

What do we do with this grant?

O -> X and her heirs for 10 years

- Law treats it differently – X has a ***non-freehold estate***
- X is a lessee/tenant
- O is a lessor/landlord
- Part contract/part property
 - A lot of statutory law as well
- Compare to license

Term of Years (*TOY*)

- L leases to T “from September 1, 2015 to August 31, 2016.”
- Notice – none needed, automatic
- Duration – the term
- L leases to T “for one year”

Periodic Tenancy (*P/T*)

- L leases to T “for month to month”
- Duration – the period
- Notice – period before termination
 - Must end at the end of a period
- Begins May 1, notice on August 20
 - Terminate on September 30
- year to year – common law requires 6 months

Tenancy at Will (T/W)

- L leases to T “as long as both wish”
- Duration – whim of either party
- Notice – immediate upon termination
- Catchall
- Death terminates

Effel v. Rosberg

- Rosberg buys house from Henry and Jack Effel as part of settlement
- **Settlement** – Lena “shall continue to occupy the property for the remainder of her natural life, or until such time as she voluntarily chooses to vacate the premises.”
 - Lena not a party to settlement
- **Lease** -- The term of the lease was “for a term equal to the remainder of the Lessee’s life, or until such time that she voluntarily vacates the premises.”
- What does Lena have?

1. L and T sign an agreement that reads, “The term is one year, beginning September 1.”
2. L and T sign a lease that reads, “This agreement lasts as long as the parties consent.”
3. L and T sign an agreement that reads, “The lease will run from September 1 until the following August 31. One thousand dollars payable on the first of every month.”
4. L and T enter a lease that reads in relevant part, “the rent is \$48,000 per year, payable \$4,000 on the first of each month.”
5. L and T enter a lease that reads, “the rent is \$1,000 per month.”
6. L and T enter a lease that reads, “the rent is \$1,000 per month and lasts until the tenant completes medical school.”
7. L and T are negotiating on the phone over an apartment lease. At the end of the conversation L says, “Have we got a deal? Five years lease with rent at \$10,000 a year?” T replies, “Great. I accept. It’s a deal.”

Tenancy at Sufferance

- Not a true tenancy
- Holdover – two options:
 - Treat as trespasser
 - Treat as renewal
 - Type of tenancy?
 - Term?

3. **A holdover problem.** Seven years ago, Tommy Hillclimber leased a commercial building on a busy street from Lisa. The lease was for a five-year term with annual rent of \$100,000. At the end of the term, Tommy retained possession of the building but continued to make rent payments. Lisa has cashed all of Tommy's rent checks. Last week, Sprawl-Mart contacted Lisa and offered to rent the building for \$200,000 a year. Lisa quickly sent notice to Tommy stating that the lease will terminate in 30 days. Does Tommy have to vacate?

Hannan v. Dusch

- Type of lease between Dusch and Hannan?
- Covenant of Quiet Enjoyment
 - Implied?
 - Waivable?
- Covenant of Delivery of Possession
 - Implied?
 - Should it be?
 - Statutory modification
 - Waivable?

Tenant Selection

- Civil Rights Act of 1866
- Fair Housing Act of 1968
 - Broader
 - Protected persons – 42 U.S.C. § 3602
 - From discriminatory practices – 42 U.S.C. § 3604
 - Exemptions -- 42 U.S.C. § 3607
- Also state statutes
 - Virginia Fair Housing Law

Tenant Selection

FOR RENT

Seeking tenant for 1 bed apt.
\$500/m. I only rent to black
people.

FOR RENT

New apartment building.
\$650/m. Walking distance
synagogue. Great amenitie

FOR RENT

Snazzy digs near downtown!
Looking for muscular football
players to rent rooms. 500/m

FOR RENT

Looking for tenants. Absolutely
no lawyers. Only couples. Must
show income 3x monthly rent.

FOR RENT

Great Deal! Apt. in exclusive
Danbury area. Very selective.
Contact ASAP. \$700/m

FOR RENT

Perfect apt. for rent. Near
\$400/m. Absolutely no pe

FOR RENT

Seeking new tenants for 2 br.
Pref for women – I'm female &
want female tenants!

