Landlord Failure to Resolve Shared Meter Problem Breaches Tenant's Right to Quiet Enjoyment

by Roger Colton and Janet Labella

I. Introduction

One common quandary facing low-income tenants who are utility consumers is whether the right to seek remedies for a grievance concerning utility service lies against the landlord renting a particular property, the utility company that provides natural gas or electric service to the rental property, or neither. The situation is often complicated by a landlord's attitude that "it is not *my* bill" and a utility company's position that the tenant's complaint is "against your landlord and has nothing to do with us or whether we should get paid." In the meantime, the tenant is left facing a potentially unpayable bill, the potential disconnection of heating or electricity that is essential to any reasonable quality of life, and no apparent avenue through which to seek redress.

A landlord breaches the covenant of quiet enjoyment by burdening one tenant with liability for the other tenants' utility usage when the tenant has no prior knowledge of that burden and did not consent to it.

The Maryland courts have recently expanded the rights of a tenant to challenge a landlord's actions regarding the provision of utility service for which the landlord did not directly contract. In *Legg v. Castruccio*,[1] a Maryland appellate court held that, where tenants share a common meter and one tenant fails to pay his or her share of the utility bill, the landlord may be held financially responsible for damages in the amount of the unpaid bill.[2] Moreover, according to the court, a landlord breaches the covenant of quiet enjoyment by burdening one tenant with liability for the other tenants' utility usage when the tenant has no prior knowledge of that burden and did not consent to it.[3]

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II. Background

Defendant landlords had rented a two-story building. The building had two apartments: an upstairs unit and a downstairs unit. Plaintiff tenant rented the ground-floor apartment on an oral, month-by-month basis. At the time plaintiff's

[1] Legg v. Castruccio, 100 Md. App. 748 (1994) (Clearinghouse No. 50,758).
[2] *Id.* at 786.
[3] *Id.* at 783.

tenancy began, the upstairs unit was vacant. The rental agreement provided that tenant would pay rent and maintain gas and electric service in her own name. A single meter was placed into service for the entire house.

Sometime after the start of plaintiff's tenancy, the landlords also rented the upstairs unit. Plaintiff was not consulted about the tenancy but was informed by the landlords that the upstairs tenants would be responsible for paying half the utility bills. Two years after moving in, however, the upstairs tenants stopped paying their share. Over the course of an 18-month period, the total bill for the two units combined was roughly $4,300, with the upstairs tenants' share being one-half, or roughly $2,150. However, the tenants in the upstairs unit paid only $140 during this time period.

At some point after the upstairs tenants stopped paying their bills, plaintiff tenant complained to defendant landlords and asked that separate meters be installed. The court found that it could be inferred from plaintiff's request for separate meters that the landlords knew that the upstairs tenants were not paying their share of the utility bills. Although the landlords said that they would "take care of" the situation, in fact, they did nothing. As a result of this inaction, and because of plaintiff's inability to pay the entire bill for both apartment units, plaintiff was faced with the threat of disconnection of utility service.

Plaintiff tenant argued that landlords had breached the covenant of quiet enjoyment in three different ways. First, she argued that the landlords, "by leasing a separate apartment that was connected to her electric meter, put the upstairs apartment to a use that interfered with the use of her apartment."[4] Second, plaintiff argued that the upstairs tenants' failure to reimburse her for their utility usage was a breach of the covenant of quiet enjoyment *by the landlords.* Finally, tenant argued that the landlords breached the covenant of quiet enjoyment since they "had the power to correct or terminate the upstairs tenants' conduct by paying the upstairs tenants' share of the utility bills, metering each unit separately, increasing the upstairs tenants' rent by the amount of the utility bill each month . . . or evicting them."[5]

III. The Court's Holding

As a general rule, the Maryland court said, "a breach of the covenant of quiet enjoyment [is] defined as [a] failure to provide something that 'goes to the essence of what the landlord is to provide.'"[6] The provision of utility service is included within this "essence." In so ruling, the court quoted the Massachusetts Supreme Court's decision in *Charles E. Burt, Inc. v. Seven Grand Corporation:*[7]

> Where tenants lease space on an upper floor of an urban building, as here, to conduct business enterprises, it is unrealistic to say that furnishing light, heat (in our climate), power, and elevator service does not go to the essence of what the landlord is to provide, to substantially the same extent as the term for [years] in the space itself. Failure to furnish such services, at least if serious in extent and not excusable, deprives the lessee of a vital part of what the

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[4] *Legg,* 100 Md. App. at 777.

