

Property II (Fall Semester 2021)
Prof. Freyeremuth

Landlord/Tenant Module A
The Nature of the Lease and the Covenant of Quiet Enjoyment

Reading Assignment: Pages 393-405
Dates: Monday, August 23 and Wednesday, August 25
Students on Call: Andreasen, Bass, Bennett, Bethel

Supplemental Materials: CALI Lessons PPL23, PPL41
ProfDale Property Videos 21, 22, 23

Learning Objectives for Module A:

1. Understand and apply the tenant's rights under the covenant of quiet enjoyment.
2. Understand and explain the distinction between a lease covenant being dependent and independent.
3. Understand and explain the distinction between express and implied covenants in a lease.
4. Understand and explain why a court will imply a covenant into a lease.
5. Understand and explain the factors relevant to when and why the law provides (or refuses to provide) the landlord and the tenant with the freedom to contract for a particular rule to govern their relationship.
6. Understand and explain the tenant's remedies against the landlord when the tenant is wrongly evicted.
7. Understand and explain the distinction between someone holding a leasehold estate, an easement, and a license.

Questions for Class Discussion:

1. L and T enter into a one-year lease for an apartment, with T agreeing to pay \$1,000 per month in rent. Upon moving in, T finds that while the refrigerator works, it is very loud, and T finds the noise highly distracting to T's studies. Has L breached the covenant of quiet enjoyment?
2. L and T enter into a one-year lease for a home, with T agreeing to pay \$2,000 per month in rent. During the year in which T occupies the home, the City in which the home is located imposes \$1,500 in real estate taxes on the home. Under the City's ordinance, real estate tax is imposed on the "owner." The lease between L and T does not address liability for real estate taxes.

- a. Does T have an obligation to the City to pay the taxes?
 - b. Does T have an obligation to L to pay the taxes?
3. L and T enter into a one-year lease for an apartment. After T moves in, L changes his mind, moves all of T's property into storage, and enters into a new lease with T2 (who also happens to be L's niece). T asks your advice.
 - a. Can T obtain an injunction to be placed back into possession?
 - b. Should T seek an injunction, or should T instead simply find another apartment and sue L for damages? What damages could T recover?
 - c. Suppose that the lease explicitly stated "T agrees that in the event of a default by L, T's sole remedy is to sue for damages; T hereby agrees that T will not seek or obtain relief by way of injunction." Would this change your prior answers? Why or why not?
4. L and T enter into a three-year lease for a building in which T will operate a cafe. T agrees to pay \$3,000/month in rent. The cafe building sits on Blueacre, a parcel of land that includes a parking lot containing 25 spaces. The building is located next door to a new high-rise student apartment complex owned by D. One week into the lease, T discovers that L has entered into an agreement with D under which L transferred to D the right for students living in D's building to park their cars in the parking lot located on Blueacre. As a result, the parking lot is essentially fully occupied with cars 24 hours a day; T's cafe business is almost nonexistent because potential customers have no place to park. T seeks your advice.
 - a. Does T have a basis to claim actual eviction?
 - b. Does T have a basis to claim constructive eviction?
 - c. What additional information would you want to ascertain before advising T regarding T's potential remedies?
5. Suppose that in the situation in Problem 4, L does not have any agreement with D regarding student parking. Nevertheless, students illegally park in the lot on Blueacre all the time, to the point that it is harming T's cafe business because potential customers have no place to park. Does T have a basis to claim actual or constructive eviction? Why or why not?
6. L and T enter into a four-year lease for a home in which T plans to live while T is in medical school. The agreed rent is \$1,000/month. Six months into the lease, L dies. For the next six months, T continues to occupy the home, sending her monthly rent check to the lawyer handling L's estate. After six months, L's son, X, sends a letter to T demanding that T vacate the home immediately. As it turns out, L had only a life estate in the home; the home had belonged to L's mother, who died back in 2015. At that time, under L's mother's will, the home was left to L for L's life, then to X in fee simple absolute. T seeks your advice.

- a. Has T been evicted?
- b. Does T have any basis on which to claim that the lease remains in effect and entitles T to another three years in possession? Does it matter that T was completely unaware of the state of title to the home and completely unaware of X's claim?
- c. Does T have any basis to recover rent that T paid during the 6 months following L's death?
- d. From whom, and in what amount, can T recover for breach of the lease contract?

7. You have looked forward to your vacation for months. After a long trip, you arrive at the beachfront resort at which you have reserved a room. After checking in, you go out for dinner and a long walk on the beach. When you return, your room key does not open the door. When you check the desk, they say "We're sorry for the confusion, but we were overbooked and you should not have been checked in. We have all of your belongings secured and will be happy to load them into a taxi for you."

- a. Can you obtain an injunction from the judge ordering the resort to place you back into possession of the room they originally checked you into? Why or why not?
- b. Do you have any other remedy?

8. Smith, a new lawyer, signs a 2-year lease for 800 square feet of office space in a downtown office building. The lease provides "During the term of the lease, Landlord reserves the right to move Tenant into premises of the same or larger size elsewhere in the building. Landlord shall give the Tenant at least 30 days notice prior to relocating the Tenant."

When Smith is a few days late paying his rent, Landlord padlocks the office and moves Smith's property into storage. Does Smith have a basis for an action that he has been wrongfully evicted without judicial process? Does *Cook v. University Plaza* case provide applicable precedent for an argument that judicial process is not needed because Smith is not a "tenant"? Why or why not?