**Legal Studies Questions**

1. Jan is struggling to find somewhere to rent. Eventually her friend, Ted, says that he will sublet one of the two bedrooms in his property to her for $100 per week. Ted lives alone, and rents his house from All Good Real Estate.

(if possible, refer to sections of the *Residential Tenancy Act 1997* in your answers)

1. What must Ted get before offering to sublet a room? What are the consequences if he doesn’t?

*(Permission from All Good, preferably in writing (section 49). If he doesn’t get it then All Good can serve him with a Notice to Vacate (section 42(1)(a)), and both him and Jan may be evicted, unless the problem is rectified by Jan leaving ((section 43(3))*

1. As a subtenant, will Jan be protected by the *Residential Tenancy Act 1997*? If not, what law governs the sub-tenancy?

*(No (section 6(2)(c)(ii)). Contract law and common law.)*

1. Jan manages to find a property of her own, and rejects Ted’s offer. Ted is struggling with money, so he decides to put the room up on Airbnb. He asks All Good for permission, but they refuse on the basis that “they don’t like him” and “he’s got a bad hair cut”. Can they refuse consent on this basis? If not, what would be some valid grounds for rejecting his request?

*(No (section 50(a)). Valid grounds may be: All Good will not be able to vet the guests, it may create too much noise for neighbours, the facilities in the property may be insufficient to support more people, if the property is an apartment or unit there may be strata rules against it)*

1. Andre lives in a share house with his two friends, Jake and Tang. Jake and Tang are Andre’s best friends, but since he’s lived with them he’s found that they are pretty unreliable.
2. Each tenant sends their rent to the owner, Betty, ever week. Jake goes to New Zealand for a holiday for three weeks, and doesn’t pay rent for that period. After the second week, Betty calls Andre and tells him he has to pay the rent otherwise she will send them a Notice to Vacate. Andre tells her that it’s not his fault, but she says that she doesn’t care. Andre pays, but now Jake refuses to compensate him because “I’m not paying rent if I’m not here”.

If Andre did not pay the rent when Betty asked him, could he have been evicted? How can Andre get the money back off Jake?

*(Yes, joint tenants are jointly and severably liable for rent. It is immaterial from the owner’s perspective whose fault it is – it only matters that they are collectively in rent arrears. She could issue a notice under section 42(1)(a), and if the rent is not rectified within the notice period (section 43(2)) a magistrate can order them to vacate the property (section 45). Andre can file a claim in the Magistrates Court against Jake to recover the rent.*

1. When the lease began worked out a roster whereby they will each do the gardening once every month. Andre did the gardening in January. He then moved out on 1 February because he was sick of Jake and Tang being so slack. Another one of their friends, Jim, moved in. Jake was meant to do the gardening in February, and Tang in March but it’s mid-April and the garden hasn’t been touched. The weeds are overgrown, and the lawn is at knee-height. Betty comes for an inspection on 20 April and sees the garden. She gives Jake, Tang and Jim a notice to vacate on the spot, because of the state of the garden. They move out before the expiry of the notice, and don’t fix the garden.

What is the proper process for transferring a tenancy agreement?

*(Found in section 49A. Andre, Jim and Betty must sign a document recording the transfer, and the date that it took place. While it does not say this in section 49A, it can be implied that Jake and Tang also have to agree to the transfer)*

While Andre properly transferred the lease into Jim’s name, he forgot to transfer the bond. At the start of the tenancy Andre, Jake and Tang each paid $500.00. At the end, Betty claims $750.00 (so, $250.00 each) to pay for professional gardeners. Is Andre responsible for the state of the garden after he moved out?

*(No – section 47C)*

If the bond dispute ends up in court, what evidence could Andre rely on to prove that he didn’t cause or permit the garden to get as bad as it did?

*(Photos and/or videos from when he moved out, oral evidence from him and the other tenants, written correspondence or notes taken during the period he moved out)*

1. Molly Klim lives in a house at 24 Grand Avenue, Moonah by herself. The house has two stories. On 28 June 2018, Molly was climbing the stairs when the balustrade snapped off and fell to the ground. It looks to her like the wood rotted through. Molly is 85, and terrified to climb the stairs without the railing. She knows that her landlord, Charles Smith, is unlikely to do repair the balustrade.
2. What type of repair is this (refer to Division 4 of the *Residential Tenancy Act 1997*)?

*General (section 32): it does not effect an essential service (section 3 and 33) nor is the damage likely to result in further damage to the premises (section 34)*

1. If Molly wants to terminate the tenancy because of this damage, what process does she have to follow?

*She must give the landlord notice that the repairs have occurred (preferably in writing) within seven days, then wait 28 days. If the landlord has not fixed the balustrade within 28 days, Molly can give the landlord a notice to terminate (section 38). The notice to terminate has to give Charles at least 14 days notice.*

1. Molly wants to vacate as soon as possible. Draft a notice to terminate for Molly. Use section 40 of the *Residential Tenancy Act 1997* for guidance. Assume that she notified Charles on 29 June 2018.

*See example. Note that she must give 14 clear days.*

1. Molly accidentally only give the landlord ten days notice. Is the notice invalid?

*No – section 39(3) and 39(4). The notice will only take effect after the 14th day.*

1. Molly changes her mind, and decides that she’d rather stay, as long as the balustrade is fixed. If she notified Charles of the need for repair on 29 June 2018, and the notice period has elapsed, what can she do to force him to carry out the repairs?

*Molly can apply to the Residential Tenancy Commissioner for an order that the repairs are to be carried out by the owner – section 36A.*