

Damages Review

Let's try a hypo

- On June 1, 2010, Landlord signed a contract with Painting Co to paint the exterior of Landlord's building by September 1st, 2010 for a contract price of \$5,000. On July 1, Landlord called PC and said it was really important that the building be painted by September 1 because he had told all his new tenants that he would paint the building by their move-in date.

- The weather was unusually crappy, and PC fell behind on all of its painting jobs. PC did not finish painting Landlord's building until Sept. 20th, 2010. As a consequence, Landlord lost all his tenants that were due to move in September 1st since they were all starting law school and couldn't wait until October 1st.

- The units stood empty and Landlord made no attempt to rent or otherwise make use of the units until finally on Sept 1st, 2011, when the new rental season started, he filled the empty units. Most realtors agree that the rental season dies down after September and that it would have been significantly harder for any landlord to have rented his units after September 20th than before September 1st.

- Landlord refused to pay PC for the work. PC sues Landlord for the \$5,000. Landlord denies liability and counterclaims against PC for \$20,000, asserting the delay in PC's painting caused him to lose all of his tenants. The rent total on the units that he would have received from Sept 2000- Sept 2001 totaled \$20,000.

-

Let's assume breach...

- What type of damages will apply?
- Restitution?
- Reliance?
- Expectation?

Expectation

- What did Landlord expect to get?
 - House painted for 5k
- What did he get?
 - House painted for 5k
 - No expectation damages (note that your answer might change if this is a material breach versus minor)

Consequential

- Are damages measurable and foreseeable?
 - Measurable: the amount of rent
 - Foreseeable: did painting company know this money would be lost?

Incidental

- Things that cost money due to trying to cover
 - cost of new leases, new ads, storage, etc

Mitigation

- Always a duty to mitigate
- Did he mitigate here?
 - What facts are important?
 - Experts say renting during this time is hard
 - BUT, did he try?
 - Could tenants have moved in at reduced amount?