



# Dispute Resolution Services

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Residential Tenancy Branch  
Office of Housing and Construction Standards

## DECISION

Dispute Codes      **MNDCT, RR, PSF, LRE, OLC, FFT**

### Introduction

This hearing dealt with the tenant's application pursuant to the *Residential Tenancy Act* (the "Act") for:

- A monetary order for damages or compensation pursuant to section 67;
- An order to reduce rent for repairs/services/facilities agreed upon but not provided pursuant to section 65;
- An order to provide services or facilities required by a tenancy agreement or law pursuant to section 62;
- An order to suspend a landlord's right to enter the rental unit pursuant to section 70;
- An order for the landlord to comply with the *Act*, Regulations and/or tenancy agreement pursuant to section 62; and
- Authorization to recover the filing fee for this application from the landlord pursuant to section 72.

The tenant attended the hearing and was represented by its counsel, CK. The landlord also attended the hearing represented by its counsel, HG. As both parties were present, service of documents was confirmed. The landlord acknowledged being served with the tenant's Notice of Dispute Resolution Proceedings package; the tenant acknowledged service of the landlord's evidence package. The tenant notes that the landlord's evidence was received 3 days prior to the hearing however the tenant was ready to proceed with the hearing. The tenant did not wish to adjourn the hearing to consider the landlord's evidence.

### Preliminary Issue

At the commencement of the hearing, the tenant advised that she will be vacating the rental unit at the end March 2021. As such, I advised the parties that the tenant's application seeking an order that the landlord provide services or facilities and an order for the landlord to comply with the *Act* would be dismissed, due to time constraints in

conducting the hearing and in accordance with rules 2.3 and 6.2 of the Residential Tenancy Branch Rules of Procedure.

Pursuant to section 63 of the *Act*, the Arbitrator may assist the parties to settle their dispute and if the parties settle their dispute during the dispute resolution proceedings, the settlement may be recorded in the form of a decision or an order. At the commencement of the hearing, the parties agreed to the following term:

**The parties agree that pursuant to section 29 of the *Act*, the landlord will provide at least 24 hours notice to the tenant for any required access to the rental unit. Notice will be provided in accordance with section 88 of the *Act*.**

As a result of the settlement above, the issue of suspending the landlord's right to enter the rental unit was not be adjudicated upon during the hearing.

Issue(s) to be Decided

Is the tenant entitled to compensation for damages or a reduction in rent for the security cameras located in and around the rental unit?

Can the tenant recover the filing fee?

Background and Evidence

At the commencement of the hearing, pursuant to rules 3.6 and 7.4, I advised the parties that in my decision, I would refer to specific documents presented to me during testimony. In accordance with rule 7.14, I exercised my authority to determine the relevance, necessity and appropriateness of each party's evidence.

While I have turned my mind to all the documentary evidence, including photographs, diagrams, miscellaneous letters and e-mails, and the testimony of the parties, not all details of the respective submissions and / or arguments are reproduced here. The principal aspects of each of the parties' respective positions have been recorded and will be addressed in this decision.

I note here that the parties were provided with equal time to present their arguments during this 60 minute hearing. During the tenant's testimony, I advised her counsel twice to make note of the time however counsel for the tenant called a further witness and gave her oral submissions at the 40 minute mark. After the landlord's counsel gave submissions, tenant's counsel asked to provide rebuttal which was denied, due to a lack of hearing time at the 70 minute mark. At this point, the hearing was concluded.

The evidence presented to me shows the parties entered into a fixed term tenancy agreement on February 20, 2020, ending on August 9, 2020. A second fixed term tenancy agreement was entered into on August 10, 2020, set to expire on August 10, 2021. Both tenancy agreements were provided as evidence. Currently, the tenant pays \$2,900.00 per month rent on the 10<sup>th</sup> day of each month.

The tenant provided the following oral testimony through her interpreter. When she moved in, the landlord told the tenant that the security cameras visible on the exterior of the house and the single camera in the living room of the rental unit were either broken or not working. The tenant accepted what the landlord said and didn't pay any attention to the cameras from then on.

On November 24, 2020, the tenant was lying on the living room sofa and noticed the red light on the security camera located in the living room was on. Immediately, the tenant sent a text to the landlord and the landlord responded that the cameras are there for the tenant's own safety. It will record if bad people come to the house. Evidence can be recorded to give to the police and if she didn't want it, to simply disconnect the power. The tenant sent a written message asking the landlord to remove it and was told the landlord didn't have time right then. The tenant found a technician online who came to check the video surveillance and discovered all the cameras facing outward on the exterior of the home were working as well as the single camera in the living room. The tenant provided a cell phone video taken of the monitors showing what the cameras were recording and transmitting. The technician advised the tenant that the cameras could transmit the signals for a person with a password to view over the internet. The technician had no way to see the transmission without a password, however.

While the technician was working, another stranger came to the tenant's door advising he was sent by the landlord to check the cameras. The landlord did not notify the tenant that this person was coming and the tenant didn't let him in. That night, the tenant was unable to sleep knowing that the landlord lied to her and recorded her everyday life without her knowledge. Her privacy was violated, as was her children's and her visitor's.

