



# Dispute Resolution Services

Page: 1

Residential Tenancy Branch  
Office of Housing and Construction Standards

A matter regarding AFFORDABLE HOUSING  
and [tenant name suppressed to protect privacy]

## **DECISION**

Dispute Codes      OLC, FFT

### Introduction

This hearing was scheduled to deal with a tenant's application for orders for the landlord to comply with the Act, regulations or tenancy agreement. Both parties appeared or were represented at the hearing and had the opportunity to make relevant submissions and to respond to the submissions of the other party pursuant to the Rules of Procedure.

### Preliminary and Procedural Matters

The tenant had identified issues with the fridge as being the subject of this dispute in filing his application. During the hearing, the tenant wanted to introduce two other repair issues (painting and bathroom vanity). As a courtesy, I permitted the tenant to raise those two repair issues to the landlord's attention during the hearing and permitted the landlord to respond to those two other issues but this decision is limited to the issue identified on the Application.

Should the tenant remain unsatisfied with the landlord's response to the two other repair issues not addressed by way of this decision the tenant is at liberty to file another application.

### Issue(s) to be Decided

Has the tenant established that it is necessary and appropriate to order the landlord to comply with the Act, regulations or tenancy agreement with respect to the fridge in the rental unit?

### Background and Evidence

The tenants took possession of the rental unit on July 15, 2010. The tenant, his wife and four children occupy the rental unit. The landlord has multiple rental units at the subject property.

The landlord provides and rent includes a fridge under the tenancy agreement. At the start of the tenancy there was a fridge in the unit and in February 2015 the landlord replaced the old fridge with a new fridge.

The tenant is of the position the fridge provided in 2015 is defective and of flimsy construction. The tenant submits that shortly after the new fridge was installed the door handle was loose and then it had to be replaced, which the landlord did. Then the crispers broke and the bottle bar in the door of the fridge broke. The tenant seeks to have the landlord remove the fridge and so that the tenants may install their own fridge.

The landlord is agreeable to the tenants bringing in a second fridge and keeping the landlord's fridge running in the rental unit but the tenant does not want two fridges.

The landlord was also agreeable to removing the fridge conditional upon: the tenant repairing the damaged crispers and bottle bar, cleaning the fridge, and only once there is a need for a replacement fridge in a different unit since the landlord does not have any storage capacity.

The landlord stated that the landlord would repair a mechanical defect or other component that require repair so long as the repair is not the result of the tenant causing the damage. The landlord is of the position the broken crispers and bottle bar has been damaged as a result of the actions or neglect of the tenant, or persons permitted on the property by the tenant.

The tenant did not agree that he is responsible for the broken crispers and bottle bar. The tenant submitted that these items broke due to the flimsy construction or materials of the fridge and ordinary wear and tear.

The landlord was of the position the tenants, or their children, have damaged the fridge as: the same type of fridge is in other units and other tenants do not have these problems with their fridges; the fridge is a reputable name brand purchased only a few years ago from an appliance retailer; that the tenants may be over-using the fridge

given the size of their family; that the tenants or their children have also caused other damage to the previous fridge and to the corner of the wall near to the fridge.

The landlord pointed out that the tenants did not report the broken crisper to the landlord and that it was the landlord that discovered this during an inspection in November 2017. Then during the landlord's inspection in November 2018 the broken bottle bar was discovered. The tenant acknowledged that the broken crisper was not reported to the landlord, explaining that the tenants were trying not to cause problems and were trying to be patient.

The tenant denied damaging the previous fridge; denied over-using the fridge; and, pointed out that the walls need painting because the unit has not been painted in over eight years.

### Analysis

In the application before me, the tenant seeks that I order the landlord to comply with the Act, regulations or tenancy agreement with respect to the fridge. As such, I must find that the landlord has violated the Act, regulations or tenancy agreement with respect to the fridge.

