



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes **OLC, FFT, CNL**

Introduction

The words tenant and landlord in this decision have the same meaning as in the *Residential Tenancy Act*, (the "Act") and the singular of these words includes the plural.

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

- An order for the landlord to comply with the *Act*, Regulations and/or tenancy agreement pursuant to section 62;
- Authorization to recover the filing fee for this application from the opposing party pursuant to section 72; and
- An order to cancel a Two Month Notice to End Tenancy for Landlord's Use of Property pursuant to section 49.

The tenants attended at the date and time set for the hearing of this matter. The landlord did not attend this hearing, although I left the teleconference hearing connection open until 9:50 a.m. in order to enable the landlord to call into this teleconference hearing scheduled for 9:30 a.m. I confirmed that the correct call-in numbers and participant codes had been provided in the Notice of Dispute Resolution Proceeding. I also confirmed from the teleconference system that the tenants and I were the only ones who had called into this teleconference.

As only the tenants attended the hearing, I asked the tenant HY to confirm that he had served the landlord with the Notice of Dispute Resolution Proceeding for this hearing. The tenant testified that he had served the landlord with the notice of this hearing and his evidence by Canada Post via registered mail on May 6, 2021, referring me to the Canada Post registered mail receipt with tracking number submitted into documentary evidence as proof of service. I have noted the registered mail tracking number on the cover sheet of this decision. I find that the landlord was served with the documents for

this hearing five days after mailing them, on May 11, 2021, in accordance with sections 88 and 89 of the *Act*.

This hearing proceeded in the absence of the landlord pursuant to rule 7.3 of the Residential Tenancy Branch rules of procedure.

Issue(s) to be Decided

Should the notice to end tenancy be upheld or cancelled?

Should the landlord be ordered to comply with the *Act*, Regulations or tenancy agreement?

Can the tenant recover the filing fee?

Background and Evidence

The tenant gave the following undisputed evidence. On April 22nd, the landlord sent him a letter asking the tenant to move out in two months. A copy of the letter was provided as evidence. The letter is not drafted on a recognized RTB form. On July 4th at 6:30 p.m., the landlord sent the tenant a text saying, *“Hey, you can still live here and forget about the letter I sent before. Hope we can still have good relationships between me and you.”* No copy of the text was provided however the text message was read into the record by the tenant.

The tenant testified that he moved in on March 1, 2020 and subsequent to moving in, the landlord installed a video surveillance camera directed at the tenant’s basement unit without the tenant’s knowledge or consent. Without the tenant’s knowledge or consent, the landlord sent a clip of the tenant interacting with his guest to a third party who was once friends with the tenant. A video clip showing the landlord’s texts to the third party together with the surveillance video was provided as evidence. The tenant testified that the sharing of the video caused him stress, anxiety and emotional turmoil.

The tenant seeks an order that the landlord take down the video surveillance camera and provide him with the privacy he is entitled to.

Analysis

Section 49(7) of the *Act* states that a Two Month’s Notice to End Tenancy for Landlord’s Use must comply with section 52 *[form and content of notice to end tenancy]*

Form and content of notice to end tenancy

52 In order to be effective, a notice to end a tenancy must be in writing and must (a) be signed and dated by the landlord or tenant giving the notice,

- (b)give the address of the rental unit,
- (c)state the effective date of the notice,
- (d)except for a notice under section 45 (1) or (2) [*tenant's notice*], state the grounds for ending the tenancy,
- (d.1)for a notice under section 45.1 [*tenant's notice: family violence or long-term care*], be accompanied by a statement made in accordance with section 45.2 [*confirmation of eligibility*], and
- (e)when given by a landlord, be in the approved form.**

(bold emphasis added)

I find the Two Month's Notice to End Tenancy for Landlord's Use served upon the tenant is not in the approved form and is therefore not effective. Further, the tenant provided undisputed evidence that the landlord does not seek to end the tenancy as stated in the text message of July 4th. I accept the tenant's undisputed evidence that the landlord does not want to pursue an end to the tenancy for landlord's use. For these reasons, I find the landlord's letter seeking to end the tenancy issued on April 22 to be of no force or effect and I cancel it. The tenancy shall continue until it is ended in accordance with the *Act*.

The tenant's second application seeks an order that the landlord comply with the *Act*. I will refer to sections 28 and 62 of the *Act* for my analysis.

28 Protection of tenant's right to quiet enjoyment

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.

62 Director's authority respecting dispute resolution proceedings

(3)The director may make any order necessary to give effect to the rights, obligations and prohibitions under this *Act*, including an order that a landlord or tenant comply with this *Act*, the regulations or a tenancy agreement and an order that this *Act* applies.

I have reviewed the video evidence provided by the tenant. I have considered the tenant's undisputed testimony that the making of the videos without his knowledge and

the subsequent sharing of the videos with a third party caused the tenant stress and anxiety. I am satisfied that the tenant's right to quiet enjoyment under section 28 was breached when the landlord videotaped the front entryway of the tenant's rental unit and then shared the video with an unrelated third party for purposes other than maintaining the security of the premises. For these reasons, I order, pursuant to section 62 of the *Act*, that the landlord take down the video surveillance camera directed at the tenant's rental unit and not reinstall cameras directed at the tenant's rental unit without the expressed written consent of both tenants.

As the tenant's application was successful, the tenant is also entitled to recovery of the \$100.00 filing fee for the cost of this application. In accordance with the offsetting provisions of section 72, I order that the tenants are to deduct \$100.00 from any single rent payment due to the landlord.

Conclusion

The landlord's Two Month's Notice to End Tenancy for Landlord's Use is cancelled and of no further force or effect. The tenancy shall continue until it is ended in accordance with the *Act*.

Pursuant to section 62 of the *Act*, the landlord must take down the video surveillance camera directed at the tenant's rental unit and not reinstall cameras directed at the tenant's rental unit without the expressed written consent of both tenants. The landlord must take down the cameras within 2 days of being served a copy of this decision.

Pursuant to section 72, the tenants are to deduct \$100.00 from any single rent payment due to the landlord.

This decision is 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: August 27, 2021

Residential Tenancy Branch