On November 28<sup>th</sup>, the landlord attended again without notice to the tenant with another stranger and knocked several times scaring the tenant's daughter. The daughter had to see a doctor due to the fright. Since then, the landlord has been harassing the tenant and threatening her with ways to halt her immigration process. The landlord has sent a debt collector and sent reports to the police saying the tenant has been hosting parties during the pandemic. The tenant denies such parties.

The tenant's witness testified that she often would attend the tenant's house and would go shopping with the tenant and purchase clothing. In the living room, where the indoor camera was set up, there is a full sized mirror where the witness and the tenant would disrobe and try on the clothing. The camera recorded all of this and the witness feels violated.

The tenant hired a second technician on December 6, 2020 who supplied the tenant with a *"surveillance camera check report"*, tendered as evidence, which states:

*"There is a hard drive in the DVR. The network cable connects the DVR and the network port 2 signal lights (yellow and green) both were on. That means this network cable is connected and has data exchange. This surveillance recordings may be seen through the network connection by mobile phone."*

Tenant's counsel submits that the value of the tenancy was undermined by the landlord's unreasonable disturbance or serious interference with the tenant's right to quiet enjoyment, specifically her right to reasonable privacy. The landlord's conduct is both disturbing and "hyper-intrusive". First, the landlord misrepresented whether the cameras were operational at the commencement of the tenancy, then he tried to intimidate the tenant with threats of calling the police for unrelated and ungrounded concerns in an attempt to thwart her immigration process. For the landlord's invasion of the tenant's privacy and loss of a sense of security, the tenant seeks an award of 30% of the value of the tenancy between the months of January 2020 to November 2020.

The landlord gave the following submission. The original tenancy agreement was for a higher amount than the current one. The tenant wants to back out of the tenancy agreement and the camera concern is just a way for the tenant to get out of the contract.

The power to deactivate the camera has always been within the tenant's ability. If the tenant does not want the "black box", or digital video recorder (DVR) operating, all the tenant had to do was unplug it. The cameras would then lose all their functions. The landlord was kind enough to send a technician to help deactivate the camera but this was refused by the tenant. There was no "so-called monitoring" of the tenant's activities by the landlord. The landlord purchased the home in 2013 and installed the cameras in 2017 when it was offered on a promotion from a big box store. It was installed for the security of the landlord and his family. He moved out in September 2018 and a friend lived in the house until the tenant moved in. The previous tenant never complained

about the camera because the ability to disconnect it by simply unplugging it had always been in the tenant's control. Alternatively, any of the cameras can be unplugged from the DVR, it is the tenant's choice.

The landlord submits that he has never logged into the DVR to view surveillance video since it has been installed since there has been no reason to do so; the premises have been "safe".

At the end of the hearing, the parties came to an agreement on the following aspect of the tenant's application. Pursuant to section 63 of the *Act*, I recorded the following term of settlement as agreed to by the parties:

**The tenant may take the DVR to a qualified technician agreed to by counsel for each party for the hard drive to be either replaced or erased.**

#### Analysis

Section 7 of the *Act* states: If a landlord or tenant does not comply with this *Act*, the regulations or their tenancy agreement, the non-complying landlord or tenant must compensate the other for damage or loss that results.

Section 67 of the *Act* establishes that if damage or loss results from a tenancy, an Arbitrator may determine the amount of that damage or loss and order that party to pay compensation to the other party.

If the director finds that a landlord has not complied with the *Act*, the regulations or a tenancy agreement, the director may order that any money paid by a tenant to a landlord be repaid to the tenant pursuant to section 65(1) of the *Act*.

Rule 6.6 of the Residential Tenancy Rules of Procedure indicate the onus to prove their case is on the person making the claim. The standard of proof is on a balance of probabilities. If the applicant is successful in proving it is more likely than not the facts occurred as claimed, the applicant has the burden to provide sufficient evidence to establish the following four points:

1. That a damage or loss exists;
2. That the damage or loss results from a violation of the *Act*, regulation or tenancy agreement;
3. The value of the damage or loss; and
4. Steps taken, if any, to mitigate the damage or loss.

Section 28 of the *Act* states:

**Protection of tenant's right to quiet enjoyment**

**28** A tenant is entitled to quiet enjoyment including, but not limited to, rights to the following:

- a) reasonable privacy;
- b) freedom from unreasonable disturbance;
- c) exclusive possession of the rental unit subject only to the landlord's right to enter the rental unit in accordance with section 29 [*landlord's right to enter rental unit restricted*];
- d) use of common areas for reasonable and lawful purposes, free from significant interference.

Entitlement to quiet enjoyment is discussed in Residential Tenancy Policy Guideline PG-6.

***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.*

*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.*

Here, the tenant has provided a cell phone captured video depicting what the cameras were recording the day they were discovered as "live". I have reviewed the video and I find the tenant has provided sufficient evidence to satisfy me the cameras were operational and capable of recording both the exterior of the rental unit and inside the rental unit. I note the video being recorded inside the unit captured the living room area, an area that a reasonable person would consider to be personal and private - free from being viewed by any other person without consent.

