



# Dispute Resolution Services

Page: 1

Residential Tenancy Branch  
Office of Housing and Construction Standards

A matter regarding 338249 B.C. Ltd dba Homelife Peninsula Property  
Management and [tenant name suppressed to protect privacy]

## **DECISION**

Dispute Codes      MNDCT, OLC, RP, FFT

### Introduction

This hearing was convened as a result of the Tenant's Application for Dispute Resolution ("Application") under the *Residential Tenancy Act* ("Act"), for a monetary order for damage or compensation under the Act in the amount of \$950.00, and for an Order for the Landlord to Comply with the Act or tenancy agreement, and for an order for regular repairs; and to recover the \$100.00 cost of her Application filing fee.

The Tenant and three agents for the Landlord, D.M., T.V., and C.L. ("Agents"), appeared at the teleconference hearing and gave affirmed testimony. I explained the hearing process to the Parties and gave them an opportunity to ask questions about the hearing process. During the hearing the Tenant and the Landlord were given the opportunity to provide their evidence orally and to respond to the testimony of the other Party. I reviewed all oral and written evidence before me that met the requirements of the Residential Tenancy Branch ("RTB") Rules of Procedure ("Rules"); however, only the evidence relevant to the issues and findings in this matter are described in this Decision.

Neither Party raised any concerns regarding the service of the Application for Dispute Resolution or the documentary evidence. Both Parties said they had received the Application and/or the documentary evidence from the other Party and had reviewed it prior to the hearing.

### Preliminary and Procedural Matters

The Parties provided their email addresses at the outset of the hearing and confirmed their understanding that the Decision would be emailed to both Parties and any Orders sent to the appropriate Party.

At the outset of the hearing, I advised the Parties that pursuant to Rule 7.4, I would only consider their written or documentary evidence to which they pointed or directed me in the hearing.

Rule 2.3 authorizes me to dismiss unrelated disputes contained in a single application. In this circumstance, the Tenant indicated different matters of dispute on the application, the most urgent of which she said was for an order for regular repairs of two things: the washing machine and the kitchen backsplash. I find that not all the claims on the Application are sufficiently related to be determined during this proceeding. I will, therefore, only consider the Tenant's request for an order for regular repairs and the recovery of the Application filing fee at this proceeding. Therefore, the Tenant's other claims are dismissed, with leave to re-apply.

#### Issue(s) to be Decided

- Should the Landlord be required to make regular repairs for the Tenant, and if so, which repairs?
- Is the Tenant entitled to recovery of the \$100.00 Application filing fee?

#### Background and Evidence

The Parties agreed that the fixed term tenancy began on March 1, 2020, with a monthly rent of \$1,950.00, due on the first day of each month. The Parties agreed that the Tenant paid the Landlord a security deposit of \$975.00, and a pet damage deposit of \$500.00.

The Tenant said that she needs two things repaired in the rental unit: first, the washing machine leveled, so that it does not vibrate and move so much; and second, the backsplash replaced behind the kitchen sink.

#### **#1 VIBRATING WASHING MACHINE**

In the hearing, the Tenant said that the washing machine in the rental unit is not level, and that it vibrates and moves, as a result. She said: "It's getting worse, and the metal is vibrating on appliances near it. I can't do a wash without holding it and causing me back pain moving it back."

The Agent said that they have been there to level it twice, and that they were not aware of continued problems. She said: "The first repair we leveled it. The second time on

June 15<sup>th</sup> – the second time repaired the suspension spring and leveled the cabinets. Further requests were not received from the tenant.”

The Parties continued to discuss the communication problems they have had about the need for repairs and scheduling maintenance appointments. The Agents indicated that they leave the scheduling of repairs to the tenants and the relevant maintenance workers. However, the Tenant said that she would prefer that the Landlord follow the RTB Rules regarding the handling of repairs and giving notice of maintenance appointments. The Tenant said that she works Monday to Friday, and that she cannot receive texts or emails on her telephone at work from maintenance people for scheduling appointments. She said this is the responsibility of the Landlord.

The Agent said:

We are trying to have the contractor and the tenant coordinate a time together. This eliminates any back and forth between us and each of them. We’re trying to help both tenants and contractors. I do not book the contractors. I don’t know their schedule or book their schedules. They coordinate a time together. We don’t hand out keys to contractors. We want them to mutually agree to do the work as fast as possible.

I’ve been in the position for eight years and this has never been a problem with thousands of tenants. We just don’t post notices and do all this work. We’re just trying to get everything done quickly and conveniently. This is one tenant out of thousands. She wasn’t accepting emails. We will do it now and we will post notices. We will give notices and provide access.

