

July 2016
MPT-1 File:
In re Whirley

HUMPHRIES & ASSOCIATES, LLP
ATTORNEYS AT LAW
2700 MADISON AVE., SUITE 120
FRANKLIN CITY, FRANKLIN 33017

MEMORANDUM

TO: Examinee
FROM: Della Gregson, Partner
DATE: July 26, 2016
RE: Barbara Whirley matter

Our client, Barbara Whirley, is renting a house. She is a little over halfway through a one-year residential lease and has encountered several problems with the house. Ms. Whirley would prefer not to move and wants the conditions repaired. She needs to know her options under Franklin law to remedy each condition.

In Franklin, specific statutes govern the landlord-tenant relationship. *See* Franklin Civil Code § 540 *et seq.* Both landlords and tenants have certain statutory duties, in addition to any duties they may have under a written lease.

Please draft a memorandum to me analyzing and evaluating Ms. Whirley's options with regard to each of the unrepaired conditions, which are described in the attached client interview summary. If more than one option is available with regard to a specific condition, explain the potential advantages and disadvantages of each option. If an option is *not* available to Ms. Whirley with respect to a particular condition, briefly explain why. Do not include a separate statement of facts, but be sure to incorporate the relevant facts, analyze the applicable legal authorities, and explain how the facts and law affect your analysis.

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FRANKLIN CITY, FRANKLIN 33017

MEMORANDUM TO FILE

FROM: Della Gregson, Partner
DATE: July 25, 2016
RE: Summary of interview of Barbara Whirley

Today I met with Barbara Whirley regarding her dispute with her landlord over repairs needed to the rental house where she resides. This memorandum summarizes the interview:

- In January of this year, Whirley rented a three-bedroom, two-bathroom house from Sean Spears. See attached lease.
- Whirley is the only occupant of the home, and she has a dog, Bentley. She and Spears agreed in a separate “Pet Addendum” to the lease that she was allowed to have a dog. Whirley will provide a copy of the Pet Addendum at our next meeting.
- The house has eight rooms: a kitchen, a living room, a master bedroom with bathroom, two additional bedrooms, one additional bathroom, and a laundry room. The master bathroom is accessible through the master bedroom. The second bathroom is in the hallway between the second and third bedrooms. She uses one spare bedroom as her home office and the other as a guest room for family and friends when they visit her (one or two visits per month).
- Whirley is experiencing a number of problems with the residence.
- About two months after she moved in, the toilet in the second bathroom began leaking.
- In late March, she began having problems with the outdoor sprinkler system not functioning.
- In May, she noticed a smell in the guest bedroom. The smell is coming from the carpet near the sliding glass door leading from the bedroom to the backyard. The carpet is damp, and there is a half-inch gap between the bottom of the door and the door frame. Whirley isn’t sure whether the door is off its track or whether the door is too small for the door frame. She has not opened the door since she moved in. The door is currently in the

closed position, but she isn't sure whether any of her houseguests may have used the door. When she discovered the gap between the door and door frame and tried to open the door, the door wouldn't budge. She has placed plastic along the door frame to try to keep outside moisture from coming in, to no avail. The carpet near the sliding door is increasingly discolored and smelly, and she has noticed mold growing around the door. The smell is so bad now that no one can use the room.

- Whirley keeps Bentley in the laundry room on weekdays while she is at work, because the laundry room door exits to the backyard and has a “doggy door” that allows Bentley to go in and out of the laundry room throughout the day. Bentley is a golden retriever, and sometimes he gets bored when Whirley is at work and chews on things. Five days ago, Whirley realized that Bentley had sneaked along the side of the washing machine next to the wall and chewed away a two-foot strip of the baseboard and areas of the wall above the baseboard. She has since moved the washing machine closer to the wall to prevent Bentley from having access to the chewed area. Since Spears allowed Whirley to have a dog at the house, she would like to have him take care of the repairs to the wall and baseboard if possible.
- Whirley has notified Spears about the toilet, sprinkler system, and guest bedroom sliding door and carpet, but he has not made any repairs. See attached emails.
- Whirley is now considering making arrangements herself to have the repairs completed. She has obtained an estimate from a handyman, a copy of which is attached.
- Whirley has paid her rent (\$1,200) on time every month.
- The average cost to rent a two-bedroom house in the same area is \$1,000. The average cost to rent a three-bedroom house in the area is \$1,200 (what Whirley is currently paying).
- Whirley does not want to leave her home because it is close to her workplace in a desirable neighborhood with limited rental options.