FOR RENT

Great place by University.
\$600/m. Kids ok, but must pay
2x security dep. Kids = trouble

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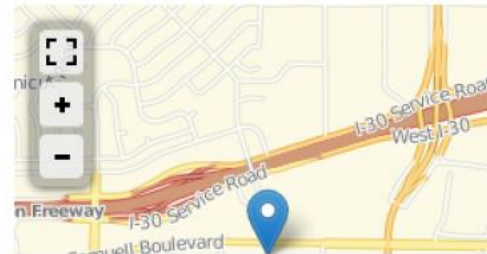
Tenant Selection

1. William Neithamer, who is gay and HIV positive attempted to rent an apartment from Brenneman Properties. Neithamer did not reveal his HIV status, but admitted to the property manager that he had dismal credit because he had recently devoted all of his resources to taking care of a lover who had died of AIDS. Neithamer, however, offered to pre-pay one year's rent. Brenneman Properties rejected Neithamer's application and, in turn, Neithamer sued under the FHA. Does he have a case? *See Neithamer v. Brenneman Property*
2. Over the phone, Landlord said to Plaintiff, "Do you have children? I don't want any little boys because they'll mess up the house and nobody would be here to watch them. Really, this house isn't good for kids because it's right next to a main road." Plaintiff sues. Landlord argues that her statements only show that she is concerned about the welfare of children. Is that a legitimate non-discriminatory reason to refuse to rent?

Tenant Selection

★ \$650 / 1010ft² - Have a room available for female Christian elderly woman none smoker (I 30 & st frances)

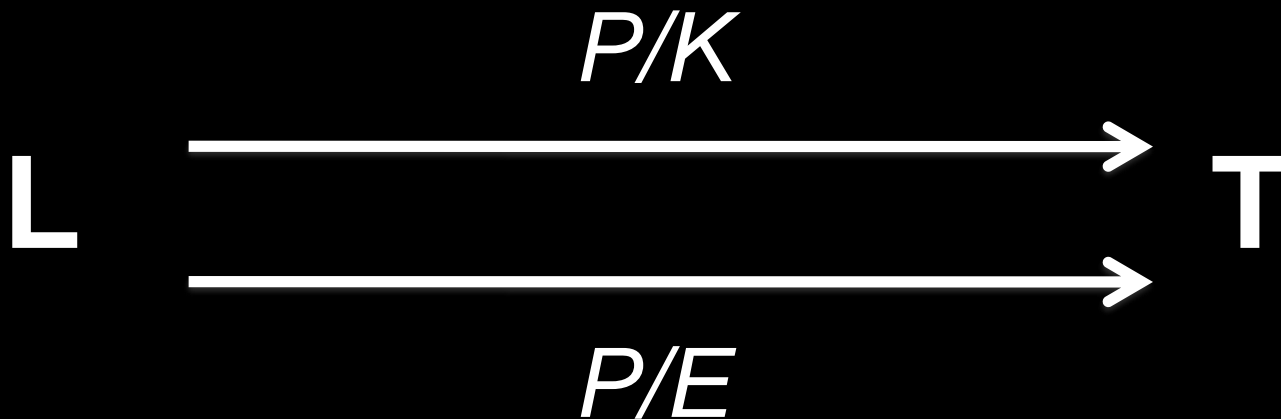
Nice comfortable furnished room available access to patio, backyard, 1/2 bath & full bath available, wyfi available, cable TV available, This all for that special Christian elderly none smoking or drinking church going female. Thank you
Serious inquiries only!!!