The Parties agreed that the Landlord has tried to have the washing machine leveled two times, prior to the arbitration hearing. After the second attempt to level the washing machine by G., the Tenant emailed the Landlord on July 12, 2020, saying:

The washing machine is not balanced at all still and this is the first use after [G.] came and it is actually worse, now almost hitting the tank as well. Pls send a different person. I can show you with video attached, and I will be adding this to a new request letter due to [G.] saying it’s fixed twice now.

The floor is different levels, and soft to stand on parts, the City... should inspect this floor in this laundry room.

Please fix asap, and see the video if you can see just how frustrating this is.  
Thanks,  
[the Tenant]

The Agent said:

I did go with the inspector on the last inspection and the washer and dryer, it's pretty level, maybe only move them and put a piece of plywood down. There's a minute difference of flooring.

The Tenant said: "There's three different flooring – laminate, linoleum, and carpet. It might not be on the inspection report."

The Tenant submitted a video of the washing machine, showing that it was not overfilled, but that it vibrates vigorously and moves away from where it was sitting to start, moving toward the hot water tank. The Tenant said that it hurts her back to have to move it back in place each time she does laundry.

## **#2 KITCHEN BACKSPLASH**

The Tenant said:

If I wash a pan or tray, it splashes, even beyond the little sealant; it's causing problems. They sent a guy over who recommended that it be replaced, because it causes problems with mould. He attended in early July. He said he'd recommend that it get replaced, and that any temporary fix won't do. [D.M.] even asked me to have the plumber recommend that so that the owner knows....

The Agent said: "I don't recall saying that. Was this when I went to the property and...?"

The Tenant said: "This was before the summer; you said: 'tell him to look at the backsplash and recommend, as needed.'"

The Agent said:

There would be no recommendations for a cosmetic repair to a backsplash. A plumber would have attended for a leak reported. She was just asking the plumber. And there was no recommendation by the plumber.

Cosmetic repairs are cosmetic. If it needed caulking, we would have done that; but to replace a backsplash for cosmetic purposes would not be done. We would be willing to look at it again, but there are no leaks to my knowledge. We want to do preventative maintenance, but not doing cosmetics, just because it doesn't look good.

The Tenant said:

I never asked it to be looking good, but the whole counter is only one piece. I don't care about the look, It's not caulked properly. If there's any water splashing to the back of the counter. I just want it fixed. If I cared about how it looks, I wouldn't have rented. I just wanted it fixed properly. He only caulked.

The Agent said:

I'm willing to have it looked at again for preventative maintenance.

When I was there with the inspector, I looked at the countertops, because she complained it was old. I have counter top . . . looks like it was in good condition. It's not granite or quartz, but looks okay to me, unless some other area is damaged.

The Tenant said:

There's no seal, and there's a big space for the water to go. I tried to explain to [D. and B.] that it flows to the back cupboard to the . . . there's no seal, no nothing. We're lucky it's plywood cupboards. It's causing a lot of dirt and debris from somewhere. I sent pictures in.

The Tenant submitted photographs of the space behind the kitchen sink. The back edge of the metal sink is approximately two centimeters at the narrowest part from the edge of where the counter meets the wall. There is a corner bead covering the joint between the counter and the low back splash. I can see a dark edge on both sides of the corner bead, which looks like some kind of mould or dirt.

### Analysis

Based on the documentary evidence and the testimony provided during the hearing, and on a balance of probabilities, I find the following.

Landlords' and tenants' rights and obligations for repairs are set out in sections 32 of the Act. Section 32 states:

**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.

...

**#1 VIBRATING WASHING MACHINE**

Policy Guideline #1 addresses the Parties' respective responsibilities for Major Appliances, as follows:

**MAJOR APPLIANCES**

...

3. The landlord is responsible for repairs to appliances provided under the tenancy agreement unless the damage was caused by the deliberate actions or neglect of the tenant.

[emphasis added]

There is no evidence before me that the Tenant was responsible for the condition of the washing machine or the kitchen backsplash. Based on the evidence before me, I find that something about the washing machine's position results in the vibration causing it to move in the laundry room. This requires the Tenant to either hold on to it to prevent the movement or to move it back into place herself each time she washes clothes.

