

I. Introduction

One of the most annoying things that can happen to you in the landlord tenant relationship is to have noisy people around you. Loud music or parties at inappropriate hours can destroy the sense of privacy and solitude that we all want from time to time in our personal space. But you must take into account the fact that you aren't living out in the country by yourself. Whenever large numbers of people live close together, at times sharing walls and floors and ceilings, a court will take this into account in determining how much noise is too much noise.

A. Subjective and Objective Standards

The court is always going to look at noise issues via an objective, rather than a subjective, standard. The difference between the two is easy to understand. The Objective Standard implies an imaginary, average person. This is a person of ordinary sensibilities. This person is known in the law as the "reasonable man." The Subjective Standard is that of one specific individual who may have very particular sensibilities.

1. Subjective Standard

In the 1970s, there was a show starring Lindsay Wagner and it was called "The Bionic Woman." In that program, Ms. Wagner played the part of a character who had suffered terrible injuries in a parachuting accident. She was rebuilt in a secret government hospital with modifications providing for enhanced performance. Among these enhancements was a mechanical ear allowing her to hear conversations at great distances.

For our purposes, we will place Ms. Wagner's character in an Ohio apartment complex. She comes home from her job every day and can't relax because she can hear every conversation in every apartment in the complex. Were she to sue, the judge would undoubtedly sympathize with her condition, but since it is an abnormal individual condition, it would be subjective, and thus the judge would not grant her relief.

2. Objective Standard

Now let's take another example. If the famous deaf actress, Marlee Matlin, were to move into an Ohio Apartment complex and members of a 1980s throwback heavy metal rock group moved in upstairs and started to have jam sessions throughout from 10:00 p.m. until 5:30 in the morning, Ms. Matlin could complain and would likely prevail upon her noise complaint because it does not matter that she is deaf and can't hear the noise. That would be the application of the subjective standard. Rather, the court, even in Ms. Matlin's case, would apply the Objective Standard, and ask, how much should a reasonable, average person have to put up with from the rock group?

II. Complaints Against the Landlord

A. Sources of Law

1. Common Law

Most leases will contain a clause stating that the tenant has the right to quietly enjoy the rented premises. In fact, in addition to the rights and obligations a rental agreement assigns to tenants and landlords, a Covenant of Quiet Enjoyment is implied into every lease contract. Dworkin v. Paley (1994), 93 Ohio App.3d 383 at 386. This means that even if this clause isn't in your rental agreement, the courts of Ohio will pretend that it is.

Originally, the Covenant of Quiet Enjoyment related only to issues of title to the property. It was a promise from the landlord to the tenant that the lease hold interest the landlord conferred to the tenant would not be disturbed by some other person with better title to the property than the landlord. The formal legal name phraseology for this was that the landlord was guaranteeing the tenant that he would not be disturbed by someone with paramount title. This meant that if you dealt with a sneaky landlord who rented you somebody else's property without the true owner's knowledge, then upon discovery of this fact, you would not have to pay rent to the sneaky landlord because he had breached the Covenant of Quiet Enjoyment. But recently, courts have extended the meaning of the clause to allow the tenants quiet and peaceful enjoyment of the premises where noise is concerned as well.

Thus nowadays, the Covenant of Quiet Enjoyment protects a tenant's right to the peaceful and undisturbed enjoyment and possession of her leasehold. Glyco v. Schultz (1972), 35 Ohio Misc. 25 at 33. The covenant is breached when the landlord obstructs, interferes with, or takes away from the tenant in a substantial degree the beneficial use of the leasehold. Howard v. Simon (1984), 18 Ohio App. 3d 14 at 16. Degree of impairment is a question of fact. Dworkin, at 386. In the Dworkin case, the tenant was complaining that the landlord's smoking was bothering her so much that she could not use her apartment into which the smoke was drifting. This has nothing to do with paramount title being vested in another. It can be argued that noise for which the landlord is responsible is an obstruction or interference, or a taking of a substantial degree of the beneficial use of the leasehold.

2. Ohio Landlord Tenant Act of 1974

a. Ohio Revised Code Section 5321.04

This section describes the landlord's duties to the tenant. It states that the landlord must fulfill all of the obligations in the lease agreement with the tenant, as well as doing what is necessary to put and keep the premises in a habitable condition. Your lease may not specifically say that you have a right to quiet enjoyment of the premises, but as stated above, the Common Law has long since implied this clause into every

residential rental agreement in the State of Ohio. Thus a violation of this clause is a violation of Ohio Revised Code Section 5321.04.

b. Ohio Revised Code Section 5321.07

A violation of the landlord's duties to the tenant under Ohio Revised Code Section 5321.04 only gets you half way to your goal as a tenant. You must then turn to Ohio Revised Code Section 5321.07. That statute says that if the tenant is current in his rent, and has delivered written notice to the landlord of the nature of the problem (in this case noise), then the landlord will have 30 days or a reasonable time (whichever is sooner) to fix the problem.