RESIDENTIAL LEASE AGREEMENT

THIS AGREEMENT (the "Agreement") is made and entered into this 1st day of January 2016 by and between Sean Spears ("Landlord") and Barbara Whirley ("Tenant"). For and in consideration of the covenants and obligations contained herein and other good and valuable consideration, the receipt and sufficiency of which is hereby acknowledged, the parties hereby agree as follows:

1. PROPERTY. Landlord owns certain real property and improvements located at 1254 Longwood Drive, Franklin City, Franklin 33015 (the "Premises"). Landlord desires to lease the Premises to Tenant for use as a private residence upon the terms and conditions contained herein. Tenant desires to lease the Premises from Landlord for use as a private residence upon the terms and conditions contained herein.

2. TERM. This Agreement shall commence on January 1, 2016, and shall continue until December 31, 2016, as a term lease.

3. RENT. Tenant agrees to pay \$ 1,200 per month by no later than the 3rd day of each month during the lease term

* * *

8. PETS. No animals are allowed on the Premises, even temporarily, unless authorized by a separate written Pet Addendum to this Agreement. Tenant will pay Landlord \$ 25.00 per day per animal as additional rent for each day Tenant violates the animal restrictions by keeping an unauthorized animal. Landlord may remove or cause to be removed any unauthorized animal and shall not be liable for any harm, injury, death, or sickness to unauthorized animals. Tenant is responsible and liable for any damage or required cleaning to the Premises caused by any unauthorized animal

9. SECURITY DEPOSIT. On or before execution of this Agreement, Tenant will pay a security deposit to Landlord of \$ 1,200 At the end of the lease, Landlord may deduct reasonable charges from the security deposit for damage to the Premises, excluding normal wear and tear, and all reasonable costs associated with repairing the Premises.

* * *

11. DESTRUCTION OF PREMISES. If the Premises become totally or partially destroyed during the term of this Agreement such that Tenant's use is seriously impaired, Landlord or Tenant may terminate this Agreement immediately upon three days' written notice to the other.

* * *

14. PROPERTY MAINTENANCE.

A. Tenant's General Responsibilities. Tenant, at Tenant's expense, shall

- (1) keep the property clean;
- (2) promptly dispose of all garbage in appropriate receptacles;
- ...
- (11) not leave windows or doors in an open position during any inclement weather;
- (12) promptly notify Landlord, in writing, of all needed repairs.

B. Yard Maintenance. Unless prohibited by ordinance or other law, Tenant will water the yard at reasonable and appropriate times and will, at Tenant's expense, maintain the yard.

* * *

16. EARLY DEPARTURE FROM PREMISES. If Tenant vacates the Premises before the end of the lease term, Landlord may hold Tenant responsible for all rent payments due for the balance of the lease term, subject to any remedies available to Tenant under Franklin law.

Dated this 1st day of January, 2016

Tenant's Signature Barbara Whirley

Landlord's Signature Sean Spears

Email Correspondence between Barbara Whirley and Sean Spears

From: Barbara Whirley<bwhirl@cmail.com>
To: Sean Spears<sspears65@cmail.com>
Subject: Repair request
Date: February 19, 2016

Hi, Sean. Last weekend I noticed some water on the floor of the hall bathroom between the toilet and the shower. I think the toilet may have a leak. Can you please stop by in the next couple of days to see if the toilet is leaking? I'll put a towel down and make sure to keep the area dry in the meantime. Thanks!

From: Sean Spears<sspears65@cmail.com>
To: Barbara Whirley<bwhirl@cmail.com>
Subject: Repair request
Date: February 27, 2016

Hi, Barbara. I'm sorry it's taken me a while to get back to you. I've been out of town—my oldest son just got married! I'm back in town now, but I'm absolutely snowed under at work this week. I should be able to swing by this weekend—would Saturday morning work for you?

