
***HARD HATS & HARD TRUTHS: HAMMERING OUT THE
DETAILS OF A TENANT’S RIGHT TO QUIET ENJOYMENT***

In Vancouver and the greater surrounding area, it is common to see a residential property undergo renovations from time to time. We have all heard the construction horror stories where excessive noise and limited access to services in the building can drive a tenant nuts.

I have had cases where a landlord decides to undertake a significant renovation project and the noise, dust, and overall mess becomes too much for a tenant. In these cases, the tenant bolts from paying rent and usually applies for a dispute resolution hearing at the Residential Tenancy Branch (the “RTB”) for a rent reduction, sometimes retroactively or going forward.

To avoid such disputes or respond to them, a landlord should build a strong foundation by knowing the following obligations.

A tenant’s right to quiet enjoyment

A tenant’s right to enjoy the premises free from unreasonable disturbance has been a long held covenant in tenancy agreements and common law. It has since been codified in section 28 of the *Residential Tenancy Act* (the “Act”). Essentially, the Act protects a tenant’s entitlement to quiet enjoyment including but not limited to reasonable privacy, freedom from unreasonable disturbance, and the use of common areas.

For further clarification, a landlord can turn to the RTB’s policy guidelines. Policy guideline #6 elaborates on the meaning of a tenant’s right to quiet enjoyment. A landlord is obligated to ensure that the tenant’s entitlement to quiet enjoyment is protected. A breach of this entitlement means substantial interference with the ordinary and lawful enjoyment of the premises. This does not only include situations where a landlord has directly caused the interference but also situations where the landlord was aware of the interference but failed to take reasonable steps to correct them.

A few examples are,

- Entering the rental premises frequently, or without notice or permission;
- Unreasonable and ongoing noise;
- Refusing the tenant access to parts of the rental premises; and
- Preventing the tenant from having guests without cause.

A tenant may be entitled to compensation for loss of use of a portion of the property that constitutes loss of quiet enjoyment even if the landlord has made reasonable efforts to minimize disruption to the tenant in making repairs.

Whether a tenant's quiet enjoyment has been breached, it is necessary to balance the tenant's right with the landlord's responsibility to maintain the premises.

A landlord's obligation to repair and maintain rental property

As with all renovation or repair projects, some disruption is to be expected. Tenants must be aware that when maintenance to a building is required, it is the landlord's obligation to ensure such maintenance is done. Pursuant to section 32 (1) of the Act, *"a landlord must provide and maintain a residential property in a state of decoration and repair that complies with the health, safety and housing standards required by law, and having regard to the age, character and location of the rental unit, make it suitable for occupation by the tenant"*.

The RTB policy guideline states that temporary discomfort or inconvenience does not constitute a basis for a breach of the entitlement to quiet enjoyment. However, frequent and ongoing interference or unreasonable disturbance may form a basis for a claim of a breach. A tenant's case can be made stronger when there are multiple disturbances from a construction project such as dust build-up, lack of elevator use, garbage pile up, excessive noise, and limited or no access to common use areas such as a pool or garden area.

So to hit the nail on the head, it is up to the landlord to provide notice of upcoming renovations to the tenants and to take reasonable steps to protect the tenant's right to quiet enjoyment. Landlords should not get un-hinged if they are planning to renovate their rental property, so long as they communicate with their tenants and remind them that some interference is warranted during construction projects that will be to the benefit of all residents.

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