[5] *Id.* At the trial level, in her counterclaim against the landlords' eviction proceedings, the tenant also claimed that the landlords engaged in unfair and deceptive acts and practices on account of the false representation that the utility bills for the upstairs unit would be paid. The tenant also claimed that the landlords' refusal to pay the bill was a dangerous defect in the premises and constituted an illegal apportionment of the utility charges. These claims, along with the claim that the landlords' conduct constituted a breach of the covenant of quiet enjoyment, were denied by the trial court. Addressing only the issue of the landlords' legal responsibility for the unpaid utility bill, the appellate court rejected the tenant's claims of unfair and deceptive trade practices on the grounds that the tenant did not suffer injury since her service was never terminated as a result of nonpayment and she could have moved from the premises.

[6] *Id.* at 779 (quoting Stevan v. Brown, 54 Md. App. 255, 458 A.2d 477 (1983)).

[7] Charles E. Burt, Inc. v. Seven Grand Corp., 340 Mass. 124, 163 N.E.2d 4, 8 (1959).

> landlord knows the lessee must have in order to carry on his business. Such a failure constitutes a breach of the covenant of quiet enjoyment . . . and "enables the lessee to recover the damages caused to him thereby. . . ."[8]

According to the court, in such a case, "the landlord will be liable to the tenant for 'the difference between the value of what [a tenant] should have received and the fair value of what [the tenant] has in fact received.'"[9]

In sum, the court said, the covenant of quiet enjoyment "insulates the tenant against acts or omissions on the part of the landlord . . . which interfere with the tenant's right to the use and enjoyment of the premises for the contemplated purposes."[10] A breach of quiet enjoyment is one step removed from a "constructive eviction." "Permitting a tenant to file a claim for damages under the covenant of quiet enjoyment without vacating the premises accomplishes the task of freeing the covenant from the closely related doctrine of constructive eviction, which by definition requires an interference substantial enough to warrant vacation."[11]

The final brick in building the legal foundation of a challenge based on a breach of quiet enjoyment is the recognition that the conduct of another tenant can constitute a breach of the covenant where the landlord has the legal authority to control that conduct. According to the court, absent some contrary agreement, "there is a breach of the landlord's obligations if, during the period the tenant is entitled to possession of the leased property, the landlord, or someone whose conduct is attributable to him, [sic] interferes with a permissible use of the leased property by the tenant."[12]

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The *Legg* court held that defendant landlords' mere rental of the upstairs apartment under circumstances that made the downstairs tenant responsible for utility usage, unto itself, was a breach of the covenant of quiet enjoyment for that downstairs tenant. The court noted that the downstairs tenant "contends that the rental of the upstairs apartment essentially forced her to accept primary liability for the unrestricted utility use of another tenant."[13] The court then responded:

> In our opinion, a landlord's burdening one tenant with liability for other tenants' utility usage, when the liable tenant has no prior knowledge of that burden and does not consent to it, is a breach of the covenant of quiet enjoyment because it severely interferes with the liable tenant's use of his/her premises. [The tenant] could not continue to receive utility service without also incurring the liability of having to pay for the utility usage of the upstairs tenants.[14]

The court held further, however, that the downstairs tenant waives any objection to the liability if he or she enters into an *agreement* to split the costs of the utility bill.[15]

Despite the landlord's obligation to avoid renting an apartment such that one

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[8] *Legg*, 100 Md. App. at 779–80 (quoting *Stevan*, 54 Md. App. 247–48, 458 A.2d 466 [quoting *Charles E. Burt, Inc.*, 163 N.E.2d at 8]).
[9] *Id.* (quoting *Stevan*, 54 Md. App. 248 [quoting *Charles E. Burt, Inc.*, 163 N.E.2d at 8]).
[10] *Id.* (quoting QC Corp. v. Maryland Port Admin., 68 Md. App. 181, 198, 510 A.2d 1101, *rev'd in part on other grounds*, 310 Md. 379, 529 A.2d 829 (1986)).
[11] *Id.*
[12] *Id.* at 782 (quoting RESTATEMENT (SECOND) OF PROPERTY § 6.1 (1977)).
[13] *Id.* at 783.
[14] *Id.*
[15] *Id.* at 783–84.

tenant will incur personal liability for the utility bills of a different tenant, the liable tenant has obligations as well. The tenant must, for example, complain of the breach and ask the landlord to end the breach.[16] According to the court, "the prevailing view is that '[t]he failure on the part of a tenant to request that an interference cease while the interference is continuing waives any right on the part of the tenant to object to that interference.'"[17]

