



# Dispute Resolution Services

Page: 1

Residential Tenancy Branch  
Office of Housing and Construction Standards

A matter regarding OBION HOLDINGS LTD.  
and [tenant name suppressed to protect privacy]

## **DECISION**

Dispute Codes      MNDC, RP, FF

### Introduction

This hearing was convened by way of a telephone conference call in response to an Application for Dispute Resolution (the “Application”) made by the Tenant for: the Landlord to make repairs to the rental unit; money owed or compensation for damage or loss under the *Residential Tenancy Act* (the “Act”), regulation or tenancy agreement; and to recover the filing fee from the Landlord.

The Tenant, the president for the company named on the Application (the Landlord”) and the Building Manager all appeared for the hearing and provided affirmed testimony. The Landlord confirmed receipt of the Tenant’s Application and her photographic evidence. The Landlord also submitted photographic evidence to the Residential Tenancy Branch and to the Tenant late in accordance with the deadlines set out by the Rules of Procedure. However, the Tenant confirmed receipt of the Landlord’s evidence and consented to the use of the evidence during the hearing.

The hearing process was explained to the parties and they had no questions about the proceedings. Both parties were given a full opportunity to present their evidence, make submissions to me, and cross examine the other party on the evidence provided.

### Issue(s) to be Decided

- Has the Tenant established that a repair is required in the rental unit?
- Is the Tenant entitled to monetary compensation for the Landlord’s failure to do this repair?

### Background and Evidence

The parties agreed that this tenancy started on July 3, 2009 for a fixed term tenancy of one year after which it continued on a month to month basis. A tenancy agreement was

completed by the parties and currently, rent is payable by the Tenant in the amount of \$1,172.00 on the first day of each month.

The Tenant testified that when she moved into the rental suite in July 2009, she was provided with a faulty kitchen extractor fan that was full of grease. The Tenant testified that she informed the previous building manager who explained to her that it would be replaced.

The Tenant testified that she again informed the previous building manager of the faulty fan in June 2014 at which point she was told that it was a housekeeping issue that the Tenant was responsible for.

The Tenant explained that it was a very old fan and that she had kept the fan clean but throughout her tenancy it has leaked grease into her food while cooking and this causes her food to spoil. The Tenant provided photographic evidence indicating grease on the kitchen fan.

The Tenant now claims that she threw out \$15.00 worth of food each week during the entire tenancy which was spoilt by the leaking grease coming out of the faulty fan. The Tenant now seeks to recover from the Landlord a total amount of \$4,410.00 for this lost food. The Tenant provided no invoices or receipts relating to the food losses.

The Landlord explained that the Tenant had signed a tenancy agreement which requires the Tenant to clean and maintain sanitary standards in the rental suite and this encompassed the regular cleaning of the kitchen fan. The Landlord also pointed out that the Tenant was required under the tenancy agreement to promptly report any repair or damage to the rental suite.

The Landlord testified that he had no knowledge that the Tenant had asked for a repair of the kitchen fan to be done at the start of the tenancy. The Landlord explained that any repairs to the rental unit have to be authorised by him and that in 2009 the previous building manager reported no issues with the Tenant's rental unit; neither did the Landlord get any request by the building manager for this repair.

The Landlord testified that in June 2013, while at the Tenant's suite doing a repair in the bathroom, the Tenant brought it to the attention of the building manager that the kitchen fan was faulty. The Landlord testified that the building manger examined the kitchen fan and it was full of grease which emanated from the Tenant's cooking and not because the fan was faulty. The building manager explained to the Tenant that she was required to clean the fan on a regular basis and determined that the fan was still in full working

order. The Landlord testified that they heard nothing back from the Tenant until they were notified of this hearing and learnt that the Tenant was asking for the repair.