Fair Housing Council of San Fernando Valley v. Roommate.com, LLC

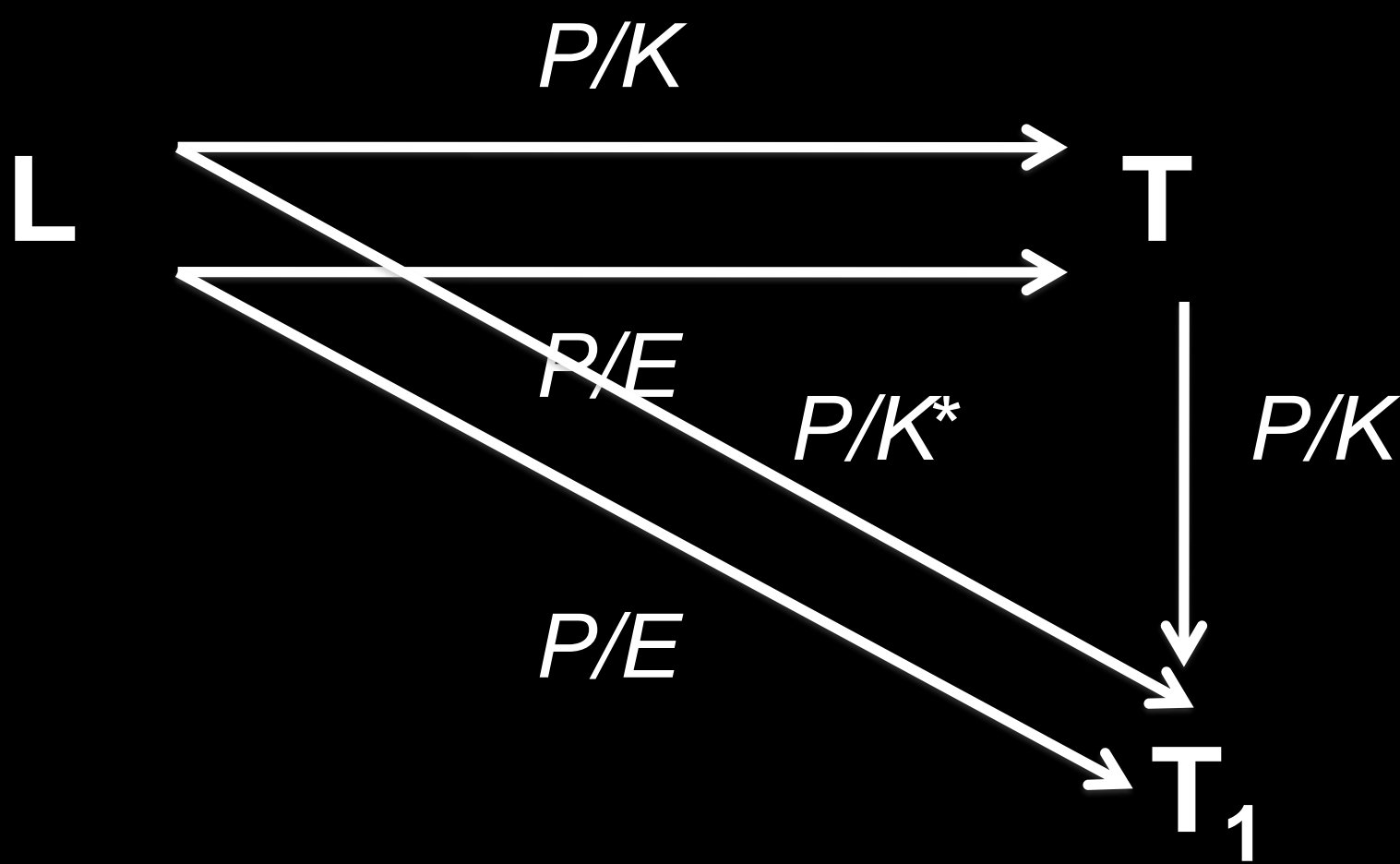
- Roommate.com
- Violation under FHA 3604?
 - What subsection alleged?
 - Issue?
- Dwelling defined in FHA 3602
 - “any building, structure, or portion thereof which is occupied as, or designed or intended for occupancy as, a residence by one or more families.”
- Constitutional issues?
- What about college dorms?