In *Legg*, this rule turned out to be inapplicable. Upon remand, the lower court found that, "despite continuing complaints from [the downstairs tenant], the [landlords] never attempted to evict the upstairs tenants, install separate meters, or otherwise address the problem." The lower court further found that the landlords "also refused to pay the balance owed by the upstairs tenants."[18]

In finding that the downstairs tenant had done that which she was required to do to preserve her rights, the court held:

> The Castruccios, as the landlords, had the obligation to resolve the problem, not Ms. Legg [the downstairs tenant]. There was an agreement between the Castruccios and the upstairs tenants for those tenants to pay one-half of the utility bill, as well as an agreement between Ms. Legg and the tenants to do the same. Ms. Legg fulfilled her obligation as a tenant by putting the Castruccios on notice that the bill was not being paid. By complaining to the Castruccios in July and requesting that they remedy the situation, Ms. Legg preserved her right to recover for breach of covenant of quiet enjoyment and she satisfied her duty to "request that an interference cease while the interference is continuing. . . ."[19]

The court found that plaintiff tenant was entitled to recover damages in the amount of the unpaid utility bill.

IV. The Threefold Importance of *Legg*

The holding in *Legg* is important to advocates for low-income tenants facing utility bill payment problems in three respects. First, *Legg* explicitly delineates the lines of responsibility when a low-income tenant is faced with unpaid utility bills owed by a tenant in an unrelated unit in the same apartment building or complex. The landlord may not stand by and claim simply to be a disinterested spectator. Second, *Legg* makes clear that a landlord's actions, or inactions, that allow for the accrual of an unpaid utility bill are a violation of the covenant of quiet enjoyment. Finally, *Legg* states that the tenant need not be forced to vacate the premises in order to demonstrate a violation of the covenant of quiet enjoyment in such circumstances. So long as the tenant complains of the situation, and the landlord has the ability and the authority to effectuate a remedy, the tenant has a remedy against the landlord.

A. Identifying the Responsible Party

The Maryland Court of Appeals' decision in *Legg* is important in that it directly confronts the dilemma facing many low-income tenants: the inability to garner attention and prompt the action of a responsible party. The downstairs tenant argued that the landlords were ultimately responsible for the payment problems associated with the upstairs utilities. She reasoned that the landlords put the apartment adjoining her own to use by renting it to tenants who refused to pay for their utility usage. The

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[16] Citing the *Restatement*, the court said that "a landlord should 'promptly' alleviate the interference, which in the case of a conduct by another tenant, means 'as soon as possible.'" *Id.* at 785 (citing Pague v. Petroleum Products Inc., 77 Wash. 2d 219, 461 P.2d 317 (1969)).

[17] *Id.* (citing RESTATEMENT (SECOND) OF PROPERTY § 6.1, comment g (1977)).

[18] Legg v. Castruccio, No. C-91-04843 CN, slip op. at 2, 3 (Md. Cir. Ct. Anne Arundel County Sept. 9, 1994).

[19] *Id.* at 3–4.

use of the upstairs property in this fashion substantially interfered with the downstairs tenant's enjoyment of the premises. The downstairs tenant was forced to surrender control of her finances and her continued electrical service to complete strangers without any prior discussion or forewarning. She was forced to assume in excess of $2,000 in the upstairs tenants' charges. She was forced to live with the fear of sudden disconnection of her utility service, all due to the landlords' use of the upstairs apartment.

Nonetheless, the landlords reasoned, and the trial court agreed before being reversed on appeal, that it was not the *landlords* who caused the problems of the downstairs tenant at all. Rather, the trial court found, it was the *upstairs tenants'* failure to pay that increased the potential for plaintiff tenant's service to be disconnected. The very party who was best in the position to help remedy the problem—the landlords—claimed neither the power, nor the responsibility, for bringing about that resolution.

