
Quiet Enjoyment & Constructive Eviction

Plaintiff’s Arguments

• Caveat Lessee
• Second 5-year lease

Reste Realty Corp. v. Cooper Cont’d

Quiet Enjoyment & Constructive Eviction

[A]ny act or omission of the landlord or anyone who acts under authority or legal right from the landlord, or of someone having superior title to that of the landlord, which renders the premises substantially unsuitable for the purpose for which they were leased, or which seriously interferes with the beneficial enjoyment of the premises, is a breach of the covenant of quiet enjoyment and constitutes constructive eviction of the tenant. p. 425
Reste Realty Corp. v. Cooper Cont’d

Quiet Enjoyment & Constructive Eviction

- Duties of Landlord and Tenant
  - Dependent
  - Independent
- Further Requirements for breach

Texas Elements of Constructive Eviction

1. The landlord must *intend* that the tenant no longer enjoy the premises, which intention may be inferred from the circumstances,

2. the landlord must commit a *material* act that *substantially interferes with the tenant’s intended use and enjoyment* of the premises,

3. the material act must *permanently* deprive the tenant of *use and enjoyment* of the premises, and

4. the tenant must abandon the premises within a *reasonable time* after the material act is committed.
**Hilder v. St. Peter, 478 A. 2d 202 (VT 1984), Casebook, p. 431.**

Does T have to abandon the premises to recover damages for a breach of the implied warranty of habitability?

- History = Conveyance
- Changing Conditions = Contract
- Applicability of Warranty
- Other Components of the Warranty
- Remedies: Rescission, Reformation, Damages

**Hilder v. St. Peter Cont’d**

- Remedies: Rescission, Reformation, Damages
- Damages
  - Difference in FMV as warranted and FMV with defects
  - Consequential
  - All of the rent
  - Repair and Deduct
  - Punitive
Implied Warranties and Remedies in Texas

- The implied warranty of **habitability** applies to **residential** leases.
- The warranty of **fitness or suitability** of purpose applies to **commercial** leases.
- **Repair-and-deduct.**  

Implied Warranties and Remedies in Texas Cont’d

- **Rent abatement.**  T’s judicial remedies include an order reducing the T’s rent in proportion to the reduced rental value resulting from the condition. The damages run from the time T notifies L of the condition to the time it is repaired or remedied.  
Chicago Board of Realtors, Inc. v. City of Chicago, 819 F.2d 732 (7th Cir. 1987), Casebook p. 444.

Affordable Housing

• Landlord responsibilities
• Tenant rights
• Stated purpose of the ordinance
• Posner/Easterbrook’s view of the purpose
• Effect of the ordinance

Retaliatory Eviction in Texas

• Retaliation is prohibited and code basically presumes that if within six months of a tenant exercising her rights, the landlord takes certain adverse action such as eviction or raising the rent, for example, that the landlord is retaliating. Tex. Prop. Code Ann. § 92.331.

• A landlord may rebut this presumption, however, by demonstrating that it had a legitimate, non-retaliatory reason for taking the adverse action against the tenant. Tex. Prop. Code Ann. § 92.332.