The Building Manager testified that after the Tenant made her Application she attended the Tenant's rental suite and explained that she would clean the kitchen fan but this would be done at the Tenant's expense. The Building Manager explained that she spent one hour cleaning the kitchen fan after which point she examined the fan. The Building Manager testified that the fan was in full working order, operating on the 'hi' and 'low' functions, and has the ability to extract steam and odors from cooking smells. The Landlord provided photographic evidence to show the cleaning that was done on the fan.

The Landlord testified that at no time did anyone inform the Tenant that the kitchen fan would be replaced and at no time did they get any written notice regarding this repair request. The Landlord submitted that the Tenant's motivation to make this Application was based on the Landlord's hearing for the Tenant's nonpayment of rent scheduled for May 2015. The Landlord submitted that the Tenant had not mitigated her loss and disputes the Tenant's allegation that there is a repair that needs to be done.

The Tenant confirmed that she had not informed the building manager of the repair at any time in writing because she relied on verbal promises made for the repair. The Tenant acknowledged that the fan had been cleaned by the Building Manager but was insistent that it was still not working properly. The parties were given an opportunity to make final closing arguments but none were made by the parties.

### Analysis

I have examined all the evidence presented for this case and I make the following findings based on the balance of probabilities. I first turn my mind to the Tenant's Application for the Landlord to repair the kitchen fan.

I find that the Tenant has failed to establish sufficient evidence that the kitchen fan was provided to her faulty at the start of the tenancy or that it became faulty during the tenancy. The Tenant provides photographic evidence which only shows grease build up on the fan; the Landlord provides photographic evidence that the grease build up was cleaned and asserts that the fan is still working.

Therefore, I find the Tenant's photographs are not sufficient evidence for me to determine that the fan is not operational. The Tenant failed to provide any independent or corroborating evidence to show that the fan at this moment in time is not fully

operational. Therefore, on this basis, I am unable to order the Landlord to make any repairs to kitchen fan as the Tenant has failed to establish and satisfy me that it is broken.

I now turn my mind to the Tenant's Application for monetary compensation. A party making an Application for monetary compensation against another party has the burden to prove their claim. The burden of proof is based on the balance of probabilities which the party making the claim must meet. Awards for compensation are provided in Sections 7 and 67 of the Act. Accordingly, an Applicant must prove the following:

1. That the other party violated the Act, regulations, or tenancy agreement;
2. That the violation caused the party making the application to incur damages or loss as a result of the violation;
3. The value of the loss; and,
4. That the party making the Application did whatever was reasonable to minimize the damage or loss pursuant to Section 7(2) of the Act.

If a party is unable to meet any of the requirements of the above test, then the Application must fail. The Tenant claims that the faulty fan was provided to her at the start of the tenancy and continued to be faulty during the long duration of the tenancy (in excess of five and half years). During this time, the Tenant alleges that she endured dripping grease onto her food which she had to subsequently dispose of.

In this respect, I find it difficult to believe that the Tenant endured such a serious problem for such a long period of time without ever reporting it to the Landlord in writing or using the remedies under the Act to deal with this problem. This would have been a reasonable requirement and course of action for the Tenant to pursue when faced with such a problem. Instead, the Tenant allowed this alleged dripping of grease to continue in excess of five years. Therefore, I find the Tenant failed to mitigate her loss as required by Section 7(2) of the Act.

Furthermore, I find that the Tenant failed to provide any invoices or receipts for the food items which were purchased and alleged to have been disposed of. Therefore, I find that the Tenant has also failed to verify the losses being claimed.

I also find that the cleaning of a kitchen hood fan is not the responsibility of a Landlord but of the Tenant to perform during and at the end of the tenancy. Therefore, I find the Tenant has failed to establish that the Landlord breached the Act in failing to clean the kitchen fan.

Conclusion

The Tenant has failed to prove that a repair in her rental suite is required. The Tenant has failed to provide sufficient evidence that she is entitled to any monetary compensation. Therefore, the Tenant's Application is dismissed **without** leave to re-apply.

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: March 27, 2015

---

Residential Tenancy Branch

