

6 Entitlement to Quiet Enjoyment

August 2016

This Policy Guideline is intended help the parties to an application understand issues that are likely to be relevant. It may also help parties know what information or evidence is likely to assist them in supporting their position. This Guideline may be revised and new Guidelines issued from time to time.

This Policy Guideline deals with a tenant's entitlement to quiet enjoyment of the property that is the subject of a tenancy agreement.

A. LEGISLATIVE FRAMEWORK

Under section 28 of the *Residential Tenancy Act* (RTA) and section 22 of the *Manufactured Home Park Tenancy Act* (MHPTA) a tenant is entitled to quiet enjoyment, including, but not limited to the rights to:

- reasonable privacy;
- freedom from unreasonable disturbance;
- exclusive possession, subject to the landlord's right of entry under the Legislation; and
- use of common areas for reasonable and lawful purposes, free from significant interference.

B. BASIS FOR A FINDING OF BREACH OF QUIET ENJOYMENT

A landlord is obligated to ensure that the tenant's entitlement to quiet enjoyment is protected. A breach of the entitlement to quiet enjoyment means substantial interference with the ordinary and lawful enjoyment of the premises. This includes situations in which the landlord has directly caused the interference, and situations in which the landlord was aware of an interference or unreasonable disturbance, but failed to take reasonable steps to correct these.

Temporary discomfort or inconvenience does not constitute a basis for a breach of the entitlement to quiet enjoyment. Frequent and ongoing interference or unreasonable disturbances may form a basis for a claim of a breach of the entitlement to quiet enjoyment.

In determining whether a breach of quiet enjoyment has occurred, it is necessary to balance the tenant's right to quiet enjoyment with the landlord's right and responsibility to maintain the premises.

A landlord can be held responsible for the actions of other tenants *if* it can be established that the landlord was aware of a problem and failed to take reasonable steps to correct it.

Compensation for Damage or Loss

A breach of the entitlement to quiet enjoyment may form the basis for a claim for compensation for damage or loss under section 67 of the RTA and section 60 of the MHPTA (see Policy Guideline 16). In determining the amount by which the value of the tenancy has been reduced, the arbitrator will take into consideration the seriousness of the situation or the degree to which

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the tenant has been unable to use or has been deprived of the right to quiet enjoyment of the premises, and the length of time over which the situation has existed.

A tenant may be entitled to compensation for loss of use of a portion of the property that constitutes loss of quiet enjoyment even if the landlord has made reasonable efforts to minimize disruption to the tenant in making repairs or completing renovations.

Ending Tenancy for Breach of a Material Term

A breach of the entitlement to quiet enjoyment has been found by the courts to be a breach of a material term of a tenancy agreement. Under section 45 of the RTA and section 38 of the MHPTA a tenant may, with written notice, end a tenancy due to the breach of a material term. The standard of proof is high, as it is necessary to establish that there has been a significant interference with the use of the premises. Compensation for damage or loss may be more appropriate, depending on the circumstances.

Ending a Tenancy for Cause

Under section 47 of the RTA and section 40 of the MHPTA, a landlord may end a tenancy if a tenant or a tenant's guest has engaged in illegal activity that has adversely affected or is likely to adversely affect the quiet enjoyment of another occupant.

Non-payment of Rent

A tenant must not deduct any amount of rent as compensation for a breach of the entitlement to quiet enjoyment, unless authorized to do so by a director's order.

C. CHANGES TO POLICY GUIDELINE

Section	Change	Notes	Effective Date
All	new	Added section numbers for clarity	August 31, 2016
A	am	Revised for clarity and accuracy	August 31, 2016
B	am	Revised for clarity	August 31, 2016
B	del	Removed content on licenses to occupy	August 31, 2016
B	am	Revised Claim for Damages to Compensation for Damage or Loss; removed content regarding claims in tort	August 31, 2016
B	am	Removed to reflect court direction from 2015 BCSC 637.	August 31, 2016
B	del	Removed content on harassment	August 31, 2016
B	new	Added content on Ending a Tenancy for Cause	August 31, 2016

Change notations

am = text amended or changed

del = text deleted

new = new section added