



# Dispute Resolution Services

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Residential Tenancy Branch  
Office of Housing and Construction Standards

A matter regarding M.A. CEDAR PLACE PROPERTIES  
LTD. and [tenant name suppressed to protect privacy]

## **DECISION**

Dispute Codes      RP, FFT

### Introduction

On May 14, 2020, the Tenants applied for a Dispute Resolution proceeding seeking a repair Order pursuant to Section 32 of the *Residential Tenancy Act* (the “Act”) and seeking to recover the filing fee pursuant to Section 72 of the *Act*.

Both Tenants attended the hearing, and C.X. and L.T. attended the hearing as agents for the Landlord. All in attendance provided a solemn affirmation.

The Tenants advised that they served the Notice of Hearing and evidence package to the Landlord by email on May 14, 2020. C.X. confirmed receipt of this package and that the Landlord could view the video evidence in that package. Based on this undisputed testimony, and in accordance with Sections 89 and 90 of the *Act*, I am satisfied that the Landlord was served the Notice of Hearing and evidence package. As well, I have accepted the Tenants’ evidence and will consider it when rendering this Decision.

C.X. advised that the Landlord’s evidence was served to the Tenants by email on May 30, 2020 and the Tenants confirmed that they received this package. As this evidence was served within the timeframe requirements of Rule 3.15 of the Rules of Procedure, I have accepted this evidence and will consider 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

- Are the Tenants entitled to a repair Order?

- Are the Tenants 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 September 1, 2019. Rent was established at \$1,900.00 per month and was due on the first day of each month. A security deposit of \$950.00 was paid. A signed copy of the tenancy agreement was submitted as documentary evidence.

Tenant L.S. advised that there has been a problem with the gas oven element and that it stopped working in February 2020. He stated that they advised the Landlord that the stove/oven is completely functional, with the exception of the baking element, and they informed the Landlord of this by email on March 1, 2020. He stated that they made nine attempts between March 1 and March 18, 2020 to address this problem, but the Landlord did not fix this issue. On March 18, 2020, the Landlord finally investigated the issue and told the Tenants that this would be fixed. However, the Landlord simply brought the Tenants a brand-new countertop toaster oven the next day as an interim appliance because a repair person was not available to fix the oven due to the COVID pandemic. He thanked the Landlord for this replacement and asked that the oven be fixed, but he received no response.

On May 4, 2020, he emailed the Landlord again about this issue, but he has heard nothing since. He stated that he called a repair shop and they advised him that the problem is likely due to a simple temperature gauge issue. He referenced the video that was submitted as evidence to support their claim that the oven is not working properly. As a stove and oven was included as part of their tenancy, they would like this repaired. Given that the Landlord was notified of this issue before the provincial state of emergency was declared on March 18, 2020, it is their belief that the Landlord could have repaired this then.

C.X. advised that the oven is still functioning, but she acknowledged that there was a repair issue; however, this loss of functionality is not an emergency. She stated that when the Landlord was notified of the issue, the Landlord responded immediately but repair technicians were not entering residences due to the global pandemic. In response and in order to respect recommended social distancing protocols, the

Landlord requested that the Tenants provide a video of the oven issue, as opposed to the Landlord inspecting in person and risk contributing to the spread of the COVID virus.

Instead of complying with the Landlord's request and providing a video, the Tenants insisted that the Landlord attend in person. She stated that the Landlord reluctantly went to the rental unit to assess the problem on March 18, 2020, and when it was determined that there was an issue with the oven, the Landlord delivered to the Tenants a replacement toaster oven to be used in the interim until a repair technician could be found to attend and fix the oven. This was a reasonable solution and the replacement oven has more features than the original oven. She referenced emails between the parties, submitted as documentary evidence, to support that the Landlord had been in constant communication with the Tenants on this issue. Furthermore, the Landlord had made multiple requests that instead of putting the health and safety of people at risk by attending to view this problem in person, that the Tenants send the Landlord pictures or videos of the problem; however, the Tenants did not do this and insisted that someone attend in person.

L.T. advised that the oven cannot be easily fixed without a qualified technician and these repair people are not currently working due to the pandemic. She acknowledged that the oven is not working properly; however, the Landlord took the appropriate and reasonable actions to simultaneously address this issue as best as possible given the current pandemic landscape.

L.S. stated that their first request to have the Landlord attend in person was prior to the state of emergency being implemented, and they wanted the Landlord to view this problem in person. He stated that they attempted to submit a video of this problem to the Landlord on March 14, 2020 but they speculated that it was not received properly due to the size of the file. He stated that the video that was submitted as evidence was recorded on May 14, 2020.

Tenant D.S. advised that he recorded the first video on March 14, 2020, and L.S. recorded the second video that was submitted as evidence. He stated that the Landlord was contacted a number of times about this repair issue, and that he is aware of a number of repair companies that can fix this issue currently.

The Tenants advised that the size of the replacement toaster oven is not adequate for their needs, so they are forced to use the neighbour's oven once or twice a week. Furthermore, they have had to eat out more because of their reduced ability to cook.