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This conclusion was ultimately legally incorrect for several reasons:

- First, Maryland law provides that a landlord is responsible for a breach of the covenant caused by its use of adjoining property.[20] In this instance, the covenant was breached because the landlords used their property by renting it to the upstairs tenants. The fact that the landlords did not "live" in the upstairs unit did not mean that they did not use those premises. Indeed, the use of the upstairs property for rental purposes was a "use" for these purposes.
- Second, Maryland law explicitly provides that a landlord is responsible for a breach of the covenant by "anyone claiming under him."[21] The upstairs tenants were clearly "claiming under" the landlords. When, therefore, the actions of the upstairs tenants interfered with the downstairs tenant, the landlords, who leased the upstairs apartment, were responsible for the violation of the covenant of quiet enjoyment.
- Finally, the landlords were the only people with the power to correct the situation. Maryland law provides that a landlord is responsible for a neighboring tenant's actions that breach the covenant of quiet enjoyment when the landlord is in a position to *correct* or *eliminate* the conduct.[22] According to one Maryland appellate court decision, "where, through the lease provisions or otherwise, [the landlord] has that ability, the thought is that he ought not to be able to escape his obligation under the covenant of quiet enjoyment by steadfastly refusing to exercise his authority."[23]

This was precisely the situation that faced the downstairs tenant in *Legg*. The landlords did indeed have the ability to remedy the problem created by the upstairs tenants' refusal to pay their half of the utility bills. The landlords were put on notice

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[20] There is an implied obligation on the part of the lessor not to derogate from his or her grant by using adjoining property so as to interfere substantially with the lessee's enjoyment of the premises. QC Corp. v. Maryland Port Auth., 68 Md. App. 181, 198, 510 A.2d 1101, 1110 (1986) (quoting 49 AM. JUR. 2D Landlord and Tenant § 339 (1970)).

[21] *Id.*

[22] The more recent cases dwell not so much on whether the landlord has approved of the conduct of the tenant as whether the landlord is in a position to correct or terminate it. Bocchini v. Gorn Management, 69 Md. App. 1, 12, 515 A.2d 1179, 1185 (1986).

[23] *Id.*

of the need for them to exercise that ability, but they "steadfastly refused to exercise that authority."

B. Unpaid Bills as a Violation of the Covenant of Quiet Enjoyment

The Maryland appellate court's decision is also important in that it explicitly recognizes that the financial burden placed upon a low-income tenant by forcing that tenant to "incur personal liability" for the bills of another party can be a violation of the covenant of quiet enjoyment. The tenant need not draw a causal connection between the financial liability so incurred and some further problem with the property. According to the court, "incurring liability for other tenants' utility usage is as severe in degree of magnitude as a landlord's failure to provide promised heat or electricity. . . ."[24]

Through this holding, the court appears to say that the liability unto itself, without more, is sufficient to impose responsibility upon the landlord. The tenant need not have experienced an actual disconnection of service. There need be no frozen pipes or spoiled foods or other manifestation of the actual loss of service.

C. No Need for Constructive Eviction

Finally, in a related fashion, and consistent with the holding discussed immediately above, the Legg court makes clear that the tenant need not vacate the premises in order to assert a claim that the landlords' actions or inactions violate the covenant of quiet enjoyment. Indeed, the court holds that if the tenant does vacate the premises, while there may be a claim for a constructive eviction, any claim for a breach of the covenant of quiet enjoyment ends with the termination of the tenancy.

The ability to sue without having to demonstrate a constructive eviction provides substantially greater remedies to the tenant. According to the court, "a constructive eviction occurs when the acts of a landlord cause serious or substantial interference with the tenant['s] enjoyment of the property which results in the tenant vacating the premises. The landlord must act with the intent and effect of depriving the tenant of his/her use and enjoyment."[25] As the court said, even when a tenant's complaints do not support a claim of constructive eviction, they may constitute a breach of the covenant of quiet enjoyment. In Legg, the court specifically noted that "permitting a tenant to file a claim for damages under the covenant of quiet enjoyment without vacating the premises accomplishes the task of freeing the covenant from the closely related doctrine of constructive eviction, which by definition requires an interference substantial enough to warrant vacation."[26]

V. Summary and Conclusions

In *Legg*, the Maryland Court of Appeals recognized the serious adverse impact that imposing personal liability on a tenant for the utility usage of an unrelated third party may create. The court found that the landlord could be held liable in such a situation. The legal vehicle for seeking to impose such liability is a claim for breach of the covenant of quiet enjoyment. So long as the landlord has the ability and the authority to remedy the tenant's unwarranted liability for the utility usage of a third party, and fails to act upon it, the landlord subjects himself or herself to a claim for damages. The third-party tenant's failure to pay can be attributed to the landlord if the landlord is in the position to correct or eliminate the nonpayment.

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[24] *Legg*, 100 Md. App. at 783.
[25] *Id.* at 778–79.
[26] *Id.* at 781.