



# Dispute Resolution Services

Page: 1

Residential Tenancy Branch  
Office of Housing and Construction Standards

A matter regarding Whiteworth Holdings Ltd  
and [tenant name suppressed to protect privacy]

## **DECISION**

Dispute Codes      RP, RR, OLC, MNDC

### Introduction

This hearing was convened by way of conference call in response to the tenants application for an Order for the landlord to make repairs to the unit, site or property; for an Order to allow the tenant to reduce rent for repairs, services or facilities agreed upon but not provided; for an Order for the landlord to comply with the *Residential Tenancy Act (Act)*, regulations or tenancy agreement; and for a Monetary Order for money owed or compensation for damage or loss under the *Act*, regulations or tenancy agreement.

The tenant and landlord's agent attended the conference call hearing, gave sworn testimony and were given the opportunity to cross examine each other on their evidence. The landlord and tenant provided documentary evidence to the Residential Tenancy Branch and to the other party in advance of this hearing. All evidence and testimony of the parties has been reviewed and are considered in this decision.

### Issue(s) to be Decided

- Is the tenant entitled to an Order for the landlord to make repairs to the unit, site or property?
- Is the tenant allowed to reduce rent for repairs, services or facilities agreed upon but not provided?
- Is the tenant entitled to an Order for the landlord to comply with the *Act*?
- Is the tenant entitled to a Monetary Order for money owed or compensation for damage or loss?

Background and Evidence

The parties agree that this tenancy started on July 01, 2012. Rent for this unit is \$950.00 per month and is due on the first of each month.

The tenant testifies that the landlord has not complied with the *Act* with regard to giving proper notice to enter the tenant's rental unit. The tenant testifies that the landlord has given 24 hours notice but places this in the tenant's mail box and then expects to enter the rental unit 24 hours later.

The tenant testifies that when they moved into this unit it was noticed that the windows were suffering from extreme mould. The property manager that was responsible at that time informed the tenant that this was a problem in many of the units in the complex and this property manager was supposed to have cleaned all the mould from the windows prior to the tenant moving in. The tenant testifies that this was not done and after the tenant had moved in the property manager came to the tenants unit with a cleaning solution and told the tenant she must clean the mould up herself. The tenant testifies that the condition of the unit at move in was generally unclean and the tenant had to also clean the rest of the unit. The tenant states that the landlord has therefore not complied with the *Act* with regards to providing a suitable rental unit fit for occupation.

The tenant testifies that she called the property administrator (the landlord's agent) who is attending this hearing and discussed these matters with her. The tenant testifies that the landlord's agent informed the tenant that they would send another person to the tenants unit to clean the mould. This person came on September 19, 2012, cleaned the mould and returned the next day to inspect it. The tenant testifies that this person informed the tenant that it was not mould but dirt. The tenant testifies if it was just dirt then why has it continually resisted treatment and keeps coming back.

The tenant testifies that the landlord informed the tenant that she is responsible for cleaning the windows and any mould. The tenant testifies that she has to do this every day and soak up the water that collects in the window tracks. The tenant testifies that this is unreasonable

for the landlord to expect the tenant to control the mould growth every day and this continual cleaning is above and beyond what a tenant should do and has a negative impact on the quality of the tenancy.

The tenant testifies that the new property manager has also cleaned the mould but the tenant and her children have to leave the unit while this work is done and then return to a strong smell of bleach and other chemicals. The tenant testifies that the building manager has not taken the proper safety precautions while cleaning the mould. The tenant returned on two occasions to find dirty gloves used by the building manager laying on her sons clean bed, an xactoe knife laying open on her sons table, a dirty swap in the window frame, bottles of cleaning solution were left within her sons reach and a face mask was left laying on a table. The property manager was also observed spraying the mould with a bleach and water mix which is known to have no effect on mould. The tenant testifies that this is unacceptable for her family's health and safety. The tenant testifies that the landlord has sent people in four times to clean the windows and one time to inspect them. Each time the tenant has to leave the unit with her children. The tenant testifies that the landlord sends different people to the tenants unit and all this results in a loss of quiet enjoyment of the rental unit.

The tenant testifies that on January 10, 2013 they noticed mould growing on a corner of the unit on a concrete wall. The tenant testifies that she then wrote to the new property manager concerning this and someone else was sent to the unit to clean this area. The tenant testifies that the landlord has replaced the exhaust fan in the bathroom but this has only mildly helped with the mould growth on the bathroom window and the tenant still has to open a window when taking a shower. The other upstairs windows are still suffering from this mould problem. The tenant does however state that the downstairs windows are not quite as bad as they were. The tenant testifies that the unit suffers with bad condensation on all the windows upstairs and on the living room window. The landlord did send someone to drill holes in the frame to release the built up water however water still builds up in the window tracks.

The tenant testifies that there is no kitchen exhaust fan to take condensation away from the kitchen when the tenant is cooking and this creates high humidity. The tenant testifies that this problem has been in place since July 01, 2012 and since January, 2013 the tenant has started to put it in writing to the landlord.

The tenant seeks compensation of \$500.00 for the loss of quiet enjoyment and because the tenant feels her tenancy has been devalued.

