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REPAIRS OF LEASED PREMISES IN LOUISIANA

An analysis of the lessor's duty to repair defects in leased premises and the lessee's remedies upon violation of that duty will be presented in this Comment.¹

THE LESSOR'S OBLIGATION TO DELIVER THE PREMISES
FREE OF THE NEED OF REPAIRS

Although the lessor is bound to deliver the premises free from need of any repairs,² the parties may agree that the lessor is absolved of any duty to repair and that the lessee accepts the premises in their present condition. It has been held, however, a lessee may rescind a lease containing such an agreement if the property is not fit for the purpose for which it is leased.³

REMEDIES OF LESSEE UPON LESSOR'S REFUSAL TO MAKE REPAIRS
NEEDED WHEN LEASE EXECUTED

The lessee, after giving the lessor an opportunity to repair defects existing at the time of delivery, may cause them to be made and deduct their cost from the rent if the repairs were indispensable and the price paid was just and reasonable.⁴ Pothier states that a lessee should be reimbursed by his lessor

1. For an analysis of the responsibility of lessor and lessee for damages from defects in leased premises see Comment, 20 LA. L. REV. 76 (1959).

2. LA. CIVIL CODE art. 2693 (1870): "The lessor is bound to deliver the thing in good condition, and free from any repairs. He ought to make, during the continuance of the lease, all the repairs which may accidentally become necessary; except those which the tenant is bound to make, as hereinafter directed."

3. *Brunies v. Police Jury of Parish of Jefferson*, 237 La. 227, 110 So. 2d 732 (1959) (condemned building to be used for library required "reconstruction"). See also *Fazzio v. Riverside Realty Co.*, 232 La. 794, 95 So. 2d 315 (1957).

4. LA. CIVIL CODE art. 2694 (1870): "If the lessor do not make the necessary repairs in the manner required in the preceding article, the lessee may call on him to make them. If he refuse or neglect to make them, the lessee may himself cause them to be made, and deduct the price from the rent due, on proving that the repairs were indispensable, and that the price which he has paid was just and reasonable." *Welham v. Lingham*, 28 La. Ann. 903 (1876); *Winn v. Spearing*, 26 La. Ann. 384 (1874); *Pesant v. Heartt*, 22 La. Ann. 292 (1870); *Scudder v. Paulding*, 4 Rob. 428 (La. 1843); *Baronne Building, Inc. v. Mahoney*, 132 So. 795 (La. App. Orl. Cir. 1931); *Purnell v. Dugue*, 129 So. 178 (La. App. Orl. Cir. 1930).

Restoration so extensive that it is classified "reconstruction" is not contemplated by Article 2694. *King v. Grant*, 43 La. Ann. 817, 9 So. 642 (1891).

Although the lessee may make certain repairs which the lessor is obligated to make, he is under no duty to do so. *White v. Juge*, 176 La. 1045, 1049, 147 So. 72, 73 (1933) ("Where the lessor fails to make repairs devolving on him, it is discretionary with the lessee, but not obligatory upon him, for the lessee to make the repairs and deduct the cost from the rent."); *Landry v. Monteleone*, 150 La. 546, 90 So. 919 (1922). See also *Teekell v. Drewett*, 103 So. 2d 525

for indispensable repairs, although made without prior notification to the lessor, on the theory of unjust enrichment;⁵ the point is unsettled in Louisiana.

If the lessor violates the guarantee imposed upon him by Article 2695,⁶ the lessee is entitled to indemnity for any resulting loss and may be entitled to resolution of the lease.⁷ Although Article 2695 mentions only that the lessor guarantees the lessee against defects in the thing let that prevent its being used, the guarantee has been extended in personal injury cases to defects that merely cause the lessee serious inconvenience.⁸ This accords with the interpretation given by the French to their corresponding article, which has been held to apply whenever serious inconvenience would result to the lessee.⁹ A similar interpretation in Louisiana cases involving repair of leased premises seems appropriate.¹⁰

(La. App. 2d Cir. 1958); *Barrow v. Culver Bros. Garage*, 78 So.2d 69 (La. App. 2d Cir. 1955); *Ellis v. Brenner*, 34 So.2d 633 (La. App. 2d Cir. 1948).

