

2018 Legal Opinion Competition

Fact Scenario

Your team works in the commercial property department at law firm Honey, Honey, Super and Trouper. Senior partner Nicola Beegee has just had a meeting with a client she has known since 1974 – Benny Ulvaeus. Nicola has asked you to consider Benny’s queries, address the legal issues involved and present her with a brief memo (no more than two pages) outlining the legal issues involved and the possible answers for her to put to Benny.

If Nicola rates your memo, she may ask you to meet with her and senior associate Hasta McManus to talk through what you have come up with and your thoughts on how to present the advice to Benny. Nicola is concerned that Benny, though once rich, may now be struggling financially. He recently had to sell his keyboard, accordion, and electric ukulele. He may not be able to afford Nicola’s hourly charge out rate. So she is thinking of having you run the meeting with Benny and his support people.

According to Nicola:

- Benny is a director of Benny Bjorn Again Limited (**‘BBAL’**). BBAL leases some central Wellington premises pursuant to a deed of lease dated 16 January 2017 (**‘the Lease’**). Its landlord is Agnetha Anni-Frid Limited (**‘the Landlord’**).
- In July this year, the Landlord applied to Wellington City Council for consent to carry out strengthening works in the building of which BBAL’s premises form part (**‘the Building’**). The Landlord’s engineers had previously noticed cracks in the Building’s concrete floor slabs. Benny suspects that the cracking was caused by the Kaikoura earthquakes.
- The Landlord’s strengthening plans were reviewed by Mr Fernando, the Council’s chief structural engineer. ‘Mamma mia!’, he cried. ‘This building is not safe. Here we go again – we must close down another building!’
- Apparently, Mr Fernando told the Landlord that the Council may need to use its regulatory powers to close down the Building. But the Landlord’s property manager, Chiquitita, said that she would rather front foot matters and close down the Building herself.

- On 2 August 2018 Chiquitita told all the tenants in the Building that the Building was not safe to occupy, and that they all had 4 hours to vacate the Building. The Landlord would be carrying out remedial works, which she expected to take 8 months.
- Benny arranged for BBAL to vacate the Building and lease alternative premises, nearby, for a term of 9 months. The rent is higher, but at least the alternative premises are safe.
- On 9 August 2018, Benny said to Chiquitita: ‘Chiquitita, tell me the truth. What’s happening with our lease from you? Do we still have to pay you rent? We can’t afford to pay rent to you as well as rent for our alternative premises’. Chiquitita just shrugged her shoulders and suggested that Benny take legal advice.

The following questions arise:

- Q1** Does BBAL still have to pay the rent for the premises that it has vacated?
- Q2** Can BBAL claim back from the Landlord any part of the rent that BBAL paid for August 2018? Or any rent that BBAL is paying for its alternative premises?
- Q3** Can BBAL get out of the Lease?
- Q4** What do you recommend that Benny should do?

Please answer each question in sequence, and set out your memo accordingly. If you need more facts, in order to be more definitive in your answers, please outline, in your memo, what those facts are.

NB: Please don’t forget to provide an outline of the teamwork approach that you took in this exercise!