



The Case of the Noisy Baby

by Zachary Lawrence J.D.

Comedian Jerry Seinfeld compared babies to an electric blender, filled with food, turned on full power and without the lid! Having raised two children, I confirm Seinfeld's analogy. Babies can be a true test of tolerance, patience, and of course, love. So how does all this relate to you, the landlord?

The Dispute

I was hired to settle a dispute between two tenants living in a rent-controlled duplex. Let's call one of them "Downstairs" and the other one "Upstairs". Upstairs is a young couple with an infant. Downstairs is a young (and angry), single professional. She's angry because upstairs has a baby - a crying baby. A baby that does what babies do...they cry and make noise. Downstairs claims that she cannot sleep. Downstairs claims that her right to the use and quiet enjoyment, a legal right of her tenancy has been breached. Downstairs wants the landlord to "fix" this problem.

Upstairs is now claiming that, as retaliation, Downstairs is pounding on the walls, creating her own noise, which is designed to disturb

upstairs. Now I've lost track of who is the baby and who are the adults.

Enter the Rules of Law

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For example, a nuisance may be activities that create unreasonable noise, vibrations, foul odors, or a health hazard.

Discrimination is when we treat some people differently than others due to the fact that they are members of a protected class. Protected classes include marriage, race, sex, religion, age and handicap. These protected classes also

include children - that is, one may not discriminate because of the fact that a tenant has children.

(For an in depth discussion on discrimination, please see my article in the September 2013 issue of this magazine.)

Downstairs is correct in stating that she has the right to live in a nuisance-free unit. The question here, however, is how do we balance the right to live in a nuisance-free unit against the right of a tenant to live with a baby, noisy or otherwise.

Had this property been located in a non-rent controlled jurisdiction, I could have easily terminated either tenancy, without cause, (which means without owing a reason to the tenants) with a simple 60 day notice.

However, in rent controlled L.A., a landlord is required to have "just cause" to terminate a tenancy. This means that the landlord must have a legal reason to terminate a tenancy.

Enter Attorney, Talk Show Host And Lakers fan, Dennis Block

Dennis and I discussed this very case on the radio, (*Landlord Tenant Radio, Mondays at 1:00 pm on KTYM 1460 am.*)

Block: This case raises many issues. The first is that under California law, a landlord may not discriminate on the basis of children. And one thing about children is that children act like children! So as a landlord, you must accept this cold hard fact. “If the child is doing what normal children do, the landlord and other tenants are required by law to tolerate a certain amount of inconvenience.

Lawrence: There are many “players” in this case, such as the landlord, tenants, property management, and lawyers. Who should get involved and when?

Block: “The landlord must take a proactive role, talk with all tenants involved, work as a team and see what can all do to solve the problem. First, I would speak

with the tenants that have the baby. I would ask them if there is any way to keep the baby reasonably quiet and at reasonable hours. The Landlord may elect to install some sound muffling materials inside the units, but is not legally required to do so.”

Lawrence: I have already attempted this “proactive” approach, however, both Upstairs and Downstairs have not changed their respective positions. Each wants the other out. So where do we go from here

The Solution

Dennis and I agreed to send the downstairs tenant a letter stating that the landlord does not and will not discriminate against children. We also stated that if downstairs is unable to cope

with the crying baby, she is welcome to vacate the premises. Furthermore, I stated that if downstairs continues to create a nuisance by pounding on the walls, for no other reason than to disturb Upstairs, I will have her evicted. Since sending this letter to Downstairs, we haven’t heard a peep from either tenant. And silence is golden. ADA

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