5. POTHIER, *TREATISE ON THE CONTRACT OF LETTING AND HIRING* § 139 (Mulligan transl. 1953): "Similarly with regard to houses, although a lessee is not readily allowed to claim reimbursement for the repairs made by him where he has not notified the lessor though he could have done so; nevertheless, if it is established that the repairs were necessary, the lessor will be ordered to refund to the lessee what they cost, it being inequitable that the lessor should gain at the lessee's expense; it is inequitable that one should be enriched by another's loss." Although Pothier (1699-1772) wrote prior to enactment of the French Civil Code, his writings were influential in its drafting and indicative of what scholars of his time thought the law was and should be.

6. LA. CIVIL CODE art. 2695 (1870): "The lessor guarantees the lessee against all vices and defects of the thing, which may prevent its being used even in case it should appear he knew nothing of the existence of such vices and defects, at the time the lease was made, and even if they have arisen since, provided they do not arise from the fault of the lessee; and if any loss should result to the lessee from the vices and defects, the lessor shall be bound to indemnify him for the same."

7. *Brunies v. Police Jury of Parish of Jefferson*, 237 La. 227, 110 So.2d 732 (1959); *Chryssoverges v. General Cigar Co.*, 163 La. 364, 111 So. 787 (1927); *Lazare Levy & Co. v. Madden*, 116 La. 374, 40 So. 766 (1906); *Caffin v. Redon*, 6 La. Ann. 487 (1851).

8. *Shelton v. Masur*, 157 La. 621, 102 So. 813 (1925) (rotten steps broke); *Breen v. Walters*, 150 La. 578, 91 So. 50 (1922) (rotten banister and post on balcony broke); *Plescia v. LeRoy*, 148 La. 316, 86 So. 824 (1921) (plaster fell from ceiling). See also discussion and cases cited in *Comments*, 20 LA. L. REV. 76 (1960), 7 LA. L. REV. 406 (1947), 4 TUL. L. REV. 611 (1930).

9. 3 LOUISIANA LEGAL ARCHIVES, COMPILED EDITION OF THE CIVIL CODES OF LOUISIANA 1470 (1942). See 2 PLANIOL, *CIVIL LAW TREATISE (AN ENGLISH TRANSLATION BY THE LOUISIANA STATE LAW INSTITUTE)* no. 1686 (1959): "Like the vendor, the lessor is responsible for concealed vices. However, the law declares him bound only for those which prevent the use of the thing (Art. 1721, par. 1). The meaning of this disposition is explained to us by Pothier: the lessor does not respond for those vices which render the use only less convenient (*Louage* No. 110). But it is admitted that this text should be broadly interpreted and to consider as impossible the use of the thing in every case where a serious inconvenience would result for the lessee."

10. See generally *Smith, A Refresher Course in Cause*, 12 LA. L. REV. 2 (1951).

Enforcement of Lessor's Obligation To Make Minor Repairs

There are at least three possible views of the lessor's obligation to make minor repairs: (1) The statement in Article 2693 that the lessor "ought" to make minor repairs¹¹ is to be literally construed, so that the lessor is not "required" to repair any but the more serious defects referred to in Articles 2694 and 2695. (2) The only requirement that a lessor pay for repairs is found in Article 2694, which requires that the repair be "indispensable"—which might include minor repairs indispensable to the lessee's full enjoyment of the premises.¹² (3) The lessor can be compelled to pay for even minor repairs.¹³

Since the law does not favor dissolution of leases,¹⁴ the probability is that the courts will not allow dissolution for failure of the lessor to make repairs of minor defects. That a defect is minor tends to prevent disagreement so serious that the parties will litigate the question of responsibility; this likely accounts for the dearth of Louisiana jurisprudence on the matter. Since the Code does not appear to require it, there is no apparent reason a lessor should be responsible for the repair of every minor defect in leased premises. Therefore, it is submitted that the lessee's relief from minor defects should be limited to that provided by a broad interpretation of Article 2694, so that the lessor would be responsible for repair of only those minor defects which seriously inconvenience the lessee's enjoyment of the premises.

11. Quoted in note 2 *supra*.

12. *E.g.*, repair of small leaks in a roof, broken window panes, unsightly holes in walls and ceilings.

