



# Dispute Resolution Services

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Residential Tenancy Branch  
Office of Housing and Construction Standards

A matter regarding CAPREIT LIMITED  
PARTNERSHIP and [tenant name suppressed to  
protect privacy]

## **DECISION**

Dispute Codes      For the Tenant:      MNDCT, MNSD, RPP, OT  
For the Landlord:      MNDCL-S, MNRL-S, FFL

### **Introduction**

This decision is in respect of applications filed by the parties under the *Residential Tenancy Act* (the “Act”).

The tenant’s application for dispute resolution was made on February 6, 2019 (the “tenant’s application”). The tenant applied for the following relief pursuant to the Act:

1. compensation for the landlord’s breach of section 28 of the Act, under section 67 of the Act; and,
2. an order for the return of the tenant’s property, under section 65 of the Act.

The landlord’s application for dispute resolution was made on February 14, 2019 (the “landlord’s application”). The landlord applied for the following relief, pursuant to the Act:

1. compensation for unpaid rent, unpaid parking fees, NSF fees, bailiff enforcement costs, and legal fees, under section 67 of the Act; and,
2. compensation for the filing fee, under section 72 of the Act.

The tenant and the landlord’s agent attended the hearing before me and were given a full opportunity to be heard, to present affirmed testimony, to make submissions, and to call witnesses. The parties did not raise any issues regarding the service of evidence.

I have reviewed all oral and documentary evidence submitted, and presented to be under the *Rules of Procedures*, under the Act, but only relevant evidence pertaining to the issues of these applications are considered in my decision.

### Issues to be Decided

1. Is the tenant entitled to compensation for the landlord's breach of section 28 of the Act?
2. Is the tenant entitled to an order for the return of his personal property?
3. Is the landlord entitled to compensation for unpaid rent, unpaid parking fees, NSF fees, bailiff enforcement costs, legal fees, and for the filing fee?

### Background and Evidence

The tenant testified that the tenancy started on August 1, 2016 and ended on October 24, 2018, when he was "illegally evicted." Rent was \$1,700.00 at the start of the tenancy, and \$1,812.00 at the end of the tenancy. The tenancy agreement states that parking fees were \$25.00 per month. The tenant paid a security deposit of \$850.00. A copy of the written tenancy agreement was included in evidence.

The tenant's primary claim for compensation is based on the allegation that the landlord breached his right to privacy (that is, section 28 of the Act) by installing video cameras on the property. He testified that there was no discussion between the landlord and the tenants, including himself, that a camera would be installed. The camera in question was in the common area near the garbage bin and parking lots. There were, and are, no signs and nothing that gave the landlord consent to record the tenant's personal information.

The tenant testified that the landlord targeted him through the video cameras, and that it is, and was, extremely stressful and that the information obtained was used against him. He explained that he suffers from anxiety and stress, and, that he cannot work. He further noted that there is nothing in the tenancy agreement informing a tenant that they are being watched.

He noted that he requested the Office of the Information and Privacy Commissioner to investigate and submitted into evidence a letter from the OIPC advising him that they would investigate the matter. The tenant submitted that the letter from the OIPC demonstrates the seriousness of the matter.

In his rebuttal and final submissions, the tenant asked the landlord's agent to confirm why there was no signage. The landlord's agent (the "landlord") said that they issued a memorandum to all the tenants letting them know about the cameras. The landlord had

not thought that signage was needed, but they are reviewing their policies and may end up putting signs up. The landlord confirmed that the cameras (there are two of them) are to mitigate issues involving illegal dumping. They do not record audio. They are motion activated, and they record for approximately 2 ½ months before they start recording over the storage medium.

The landlord testified that the two cameras were installed in June 2017, and each point to garbage bins located outside the apartment building. The landlord's position is that the cameras are not illegal and do not invade personal privacy. He referred me to a transcript of an exchange between a Supreme Court judge and the tenant during a hearing on a related matter, on October 24, 2018:

THE COURT: The surveillance camera -- cameras are not illegal in common areas; all right?

MR. [TENANT]: Yeah, I fully agree.

The landlord argued that the OIPC will investigate any matter brought before it, and the letter confirming that there is an investigation does not mean there is a privacy breach.