Tenant Exit: Transfer

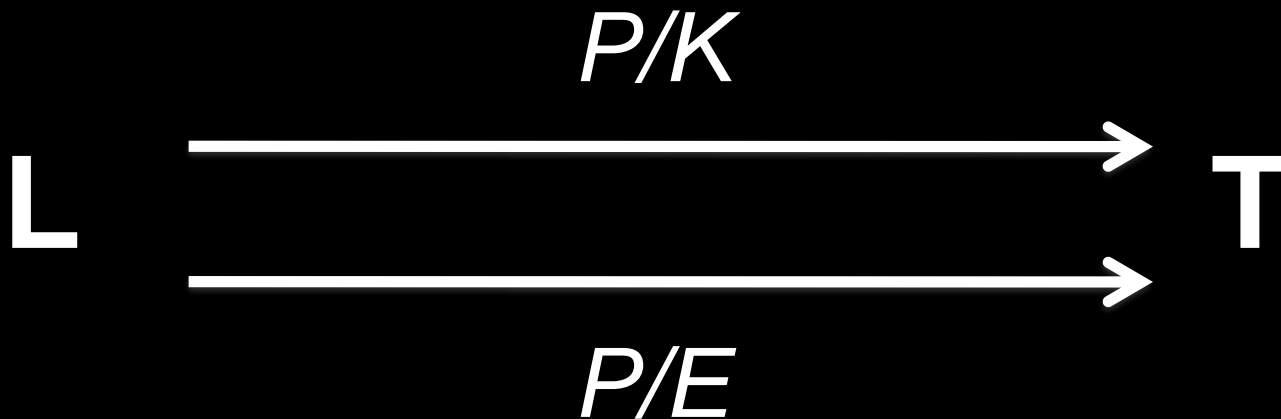


Witch leases her Gingerbread Cottage to Hansel for a period of one year—January 1 to December 31—in exchange for \$100 a month. Four months into the lease, Hansel then transfers all of his remaining interest in the property to Gretel

