



# Dispute Resolution Services

Page: 1

Residential Tenancy Branch  
Office of Housing and Construction Standards

A matter regarding Shirlyn Investments LTD  
and [tenant name suppressed to protect privacy]

## **DECISION**

Dispute Codes      ERP, FFT

### Introduction

This hearing dealt with the tenant's Application for Dispute Resolution seeking an order to have the landlord make emergency repairs.

The hearing was conducted via teleconference and was attended by the tenant; the landlord's agent and owners of the property.

The tenant's original Application sought an order to have the landlord deal with a faulty shower; stove; the wrong installation of a countertop; and a fridge. I note also, that in the Application, while notified as a problem, the tenant submitted evidence of problems with blinds; a window; and mould the application did not specify the tenant sought remedy for these issues.

In the hearing the parties agreed the problem with the shower and bathroom sink had been repaired. While the parties also agreed the fridge was fixed the tenant submitted there is a new problem, in that the fridge "runs" every 5 minutes.

As a result of some of the changes in the circumstances the tenant submitted that he still sought an order to have the landlord deal with the countertops; stove; fridge (new issue); and mould. The landlord was prepared to respond to all of these claims.

### Issue(s) to be Decided

The issues to be decided are whether the tenant is entitled to an order to compel the landlord to complete emergency repairs and to recover the filing fee from the landlord for the cost of the Application for Dispute Resolution, pursuant to Sections 33, 67, and 72 of the *Residential Tenancy Act (Act)*.

### Background and Evidence

The parties submitted into evidence a copy of a tenancy agreement signed by the parties May 24, 2018 for a one year and one day fixed term tenancy beginning on June

4, 2018 for a monthly rent due on the first of each month of \$1,050.00 that converted to a month to month tenancy on June 5, 2019. A security deposit of \$525.00 was paid.

The tenant seeks an order to require the landlord make repairs and or replaces the countertop in the kitchen as the current countertop is of low quality and slopes toward the front and the corner seem. The tenant submits that this causes any water on the counter to drip onto the kitchen floor. The tenant has submitted video and photographic evidence of him using a small level to assess the slope of the countertop and water on the kitchen floor.

The landlord submits there are no problems with the countertop and that the level used by the tenant is insufficient to establish the true level of the countertop. The landlord submits the rental unit had been renovated just prior to the tenancy.

The tenant seeks an order to have the landlord repair the light indicator on two of the stove elements as the current indicator cannot be seen from all angles. The tenant also seeks an order to have the landlord level out the stove properly as he complains that the non-flat stove “causes continuing burning of food or continuous and uninterrupted supervision of cooking process”.

In support of this position the tenant has submitted video evidence showing the use of a pan on the stove with a coloured liquid in the pan on each stove element. In addition, the tenant has submitted a photograph of the stove, taken from a very acute angle to the left of the stove (over the countertop) showing the two left elements clearly turned on but that the light cannot be seen as compared to the right elements where one element is on and the right hand light can be seen as on.

The tenant testified that oil goes to the side of the pan and his food can burn when he is not watching it constantly. The landlord (owner) testified that the tenant should not be leaving food on the stove unattended, especially when cooking with oil.

As noted above, the parties agreed the fridge has been repaired for the blocked hose that was causing water leaks. However, the tenant now submits the fridge runs every 5 minutes and that this continues noisily throughout the night and he is concerned about the extra electrical consumption. No evidence was provided to establish that there is any increase in electrical consumption. The landlord submitted it is not unusual for a fridge to have to cycle on and off – this is part of the normal refrigeration process.

The tenant seeks an order to have the landlord repair a mould problem with a window in the rental unit. In support of this issue the tenant has submitted photographic and video evidence. The landlord testified that they had tried to arrange for the removal of the window and replacement but that the tenant refused to allow the landlord to do so.

The tenant submitted that the landlord wanted to remove the window and replace it the following day leaving the window as an opening to the rental unit overnight. The landlord testified that this was the only way the replacement could be completed.

### Analysis

Section 33(1) of the *Act* defines, "emergency repairs" as repairs that are

- (a) urgent,
- (b) necessary for the health or safety of anyone or for the preservation or use of residential property, and
- (c) made for the purpose of repairing
  - (i) major leaks in pipes or the roof,
  - (ii) damaged or blocked water or sewer pipes or plumbing fixtures,
  - (iii) the primary heating system,
  - (iv) damaged or defective locks that give access to a rental unit,
  - (v) the electrical systems, or
  - (vi) in prescribed circumstances, a rental unit or residential property.

Despite the tenant's Application for Dispute Resolution being scheduled to be heard as an application for emergency repairs, I find that none of the issues identified in the tenant's application fall under the category of emergency repairs, as none of the repairs sought by the tenant (countertops; stove level; fridge; or mould) are outlined under Section 33, as noted above.

However, Section 32(1) of the *Act* sets out the landlord's obligations to maintain and repair the rental unit as follows:

"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 make it suitable for occupation by a tenant."

As such, I have considered the tenant's Application pursuant to Section 32 instead of Section 33. In such cases, the tenant must provide sufficient evidence to establish not only that a problem exists but that it somehow is contrary to the obligations outlined in Section 32(1).

Based on the submissions of both parties I accept that the tenant has provided sufficient evidence that the countertop and stove tops may be unlevel and that the left element light on the stove may not be visible. However, I find that the tenant has failed to provide sufficient evidence to establish that these problems constitute a contravention of the landlord's obligations under Section 32.

There is no evidence before me that these issues are contrary to health, safety and housing standards required by law or that these issues make the rental unit unsuitable for occupation by a tenant. Therefore, I dismiss this portion of the tenant's Application, without leave to reapply.

In addition, while the tenant submitted that the fridge is "running every 5 minutes" the tenant has not provided any evidence to substantiate this claim or that even if this were the case, there is no evidence of how that proves the landlord is not compliant with Section 32 of the *Act*. Therefore, I dismiss this portion of the tenant's Application without leave to reapply.

Finally, in regard to the tenant's request for a replacement window to deal with a mould issue I am satisfied with the submissions of both parties that the landlord made an attempt to make the changes requested but that it was the tenant who would not allow the landlord to complete the task.

Having said that, I note that while the landlord may be required to remove the window overnight it is incumbent on the landlord to ensure the rental unit is secured during the period that the window would need to be removed. I also note the tenant is obligated to allow the landlord to make the repair in whatever manner is available to them.

As a result, I will not, at this time, order the landlord to make the repairs to the window as requested by the tenant. However, this decision is based on the fact the landlord is willing to change the window. If the landlord fails to replace the window within a reasonable time and the tenant does not interfere with the landlord in doing so, I grant the tenant liberty to reapply for an order to have the landlord replace the window.

### Conclusion

In conclusion, I dismiss the tenant's Application for Dispute Resolution in its entirety.

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 20, 2020

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Residential Tenancy Branch