

Covenant for Quiet Enjoyment and Constructive Eviction

Chapter 24, Texas Property Code

Landlords may evict tenants judicially according to the forcible entry and detainer statutes contained in Chapter 24 of the Texas Property Code. Also, landlords may force tenants to leave nonjudicially, either by breaching the covenant for quiet enjoyment or by committing acts or omissions amounting to constructive eviction.

Unlike judicial eviction, little statutory law addresses these processes, only case law. Also, unlike judicial eviction, the decision to terminate the lease rests primarily with the tenant after the landlord acts inappropriately.

What is the covenant for quiet enjoyment?

The covenant for quiet enjoyment is a covenant (or promise) implied by law. It prohibits the landlord (lessee) from disturbing the tenant's quiet use and enjoyment of the property. The covenant covers not only the landlord's actions but also those of persons deriving title from the landlord, such as other tenants. It does not cover acts of strangers.

How is the covenant breached?

Landlords breach the covenant primarily by preventing the tenant from entering the property except by an appropriate judicial process or in compliance with statutory guidelines. For example, the covenant is not breached when the tenant is excluded for bona fide repairs, construction or emergencies if done in compliance with Section 92.002(b) of the Texas Property Code. Likewise, no breach results from exclusion by removing abandoned property (Section 92.002[b]), changing door locks (Section 92.002[c]) or interrupting utilities (Section 92.002[a]) if done in compliance with the statutory dictates. The landlord may breach the covenant, however, by leasing the property to a third party before the lease term ends.

Because of recent statutory intrusion into this area, little pertinent case law exists.

What remedies does a tenant have when landlords breach the covenant?

Unless the landlord's intrusion is severe, the tenant's remedies are limited to damages, attorneys' fees and a possible injunction to end the interference.

More precisely, if the landlord does not strictly comply with the statutory guidelines for entering the property, removing abandoned property, changing door locks or interrupting utilities (Sections 92.002[a], [b] and [c]), the tenant may recover actual damages, one month's rent and reasonable attorneys' fees (Section 92.002[d][2]). The court may deduct

from the recovery any delinquent rent and other sums for which the tenant is liable to the landlord.

In addition to the statutory remedies previously described, the tenant also may recover damages allowed by common law (better known as case law). These include all damages naturally and proximately resulting from the breach. Lost profits and diminished rental value are mentioned by Texas cases.

Tenants also may recover punitive damages in certain instances (*Clark v. Sumner*, 559 S.W. 2d 914).

Finally, injunctive relief is available when the landlord has violated a statutory prohibition described earlier. Likewise, it is also available when the disturbance causes irreparable injury or when damages will not adequately compensate the tenant (*Obets & Harris v. Speed*, 211 S.W. 316).

When the intrusion is severe enough to constitute constructive eviction, the tenant may vacate the premises and terminate the lease.

What is constructive eviction?

Constructive eviction is, in essence, a material, substantial and intentional interference with the tenant's use and enjoyment of the property. Two elements are required.

First, the landlord's conduct materially and permanently interferes with the tenant's beneficial use of the premises. Second, the tenant leaves the property because of the interference. Basically, the landlord's actions constructively force the tenant to vacate the premises.

What is the difference between the breach of covenant for quiet enjoyment and constructive eviction?

No ironclad distinction is made between the two. However, a breach of the covenant for quiet enjoyment generally applies to situations where the tenant is denied physical access to the property. Texas statutory law indicates several instances when the landlord's physical invasion is permissible. Constructive eviction, on the other hand, applies when the tenant is denied the beneficial use of the property. No statutory law in Texas addresses the issue.

What four things are required by Texas case law for constructive eviction?

Texas case law has narrowed constructive eviction to the following four-part test:

- the landlord intends for the tenant to no longer enjoy the premises (this may be presumed),

- material acts or omissions by the landlord, the landlord's agents or those acting with the landlord's permission substantially interfere with the tenant's use and enjoyment of the property for the purposes for which it was rented,
- the acts permanently deprive the tenant of the use and enjoyment of the premises, and
- the tenant abandons the property within a reasonable time after the acts or omissions occur (*Stillman v. Youmans*, 266 S.W. 2d 913).

The tenant cannot continue to occupy the premises and allege constructive eviction. The tenant must be forced to leave involuntarily.

What are some examples of constructive eviction from Texas case law?

An early 1929 Texas case held that the landlord's failure to abate a nuisance constructively evicted the tenant (*Maple Terrace Apt. Co. v. Simpson*, 22 S.W. 2d 698). Other examples include the unauthorized removal of fixtures; loud, abusive language and

threats to close the tenant's business made by the landlord in the presence of the tenant's customers, the removal of the tenant's advertising sign from the front of the building; and excessive noises and vibrations caused by the landlord's elevator in the building.

What remedies does a tenant have when constructively evicted?

Aside from the remedy of abandoning the premises and terminating the lease, the tenant may recover damages caused by the landlord's wrongful eviction. For instance, the tenant may recover the difference between the agreed rent for the duration of the lease and comparable rent paid elsewhere. Likewise, lost profits, the reasonable cost of moving and the depreciation in value of the property caused by the move are recoverable (*Reavis v. Taylor*, 162 S.W. 2d 1030).

In addition, punitive damages are recoverable when the landlord acted knowingly or maliciously (*Van Sickle v. Clark*, 510 S.W. 2d 664).