



# Dispute Resolution Services

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Residential Tenancy Branch  
Office of Housing and Construction Standards

## **DECISION**

Dispute Codes      OLC, DRI, FFT, MNDCT, PSF

### Introduction

This hearing dealt with the tenant's application pursuant to the *Residential Tenancy Act* (the "Act") for:

- a monetary order for compensation for damage or loss under the Act, regulation or tenancy agreement pursuant to section 67;
- an order requiring the landlord to comply with the Act, regulation or tenancy agreement pursuant to section 62;
- an order to the landlord to provide services or facilities required by law pursuant to section 65;
- a determination regarding their dispute of an additional rent increase by the landlord pursuant to section 43;
- authorization to recover his filing fee for this application from the landlord pursuant to section 72.

Both parties attended the hearing via conference call and provided affirmed testimony. The named landlord was assisted by her translator, H.C.

Both parties were advised that the conference call hearing was scheduled for 60 minutes and pursuant to the Rules of Procedure, Rule 6.11 Recordings Prohibited that recording of this call is prohibited.

Both parties confirmed the tenant served the landlord with the notice of hearing package and the submitted documentary evidence via Canada Post Registered Mail on May 17, 2021. The landlord confirmed that no documentary evidence was submitted. The tenant also confirmed that 2 files; a video and police information documents were not served to the landlord. I accept the undisputed affirmed evidence of both parties and find that both parties have been sufficiently served as per section 71 of the Act.

Preliminary Issue(s)

At the outset, the tenant stated that she was informed that the Residential Tenancy Act does not apply as she shares a kitchen with the landlord.

Section 4 (c) of the Residential Tenancy Act states in part,

This Act does not apply to

Living accommodation in which the tenant shares bathroom or kitchen facilities with the owner of that accommodation.

The landlord stated that the tenant has a room with a private bathroom and shares the kitchen with her brother's family. The landlord confirmed that she is the owner but lives upstairs. I find based upon the direct testimony of both parties that Section 4 of the Act does not apply. In this case the kitchen is shared with the landlord/owner's brother's family. The landlord/owner lives upstairs in a separate space. On this basis, the kitchen is not shared with the owner.

At the outset, the tenant's application was clarified. The tenant stated that she seeks a monetary claim of \$10,000.00 but has no idea what this is for. The landlord confirmed that she is not aware of any details concerning this claim. I find that as both parties are not aware of the details of this monetary claim that this portion of the tenant's application is dismissed with leave to reapply. Leave to reapply is not an extension of any applicable limitation period.

The tenant seeks an order for the landlord to replace or repair the stove which has been broken since May of 2019. The tenant also seeks a finding that the landlord increased the rent illegally when no rent increases are allowed under the Act.

Issue(s) to be Decided

Is the tenant entitled to an order for the landlord to provide services or facilities?

Is the tenant entitled to an order for repairs?

Is the tenant entitled to a finding on an illegal rent increase?

Background and Evidence

While I have turned my mind to all the documentary evidence, and the testimony of the parties, not all details of the respective submissions and / or arguments are reproduced here. The principal aspects of the applicant's claim and my findings are set out below.

The tenant seeks an order for the landlord to replace or repair a broken stove. The tenant stated that the stove stopped working in May 2019 and the landlord was notified. The landlord disputed the tenant's claim arguing that the stove was not broken. The tenant referenced a submitted photograph of the stove where the oven is being used as storage and the cooktop is covered with two pieces of tiles. The same photograph shows two portable cooktops plugged in and resting on the tile. The landlord confirmed the tenant's claim that the tenant was provided with two portable cooktops.

The tenant also argued that the landlord had increased her rent by \$50.00 from \$670.00 to \$720.00. The tenant stated that she was aware that rent increases have been frozen until December 31, 2021. The tenant stated that she had already made one payment of the increased rent at \$720.00. The landlord made no comment.

### Analysis

Section 32 of the Act states that a landlord must provide and maintain the residential property in a state of decoration and repair.

In this case the tenant has provided submission that the stove was broken requiring repair/replacement. Despite the landlord arguing that the stove was not broken, I find that I prefer the evidence of the tenant over that of the landlord. The tenant referenced a submitted photograph of a stove where the oven was used as storage; two pieces of tile were covering the cooktop and two portable cooktops were plugged in and sitting on the tile. I find that this is sufficient evidence to satisfy me that the stove was not in normal use and as such broken.

Section 27 of the Act also states that a landlord must not terminate or restrict a service or facility if the service or facility is essential to the tenant's use of the rental unit as living accommodation or providing the service or facility is a material term of the tenancy agreement.

I find that a stove is an essential part of the tenancy agreement and find that the tenant has established a claim that the stove is broken and the landlord was aware of the issue since May 2019 as the landlord had provided two portable cooktops for use. I order the landlord to replace the stove within 2 weeks of the date of this hearing. If the landlord

fails to replace the stove by the deadline the tenant is authorized to withhold \$50.00 per month until the stove is replaced.

On the tenant's claim that the landlord increased the rent by \$50.00 from \$670.00 to \$720.00, I find that the tenant has provided sufficient evidence to satisfy me. The landlord did not dispute the claim. No evidence of a notice of rent increase being served by the landlord to the tenant have been submitted. Both parties were notified during the hearing that rent increases have been frozen from March 30, 2020 to December 31, 2021. On this basis, I make the finding that the landlord has made an illegal rent increase and find that the rent shall revert back to \$670.00 as per the original tenancy agreement. The landlord may not increase the rental rate until authorized to do so by the Act. I also find that as the landlord has already received \$50.00 for an illegal rent increase the tenant may deduct this amount from the next monthly rent for October 2021, allowing a one-time rent payment of \$620.00.

The tenant is entitled to recovery of the \$100.00 filing fee. As the tenancy continues, I authorize the tenant to withhold one-time \$100.00 from the next monthly rent upon receipt of this decision. This will allow the tenant to make an October 2021 rent payment of \$520.00.

### Conclusion

The tenant's application is granted.

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: September 17, 2021

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Residential Tenancy Branch