13. POTHIER, TREATISE ON THE CONTRACT OF LETTING AND HIRING § 108 (Mulligan transl. 1953): "The lessee has an action against the lessor arising from the lessor's obligation to repair. This action is a branch of the action *ex conducto*. If, after the lessor has been duly cited in this action, it appears that there is a dispute as to the repairs, the judge will order an inspection, and when the repairs to be done are ascertained, the lessor will be ordered to have them carried out within a period of time stated by the judge. In the same judgment, the judge must decree that, if the lessor fail to comply with the order within the period stated, the lessee will be authorized to have the repairs done and to deduct the cost of the repairs from the rent due by him, and that if the lessee does not owe rent, he shall be reimbursed by the lessor.

"If, after having been placed in *mora*, the lessor delays making the repairs, and thereby causes the lessee to suffer damages, the lessee can obtain a judgment for damages against the lessor by this action.

"By this action the lessee sometimes can demand cancellation of the lease and this in a proper case will be granted him, as where the repairs are extensive and prevent due use of the leased property, and the lessor takes no steps to effect the repairs and the lessee is not in a position to have them done."

14. *Vincent v. Frelich*, 50 La. Ann. 378, 23 So. 373 (1898); *Penn v. Kearny, Blois and Co.*, 21 La. Ann. 21 (1869); *Lirette v. Sharp*, 44 So. 2d 221 (La. App. 1st Cir. 1950).

DEFECTS THAT OCCUR DURING THE CONTINUANCE OF THE LEASE

Since the object of a lease is not the thing leased but the enjoyment of it for the whole period of the contract, a lessor's responsibility extends, with some exceptions, to defects that arise during the lease.¹⁵

Obligation Of Lessee To Repair

Article 2716 makes the lessee responsible for the repair of specifically enumerated defects that occur during the continuance of the lease and for "everything of that kind, according to the custom of the place."¹⁶ Several cases indicate that the list of defects is merely illustrative and that the lessee is responsible for repair of all those minor defects customarily assumed to result from the lessee's negligence or that of his family.¹⁷

15. LA. CIVIL CODE art. 2692 (1870): "The lessor is bound from the very nature of the contract, and without any clause to that effect:

"1. To deliver the thing leased to the lessee.

"2. To maintain the thing in a condition such as to serve for the use for which hired.

"3. To cause the lessee to be in a peaceable possession of the thing during the continuance of the lease."

2 PLANIOL, CIVIL LAW TREATISE (AN ENGLISH TRANSLATION BY THE LOUISIANA STATE LAW INSTITUTE) no. 1675 (1959): "The lease imposes on the lessor various obligations all of which spring from a single principle; the lessor is bound to procure for the lessee the enjoyment of the premises leased for the duration of the lease. . . . [T]his is the principal object of the contract for the lessee, the result which he proposes to obtain for himself in leasing the thing. It is for the lessor what the obligation to transfer the ownership of the thing sold is for the vendor.

"This obligation is a continuing obligation to do, that is, to which lasts for the entire duration of the lease." See also LA. CIVIL CODE arts. 2693, 2695, 2717 (1870).

16. LA. CIVIL CODE art. 2716 (1870).

17. Breen v. Walters, 150 La. 578, 584, 91 So. 50, 52 (1922) ("There is no testimony in the record to show that, according to the custom prevailing in the city of New Orleans, it is the duty of a tenant to repair the balustrade of a gallery. The plaintiffs, therefore, were not bound to make these repairs."); Lowe v. Home Owners' Loan Corp., 1 So.2d 362, 368 (La. App. Orl. Cir. 1941) ("[W]e have interpreted the words 'according to the custom of the place' [in Article 2716] to mean that if, in a particular locality in which the property is situated, it is the custom for the tenant to fix certain other things not expressly set forth in the article, then the article applies to those things as well as those expressly included, provided only that the article which requires repair be similar to those listed in the article and that it be the custom in the particular locality for the tenant to fix such things." See also Hutchins v. Piek, 164 So. 173 (La. App. Orl. Cir. 1935).