Based on the “*surveillance camera check report*” I am also satisfied that the images being captured by the cameras both inside and outside the home were “live”, capable of being viewed remotely over the internet. While it would be impossible for the tenant to prove whether the landlord or any other person actually viewed the personal and private activities inside the home; the capability to do so existed. By leaving the cameras connected to the internet, capable of being viewed remotely by the landlord or any other person with access to the viewing password, I find the landlord has deprived the tenant of her right to quiet enjoyment and her right to reasonable privacy free from unreasonable disturbance. Based on this reasoning, I find the landlord in breach of section 28 of the Residential Tenancy Act. (point 2 of the 4 point test)

As a result of the breach, I find the tenant has suffered damage in the form of mental anguish, due to not knowing whether the landlord or anybody else with access to the video feed had access to the “live” video of the tenant, her family and guests inside the home. (point 1 of the 4 point test). The tenant submits that the value of the damage should be calculated as a repayment of a percentage of rent the tenant paid since the commencement of the tenancy until the discovery of the working cameras. The tenant submits that a 30% repayment would be in the proper range and provided two Residential Tenancy Branch cases as guidance in arriving at the figure of 30%. Both of the previous decisions involve cameras facing outside, not inside. In those cases, recovery of rent between 15% and 20% was ordered. Tenant’s counsel submits that filming inside the rental unit is much more invasive so the range of 30% would be better suited to this case. I note that the tenancy began on February 20, 2020 and was discovered on November 24, 2020, a period of approximately 9 months. [ $\$2,900.00$  (rent) x 9 (months) / 30% =  $\$7,830.00$ ]. The tenant has provided sufficient evidence to show the value of the damage, (point 3 of the 4 point test.)

The landlord points out that since the beginning of the tenancy, the tenant has known there are cameras and that the tenant has always had the ability to simply unplug the DVR. This would render the cameras useless and incapable of transmitting video feeds over the internet. Likewise, any of the cameras could be individually unplugged if the tenant was uncomfortable with them. The tenant never took the opportunity to do so. The landlord points to the photographs of the DVR situated out in the open within the living room as proof of the tenant’s capacity to disconnect it. I find this argument has merit in that the tenant did not take steps to mitigate the damage by disconnecting the DVR or cameras during the time it was operational. Instead of relying on the landlord’s assurance the cameras were not operational, the tenant could have taken the steps to ensure the cameras or the DVR was disconnected herself. I find that the tenant’s own negligence in leaving the DVR plugged in and the cameras plugged into the DVR

contributed in the damages for which the tenant now seeks compensation. For her own contributory negligence, I find the tenant should bear half of the responsibility for her own failure to mitigate the damage. (point 4 of the 4 point test)

For the breach of quiet enjoyment, I award the tenant 15% of the rent paid between February 20, 2020 and November 24, 2020, a total of **\$3,915.00** pursuant to sections 65 and 67.

The tenant seeks compensation for the inspection of the surveillance cameras, a trip to the doctor for her daughter due to the landlord's knocking on the door and an additional cost for serving documents. For the first camera inspections, the tenant did not obtain a receipt for me to be able to verify the first technician's costs and the tenant has therefore failed to provide sufficient evidence as to the value of the claim (point 3). The second technician was hired when the first one did not provide a report for this hearing and I do not find the landlord should be responsible for paying for this second report. Lastly, the tenant has not provided sufficient evidence to satisfy me her child's trip to the doctor was directly related to any breach of the *Act*, regulations or tenancy agreement by the landlord. These portions of the tenant's claim are dismissed without leave to reapply.

Lastly, the tenant seeks to recover the fees paid to serve written requests to resolve the issues. Section 72(1) of the *Act* provides that an Arbitrator may award one party recovery of the filing fee from the other party; however, the *Act* does not provide for recovery of other costs associated with making an Application for Dispute Resolution, gathering evidence, copying evidence or serving hearing documents. The tenant's application seeking to recover the costs involved in pursuing this claim are dismissed without leave to reapply.

The recovery of the filing fee is at the sole discretion of the arbitrator. As the tenant was partially successful in her claim, I award the tenant half of the fees paid to commence this claim, or **\$50.00**.

Item	Amount
Compensation for failure to provide quiet enjoyment of the rental unit	\$3,915.00
Filing fee	\$50.00.
<b>Total</b>	<b>\$3,965.00</b>



Conclusion

I issue a monetary order in the tenant's favour in the amount of **\$3,965.00** pursuant to section 67 of the *Act*.

The following issues were settled and recorded pursuant to section 63 of the *Act*:

**The parties agree that pursuant to section 29 of the *Act*, the landlord will provide at least 24 hours notice to the tenant for any required access to the rental unit. Notice will be provided in accordance with section 88 of the *Act*.**

**The tenant may take the DVR to a qualified technician agreed to by counsel for each party for the hard drive to be either replaced or erased.**

This decision is final and binding and made on authority delegated to me by the Director of the Residential Tenancy Branch under Section 9.1(1) of the *Residential Tenancy Act*.

Dated: March 22, 2021

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Residential Tenancy Branch