



# Dispute Resolution Services

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Residential Tenancy Branch  
Office of Housing and Construction Standards

A matter regarding AQUATERRA MANAGEMENT LTD. DBA COLUMBIA PLACE  
APARTMENTS  
and [tenant name suppressed to protect privacy]

## **DECISION**

Dispute Codes      RP, FFT

### Introduction

On August 18, 2018, the Tenant applied for a Dispute Resolution proceeding seeking a Repair Order pursuant to Section 32 of the *Residential Tenancy Act* (the “Act”) and seeking recovery of the filing fee pursuant to Section 72 of the *Act*.

The Tenant attended the hearing and C.F., S.P., and M.G. attended the hearing as agents for the Landlord. All in attendance provided a solemn affirmation.

The Tenant advised that he served the Notice of Hearing package, including his evidence, to the Landlord by hand and the Landlord confirmed receipt of this package. In accordance with Sections 89 and 90 of the *Act*, and based on this undisputed testimony, I am satisfied that the Landlord was served the Notice of Hearing package and evidence.

The Landlord advised that he served their evidence to the Tenant on August 29, 2018 and the Tenant confirmed that he received this package. As service of their evidence complies with Rule 3.15 of the Rules of Procedure, I have accepted this evidence and considered it when rendering this decision.

All parties were given an opportunity to be heard, to present sworn testimony, and to make submissions. I have reviewed all oral and written submissions before me; however, only the evidence relevant to the issues and findings in this matter are described in this Decision.

Issue(s) to be Decided

- Is the Tenant entitled to a Repair Order?
- Is the Tenant entitled to recover the filing fee?

Background and Evidence

While I have turned my mind to the accepted documentary evidence and the testimony of the parties, not all details of the respective submissions and/or arguments are reproduced here.

All parties agreed that the tenancy started on December 1, 2017 and rent was established at \$2,100.00 per month, due on the first of each month. A security deposit of \$1,050.00 was paid.

The Tenant advised that when he moved into the rental unit, the kitchen countertop was already worn and damaged. During the tenancy, he stated that he accidentally burned the countertop. He submitted that he contacted the Landlord and requested that the countertop be repaired; however, this request was denied. He referred to a letter that he submitted into evidence, dated July 24, 2018, where he again requested that the countertop be repaired, where he acknowledged that he was responsible for the burn mark, and he offered to pay for replacement of the countertop but not the installation. The Landlord denied this request as well and stated that the Tenant would be responsible for the whole repair.

The Landlord referred to the Application for Tenancy that was submitted into evidence and stated that this rental unit was rented in "As is" condition. He also stated that there was no agreement to replace the countertop at the beginning of the tenancy. He referred to a response letter submitted into evidence dated August 17, 2018 whereby the Landlord agreed to pay for the plumbing and re-installation of the sink but would not pay for a new countertop or the installation. The Landlord advised that because this damage was caused by the Tenant's negligence, they should not have to pay for the cost to replace the countertop, which was approximately five to ten years old.

The Tenant submitted that the countertop was very old and there are two areas around the sink that have deteriorated due to age and wear that he is concerned will eventually get mouldy and rot. He advised that the Landlord told another tenant that the Tenant will "have to pay every penny" to have this countertop replaced.

The Landlord stated that the Tenant will not be charged upon move out for replacement of the entire countertop if it was necessary to be replaced due to being past its useful life; however, the Tenant would likely be charged \$25.00 for the burn damage. During the hearing, the Landlord told the Tenant that if the Tenant still wished to have the countertop replaced immediately, the Tenant would be responsible for the cost of having this replaced. The Landlord acknowledged that the deteriorated parts of the countertop, with the exception of the burn mark caused by the Tenant, could be addressed.

The Tenant advised that he did not understand that he would not be charged for the cost of the entire countertop at the end of the tenancy due to the burn mark. He requested that the areas of the countertop that have deteriorated due to age be repaired but he would still prefer the entire countertop to be replaced, if possible.

### Analysis

Section 32 of the *Act* requires that the Landlord provide and maintain residential property in a stated of decoration and repair that “complies with the health, safety and housing standards required by law” and “having regard to the age, character and location of the rental unit, makes it suitable for occupation by a tenant.”

When reviewing the totality of the evidence before me, I am satisfied that the Tenant was responsible for the burn mark and that this is primarily superficial damage that does not affect the functionality or usability of the countertop. Furthermore, the Landlord acknowledged that the two areas on the countertop that have deteriorated due to age could be repaired. While the Tenant is seeking replacement of the entire countertop, I do not find that there is sufficient evidence to substantiate that the age or state of the existing countertop is beyond its useful life and must be replaced. Consequently, I Order that the Landlord repair, within **a month** of the date of this decision, the two areas by the kitchen sink that appear to have deteriorated due to age and moisture, and do so in a manner that mitigates against further decline.

The Landlord should be aware that failure to comply with the above noted Order could lead to a Tenant’s Application for compensation.

As the Tenant was partially successful in his claims, I find that the Tenant is entitled to recover half of the filing fee in the amount of \$50.00, which he may deduct from the next month's rent or otherwise recover from the Landlord.

### Conclusion

I Order that the Landlord complete the following action:

- As soon as is reasonably possible and within **a month** of the date of this decision, the Landlord must repair the two areas by the kitchen sink that appear to have deteriorated due to age and moisture, in a manner that mitigates against further decline.

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: October 24, 2018

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Residential Tenancy Branch