I find that remedying this situation is the Landlord's responsibility and, although there have been two attempts to resolve this issue in the past, the problem continues. I, therefore, make the following Orders:

- **I Order** that the Landlord have a licensed and qualified professional (or professionals, as required), from a business in good standing in the community attend the Tenant's rental unit as soon as reasonably possible and not more than

21 days after the date of this Decision to find a solution that stops the vibration and movement of the washing machine.

- **I Order** the Landlord to give the Tenant proper written notice of the date and time that the professional will attend the rental unit for the repair in accordance with section 29(1)(b) of the Act (see the section reproduced below).

Should the Landlord fail to comply with the above noted Orders as written, the Tenant is authorized to deduct \$50.00 per month from her rent until the Landlord complies with the above noted Orders. If the Landlord has not complied with the above noted Orders within four months after the date of this Decision, the rent reduction is increased to \$100.00 per month, until the Landlord complies with these Orders. This rent reduction **only** applies if the Landlord fails to comply with the specific Orders noted above.

## **#2 KITCHEN BACKSPLASH**

I find that the Tenant's version of events in this matter is consistent with the photographs she submitted. I find that her objective in requesting a backsplash replacement is to prevent mould build up, and to keep splashing sink water off the wall above the current, short, backsplash that is in place.

I find that the Agent supports this work, as she said: "We want to do preventative maintenance", and "I'm willing to have it looked at again for preventative maintenance." As a result, I order the following preventative maintenance be completed by the Landlord:

- **I Order** that the Landlord have a licensed and qualified professional (or professionals, as required), from a business in good standing in the community attend the Tenant's rental unit as soon as reasonably possible and not more than 21 days after the date of this Decision to replace the backsplash with something that will not mould or negatively affect the wall behind the sink..
- **I Order** the Landlord to give proper written notice of the date and time that the professional will attend the rental unit for the inspection and repair in this regard, in accordance with section 29(1)(b) of the Act.

Should the Landlord fail to comply with the above noted Orders as written, the Tenant is authorized to deduct \$50.00 per month from her rent until the Landlord complies with the above noted Orders. If the Landlord has not complied with the above noted Orders

within four months after the date of this Decision, the rent reduction is increased to \$100.00 per month, until the Landlord complies with these Orders. This rent reduction **only** applies if the Landlord fails to comply with the specific Orders noted above

#### 24-Hour Notice to the Tenant

I acknowledge that the Agent agreed to post Notices of scheduled maintenance visits for the Tenant and to provide access to the repair workers, in compliance with section 29(1)(b) of the Act. However, the Agent might find it useful to understand her obligations under the Act in this regard.

For instance, section 29 of the Act states:

#### **Landlord's right to enter rental unit restricted**

**29** (1) A landlord must not enter a rental unit that is subject to a tenancy agreement for any purpose unless one of the following applies:

- (a) the tenant gives permission at the time of the entry or not more than 30 days before the entry;
- (b) at least 24 hours and not more than 30 days before the entry, the landlord gives the tenant written notice that includes the following information:
  - (i) the purpose for entering, which must be reasonable;
  - (ii) the date and the time of the entry, which must be between 8 a.m. and 9 p.m. unless the tenant otherwise agrees;

. . .

As the party responsible for repairing major appliances, the landlord is responsible for arranging these repairs and for escorting the maintenance workers into the rental unit, unless otherwise agreed to by the tenant. As such, landlords are required to give tenants at least 24 hours written notice of such visits, which notice includes the purpose for entering and the date and time, as set out in section 29 (1)(b)(ii). While some tenants may agree to coordinate the service call with the maintenance person, a tenant who does not agree to this process is within her rights under the law to require that the landlord complies with the Act.

Please also note section 5 of the Act:

#### **This Act cannot be avoided**



**5** (1) Landlords and tenants may not avoid or contract out of this Act or the regulations.

(2) Any attempt to avoid or contract out of this Act or the regulations is of no effect.

Further, section 7 states that “If a landlord or tenant does not comply with this Act, the regulations or their tenancy agreement, the non-complying landlord or tenant must compensate the other for damage or loss that results.”

I also award the Tenant with recovery of her \$100.00 Application filing fee. The Tenant is authorized to reduce one future rent payment by \$100.00 in satisfaction of this award.

### Conclusion

The Tenant’s Application for regular repairs is granted, as set out in the Orders above. I, therefore, Order the Landlord to comply with this Decision and Orders described above.

The Tenant is also awarded recovery of the \$100.00 Application filing fee. The Tenant is authorized to reduce one future rent payment by \$100.00 in satisfaction of this award.

This Decision is final and binding on the Parties, unless otherwise provided under the Act, and 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 08, 2020

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Residential Tenancy Branch