2 PLANIOL, CIVIL LAW TREATISE (AN ENGLISH TRANSLATION BY THE LOUISIANA STATE LAW INSTITUTE) no. 1678 (1959): "[T]he immovable should be delivered to the taker 'in good state of repairs of all sorts.' The lessee is later bound to make the small repairs or which become necessary in the course of the lease, but the lessor owes the thing in good condition; he should therefore have repaired, at his expense, and before delivery, all the deteriorations whatever they may be." After the conjunction "or" in the French Civil Code appears "*réparations locatives*," an interpretation of which is not present in the Planiol transla-

The Code seems to indicate that if such defects result from decay or an unforeseen event, or any other cause not actually or under the Code presumed to be the lessee's fault, their repair is the lessor's obligation.¹⁸ The Louisiana Supreme Court, however, has held a lessor not responsible for defects resulting from decay of a window frame.¹⁹

Rights Of Lessor And Lessee Under Article 2700

Article 2700 provides that whatever the inconvenience the lessee may suffer, he must allow to be made any repairs²⁰ that become necessary during the lease and cannot be postponed until its expiration.²¹ By necessary implication, the article can apply only when the lessor voluntarily undertakes to make such repairs. If the repairs continue for longer than a month, the lessee is entitled to a diminution of rent;²² if the repairs are

tion. This term means pertaining to repairs for which the tenant is liable. Therefore, the French article indicates the lessee is liable for the repairs indicated in the article *and* for small repairs.) Pothier explains that the small repairs are those which custom imputes to be caused by the fault of the lessee. POTHIER, TREATISE ON THE CONTRACT OF LETTING AND HIRING §§ 219, 225 (Mulligan transl. 1953).

18. LA. CIVIL CODE arts. 2692, 2693, 2695, 2717 (1870). See also the strong dissent in *Harris v. Tennis*, 149 La. 295, 296, 88 So. 912, 913 (1921).

19. *Harris v. Tennis*, 149 La. 295, 88 So. 912 (1921) (Article 2716 imposed duty to repair on lessee), questioned in *Hutchins v. Pick*, 164 So. 173 (La. App. Or. Cir. 1935).

20. Once a lessor has delivered a thing he generally has no right to make any alteration in it during the continuance of the lease. LA. CIVIL CODE art. 2698 (1870); *Kizer v. New Orleans*, 173 La. Ann. 173 (1865). However, he may make certain repairs under authority of Article 2700. It might be inferred from this article that repairs not urgently needed may not be made without the consent of the lessee. The Code does not so provide, unless the prohibition against making "alterations" is interpreted to apply to repairs also, which seems unlikely.

21. LA. CIVIL CODE art. 2700 (1870): "If, during the continuance of the lease, the thing leased should be in want of repairs, and if those repairs can not be postponed until the expiration of the lease, the tenant must suffer such repairs to be made, whatever be the inconvenience he undergoes thereby, and though he be deprived* either totally or in part of the use of the thing leased to him during the making of the repairs. But in case such repairs should continue for a longer time than one month, the price of the rent shall be lessened in proportion to the time during which the repairs have continued, and to the parts of the tenement for the use of which the lessee has thereby been deprived.

"And the whole of the rent shall be remitted,** if the repairs have been of such nature as to oblige the tenant to leave the house or the room and to take another house, while that which he had leased was repairing."

According to the comments under this article in 3 LOUISIANA LEGAL ARCHIVES, COMPILED EDITIONS OF THE CIVIL CODES OF LOUISIANA 1474 (1942), the following mistakes were made in translating the French text of the Louisiana Civil Code into English at the asterisk (*) references above:

"*Note error in English translation of French text; 'either totally or in part of the use' should be 'of a part.'

"**English translation of French text incomplete; should include 'during the continuance of the repairs.'"

