

Most Negative Treatment: Distinguished

Most Recent Distinguished: [Juhasz v. Hymas](#) | 2016 ONSC 1650, 2016 CarswellOnt 3813 | (Ont. Div. Ct., Mar 7, 2016)

2015 ONSC 3893

Ontario Superior Court of Justice (Divisional Court)

Nickoladze v. Bloor Street Investments/Advent Property Management

2015 CarswellOnt 9203, 2015 ONSC 3893, 255 A.C.W.S. (3d) 210, 336 O.A.C. 198

Nicholas Nickoladze, Tenant/Appellant and Bloor Street Investments/Advent Property Management, Landlord/Respondent

Nordheimer J., Rady J., D.L. Corbett J.

Heard: June 16, 2015

Judgment: June 16, 2015

Docket: Toronto 380/14, TST-43738-13

Counsel: Karen J. Sanchez, for Tenant / Appellant

Timothy **Duggan**, for Landlord / Respondent

Subject: Property

Related Abridgment Classifications

For all relevant Canadian Abridgment Classifications refer to highest level of case via History.

Real property

[V](#) Landlord and tenant

[V.20](#) Residential tenancies

[V.20.1](#) Judicial review of decisions

Headnote

Real property --- Landlord and tenant — Residential tenancies — Judicial review of decisions

Landlord's right of entry — Residential tenant brought applications before Landlord and Tenant Board for alleged breaches by landlord regarding maintenance issues — Before hearing was held, landlord entered tenant's rental unit to inspect it and took photographs of interior — Applications were resolved through mediation — Tenant appealed two orders of Board, one dismissing his complaint that landlord had illegally entered his unit and invaded his privacy by taking pictures of interior, and other dismissing his request for review of first order — Appeal dismissed — Board found that landlord's entry into tenant's unit was authorized by s. 27 of Residential Tenancies Act, 2006, and that photographs were produced in mediation and used for no other purpose — Whether photographs were actually used in mediation was irrelevant — Photographs were clearly taken for purpose of being available for use at hearing of applications and at subsequent mediation — It was within Board's discretion to find why photographs were taken and to determine that, since they were taken for use before Board and for no other purpose, tenant could make no legitimate complaint about landlord's conduct — Fact that photographs were taken did not, by itself, infringe tenant's privacy rights — It was open to Board to determine that photographs were taken for purpose of inspection and for use at hearing of tenant's outstanding applications — There was no error of law arising from Board's decision, and thus no error in Board's order dismissing review from that decision.

Table of Authorities

Statutes considered:

Residential Tenancies Act, 2006, S.O. 2006, c. 17
s. 27 — considered

APPEAL by residential tenant from two orders of Landlord and Tenant Board.

Nordheimer J., (Orally):

1 Mr. Nicoladze, the tenant, appeals from two orders of the Landlord and Tenant Board. The first order dismissed the tenant's complaint that the respondent landlord had illegally entered his rental unit and, once there, had invaded his privacy by taking pictures of the interior of the unit. The second order dismissed the tenant's request for a review of the first order.

2 An appeal lies to the Divisional Court from an order of the Board restricted, though, to a question of law. The first issue to be addressed is whether a question of law is raised by this appeal. If it is, then the standard of review for that decision is one of correctness.

3 There is a history of the tenant bringing applications before the Board for alleged breaches regarding maintenance issues. There were two such applications outstanding at the time that the issues in this appeal arose. About a month before a hearing was to be held by the Board on those two applications, the landlord gave notice to the tenant of its intention to enter the rental unit on a specific day "in order to inspect the unit".

4 The landlord entered the unit on the specified day. In the course of the inspection, the landlord took some photographs of the interior of the unit. When the tenant's applications regarding the alleged maintenance issues came before the Board, approximately a month later, the landlord made the tenant aware of the existence of the photographs and of its intention to rely on them at the hearing. The landlord gave copies of the photographs to the tenant. The hearing commenced but did not finish. The parties then engaged in a mediation and the applications were resolved.

5 Thereafter, the tenant sought relief regarding the landlord's entry into the rental unit and the taking of the photographs. The Board dismissed that application finding that the landlord's entry into the rental unit was authorized by s. 27 of the *Residential Tenancies Act, 2006*, S.O. 2006, c. 17 and that the photographs "were produced in mediation and not used for any other purpose".

6 The tenant says that the Board erred in that conclusion because the photographs were not, in fact, used in the mediation. I do not take, from the Board's statement that the photographs were "produced" in mediation, that the Board meant that they were actually used in the mediation as opposed to simply being available at the mediation. In any event, in my view, whether the photographs were actually used in the mediation is irrelevant. The photographs were clearly taken for the purpose of being available for use at the hearing of the applications and, it follows, for use at the subsequent mediation of those applications. Whether they ultimately had to be used at the mediation does not change the reason why the photographs were taken.

7 It was entirely within the discretion of the Board to find, as a fact, the reason why the photographs were taken and to determine that, since they were taken for use before the Board and for no other purpose, the tenant could make no legitimate complaint regarding the landlord's conduct. There is nothing that arises from that determination that can be fairly characterized as giving rise to a question of law.

8 While it might be prudent for a landlord to expressly state in a notice to enter a rental unit that photographs may be taken, the failure to do so does not render the entry unlawful. Section 27 of the *RTA* expressly authorizes a landlord

to enter a rental unit for the purposes of conducting an inspection and that it is what happened in this case. The entry was therefore lawful.

9 Further, the fact that photographs were taken does not, by itself, constitute an infringement of the tenant's privacy rights. It would only constitute an infringement if it was done for an improper purpose. In this case, the Board determined that the photographs were taken for the purpose of the inspection and for use at the hearing of the tenant's outstanding applications. It was open to the Board, on the evidence, to reach that conclusion. In this day and age, it is not at all surprising that either a tenant or a landlord would take pictures of relevant items in order to use them at a hearing before the Board. Indeed, I understand that, on a prior occasion, the tenant had done precisely that to advance his position.

10 There is no error of law arising from the Board's decision in this matter. There is consequently no error in the Board's order dismissing a review from that decision.

11 The appeal is dismissed.

Costs

12 On behalf of the panel, I have endorsed the Appeal Book, "This appeal is dismissed for oral reasons given by Nordheimer J. Costs payable by the tenant/appellant to the landlord/respondent fixed at \$4,000 inclusive of disbursements and HST."

Appeal dismissed.