Assignment

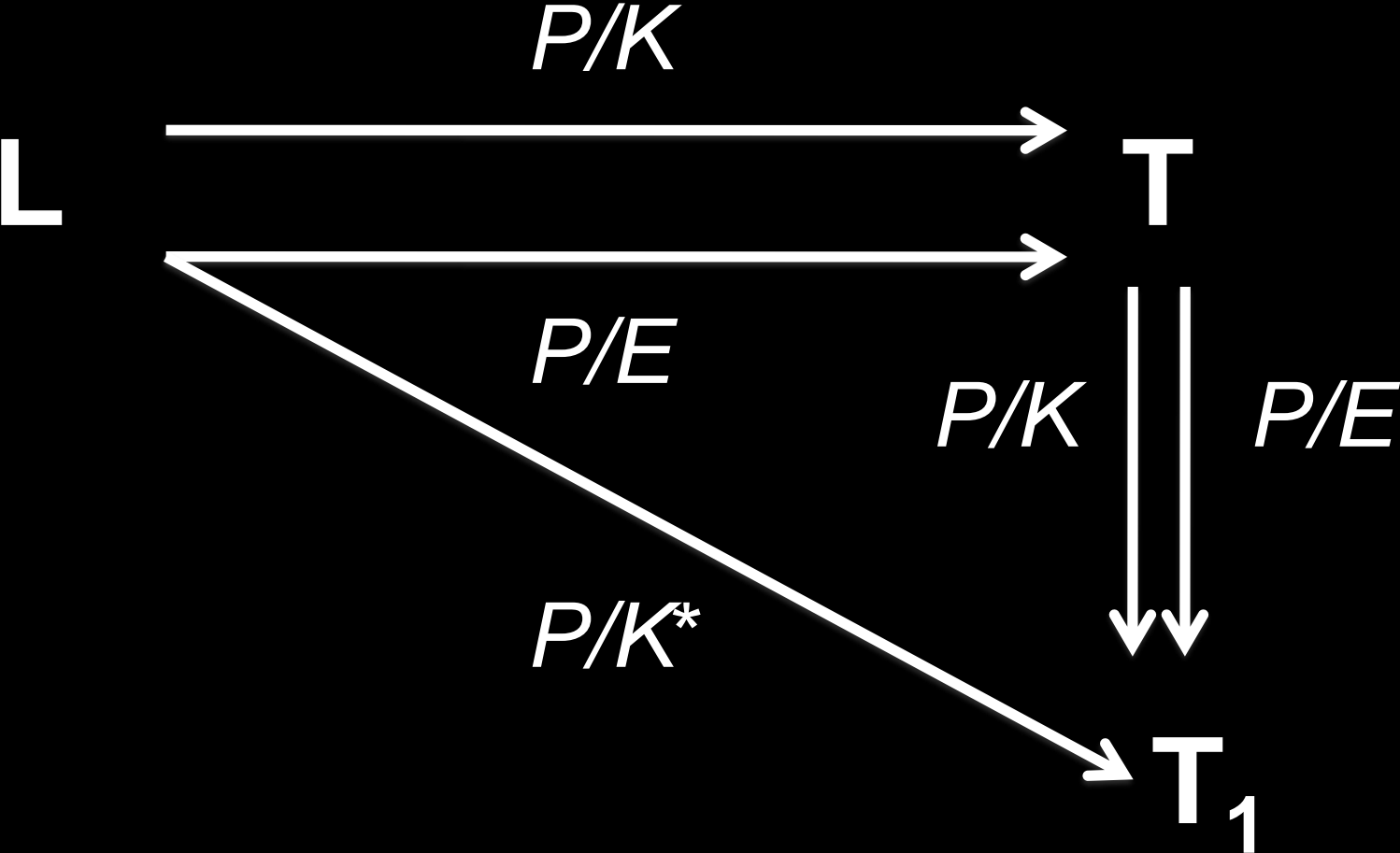


Tenant Exit: Transfer



Witch leases her Gingerbread Cottage to Hansel for a period of one year—January 1 to December 31—in exchange for \$100 a month. Hansel then transfers the first four months of the lease to Gretel

Sublease



1. Landlord leases property to T1 from January 1, 2015 to December 31, 2015. On March 1, T1 sold T2 her remaining interest in the property. On October 1, T2 rented the property to T3 for two months. Describe the privity relationships between all of the parties. If T3 stops sending rent payments to Landlord, whom can the Landlord sue to recover the money?
2. Alger, a landlord, rents a commercial building to Brown for 5 years. Six months into the lease, Brown subleases his interest to Clancy for 3 years. Clancy then turns around and assigns his interest to Dahl. Describe the privity relationships between all of the parties. If Dahl stops sending rent checks to Alger, whom can Alger sue to recover the money.
5. L leases a commercial property to T1 for ten years beginning in 2010. In 2012, T1 assigns all of her interest to T2. A year later, T2 assigns all of her interest to T3. In 2014, T3 subleases to T4 for a term of four years. In the sublease contract, T4 agrees to assume “all of the covenants and promises” in the original lease between L and T1. In 2015, T4’s business fails and she ceases making paying rent. What are the privity relationships? Whom can L sue to recover the unpaid rent money?

Julian v. Christopher

- Julian and Gilleland purchase biz/rent from Christopher
- Could not be assigned or sublet “without the prior written consent of the landlord.”
- Want to rent out upstairs apartment
- Christopher says not agree unless paid additional \$150 a month
 - Why asking for such?

Julian v. Christopher

- If lease silent, what is the default rule?
- If lease says NO – any inference?
- If lease says, consent, do we imply reasonable?
 - Why?
 - What is reasonable?
- What about, need consent “but landlord can withhold for whatever stupid reason”?
- Apply to residential?

Julian v. Christopher

- Could not be assigned or sublet “without the prior written consent of the landlord.”
- If lease silent, what is the default rule?
- If lease says NO – any inference?
- If lease says, consent, some jurisdictions imply reasonable
 - Commercially reasonable
- What about, need consent “but landlord can withhold for whatever stupid reason”?
- Apply to residential?

1. Last year, X rented a storefront in a local strip mall and opened a successful coffee shop. The lease is for 10 years and includes the following provision: “No assignments or subleases without the landlord’s consent. Landlord can only deny consent based on commercially reasonable objections.” Recently X was offered her dream job on a coffee plantation in a faraway country. She now wishes to exit her lease. Must the Landlord consent to the following assignment proposals?

- a. Alfred plans to open a mattress store. He’s a college dropout with no business experience but his rich father will co-sign the lease and guarantee all payments get made on time.
- b. Bob, an experienced therapist with good credit, wants to open a marriage counseling practice targeted at same-sex couples. The landlord, however, believes same-sex marriage is immoral and worries that the counseling center will hurt the business of a Christian bookstore in the strip mall.
- c. Cathy has a well-thought out plan to open a shooting range. The Landlord agrees to the assignment on the condition that Cathy increase the rent payment by \$100/month. Cathy refuses.