22. LA. CIVIL CODE art. 2700 (1870).

of such nature that the lessee is required to vacate the premises entirely "the whole of the rent shall be remitted."²³

In *Dehan v. Youree*²⁴ the Supreme Court stated that "if the repairs have been of such a nature as to oblige the tenant to leave the house while the repairs are being made, the whole of the rent will be remitted; from which it follows as a corollary that . . . the lease terminates."²⁵ This dictum apparently springs from an error in translation of the second paragraph of Article 2700 from the French text of the Louisiana Civil Code, which resulted in omission from the English text of the following italicized language: "And the whole of the rent shall be remitted *during the continuance of the repairs* if the repairs have been of such nature as to oblige the tenant to leave the house or the room and to take another house, while that which he had leased was repairing."²⁶ This paragraph was designed to provide not cancellation of the lease but remission of rent effective immediately if the repairs require temporary vacation of the premises.²⁷

Lessee's Remedy When Lessor Elects Not To Repair Premises

Article 2700 does not adjust the rights of the parties when the lessor fails to make repairs to the leased thing. However, Article 2717 provides that the lessor must bear the expense of repairs that unforeseen events or decay render necessary;²⁸ and Article 2693 requires that the lessor make repairs that accidentally become necessary, except of defects for which the lessee is responsible. Additionally, the lessor's guarantee under Article 2695 expressly applies to defects which arise after delivery of the thing to the lessee as well as to pre-existing de-

23. *Ibid.*

24. 161 La. 806, 109 So. 498 (1926).

25. *Id.* at 814, 109 So. at 501.

26. See note 21 *supra*.

27. This interpretation of Article 2700 imposes hardship on a lessee who is required to move out for a long period or who cannot obtain temporary quarters, unless dissolution of the lease or indemnification are available under Article 2695. See note 6 *supra*. The French Civil Code specifically provides for optional annulment "if the repairs are such as to render unfit for habitation the space required for lodging for himself and of his family. FRENCH CIVIL CODE art. 1724 (1804) (English translation from 3 LOUISIANA LEGAL ARCHIVES, COMPILED EDITION OF THE CIVIL CODES OF LOUISIANA 1473 (1942)).

the lessee."

28. LA. CIVIL CODE art. 2717 (1870): "The expenses of the repairs, which unforeseen events or decay may render necessary, must be supported by the lessor, though such repairs be of the nature of those which are usually done by the lessee."

fects, and it renders him responsible to the same extent for both.²⁹

Repairs Made Necessary By Unforeseen Events

According to Article 2697 total destruction of the thing leased terminates the lease; if it is partially destroyed the lessee may demand diminution of rent or resolution of the lease, but not damages.³⁰ To determine if there has been a partial destruction the courts have resorted to the "repair"- "reconstruction" dichotomy.³¹ If "reconstruction" is required, there is a partial destruction and Article 2697 applies;³² if there has been only an injury to the leased premises necessitating mere "repairs," Article 2700 applies.³³ But this dichotomy begs the question, for it simply asks whether "repair" or "reconstruction" is necessary instead of whether there has been a "partial destruction"; it answers neither.

The difficulty in distinguishing partial destruction from injury is illustrated by the French commentator Marcadé, who points out that fall of a chimney, shattering of windows, and even snow weighting down a roof may not partially destroy a building, but merely injure it.³⁴ Planiol says of the French article that corresponds to Article 2697: "A total loss, or at

29. See notes 6-15 *supra*, and accompanying text.

30. LA. CIVIL CODE art. 2697 (1870): "If, during the lease, the thing be totally destroyed by an unforeseen [sic] event, or it be taken for a purpose of public utility, the lease is at an end. If it be only destroyed in part, the lessee may either demand a diminution of the price, or a revocation of the lease. In neither case has he any claim of damages."

31. The distinction between "repairs" and "reconstruction" is not restricted to cases interpreting Article 2697, but has been used indiscriminately in application of Articles 2692, 2695, 2697, and 2700. *Brunies v. Police Jury of Parish of Jefferson*, 237 La. 227, 110 So. 2d 732 (1959) (Articles 2692 and 2695); *Bernstein v. Bauman*, 170 La. 378, 127 So. 874 (1930) (Articles 2697 and 2700); *Chrysoverges v. General Cigar Co.*, 163 La. 364, 111 So. 787 (1927) (Articles 2692 and 2695); *Dehan v. Youree*, 161 La. 806, 109 So. 498 (1926) (Articles 2692 and 2695); *Henry Rose Mercantile & Mfg. Co. v. Smith*, 139 La. 217, 71 So. 487 (1916) (Article 2697); *Reynolds v. Egan*, 123 La. 294, 48 So. 940 (1909) (Articles 2692 and 2695); *Levy v. Madden*, 116 La. 374, 40 So. 766 (1906) (Articles 2695 and 2700); *Vincent v. Frelich*, 50 La. Ann. 378, 23 So. 373 (1898) (Article 2697); *J. M. Denman & Co. v. S. M. Lopez & Co.*, 12 La. Ann. 823 (1857) (Articles 2695 and 2697); *DiCarlo v. Campo*, 132 So. 527 (La. App. Or. Cir. 1931) (Articles 2697 and 2700); *Goldberg v. Porterie*, 2 La. App. 645 (2d Cir. 1925) (Articles 2695 and 2697).

