

## WHAT DOES QUIET ENJOYMENT MEAN ANYWAY?

by Alex Kolandjian and Aida Nabavi with the assistance of Luciana Andrade and Josh Rudolph

### 1. WHAT IS QUIET ENJOYMENT?

The right of a tenant to peacefully enjoy its premises without interference from a landlord.

**Test:** A landlord's covenant to provide quiet enjoyment, whether express or implied in a lease, means that **a landlord must not substantially interfere** with its tenant's enjoyment of the premises. To be actionable, a landlord's interference must be **grave** and **permanent** such that it renders the premises substantially less fit for the purposes for which it was leased.<sup>1</sup>

### 2. HOW DOES QUIET ENJOYMENT ARISE?

- (a) **Implied** – Common law, *Conveyancing and Law of Property Act*
- (b) **Express** - Contract

**Example:** *“Upon the observance and performance of all the covenants, terms and conditions on Tenant's part to be observed and performed, and subject to the other provisions of this Lease, Tenant shall have the right of quiet enjoyment and use of the Premises for the Term without hindrance or interruption by Landlord or any other person claiming by or through Landlord.”*

### 3. WHAT CONSTITUTES A BREACH OF QUIET ENJOYMENT?

Courts will consider multiple factors such as: (i) the language used in the lease, (ii) the degree of interference on the tenant's use of the leased premises, (iii) the adverse consequences to the tenant's business, and (iv) whether the interference with the tenant's use is permanent or intermittent. Below are some situations in which courts decided whether there has been a breach of the tenant's quiet enjoyment.

#### Scenarios for Discussion

- (a) **The Case of Major Renovations.**<sup>2</sup> The tenant ran a restaurant from the leased premises. The landlord wished to renovate and redevelop the centre, which would result in the erection of a temporary hoarding wall along the length of the premises and later a glass façade that would intrude several feet into the premises, substantially reducing the



[Alex Kolandjian](#)  
Partner

t: 416.849.4103

[akolandjian@foglers.com](mailto:akolandjian@foglers.com)



[Aida Nabavi](#)  
Associate

t: 416.864.1371

[anabavi@foglers.com](mailto:anabavi@foglers.com)

[Luciana Andrade](#)  
Student-at-law

416.864.7625

[landrade@foglers.com](mailto:landrade@foglers.com)

[Josh Rudolph](#)  
Student-at-law

416.365.3728

[jrudolph@foglers.com](mailto:jrudolph@foglers.com)

<sup>1</sup> *London Prestige Ltd v Wellington Harlech Centre Inc.*, 2019 ONSC 2364 at para 31.

<sup>2</sup> *Bloor Street Diner v The Manufacturers Life*, 2016 ONSC 440.

size of the most desirable seating in the premises and obscuring the view from the street. The lease expressly prohibited the obstruction of the premises' view. The landlord argued that the renovation would enhance the premises and increase revenues.

- (b) **Adverse Effects on Common Areas.**<sup>3</sup> The tenant signed a 5 year commercial lease for medical office space in a plaza, agreeing to take the space "as is". The tenant vacated the space after 15 months and argued a breach of his quiet enjoyment for several reasons, including an insect infestation, mold, roof leaks, problems with the HVAC system, safety issues and constant elevator breakdowns resulting in limited use of the common areas. The tenant's patrons were often elderly patients and individuals with limited mobility. The plaza and its facilities were old and the landlord promptly addressed elevator breakdowns and maintained them regularly. The lease permitted the landlord to take the elevator out of service for maintenance and repairs and stated that any diminution of the common areas would not result in liability for the landlord, "nor would the Tenant be entitled to any compensation or abatement of rent, nor would such alteration or diminution of such Common Areas and Facilities be deemed constructive or actual eviction, or a breach of any covenant for quiet enjoyment." The tenant only complained in writing to the landlord once regarding the insects.
- (c) **Quiet Enjoyment and the Pandemic.**<sup>4</sup> Throughout the Covid-19 pandemic, a large department store was forced to close on numerous occasions to comply with government mandates. The tenant argued that the landlord's failure to operate a "first-class mall" during the pandemic lockdowns amounted to a breach of quiet enjoyment. The tenant alleged that the following factors led to the landlord's breach: (a) since the first lockdown, the mall operated only 40 percent of the time; (b) the landlord had refused to make improvements to mitigate health risks, such as upgrading the HVAC system, (c) the mall had changed in character due to the limited access by the public. The tenant stopped paying rent and commenced an action. The landlord attempted to terminate the lease and the tenant applied for relief from forfeiture.
- (d) **Control of the Development vs. Quiet Enjoyment.**<sup>5</sup> The tenant purchased a hardware business that operated in the landlord's mall. As part of the approval of the assignment of the lease to the tenant, the landlord amended the lease to allow for renovations. It was a "take it or leave it" proposition. The tenant was unaware of the extent of the landlord's renovation plans. The tenant claimed a breach of quiet enjoyment as a result of the renovations undertaken by the landlord, which included the addition of a second storey to the mall.

#### 4. REMEDIES

Damages, Termination, Injunctive Relief

<sup>3</sup> 2072467 Ontario Inc v Dr Matthews PC, 2020 ONSC 2739.

<sup>4</sup> Hudson's Bay Company ULC v Oxford Properties et al, 2021 ONSC 4515 .

<sup>5</sup> Bryandrew Holdings Ltd v Sifton Properties Ltd (1994), 45 ACWS (3d) 1293 (Ont Ct J).