Sommer v. Kridel

- Sommer rents to Kridel
 - What type of lease?
 - Before move in, pay \$690 for what?
- Lease starts on May 1, 1972, but on May 19 – letter
 - Sommer not answer (p. 156)
- Not rent apartment until Sept 1, 1973
 - Rent for \$345 a month
- Sues Aug. '72 for \$7,590 (total amount)
 - Mistrial, then sues for \$5,865 (May 1 – Sept 1, '73)

Sommer v. Kridel

- Duty to Mitigate?
 - Property v. Contract
 - Fairness
- Reasonable diligence
 - How prove?
 - Who bears burden?
 - Expenses of relisting?
 - What if L has other vacant apartments?
- Result here?
- Residential only?
- Interaction with “reasonable consent” jurisdiction?

Eviction – Berg v. Wiley

- Wiley lease to Berg
 - 5 year term
 - Begins Dec. 1, 1970
 - Conditions – no structure change; operate restaurant in “lawful and prudent manner”
- Berg remodels without Wiley permission
 - June 1973 letter
 - Health Department’s interaction
 - Friday, July 13, 1973
 - Monday, July 16, 1973
- Wiley relets on Aug. 1, 1973
- Berg claims wrongful eviction

Eviction – Berg v. Wiley

- Abandonment/Surrender by Tenant
- Self-help re-taking is not wrongful eviction if:
 - Landlord legally entitled to possession and
 - Means of reentry peaceful
- Was reentry peaceful?
- Presumption to judicial process
- Move away from common law; no self-help
 - Statutory example
- Security deposits

Fidelity Mutual Life Insurance Co. v. Kaminsky

- FMLIC leases to Dr. Kaminsky
 - Express covenant of quiet enjoyment (CQE)
- Abortion protestors start June 1984
- Kaminsky pays through November 1984
- Doctrine of Constructive Eviction:
 1. L intends to breach CQE
 - Base on circumstantial evidence
 2. L's material act or omission substantially interferes with use and CQE
 3. Results in permanent deprivation
 4. T abandons premises in reasonable time after act or omission

Fidelity Mutual Life Insurance Co. v. Kaminsky

- What about 3rd parties causing interference?
 - Did they interfere with use and quiet enjoyment?
 - What L acts or omission?
 - Evidence of L's intent to interfere?
- Do we have permanent deprivation?
- Did T leave in reasonable time?
- What are the doctrine's shortcomings?

5. **Troublesome tenants.** Suppose your landlord rents the floor above your apartment to the members of a Led Zeppelin cover band. If the band practices every night between the hours of 3:00 am and 4:00 am, could you bring a successful constructive eviction claim against the landlord?

Hilder v. St. Peter

- 10-12 Church Street, Rutland, VT



10-12 Church Street
Rutland, Vermont, 1999

Implied Warranty of Habitability

- What types of defects does it apply too?
- What must be defected?
- What standard do you apply to determine whether its a defect?
- Is it waivable?
- Does it apply to commercial leases?

7. The Mad Hatter and the Alice each decide to rent an apartment in Wonderland. The Mad Hatter walks into a large apartment and sees a hole in the roof, but he decides to rent the unit anyway. The apartment that Alice decides to lease has no obvious problems. The next day, however, some mold spots appear by one of the vents. The mold grows rapidly and Alice starts to have regular headaches and some trouble breathing. Additionally, an unknown troublemaker smashed Alice's air conditioning unit and it no longer works. Can either the Mad Hatter or Alice win a lawsuit against their landlord if their problems aren't fixed?

Implied Warranty of Habitability -- Remedies

- *Hilder* measures rent reduction:
 - $\text{FMV}(\text{complying}) - \text{FMV}(\text{non-complying})$
 - Worry about unwary L?
- Can T withhold rent?
- Can T simply terminate and leave?
- Other damages available:
 - consequential damages
 - punitive damages
- IWOH impact on affordable housing