32. *Henry Rose Mercantile & Mfg. Co. v. Smith*, 139 La. 217, 71 So. 487 (1916).

33. *Bernstein v. Bauman*, 170 La. 378, 127 So. 874 (1930); *J. M. Denman & Co. v. S. M. Lopez & Co.*, 12 La. Ann. 823 (1857); *DiCarlo v. Campo*, 132 So. 527 (La. App. Or. Cir. 1931); *Goldberg v. Porterie*, 2 La. App. 645 (1925).

34. Quoted in *Vincent v. Frelich*, 50 La. Ann. 378, 380, 23 So. 373, 375 (1898).

least such a loss that what remains can no longer serve the purpose for which the contract was made, is contemplated."³⁵ A similar interpretation seems appropriate under Article 2697, so that property is considered partially destroyed when in its damaged condition it can no longer be used for the purpose for which it was leased. In this situation a lessee would have the option to demand resolution of his lease, or to continue it and demand a diminution of the rent. However, he may not require the lessor to rebuild the premises.³⁶

Article 2697 seems to give the lessee an option to demand revocation of the lease or diminution of the rent if there has been a partial destruction of the leased thing. Some cases indicate the lessee does not have an option, but the facts of the case determine whether or not revocation is allowed.³⁷ In *Henry Rose Mercantile & Mfg. Co. v. Smith*³⁸ the court recognized that Article 2697, unlike the corresponding French article, gives the lessee an unqualified right to dissolution when the building has been partially destroyed. Decisions to the contrary seem to have resulted from an erroneous determination that partial destruction included minor injuries not justifying cancellation.³⁹ If "partial destruction" as used in Article 2697 is interpreted as damage which prevents the use of the leased thing, but not lesser injuries, there is no need to qualify the lessee's right to demand dissolution.

Repairs Made Necessary by Unforeseen Events But Not Covered by Article 2697.—If Article 2697 is not applicable to defects that do not prevent use of the thing, it may be that such defects should be treated the same as those resulting from decay. This would require the lessee to endure inconvenience during repair for thirty days without diminution of rent.⁴⁰ However,

35. 2 *PLANIOL, CIVIL LAW TREATISE (AN ENGLISH TRANSLATION BY THE LOUISIANA STATE LAW INSTITUTE)* no. 1734 (1959).

36. *Jackson v. Doll*, 109 La. 230, 33 So. 207 (1902) (but a syllabus by the court did indicate that a lessor could be required to *repair* a building he lets).

37. *Bernstein v. Bauman*, 170 La. 378, 127 So. 874 (1930); *Meyer v. Henderson*, 49 La. Ann. 1547, 16 So. 729 (1894).

38. 139 La. 217, 71 So. 487 (1916).

39. Comment, 30 *TUL. L. REV.* 474, 477 (1956) discusses the confusion that exists in the interpretation of Article 2697. The redactors of Louisiana's Code left out the qualifying words "according to circumstances" that were in the corresponding French Civil Code article. The Comment concludes that the courts have reinstated the qualification of the lessee's right to demand a dissolution of the lease. No mention is made that "partial destruction" as used in the article does not include minor injuries, rendering the qualification unnecessary to prevent dissolution of the lease for minor defects.

40. *LA. CIVIL CODE* art. 2700 (1870).

a fairer result might be achieved by application of the rationale of the repair articles to place all loss from unforeseen events on the lessor, rather than literal application of Article 2700.⁴¹

Applicability Of Article 2699 To Repair Cases

Article 2699 purports to apply where, without any fault of the lessor, the thing leased ceases to be fit for the purpose for which it was leased, or its use is "much impeded."⁴² However, the article includes an illustrative factual situation in which a neighbor by raising his wall intercepts the light of the leased house — certainly not a repair problem. Since the lessee's remedies for defects in the thing itself are provided in prior articles, it is submitted the redactors added Article 2699 to cover other situations:⁴³ disturbances from outside the property leased that do not injure it, but make its use inconvenient or undesirable.

