



# Dispute Resolution Services

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Residential Tenancy Branch  
Office of Housing and Construction Standards

A matter regarding TOP VISION REALTY INC.  
and [tenant name suppressed to protect privacy]

## DECISION

### Dispute Codes:

DRI, ERP, RP, OLC, MNDCT, FFT

### Introduction:

This hearing was convened in response to an Application for Dispute Resolution filed by the Tenant in which the Tenant applied for a monetary Order for money owed or compensation for damage or loss, to dispute a rent increase, for an Order requiring the Landlord to make repairs, for an Order requiring the Landlord to comply with the tenancy agreement and/or the *Residential Tenancy Act (Act)*, and to recover the fee for filing this Application for Dispute Resolution.

The Tenant stated that the Dispute Resolution Package and all of the evidence the Tenant submitted to the Residential Tenancy Branch were sent to the Landlord, via registered mail. The Agent for the Landlord acknowledged receiving these documents and they were accepted as evidence for these proceedings.

The participants were given the opportunity to present relevant oral evidence, to ask relevant questions, and to make relevant submissions. Each participant affirmed that they would speak the truth, the whole truth, and nothing but the truth during these proceedings.

### Issue(s) to be Decided:

- Is there a need to issue an Order requiring the Landlord to make repairs?
- Is the Tenant entitled to compensation for deficiencies with the refrigerator?
- Has there been a rent increase that does not comply with the Act?
- Is the Tenant entitled to recover a rent overpayment?
- Is the Tenant entitled to recover compensation for "lost benefits" as a result of a rent increase?
- Is the Tenant entitled to recover costs associated to preparing for these proceedings?
- Is the Tenant entitled to recover the fee for filing this Application for Dispute Resolution?

Background and Evidence:

The Tenant and the Agent for the Landlord agree that this tenancy began in 2015.

The Tenant is seeking an Order requiring the Landlord to make repairs to the water. In support of this claim she stated that:

- Since she moved into this rental unit, the water has been periodically dirty and/or has white crystals in it;
- The water stays murky for weeks or months;
- She thinks the last time the water was murky was in July of 2020; and
- The water is currently clear.

In response to the water repairs, the Agent for the Landlord stated that:

- The Landlord is aware of the on-going issues with water in the rental unit;
- The issue with water is the result of the quality of the water being provided with the city, which has intermittent water quality issues; and
- There is nothing the Landlord can do to improve the quality of the water being supplied to the residential complex by the city.

The Tenant is seeking an Order requiring the Landlord to repair her kitchen faucet. In support of this claim she stated that:

- The kitchen faucet was spewing water all over the kitchen;
- The Landlord came to the unit in March of 2020, but did not properly repair the faucet;
- The faucet still spews water all over the kitchen;
- She submitted video evidence of the problem with the faucet, which was taken prior to March of 2020; and
- None of the videos demonstrate the current condition of the faucet.

In response to the kitchen faucet repair, the Agent for the Landlord stated that:

- The kitchen faucet was repaired in March of 2020;
- The faucet now functions properly and no longer spews water; and
- The Tenant believes the faucet does not function properly because the water does not flow in one single stream of water.

The Tenant is seeking an Order requiring the Landlord to make repairs to her front door. In support of this claim she stated that:

- Prior to this hearing the front door of the residential complex was not operating properly;
- The front door of the complex has been repaired and is now working properly;
- The front door to her rental unit is difficult to open and close;
- The problem with the front door to her unit was previously reported to the Landlord;
- The problem with her front door was previously repaired by the Landlord;

- The problem was reoccurred; and
- The door needs to be repaired again.

In response to the door repair, the Agent for the Landlord stated that:

- The Landlord was not aware that the front door to the unit was not working properly; and
- The Landlord will inspect the door and make any necessary repairs.

The Tenant is seeking an Order requiring the Landlord to wash her windows. In support of this claim she stated that:

- She is not asking the Landlord to clean the interior of the windows;
- The exterior windows have not been washed in five years.