The landlord's application seeks compensation for unpaid rent of \$7,263.13 for July 2018 through October 2018, inclusive, parking fees of \$250.00, NSF charges of \$125.00, bailiff costs of \$2,371.82, and the filing fee of \$100.00. The landlord also sought compensation for legal fees incurred of \$14,415.02, which I explained that I would not be able to award under the Act. The landlord submitted a statement of account for the above-noted rent and other fees, and an invoice related to the bailiff costs. The tenant did not dispute or raise any issues with respect to the above-noted amounts.

### Analysis

The standard of proof in a dispute resolution hearing is on a balance of probabilities, which means that it is more likely than not that the facts occurred as claimed. The onus to prove their case is on the person making the claim.

Section 7 of the Act states that 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 states that if damage or loss results from a party not complying with the Act, the regulations or a tenancy agreement, an arbitrator may determine the amount of, and order that party to pay, compensation to the other party.

When an applicant seeks compensation under the Act, the applicant must prove each of the following four criteria, on a balance of probabilities, in order for me to consider whether I grant an order for compensation:

1. has the respondent party to a tenancy agreement failed to comply with the Act, the regulations, or the tenancy agreement?
2. if yes, did loss or damage result from that non-compliance?
3. has the applicant proven the amount or value of their damage or loss?
4. has the applicant done whatever is reasonable to minimize their damage or loss?

### **Tenant's Claim for Compensation & Recovery of Personal Property**

The tenant claims that the landlord breached section 28 of the Act, specifically his right to privacy, which is section 28(a). Section 28(a) of the Act reads as follows:

28 A tenant is entitled to quiet enjoyment including, but not limited to, rights to the following: (a) reasonable privacy;

What is “reasonable privacy”? Reasonable privacy is not being recorded in your home or rental unit but does not extend to a garbage bin and immediate surrounding parking lot. This is not to say that tenants are not entitled to a complete absence of privacy, but rather, reasonable privacy of tenants going about their business in a common area must be balance with the landlord's interests in curtailing illegal dumping. The level of privacy decreases when it comes to common areas, and even more so in common areas external to the building, such a garbage bin. The act of disposing of garbage in a bin, or the act of walking by a garbage bin, affords little expectation of privacy. The landlord informed the tenants that there were video cameras pointing at the garbage bins.

In this case, I am not persuaded by the tenant's argument that the landlord breached his reasonable privacy by the placement of a video camera pointed at garbage bins. And, while the OIPC may be investigating the complaint, an investigation in and of itself does not suggest the seriousness of the allegations. It would not be until the OIPC's report is

issued would this be determinable. Finally, I note that the tenant previously “fully agree[d]” with a Supreme Court judge that cameras are not illegal in common areas.

Taking into consideration all the oral testimony and documentary evidence presented before me, and applying the law to the facts, I find on a balance of probabilities that the tenant has not met the onus of proving his claim that the landlord breached section 28 of the Act.

As this is my finding in respect of whether the landlord breached the Act, I need not consider the remaining three criteria of the above-noted four-part test. This aspect of his claim is dismissed without leave to reapply.

I note that the tenant’s personal property is currently in the custody of a bailiff storage service and as such I am unable to make any order against the landlord for the return of the tenant’s property. Given this, I dismiss this aspect of the tenant’s claim without leave to reapply.

As the tenant was unsuccessful in his application I do not award compensation for the filing fee.

### **Landlord’s Claim for Compensation**

The landlord claimed compensation for unpaid rent, unpaid parking fees, NSF charges, the filing fee, and for bailiff costs, totalling \$10,109.95. As noted earlier, I cannot award compensation for recovery of legal expenses; these may be recoverable in court.

The tenant did not dispute the amounts claimed by the landlord, though he did mention at the start of the hearing that there is some sort of dispute with the landlord over the parking and utility charges.

Taking into consideration all the oral testimony and documentary evidence presented before me, and applying the law to the facts, I find on a balance of probabilities that the landlord has met the onus of proving their claim for compensation in the amount of \$10,109.95. This includes the filing fee.

Given the above, I order the landlord to retain the security deposit of \$850.00 in partial satisfaction of the award and I grant a monetary award in the amount of \$9,259.95 for the remainder.

As the landlord was successful in its application, I include in the above-noted award the filing fee of \$100.00.

Conclusion

I hereby dismiss the tenant's application without leave to reapply.

I hereby grant the landlord a monetary order in the amount of \$9,259.95, which must be served on the tenant. The order may be filed in, and enforced as an order of, the Provincial Court of British Columbia.

This decision is made on authority delegated to me by the Director of the Residential Tenancy Branch under section 9.1(1) of the Act.

Dated: March 21, 2019

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Residential Tenancy Branch