Term 3 of the tenancy agreement by the parties provides that the landlord shall equip the rental unit with a fridge and is included in their rent. The landlord has provided a fridge in the rental unit for the tenants to use, thus complying with the tenancy agreement. The tenant's request that the landlord be required to remove the fridge from the rental unit but that would contradict the parties' existing terms of tenancy. Parties to a tenancy agreement may mutually agree to change a term in a tenancy upon mutual consent or upon an order of an Arbitrator.

The landlord appeared agreeable to removal of the fridge under certain conditions, including repair of the crispers and bottle bar at the tenant's expense; however, the tenant was not agreeable to such a condition. Therefore, I find the parties have not reached an agreement to amend the tenancy agreement and I also decline to order the landlord to amend the terms of the tenancy agreement on the basis the tenant wants a different fridge.

Should the parties reach mutually agreeable terms to remove the landlord's fridge from the rental unit at a later time they remain at liberty to amend their tenancy agreement by

mutual consent. I strongly suggest the amended term(s) be recorded in writing and signed by both parties.

Having declined to order the landlord to remove the landlord's fridge from the rental unit, I turn my mind to whether the landlord should be ordered to repair the fridge as it is undeniable that there are broken components of the fridge and I am satisfied that the broken components negatively impact its functionality to some degree.

Section 32 of the Act provides for repair and maintenance of a rental unit and including the equipment and fixtures provided to the tenant by the landlord. The parties were in dispute as to who is responsible for repairing the broken components of the fridge.

Both a landlord and a tenant have obligations to repair and maintain under section 32, as set out below:

**Landlord and tenant obligations to repair and maintain**

- 32** (1) A landlord must provide and maintain residential property in a state of decoration and repair that
- (a) complies with the health, safety and housing standards required by law, and
  - (b) having regard to the age, character and location of the rental unit, makes it suitable for occupation by a tenant.
- (2) A tenant must maintain reasonable health, cleanliness and sanitary standards throughout the rental unit and the other residential property to which the tenant has access.
- (3) A tenant of a rental unit must repair damage to the rental unit or common areas that is caused by the actions or neglect of the tenant or a person permitted on the residential property by the tenant.
- (4) A tenant is not required to make repairs for reasonable wear and tear.
- (5) A landlord's obligations under subsection (1) (a) apply whether or not a tenant knew of a breach by the landlord of that subsection at the time of entering into the tenancy agreement.

[Reproduced as written with my emphasis underlined]

As provided in section 32(3), a tenant is responsible to repair damage caused by their actions or neglect or those of persons permitted on the property by the tenant.

However, as seen in section 32(4), the Act stipulates that reasonable wear and tear is not a tenant's responsibility to repair. Accordingly, a landlord is responsible for repairing items that have broken due to the normal aging process, natural deterioration from use, and/or reasonable wear and tear.

Upon review of the photographs presented to me by the tenant, I find it more likely than not that the broken crispers and bottle bar are the result of excessive force or inserting too large or too heavy objects in the bottle bar and crispers. I also see what appears to be a dent on the inside wall of the fridge on the left side which would appear to be from impact and I cannot image it is from ordinary wear and tear. I also note that the fridge appears to be very full of contents in the pictures presented to me which causes me to conclude that the tenants are likely trying to fit too many items or larger sized items in the limited space. Also of consideration in making my decision is that it appears that the corner of the wall near the fridge has suffered from significant impact during the tenancy since it was listed as being in good condition at the start of the tenancy and there are now rather large pieces of drywall or plaster have been dislodged. Based on my findings above, I find the responsibility for repairing the crispers and bottle bar falls upon the tenants pursuant to section 32(3) of the Act and I make no order for the landlord to make these repairs.

In light of the above, I dismiss the tenant's application in its entirety, without leave to reapply.

### Conclusion

I dismiss the tenant's application in its entirety without leave to reapply.

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: January 03, 2019

---

Residential Tenancy Branch