In response to the windows, the Agent for the Landlord stated that:

- The exterior windows were washed two years ago; and
- The Landlord will wash the exterior of the Tenant's windows.

The Tenant is seeking an Order requiring the Landlord to spray for silverfish. In support of this claim she stated that:

- She has silverfish in her rental unit every year;
- She has reported the silverfish every year;
- The Landlord has treated her rental unit for silverfish twice in her tenancy.

In response to the silverfish, the Agent for the Landlord stated that:

- The Tenant reports silverfish every year;
- The unit was last treated for silverfish in 2019; and
- The Landlord will have the unit treated for silverfish.

The Tenant is seeking an Order requiring the Landlord to repair or replace the refrigerator. In support of this claim she stated that:

- The refrigerator door does not close properly;
- When the refrigerator door is closed there is a gap between the door and the body of the refrigerator;
- The gap allows cold air to escape from the refrigerator; and
- She thinks her hydro bills are excessively high because the refrigerator is not functioning properly.

In response to the refrigerator, the Agent for the Landlord stated that the Landlord will inspect the refrigerator and make any necessary repairs.

The Tenant is seeking compensation of \$194.20 for hydro consumption. In support of this claim the Tenant stated that:

- She uses very little hydro in her rental unit;
- She uses no lights;

- She does not understand why her hydro bills are so high;
- BC Hydro told her that refrigerators consume the most energy in any rental unit;
- She believes her hydro is excessively high because the refrigerator was not functioning properly due to the age of the refrigerator and the problem with the door; and
- Her hydro documents show that her hydro costs have doubled since she reported the problem with the refrigerator in 2017.

The Tenant submitted documentation of her hydro costs since 2017, which indicate her bills range from \$19.73 to \$57.82, with most bills being in the higher end of that range.

The Tenant alleges there has been a rent increase that does not comply with the legislation.

The Agent for the Landlord and the Tenant both testified that:

- Prior to March 1, 2020, the monthly rent was \$855.50;
- On November 12, 2019 the Landlord served the Tenant with written notice that her rent would increase to \$877.74, effective March 01, 2020;
- The notice to increase the rent was served on a Notice of Rent created by the Residential Tenancy Branch; and
- The Tenant has paid the monthly rent increase since March 01, 2020.

The Tenant submitted a Notice of Rent Increase, dated August 27, 2020, which is inconsistent with the testimony provided at the hearing. The Notice of Rent Increase declares that:

- The rent has not been increased since September 01, 2017;
- In August of 2020 the rent was \$855.50; and
- The rent will be increased to \$877.74, effective December 01, 2020.

The Tenant submitted a Shelter Aid for Elderly Renters form, which declares that her rent was increasing to \$877.74, effective March 01, 2020.

In the Tenant's written submission, the Tenant declared that the rent was increased twice in 2020.

In regard to the rent increase, the Tenant stated that:

- The Landlord did not have the right to impose this rent increase because of the COVID-19 pandemic;
- She was the only person in the residential complex who was served with a rent increase;
- She does not believe she should have to pay this rent increase because she was threatened and verbally abused by an agent for the Landlord;
- She is seeking to recover all of the increased rent payments she has made since March 01, 2020; and

- She is seeking to recover monthly employment assistance benefits she lost as a result of the rent increase.

The Tenant is seeking compensation of \$160.90 for costs associated to preparing for these proceedings. These includes costs for photocopying, recording videos, mailing, and fuel for her vehicle.

Analysis:

Section 32 of the *Act* requires landlords to 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.

When a tenant seeks an Order requiring the Landlord to make repairs to the unit, the tenant bears the burden of proving that repairs are needed, pursuant to section 32 of the *Act*. In the case of verbal testimony, when one party submits their version of events and the other party disputes that version, it is incumbent on the party bearing the burden of proof to provide sufficient evidence to corroborate their version of events. In the absence of any documentary evidence to support their version of events or to doubt the credibility of the parties, the party bearing the burden of proof would fail to meet that burden.