From: Barbara Whirley<bwhirl@cmail.com>
To: Sean Spears<sspears65@cmail.com>
Subject: Leaking toilet
Date: March 4, 2016

Sean, I left two phone messages that last Saturday morning was good for me, and I waited at the house until almost 2 p.m. that day, but you never showed up. The leak in the toilet is getting worse. I've put a plastic bucket behind the toilet to catch the dripping water. Please stop by as soon as you can. I am home most weeknights by 6 p.m. and should be around this weekend. Thanks!

From: Barbara Whirley<bwhirl@cmail.com>
To: Sean Spears<sspears65@cmail.com>
Subject: Needed repairs
Date: March 31, 2016

Sean, I've tried calling you several times over the last few weeks and left voicemail messages about the leaking toilet, but you haven't called me back. The toilet really needs to be fixed. The leak is so bad now that I have to empty the plastic bucket twice a day and sometimes the toilet doesn't flush. In addition, the automatic sprinkler system for the front yard just stopped working, so I have to water the front flower beds by hand two or three times a week. This takes 15–20 minutes and is a real hassle—especially in this hot weather. I do not see any leaks, so I think the sprinkler box has malfunctioned. Can you please figure out what is wrong and get it fixed? Please call or email me about both of these problems ASAP. Thanks!

From: Sean Spears<sspears65@cmail.com>
To: Barbara Whirley<bwhirl@cmail.com>
Subject: Needed repairs
Date: April 6, 2016

Barbara, I'm sorry for the delay, but I've got a lot on my plate right now. I promise I will get by the house to check on everything as soon as I can. Please hold down the fort in the meantime! Thanks!

From: Barbara Whirley<bwhirl@cmail.com>
To: Sean Spears<sspears65@cmail.com>
Subject: Needed repairs
Date: April 27, 2016

Sean, I just got your voicemail message saying you wanted to stop by this weekend. I will be out of town Friday and Saturday, but anytime on Sunday would work for me. See you Sunday!

From: Barbara Whirley<bwhirl@cmail.com>
To: Sean Spears<sspears65@cmail.com>
Subject: Needed repairs
Date: May 4, 2016

Sean, what happened Sunday?! I thought you were going to stop by.... If you can't make it, then please at least have the courtesy to call and let me know! When can you come by?

From: Barbara Whirley<bwhirl@cmail.com>
To: Sean Spears<sspears65@cmail.com>
Subject: Problem with sliding door and other repairs
Date: May 26, 2016

Sean, I have been very patient. The toilet in the hall bathroom has been leaking for the past three months, and the automatic sprinkler system is still not working. These problems are very troubling, but now there's an even bigger problem—the sliding glass door in the guest bedroom is leaking and the carpet is wet and smelly. The smell is so bad that I can't even use the guest bedroom! Plus, mold is growing around the door, and I know that mold can cause health problems, so I have stopped using this room. I think the door and the carpet need to be replaced! Maybe you didn't take seriously the other problems I reported and that's why you haven't made any of the other repairs I've requested. But now a whole room in the house is completely unusable! Why should I pay rent for a 3-bedroom house when all I'm really getting is a 2-bedroom house and my guests have to sleep on the living room couch? If you don't make arrangements to get everything fixed, then I'm going to look into making the repairs myself and take appropriate legal action. I really like living here, but I can't continue to "hold down the fort" any longer!

JB Handyman Services*You Break It, We Fix It!*

Estimate 000347

DATE: June 23, 2016

98 Meadow Lane
 Franklin City, Franklin 33019
 Phone 111 555 4500

TO:

Barbara Whirley
 1254 Longwood Drive
 Franklin City, Franklin 33015

Description	Amount
Replace toilet water supply valve and hose; Reseal toilet tank	\$200
Replace automatic sprinkler control box (6 zones)	\$300
Replace sliding glass door, door frame, and insulation; Replace 10 X 12 square foot carpet and pad adjacent to door	\$1,800
Replace 2 foot section of baseboard in laundry room; Patch and repair drywall above damaged baseboard; Retexture and repaint damaged wall to match existing wall	\$300

Total Estimate \$2,600

THANK YOU FOR YOUR BUSINESS!

