



# Dispute Resolution Services

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Residential Tenancy Branch  
Ministry of Housing and Social Development

## **DECISION**

**Dispute Codes:** *ERP, RP, MNR, MNDC, RR, FF*

### **Introduction**

This hearing dealt with an application by the tenant pursuant to the *Residential Tenancy Act*, for an order seeking landlord's action to conduct emergency repairs. The tenant also applied for a monetary order for the cost of an environmental test for mould and the filing fee. The tenant also applied for a reduction in rent of \$1,000.00 for loss of income from a subtenant. Both parties attended the hearing and were given full opportunity to present evidence and make submissions.

### **Issues to be decided**

Is the landlord responsible for the cost to conduct an environmental test of the rental unit? Is the landlord liable for loss of rental income from a sub tenant? Is the tenant entitled to the recovery of the filing fee?

### **Background and Evidence**

The tenancy started on December 01, 2009 for a fixed term ending February 28, 2011. Prior to the start of the tenancy, the tenant occupied the home as the owner. The monthly rent is \$2,000.00. The written lease allows the tenant to sublet the suite in the unit at his discretion.

The tenant stated that in February 2010, a subtenant moved in for a fixed term ending February 28, 2011 at a monthly rent of \$1,000.00. In the spring of 2010, the subtenant informed the tenant that there was mould in the unit. The tenant supplied a dehumidifier to the sub tenant for use in the suite. The subtenants continued to occupy the rental unit until they had to move out of the country for personal reasons. They moved out of the suite on September 15, 2010.

The tenant found new sub tenants who moved in on September 15, 2010. These new subtenants decided to move out two weeks later stating that there was mould in the unit that adversely affected their health.

The tenant informed the landlord about the mould problem on October 01, 2010. The landlord visited the unit the next day and found no visible sign of mould. The tenants agreed that mould was not visible as they had cleaned out the entire home. On October 07, the tenant agreed to allow a second inspection by the landlord. However, the tenant was not home at the appointed time and he sent a friend of his to point out the areas of concern. The landlord attended the appointment with a contractor.

The tenant's representative pointed out areas that included caulking in two bathrooms, the area under the stairs, luggage with mould stains and a freezer that was not in use. The contractor found no mould anywhere except for a small amount near the crawl space access door and some in the inoperative freezer. The landlord offered to have the areas cleaned up. The contractor stated that the access panel was not properly insulated and therefore may have caused the visible presence of mould in the area near the crawl space access.

The tenant stated that this area was under the staircase located in his part of the house and was used for storage. The tenant filed two photographs. One showed small black patches along the baseboard in the area under the stairs and the other showed a suitcase with mould stains. The tenant stated that he turned off the freezer in September as it was not required and that there was no mould in it.

On October 13, the tenant contacted a commercial environmental company to conduct a test of the air quality in the home. The results showed that the *Aspergillus Penicillium* species was present inside the home in amounts that were 3-7 times the normal control. All other species were present in normal numbers. The report stated that the presence of the elevated species can cause health problems for the occupants.

The tenant has filed a statement from sub tenant #1 in which she describes the allergic reactions that she suffered through her tenancy of nine months and a sworn affidavit from sub tenant #2 stating that she moved out for health reasons. The tenant also filed two letters from a doctor and a nutritionist dated October 20 and 21. These letters state that the symptoms that the tenant shows are consistent with exposure to toxic mould.

The tenant is claiming the reimbursement of the cost of the test in the amount of \$560.00 and \$1,000.00 for the loss of rental income of the suite for the month of October 2010.

### **Analysis**

Section 6 of the *Residential Tenancy Policy Guideline*, states that a landlord would normally be held responsible for a problem, if he was aware of a problem and failed to take reasonable steps to correct it.

In this case, the landlord was notified of a problem by the tenant on October 01, 2010. The landlord took immediate action and visited the unit on October 02, 2010. The tenant agreed that there was no visible sign of mould. The landlord took further action and visited the unit with a contractor who noted that an access door was not properly insulated and may have caused the presence of the mould in that area.

The test ordered by the tenant indicated the elevated presence of one species of mould. The doctor's note states that the tenant's symptoms are consistent with exposure to toxic mould. However, the evidence filed by the tenant did not indicate that the medical conditions of the occupants of the home were directly linked to the presence of mould at this residence. This tenant lived in this home as the owner of the home, prior to the start of tenancy and did not report any problems with mould prior to October 2010.

The photographs that the tenant filed show a small amount of mould along a baseboard in a storage area. The tenant did not file any other photographs showing the presence of mould.

Therefore, I find that the tenant has failed to prove that there were significant levels of mould in the rental unit and that the landlord was negligent in responding to the tenant's complaint. Based on the documentary evidence and sworn testimony of both parties, I find that the landlord responded to the tenant's complaints in a timely manner

I find that the tenant has not proven that the loss of income he suffered was a result of negligence on the part of the landlord and therefore the tenant's claim for the loss of rental income is dismissed. The tenant ordered the laboratory test and therefore must bear the cost.

Since the poorly insulated access panel may be the cause of the mould, I order the landlord to rectify this problem by November 30, 2010.

### **Conclusion**

The tenant has not proven his case and therefore must bear the cost of filing this application. The tenant's application is dismissed 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: November 08, 2010.

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Dispute Resolution Officer