On the basis of the undisputed evidence, I find there are intermittent water quality issues with the water in the rental unit. I find that the Tenant submitted insufficient evidence to establish that the water quality is the result of a deficiency in the residential complex. On the basis of the testimony of the Agent for the Landlord and the absence of any evidence to the contrary, I find that the issues with water quality is related to the quality of water being provided to the complex by the city. As there is no evidence to show that the Landlord has the ability to remedy the issue with water quality, I will not be issuing an Order requiring the Landlord to address this issue.

I find that the Tenant submitted insufficient evidence to establish that the kitchen faucet currently requires repairs. In reaching this conclusion I was heavily influenced by the absence of evidence that corroborates the Tenant's testimony that faucet was not properly repaired in March of 2020 and that it still spews water all over the kitchen. I note that the Tenant acknowledged that she did not provide video evidence taken after the faucet was repaired in March of 2020.

In concluding that the Tenant submitted insufficient evidence to establish that the kitchen faucet currently requires repairs, I was further influenced by the absence of evidence that refutes the Agent for the Landlord's testimony that faucet does not spew water anymore and that it is functioning properly. I find his testimony was consistent and forthright throughout this hearing, and I have no reason to doubt his credibility.

As the Tenant submitted insufficient evidence to establish that the kitchen faucet currently requires repairs, I will not be issuing an Order requiring the Landlord to repair the faucet.

On the basis of the undisputed testimony of the Tenant, I find that the front door to her unit is not working properly. **As the Agent for the Landlord agreed that the Landlord will inspect and repair the door, I find that prior to February 28, 2021, the Landlord must fulfill that promise.**

On the basis of the testimony of both parties, I find that the exterior windows have not been washed for at least two years. **As the Agent for the Landlord agreed that the Landlord will wash the exterior of the Tenant's windows, I find that prior to April 30, 2021, the Landlord must fulfill that promise.**

On the basis of the testimony of both parties, I find that there is an on-going problem with silverfish in the rental unit. **As the Agent for the Landlord agreed that the Landlord will treat the unit for silverfish, I find that prior to February 28, 2021, the Landlord must fulfill that promise.**

On the basis of the undisputed testimony of the Tenant, I find that her refrigerator door does not close properly. **As the Agent for the Landlord agreed that the Landlord will inspect and repair the door, I find that prior to February 28, 2021, the Landlord must fulfill that promise.**

I find that the Tenant submitted insufficient evidence to support her belief that her hydro is excessively high because the refrigerator was not functioning properly. In reaching this conclusion I was influenced, in part, by the absence of any evidence to establish that her hydro consumption is greater than other occupants of the complex who live in a similar size unit with a properly functioning refrigerator. I was also influenced, in part, by the absence of any evidence from an expert to establish that the refrigerator consumed excessive electricity and, if so, the percentage of consumption that can be attributed to the poorly functioning refrigerator.

Although the Tenant alleges that her hydro consumption has doubled since she reported the problem with the refrigerator in 2017, I am unable to conclude that the hydro consumption reports support the Tenant's claim. Although there are clearly some peaks and valleys in hydro consumption, I find those anomalies could have been caused by temporary absences and/or heating the unit during colder months.

As the Tenant submitted insufficient evidence to support her belief that her hydro is excessively high because the refrigerator was not functioning properly, I dismiss her claim of \$194.20 for hydro consumption.

Section 42(1)(b) of the *Act* stipulates that a landlord must not impose a rent increase for at least 12 months after the effective date of the last rent increase made in accordance with this *Act*.

I find that the Tenant has submitted insufficient evidence to support her submission that her rent was increased twice in 2020. In reaching this conclusion I was heavily influenced by the undisputed testimony that the Tenant's rent was increased from 855.50 to \$877.74, effective March 01, 2020.

My conclusion that the Tenant submitted insufficient evidence to support her submission that her rent was increased twice in 2020 is based, in part, on the fact that the Tenant did not testify that her rent was increased between January 01, 2020 and March 01, 2020, nor did she testify that her rent was increased between March 01, 2019 and declares that the current rent is \$855.50 and rent has not been increased since September 01, 2017.

