
VIDEO SURVEILLANCE

The legislation that governs privacy laws for landlords and tenants in British Columbia is the *Personal Information Protection Act* (PIPA). Landlords and building owners must abide by PIPA to prevent privacy complaints.

In the case of *Fhbw Investments Co. Ltd. (Re)*, 2023 BCIPC 46, an investment company (Company) owned a rental building and installed video surveillance camera in the building.

The stated purpose for the surveillance was to deter theft, monitor unauthorized entry, and to enforce the “no sublet” clause in the tenancy agreement. However, the Office of the Information and Privacy Commissioner for B.C (OIPC) found otherwise.

The OIPC found that the Company was not authorized to collect, use, and disclose the tenant’s personal information. The adjudicator found:

1. The Company failed to obtain consent or express consent from the tenant for the collection, use, or disclosure of her personal information and failed to provide notice of the purpose of the collection. The adjudicator concluded that posting signs about the video surveillance in the building was unsatisfactory notice.
2. PIPA authorizes an organization to collect information without consent where:
 - a. it is reasonable to expect that the collection with the consent of the individual would compromise the availability or accuracy of the personal information; and
 - b. where the collection is reasonable for an investigation or a proceeding.

The company failed to satisfy those requirements. The adjudicator stated that the tenant would have to be unaware that they were under video surveillance, and it must be a surreptitious recording. In this case, the Company posted signs about the surveillance and the surveillance was obvious to tenants in the building. As such, the Company did not receive authorization under PIPA to collect without consent.

3. Lastly, the adjudicator assessed whether the tenant provided “deemed” consent and found no deemed consent was provided. The adjudicator found that the Company did not explain the nature of the incidents of theft in the building that justifies the installations these cameras, nor did they attempt less intrusive methods of surveillance before installing cameras. Furthermore, due to the nature of the location of the cameras (laundry room, lobby, and entrance of the building), the complainant and other tenants in the building did not volunteer to be on camera as they did not have a choice.

While the Company/Landlord guised their purpose for being security driven, deterring theft and unauthorized entry, it was clear the location of the cameras was geared towards monitoring tenants. The Company failed to satisfy the requirements under PIPA and as such was not authorized to collect the tenant’s personal information. The adjudicator agreed and ordered the Company to disable the video cameras, stop collecting the video images, and delete the video images.

The OIPC provides some guidance to landlords who wish to set up video surveillance:

- When setting up and installing operating cameras, the system should be set up and operated to collect the minimum amount of information to be effective. This setup reduces the intrusion on individual’s privacy. There is no guidance as to how a landlord is supposed to decide the minimum amount of information needed to be effective, but some examples are provided.
- Cameras should be positioned to reduce images of individuals who are not being targeted.
- Don’t aim your camera in areas where persons would have heightened expectations of privacy such as change rooms, showers, or even hallways leading to laundry room. In addition, you should be careful about what lies beyond the area that you are watching over.
- Sound should not be recorded unless for some reason it is necessary.
- If the camera is being monitored, the recording function of the camera should only be turned on when unlawful activity is suspected or occurring. This means that the landlord would have to leave it up to the person who is monitoring the video link on the camera to use their judgment to start recording when they think something unlawful, or irregular is about to happen. Therefore, unmonitored cameras would be a better choice for landlords because you would not have to rely on the uncertainties of a person trying to decide as to when a situation would be recordable.

(2024)

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