

Message From Chris....

The “**Covenant of Quiet Enjoyment**,” *we’ve all seen it, but have you ever had to really use it?* I’ve seen more than a few people confused by the legal significance of this phrase and thought everyone would benefit from a quick talk on this subject. Take a look below... (and don’t forget to click on my Facebook or YouTube links below to also see my short video on this material).

Covenant of Quiet Enjoyment

Some anonymous person once humorously noted “...I have my mind made up so don’t try to confuse me with the facts.” We’ve all seen the covenant of quiet enjoyment expressed in the leases we negotiate. It ordinarily reads something to the effect of “... Tenant may peaceably and quietly have, hold and enjoy the premises for the term aforesaid...” ***However, what is this covenant, why is it there & what implications follow from the parties expressly addressing it in their lease?***

**What is it?** The covenant of quiet enjoyment is the legal mechanism which prevents a landlord (or anyone for whose conduct the landlord is responsible) from “interfering” with a tenant’s use and enjoyment of the leased premises during the lease term. Interestingly enough, if this covenant is not expressly spelled out in the lease (or if the lease was made orally), the law actually ***implies*** (i.e., inserts) this covenant into the lease. When the law implies this covenant into the lease, the upshot is that upon such “interference” by landlord, the tenant doesn’t have to pay rent and can even elect to terminate the lease.

**If the law *implies* it into every lease, why do I always find it **written** into every lease?** Even though the law implies this covenant into every lease, the parties to a lease can still modify and condition the enforcement of this covenant by tenant. Accordingly, when the language relating to the covenant of quiet enjoyment appears in the lease, ***it’s actually restricting and conditioning tenant’s rights - not enlarging them....*** That’s why your lease reads that “...upon tenant’s payment of rent and observance of all the terms and provisions of this lease as contained herein, tenant may peaceably and quietly have, hold and enjoy the premises for the lease term contained herein...” Remember, in the beginning, landlords’ counsel drafted the leases to serve the best interests of landlords, not tenants. Since that time, due to all the leases that have been executed over the years, it has become a custom that Tenant will have to pay rent and perform all of their lease obligations **prior** to enforcing the covenant of quiet enjoyment against Landlord (which is reverse of how the law would otherwise imply).

*What implications follow from the parties expressly addressing it in their lease?*

Basically, once the covenant of quiet enjoyment is expressed (i.e., conditioned) in the lease, it's incumbent upon the tenant (and even the landlord) to carefully draft the lease provisions so that their interests are protected. Why? Upon seeing that the parties have chosen to negotiate their own particular terms as relating to the covenant of quiet enjoyment, the courts will not, absent certain circumstances, modify such negotiated terms. So, negotiate carefully and write well....

What My Clients Are Saying

“Chris Griswold has always been proactive and professional. He takes the time to work with us and tailors his approach to our situational needs. My favorite thing about Chris is that he will let me know if there is an easier, less-expensive approach. We look forward to working with him well into the future.”

**Carl S. Milam / President / Western Concepts Restaurant Group / Oklahoma City, Oklahoma**

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