
- F. The property manager told the client that the lease the client signed makes it clear that the landlord is not responsible for any repairs.

Answer Explanation:

Solution: The correct answers are C and F.

Answer C is correct. Section 6-20-5(f) creates a cause of action for a tenant against a landlord who attempts to waive the duty to maintain a habitable premises under § 6-20-5(a) but only if the landlord attempts to enforce the unenforceable lease provision. Here, the property manager told the client that it was her responsibility to rent equipment to dry out the apartment, which the client did. This is an attempt to enforce the lease provision, which triggers the cause of action under § 6-20-5(f).

Answer F is correct. The property manager told the client that the lease the client signed makes the damage to the apartment the client's responsibility. This is an attempt to enforce the lease provision, which triggers the cause of action under § 6-20-5(f).

Answer A is incorrect. The client's financial status is not relevant to whether she has a cause of action under § 6-20-5(f).

Answer B is incorrect. This fact is relevant to whether the landlord has the right to force the client to vacate the premises pursuant to § 6-20-5(e) but is not relevant to whether the client has a cause of action under § 6-20-5(f).

Answer D is incorrect. This fact is not relevant to whether the client has a cause of action under § 6-20-5(f).

Answer E is incorrect. Section § 6-20-5(f) does not provide a cause of action for a landlord's attempt to assert a right under § 6-20-5(d).

Content Scope Designation:

Content Scope: Skill B.10; Subject Matter: Real Property I.D.5: Habitability and suitability

You file a complaint in the proper court on behalf of your client against Rentals LLC for violations of § 6-20-5. The claim is diverted into a mandatory mediation program designed to resolve disputes between landlords and tenants.

The first mediation session occurs, and Rentals LLC offers to settle the matter under the following terms:

- The client is to relocate to a different apartment in the same apartment complex that does not need repairs.
- The property manager will reimburse the client for the two months of rent she paid after the storm occurred.
- The parties will agree to terminate the client's current lease.
- The parties will enter into an agreement for the new apartment at the same rent as the client's former lease on a month-to-month basis.
- The new apartment is ready for the client to move into immediately.

You explain to the client that agreeing to the proposal would eliminate any potential benefits from negotiating further or going to trial. You also explain that accepting the proposal would not prevent future conflicts or litigation related to future conflicts.

Component 5: Without simply restating the terms of the settlement proposal, list two specific additional drawbacks to the client—other than the ones you have already explained to the client—of Rentals LLC's proposal, taking into consideration the client's known objectives, interests, and constraints.

Provide one answer in each answer field. The length of each answer should be about one sentence.

Representative Correct Answers:

- The client will not have the benefit/protection of a new one-year lease.
 - The landlord will be able to terminate the client's lease with one month's notice.

- The client will have to move again if the landlord terminates her month-to-month lease.
- The client will not be reimbursed for her rental of the fans and the wet/dry vacuum.
- The client will have to pay the costs associated with moving.
 - The client will have to hire movers.
 - The client said she cannot afford to move, and now she has to move.

Content Scope Designation:

Content Scope: Skill B.11; Subject Matter: Real Property I.D.2: Possession, rent, and actual and constructive eviction

The first mediation session concludes without a resolution. Before the next scheduled mediation session, you research publicly available documents about Rentals LLC and discover that the LLC was created five years ago, it is registered as a member-managed LLC with two members, the LLC conducts different, unrelated types of business, and the building in which the client lives is owned by the property manager personally.

Given the information you have learned so far, you consider whether you should argue during mediation that Rentals LLC's veil of limited liability can be pierced because Rentals LLC is the alter ego of the property manager.

Component 6: List two specific facts now known that support the position that Rentals LLC's veil of limited liability can be pierced, holding the property manager personally liable for Rentals LLC's obligations.

Provide one answer in each answer field. The length of each answer should be about one sentence.

Representative Correct Answers:

- The client's rent checks must be made out to the property manager individually.
- The property manager personally owns the apartment building.

Content Scope Designation:

Content Scope: Skill B.10; Subject Matter: BA IX.D: Piercing the veil

Flooded Apartment C3 Rubric

You receive an email from the client. In the email, the client says, "I'm worried that the landlord is going to make me move. I can't afford to move." In your response to the email, you want to advise the client about actions the landlord may take that would cause the client to relocate. Before responding, you confirm that there is no relevant anti-retaliation statute in your jurisdiction.

You explain in your email to the client that the landlord does not have grounds to evict her.

Component 3: Pursuant to § 6-20-5 and the facts now known, list two specific actions—other than eviction—that the landlord could take that would cause the client to relocate.

Provide one answer in each answer field. The length of each answer should be about one sentence.

This rubric uses a system of bullets and "sub-bullets" to list correct and incorrect answers.

An answer with a solid bullet point in front of it is a representative correct or incorrect answer. If there are indented answers under it with hollow bullet points (sub-bullets), each sub-bullet is an anticipated alternative phrasing of the correct or incorrect answer.