If the landlord has not fixed the problem within the time statutorily prescribed in R.C. 5321.07, then the tenant has one of three options. The tenant can start escrowing her rent with the clerk of courts until the problem is abated, the tenant can file a Motion to Compel with the courts requesting that the problem be fixed, or the tenant can declare that the lease agreement is terminated and move out.

One should be careful about declaring the lease agreement terminated because of the noise problem. Courts have tended to require some pretty bad conditions before allowing a tenant to terminate the lease agreement. It is far better to start off with the escrow solution and see if that will get the landlord to take the necessary steps to end the problem.

In fact, to constitute a breach of the covenant, "the interference with the tenant's quiet enjoyment must be so substantial as to be tantamount to an eviction, actual or constructive." Endress v. Equitable Life Assurance, 1987 Ohio App. LEXIS 9433 (Oct. 29, 1987), Cuyahoga App. No. 52958, unreported. A constructive eviction occurs when the acts of interference by the landlord compel the tenant to leave, and he is thus in effect dispossessed, though not forcibly deprived of possession. Sciascia v. Riverpark Apts. (1981), 3 Ohio App. 3d 164 at 166, citing Liberal Savings & Loan Co. v. Frankel Realty Co. (1940), 137 Ohio St. 489 at 499.

In this case, the problem is the noise. But then the issue becomes, is the noise the fault of the landlord?

B. When is the Landlord Responsible for Noise?

1. From Where Does the Noise Arise?

a. Unrelated Third Parties

It is generally the law in the State of Ohio that a landlord does not have any liability arising out of the acts of third parties over whom he has no control. A tenant cannot assert that her landlord has breached the covenant of quiet enjoyment because of wrongful acts taken by strangers. Ayers v. Simmons, 1993 Ohio App. LEXIS 5067

(September 30, 1993) Highland Co. App. No. 93 CA 827 unreported citing 65 Ohio Jurisprudence 3d (1986) 263, Landlord & Tenant, Section 212; 49 American Jurisprudence 2d (1970) 356, Landlord & Tenant, Section 341; Annotation (1955), 41 A.L.R.2d 1414, 1441, Section 22. Thus if your neighbor who rents from another landlord is making a racket, you will not be able to hold this against your landlord and exercise your options listed above under Ohio Revised Code Sections 5321.04 and 5321.07.

b. Landlord or His Employees/Agents

If the landlord or his employees/agents cause the noise, then he will be responsible for the noise under the doctrine of Respondeat Superior. This is also called the Master/Servant rule. It goes like this: When the boss tells the employee or agent to do something that end up being legally actionable, the boss can't get out of responsibility for that act simply by saying "Hey, back off, it was my employee, not me." If the wronged party can show that the actions of the employee were taken in furtherance of the landlord's business, then the landlord will have responsibility for the wrong.

An example of this might be that of a landlord's employee who handles all of the maintenance around the apartment complex who has taken to cutting the lawn in the middle of the night with an old and very loud lawnmower. This disturbs the tenant to no end and the tenant complains. The landlord does nothing about it. In this case, the landlord will be held responsible for the acts of his employee/agent (since cutting the yard is in furtherance of his business) just as if the landlord had done the act himself.

c. Other Tenants of the Landlord

Things get a bit trickier if the person making the noise is another tenant in the building. In this case, the noisy tenant certainly doesn't fit under the employee/employer relationship, but neither is that loud tenant a perfect stranger either. The landlord will argue that he has no control over the amount of noise that the noisy neighbor makes. But the tenant will argue that the landlord put those noisy neighbors in a position to bother her with all of their racket, and that the landlord profits from this relationship by collecting rent from both.

For instance, if a landlord has a retirement community of older persons, and then allows a biker gang to move in to one of the units, few judges would be sympathetic to the argument that the landlord is not responsible for the noise the biker gang makes which disturbs the other tenants.

So what does the law say about it? In the case of Liggins v. Westminster Arms Inc., 1998 Ohio App. LEXIS 6247 (December 22, 1998) Franklin Co. App. Nos. 98AP-377 and 98AP-378, unreported, the tenant complained about marijuana smoke and loud noises coming from the apartment below her. The landlord conducted an investigation by sending employees over to smell the apartment, and by telling the tenant to fill out noise reports whenever the tenants below were being too loud.