In the absence of evidence to establish that the rent was increased twice in 2020 or that the rent was increased since September 01, 2017, I cannot conclude that the Landlord was restricted from raising the rent pursuant to section 42(1)(b) of the *Act*.

Section 42(2) of the *Act* stipulates that a landlord must give a tenant notice of a rent increase at least 3 months before the effective date of the increase. Section 42(3) of the *Act* stipulates that the rent increase must be given in the approved form.

On the basis of the undisputed testimony, I find that on November 12, 2019 the Tenant was served with a Notice of Rent Increase on the form that was created by the Residential Tenancy Branch. I find that the notice of rent increase was served on the proper form and that it provided the Tenant with the required 3 months' notice that her

rent would increase from \$855.50 to \$877.74. I therefore find that the Landlord increased the rent in accordance with sections 42(2) and 42(3) of the *Act*.

Section 43(1)(a) of the *Act* stipulates that a landlord may impose a rent increase only up to the amount that is calculated in accordance with the regulations. Section 22(2) of the Residential Tenancy Regulation stipulates that a landlord may impose a rent increase that is no greater than two percent above the annual inflation rate which for the first part of 2020 was 2.6%. As the rent increase the Landlord imposed on March 01, 2020 was less than 2.6% of the monthly rent, I find that the Landlord increased the rent in accordance with section 43(1)(a) of the *Act*.

On the basis of the evidence before me, I find that the Landlord increased the rent to \$877.74 in accordance with the *Act*.

In considering the matter of the rent increase, I have placed no weight on the Tenant's submission that she was the only person in the residential complex who was served with a rent increase and she does not believe she should have to pay this rent increase because she was threatened and verbally abused by an agent for the Landlord. Even if both of these submissions are true, they do not negate the Landlord's right to raise the rent in accordance with the *Act*.

In considering the matter of the rent increase, I have considered the Tenant's submission that the Landlord did not have the right to impose this rent increase because of the COVID-19 pandemic. *Ministerial Order M089* issued March 30, 2020 pursuant to the State of Emergency declared on March 18, 2020 suspended the right to impose rent increases, effective March 30, 2020. As the Landlord increased the rent effective March 01, 2020, I find that *Ministerial Order M089* had no effect on that rent increase.

I have considered the Notice of Rent Increase submitted in evidence, dated August 27, 2020, although neither party raised this evidence during the hearing. Even if I concluded that this Notice of Rent Increase was served to the Tenant sometime on, or after, August 27, 2020, I find that it would not constitute a second rent increase in 2020. As the Notice of Rent Increase declares the rent will be increased to \$877.74, effective December 01, 2020, and the rent had already been increased to \$877.74 on March 01, 2020, this cannot be considered a second rent increase.

As the Landlord increased the rent to \$877.74 in accordance with the *Act*,



I find that the Landlord had the right to collect rent of \$877.74. I therefore dismiss the Tenant's application to recover any of the rent increase she paid and any lost benefits she experienced as a result of the rent increase.

The dispute resolution process allows an Applicant to claim for compensation or loss as the result of a breach of *Act*. With the exception of compensation for filing the Application for Dispute Resolution, the *Act* does not allow an Applicant to claim compensation for costs associated with participating in the dispute resolution process. I therefor dismiss the Tenant's application to recover costs she incurred to prepare for these proceedings.

I find that the Tenant's Application for Dispute Resolution has some merit and that she is entitled to recover the fee paid to file this Application.

Conclusion:

Pursuant to section 72(2) of the *Act*, I hereby authorize the Tenant to retain \$100.00 from one monthly rent payment, in compensation for the fee paid to file this Application for Dispute Resolution.

The Landlord is obligated to make the repairs he told the Tenant he would make during the hearing on January 15, 2021. For clarity, the required repairs are highlighted in bold lettering in my analysis.

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 16, 2021

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Residential Tenancy Branch