NOTE: A bullet and sub-bullet provided together cannot both receive points.

Score	Rationale
2	The response includes two correct answers.
1	The response includes one correct answer.
0	The response is blank, off-topic, incorrect, insufficient, or I don't know.

Correct Answers

- The landlord could decide not to renew the yearly lease, which concludes in two months.
- The landlord could terminate the lease pursuant to § 6-20-5(e) in order to repair the apartment.

Incorrect Answers

- The landlord could evict the client. (This is incorrect because it is contrary to the facts.)
- The landlord could force the client to move. (This is incorrect because it is nonresponsive to the question. The question asks for actions the landlord could take that would cause the client to relocate.)
- Any answer regarding whether the landlord breached the warranty of habitability. (This is incorrect because who is responsible for causing water damage is not a factor under § 6-20-5(e).)
 - The landlord could prove that it did not breach the warranty of habitability.
 - The landlord could prove that the client was responsible for the flooded apartment.
- Any answer that relates to actions beyond the bounds of § 6-20-5 and the facts now known. (This is incorrect because the question asks for actions the landlord could take pursuant to the statute and the facts now known.)
 - The landlord could become insolvent.
 - The landlord could threaten the client.
 - The landlord could refuse to repair the apartment.

Flooded Apartment C3 Benchmarks

Sample of Score Point 2

Benchmark Response #1 (Score 2)

Response

The landlord is not required to renew the client's lease. If it is not renewed, the client will have to move anyway. (1 point)

Since the apartment has water damage, the statute allows the landlord to terminate the lease. (1 point)

Annotation

Answer 1 (*The landlord is not required to renew the client's lease. If it is not renewed, the client will have to move anyway*) receives a point because it lists a specific action the landlord could take pursuant to § 6-20-5 and the facts now known that would cause the client to relocate. A landlord is not required to renew a periodic lease at the end of the period. The client entered into a periodic lease of one year, which ends in two months, at which point Rentals LLC can elect not to renew the lease.

Answer 2 (*since the apartment has water damage, the statute allows the landlord to terminate the lease*) receives a point because it lists a specific action the landlord could take pursuant to § 6-20-5 and the facts now known that would cause the client to relocate. Section 6-20-5(e) of the landlord-tenant statute allows a landlord to terminate a lease after notice to perform repairs that can be made only if the unit is vacant. Rentals LLC could terminate the client's lease in order to repair the water-damaged carpet and floors.

Samples of Score Point 1

Benchmark Response #2 (Score 1)

Response

Pursuant to subsection (e) of the statute, the landlord could end the lease in order to carry out repairs on the unit. (1 point)

The landlord could evict the tenant for nonpayment of rent. (0 points)

Annotation

Answer 1 (*pursuant to subsection (e) of the statute, the landlord could end the lease in order to carry out repairs on the unit*) receives a point because it lists a specific action the landlord could take pursuant to § 6-20-5 and the facts now known that would cause the client to relocate. Section 6-20-5(e) of the landlord-tenant statute allows a landlord to terminate a lease after notice to perform repairs that can be made only if the unit is vacant. Rentals LLC could terminate the client's lease in order to repair the water-damaged carpet and floors.

Answer 2 (*the landlord could evict the tenant for nonpayment of rent*) does not receive a point. Although it lists an action the landlord could take that would cause the client to relocate, the instructions to the examinee specifically exclude this as a correct answer. Additionally, it is not a known fact that the client is not current on rent payments.

Benchmark Response #3 (Score 1)

Response

The landlord could decide not to renew the client's lease. (1 point)

The landlord could rent the apartment to someone else. (0 points)

Annotation

Answer 1 (*the landlord could decide not to renew the client's lease*) receives a point because it lists a specific action the landlord could take pursuant to § 6-20-5 and the facts now known that would cause the client to relocate. A landlord is not required to renew a periodic lease at the end of the period. The client entered into a periodic lease of one year, which ends in two months, at which point Rentals LLC can elect not to renew the lease.

Answer 2 (*the landlord could rent the apartment to someone else*) does not receive a point. Though not renewing the lease is an action the landlord could take pursuant to § 6-20-5 and the facts now known that would cause the client to relocate, this answer states the same information as Answer 1. If two answers state the same underlying information, only one answer can receive a point.

Sample of Score Point 0

Benchmark Response #4 (Score 0)

Response

The landlord could choose not to repair the apartment. (0 points)

The LLC could dissolve. (0 points)

Annotation

Answer 1 (*the landlord could choose not to repair the apartment*) does not receive a point because it does not list a specific action the landlord could take pursuant to § 6-20-5 and the facts now known that would cause the client to relocate. The landlord choosing not to repair the apartment would not necessarily mean the client is forced to relocate.

Answer 2 (*the LLC could dissolve*) does not receive a point because it does not list a specific action the landlord could take pursuant to § 6-20-5 and the facts now known that would cause the client to relocate. The dissolution of the LLC would not necessarily mean the client must relocate.