### Analysis

Upon consideration of the evidence before me, I have provided an outline of the following Sections of the *Act* that are applicable to this situation. My reasons for making this Decision are below.

Section 32 of the *Act* requires that the Landlord provide and maintain residential property in a state 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.”

With respect to the issue of the repair of the oven, all parties have confirmed that the oven is not functioning properly and is in need of repair. While the Tenants claim that they have addressed this issue many times with the Landlord and they have been largely ignored, I find it important to note that the documentary evidence that they provided of their emails to the Landlord seem to be submitted in a manner which portrays a lack of response on the part of the Landlord. However, when reviewing the Landlord’s submissions of the email history between the parties, a more fulsome account of their communication history was provided, and it appears as if there were many responses sent by the Landlord attempting to address the oven issue. In my view, I find the Tenants’ limited or edited submissions to be an apparent attempt to portray a scenario that is not entirely accurate. This causes me to question their credibility and the reliability of their testimony and evidence on the whole.

Moreover, the Landlord’s evidence is that they requested video evidence of the oven issue instead of having to attend in person to reduce the potential of any unnecessary transmission or exposure to the COVID virus. During the hearing, L.S. stated that the video submitted as documentary evidence was the only video recorded and that it was done on May 14, 2020. However, the Tenants then contradictorily stated that they recorded a video prior to this on March 14, 2020 and attempted to send this to the Landlord but speculated that it may not have been received due to its size. In my view, if they had made a legitimate attempt to record a video on March 14, 2020 and attempted to send this to the Landlord then, if there was a problem with being able to send it to the Landlord due to its size, it is not clear to me why they made no other attempt to record and send a smaller or shorter video. Given that I am already dubious of the accuracy of their testimony, I find that this change in their testimony about there being a video recorded on March 14, 2020 to be unpersuasive and unlikely. As I am doubtful of the truthfulness of their testimony, I give little weight to the Tenants’ evidence and I prefer

the Landlord's evidence on the whole. Furthermore, I am satisfied that it was more likely than not that the Tenants did not reasonably accommodate the Landlord's request that this repair issue be investigated in an alternate manner to protect the safety and well-being of everyone involved during a pandemic crisis.

While the Tenants claim that this repair should have been dealt with sooner because their requests were made prior to the state of emergency being declared, I find it important to note that the global pandemic has been a known issue that has affected the world for months prior to their oven not functioning properly, and to suggest that the Landlord did not need to consider the health of all parties involved because the state of emergency had not yet been issued, in my view, is at the very least unreasonable and unacceptable. Based on a review of the totality of the evidence before me, I am satisfied that the Landlord responded to being informed of this repair issue as readily as possible and that a repair technician was not available to address this repair. Furthermore, I find that the Landlord attempted to investigate the issue in as reasonable a manner as could have been expected during an uncertain time of a global pandemic and that the Tenants were at fault for delaying the issue. While all parties acknowledge that the oven is in need of repair, I am satisfied that the Landlord's provision of an interim appliance, while it may not be an equivalent appliance, is a reasonable substitute and interim measure until a repair can be conducted.

As an aside, to demonstrate their loss and that the interim appliance is not adequate, the Tenants have claimed to have found it necessary to use the neighbour's oven in the meantime to cook. If this is truthful, the Tenants will have been contradicting the same social distancing guidelines that were recommended in March 2020 when they insisted that the Landlord investigate the repair issue personally. I also find it important to note that they indicated in their email on May 4, 2020 that they have not even used the oven and "it is still in the box." Based on the doubts that their testimony has created already, I am hesitant to accept that they have been using the neighbour's oven as stated. I find it more likely than not that they are dissatisfied with the Landlord's interim solution and have simply just chosen not to use it.

Given that all parties acknowledge that the oven is in need of repair, even though provincial recommendations may be relaxing somewhat to allow society to return to a more familiar state of normalcy, the parties are encouraged to use common sense to work together to address this issue as safely as possible. Just because businesses appear to be tentatively opening, it does not necessarily mean that this repair can be addressed immediately. The parties are reminded that the state of emergency has been extended until June 23, 2020, at the very least, and that they need to respect these

requirements to ensure that the safety of the public is the most pressing priority. Should the repair of the oven not be able to be addressed due to issues related to the pandemic, under Section 32 of the *Act*, I Order that the Landlord hire a qualified appliance professional, within **one month** of the end of the declared state of emergency, to investigate the problem and to have it repaired.

As the Tenants hindered the Landlord's efforts to investigate the repair issue, and as the Landlord has provided a reasonable substitute for the oven until the current oven can be replaced, I find that the Tenants were not successful in this Application. Therefore, they are not entitled to recover the filing fee in the amount of \$100.00.

### Conclusion

If the repair is not possible prior to the lifting of the provincial state of emergency, I Order that the Landlord complete the following action:

- As soon as is reasonably possible, and within **one month** of the end of the declared state of emergency, the Landlord must hire a qualified professional to investigate the nature of the oven repair and to have the necessary repair work completed.

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: June 13, 2020

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Residential Tenancy Branch