A possible conflict with this theory of the scope of Article 2699 might be urged on the basis of Article 2703,⁴⁴ which relieves the lessor of any duty to guarantee the lessee against disturbances by third parties not claiming any right to the premises. However, the two articles can be reconciled with ease. Article 2699 applies to action by a third party, as the illustration of a neighbor obstructing light by raising his walls clearly indicates. It allows the lessee to claim annulment of the lease; but it does not allow indemnity against the lessor.⁴⁵ Article 2703 complements this article by providing indemnification against the third party.

A REPAIR PROBLEM NOT COVERED BY CODE ARTICLES — PARTY WALL CASES

A problem to which no particular code article addresses itself involves the rights of the lessee of a building that shares a wall with another building; any repair or alteration of the party wall will likely inconvenience the lessee. The Louisiana Supreme Court has indicated that it considers the rights of

41. The repair articles have been so applied in party wall cases. See text accompanying notes 46-49 *infra*. See also LA. CIVIL CODE art. 2717 (1870), quoted in note 28 *supra*.

42. LA. CIVIL CODE art. 2699 (1870).

43. The Comments in 3 LOUISIANA LEGAL ARCHIVES, COMPILED EDITION OF THE CIVIL CODES OF LOUISIANA 1473 (1942) appended to Article 2699 indicate that there was no corresponding article in the French Civil Code nor in the Louisiana Civil Code of 1808.

44. LA. CIVIL CODE art. 2703 (1870).

45. Reynolds v. Egan, 123 La. 294, 48 So. 940 (1909) (walls cracked by third persons' excavations on adjoining property).

lessor and lessee in such a case analogous to those where repairs are required under Article 2700.⁴⁶ This may be a proper analogy in that the defect, if it can be called one, is not due to any fault of the lessor. Nevertheless, the lessor is required to preserve and maintain the premises in a condition satisfactory for the use for which they were leased.⁴⁷ Tearing down a party wall, although by a third party, violates the lessor's guarantee of peaceable possession of the thing during the continuance of the lease. Although purporting to apply Article 2700 by analogy, the Supreme Court has allowed diminution of rent when the duration of disturbance was less than one month,⁴⁸ and has allowed dissolution of the lease,⁴⁹ neither of which are authorized by Article 2700. Thus, although the party wall cases are in general analogous to Article 2700 cases, they are not governed by that article's strict rules; instead an admixture of the articles on repair is used to give the lessee adequate remedies.

CONCLUSION

From the Code articles considered in this Comment it is apparent that varying degrees of responsibility are placed on the lessor to repair different types of defects, depending on when the defect arose and how and by whom it was caused. If fault may be attributed to the lessor, as when he delivers the leased thing in a defective condition or wrongfully refuses to repair the thing during the lease, the lessee may be entitled to damages and dissolution of the lease. However, if no fault is attributable to the lessor, as when an unforeseen event or a third person causes the defect, or in case decay causes a defect which the lessor offers to repair, the lessee is entitled to no damages, but only remission or diminution of the rent, or dissolution of the lease. If a repair problem is not covered precisely by a particular code article, it is submitted that the courts should apply the general rationale of the articles on repair to reach just results, as they have done in the party wall cases.

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46. *Dorville v. Amat*, 6 La. Ann. 566 (1851). The court in discussing the party wall case under consideration stated: "We consider the relation of landlord and tenant towards each other, in a case of this kind, as analogous to that which they occupy where repairs are required. See C. C. 2670. [LA. CIVIL CODE art. 2700 (1870)]." *Id.* at 567. This analogy was approved and applied in *Stevens v. Tulane Board of Administrators*, 135 La. 1013, 68 So. 109 (1915).

47. LA. CIVIL CODE arts. 2692, 2695 (1870).

48. *Dorville v. Amat*, 6 La. Ann. 566 (1851).

49. *Coleman v. Haight*, 14 La. Ann. 564 (1859).