

## 'QUIET ENJOYMENT' – HOW QUIET, HOW MUCH ENJOYMENT?



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## 'QUIET ENJOYMENT' – HOW QUIET, HOW MUCH ENJOYMENT?

In every lease of property the landlord gives to the tenant a covenant for 'quiet enjoyment' – either expressly or by implication.

How literally can the tenant of a flat or office take that covenant? Is he entitled to expect perfect silence in his elysian retreat, so that he can savour every waking and sleeping moment spent there? Or is the truth more banal – that he is just entitled to occupy the premises without fearing the early morning knock on his door by someone claiming the right to evict him, while all around him are landlords' workmen drilling holes in ceilings and other tenants holding all-night raves?

The expression originally came from the sale of land. A person conveying land was deemed to be giving his buyer a number of implied covenants, one of which was that the buyer would have 'quiet enjoyment' of the land, free from any alien claims or superior rights. So, if Mon Repos in Acacia Avenue was invaded by aggrieved cousins of the seller, claiming that they were owed a share of the sale proceeds and would squat there until they were paid, the buyer would be entitled to damages.

In any lease or tenancy, the landlord by legal implication guarantees not to disturb the tenant's occupation of the property, except where rights are expressly reserved – for example, the right for the landlord to redevelop its adjoining buildings or the right already granted to a neighbour to escape in the case of emergency through part of the premises. That implied guarantee only extends to the actions of the landlord itself, so, if the freehold belongs to a third party who has the right to terminate the landlord's own lease, the tenant has no protection.

Most modern leases include an express covenant for quiet enjoyment, for example:

*"The Tenant [paying the rent hereby reserved and observing and performing the tenant covenants herein contained] may peaceably hold and enjoy the Premises during the Term without any interruption by the Landlords or any person claiming through, under or in trust for them."*

Even if this clause contains the words in square brackets and so appears to be conditional, the landlord can still be liable to a tenant who is in default.

Examples of what the landlord can not do include:

- Causing obstruction to the tenant's access to the premises, e.g. by erecting scaffolding or blocking his car park
- Causing flooding to the premises from adjoining land of the landlords, on account of defective drains
- Building above existing flats, so as to cause disturbance to the tenants in occupation, who were prevented from letting or selling their flats
- Boarding up premises when the tenant defaulted, so that the tenant's liquidator could not show the premises for sale

- Entering premises to carry out work without proper notice

A principle established in cases where breach of a covenant for quiet enjoyment is alleged is that no action can lie against the landlord for conditions which existed before the grant of the relevant lease to the tenant. In two cases heard by the House of Lords in 1999, *London Borough of Southwark v Mills* and *Baxter v London Borough of Camden*, tenants of council houses brought actions against their landlord councils to remedy the situation where, because of paper-thin walls between flats in a block, all everyday activities of their neighbouring tenants were clearly audible, so that the lack of privacy caused tension and distress.

Their lordships were undoubtedly very sympathetic to the tenants and considered arguments in relation to the law of nuisance and the councils' statutory duties, but could not see their way to finding against the councils. When it came to deciding whether there had been a breach of the councils' covenants for quiet enjoyment, Lord Hoffman and Lord Millett reviewed the law on this subject, for example:

*"It has long been understood that the word 'quiet' in such a covenant does not refer to the absence of noise. It means without interference....But its scope was extended to cover any substantial interference with the ordinary and lawful enjoyment of the land, although neither the title to the land nor possession of the land was affected."* [Lord Millett]

*"The flat is not quiet and the tenant is not enjoying it. But the words cannot be read literally"* [Lord Hoffman]

Lord Hoffman then quoted from an earlier case, explaining that the word 'enjoy' used in this connection is a translation of the Latin word '*fruo*' and refers to the exercise and use of the right and having the full benefit of it, rather than to deriving pleasure from it. He went on:

*"First there must be a substantial interference with the tenant's possession. This means his ability to use it in an ordinary way....[Secondly, the covenant] is prospective in nature. It is a covenant that the tenant's lawful possession **will** not be interfered with by the landlord or anyone else... The covenant does not apply to things done before the grant of the tenancy."*

In both these cases the judgment was that, because the claimants 'came to' the nuisance, i.e. the flats were already noisy and they should have known that, the councils had no liability. The tenants had 'accepted' the condition of the flats and could not show that the councils had done anything to aggravate the existing situation.

The matters which therefore have to be proved by a tenant claiming a breach of the covenant for quiet enjoyment are:

1. A new activity, arising after the grant of the lease, on the part of the landlord, which is inconsistent with the ordinary use of the landlord's property; and
2. Serious and persistent disturbance to the tenant's occupation of his property.

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In practice, very few claims against landlords are successful and, where the clearer action lies in nuisance or another area of the law, the Courts are not willing to use the covenant for quiet enjoyment to give redress to tenants.

## **Need to know more?**

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