The tenant testifies that her Hydro bills increased dramatically for the period of December, 2012 to February, 2013. The tenant testifies that her previous Hydro bill for the proceeding months of October to December, 2012 was for 53 days; 151 kw used and the amount of \$378.56 was charged. The tenant testifies that she thought that bill was high so preceded to turn down the baseboard heaters and expected a lower bill next time. However the next Hydro bill was for 62 days; 5857 kw was used and the bill was \$717.48. The tenant testifies that the baseboard heaters are inefficient, the old windows let out the heat therefore forcing the thermostats to come on and the tenant has to have windows open to help with the condensation problem. The tenant seeks to recover compensation from the landlord for this additional high bill to the sum of \$250.00. The tenant has not provided a copy of the bills in evidence.

The landlord's agent disputes the tenants claim for loss of quiet enjoyment. The landlord's agent testifies that the tenants concerns were brought to the landlord's attention and the landlord has addressed these concerns in a timely manner. The landlord's agent testifies that they have sent people in to clean the mould, they have provided drainage in the window frames and have painted the bathroom after a section of the drywall was removed to inspect for mould.

The landlord's agent testifies that the previous building manager had told the landlord that he had cleaned the mould and when it was discovered that he had not done so his employment was terminated. The landlord's agent testifies that a man was sent to address the issues in September, 2012 and the landlord was unaware of any further issues until January, 2013. At that time the landlords' agent testifies that they had a restoration

company in to look at the windows and the landlord followed through with the restoration company's recommendation as to the treatment of the mould. The landlord's agent testifies that on February 13, 2013 she went and inspected the tenant's windows and found no more mould on the windows. The landlord's agent testifies that there was some condensation on the windows but this is to be expected due to the climate and the position of the baseboard heaters.

The landlord's agent testifies that there is not an exhaust fan in the kitchen as this is a 1960's building and kitchen fans were not required then. If the tenant experiences moisture levels when cooking the tenant can open a door or window.

The landlord's agent testifies that each tenant is responsible for their own Hydro usage and the landlord cannot be held responsible for higher Hydro bills as the landlord does not control the heat used. The landlord is however prepared to replace the tenant's baseboard heaters to a newer more efficient model.

The landlord's agent testifies that after looking at the tenants evidence regarding safe practise when dealing with mould. These practises do not apply when the area of mould is considered to be minor. The landlord's agent testifies that the TCP mixture used comes already prepared and does not have to be prepared on site. The landlord's agent testifies that the landlord has scheduled an air quality test to be done and they are presently waiting for a date for this test to be conducted.

The tenant testifies that the building manager has not followed safety precautions with regards to the equipment used to clean the mould. The building manager did not act in a professional manner and the tenant does not want the building manager to return to the unit to clean mould because the building manager has put the tenants children at risk.

The tenant disputes the landlord's agent's claim that the mould is now eradicated and states it is still present particularly on the window seals. The tenant refers to her photographic evidence showing mould visible on the windows in photographs dated February 11, 2013. The tenant testifies that the holes drilled cannot keep up with removing the water and what

water does drain now runs down the outside of the unit which potential will create moisture problems there. The tenant testifies that they go to Alberta twice a month and are not at home to keep wiping up the excessive water or cleaning on a daily basis.

The tenant testifies that the landlord must remedy the mould problem. The tenant seeks a rent reduction for the months of living with the mould and any further months until the problem is properly addressed.

The tenant testifies that a window company representative did come to look at the windows and recommended vinyl windows. However due to the high cost he said the sealant in the existing windows could also be replaced.

The landlord's agent testifies that they have followed up with the window company and are waiting for the report from them.

### Analysis

I have carefully considered all the evidence before me, including the sworn testimony of both parties. With regard to the tenants application for an Order for the landlord to repair the unit, site or property and to comply with the *Act*, I refer the parties to s. 32 (1) of the *Act* which states

*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.*

S. 32(5) of the *Act* states

*A landlord's obligations under subsection (1) (a) apply whether or not a tenant knew of a breach by the landlord of that subsection at the time of entering into the tenancy agreement.*

While I accept that a tenant is responsible to keep windows clean and remove mould from the window tracks I do not accept that it is reasonable for the landlord to expect the tenant to do this on a daily basis and to remedy a pre-existing condition that was not corrected before the tenancy commenced. A landlord is expected to ensure that a rental unit is fit for occupation and while that is dependent on the age of the building it does not absolve the landlord from exercising due diligence to correct an ongoing problem with the condensation and mould.

The landlord is responsible for the actions of any staff employed by the landlord and I therefore find the landlord was aware of this mould issue at the start of the tenancy and did not take corrective action until September, 2012. The landlord's agent argues that the tenant did not inform them that the problem continued until January, 2013 however the landlords must bear equal responsibility for failing to ensure the problem was eradicated after the September treatment took place. Having reviewed the photographic evidence provided by the tenant showing the high levels of mould on the windows I am of the opinion that this mould continues to be a problem and the landlord's attempts to control or eradicate it have failed.

I therefore **Order** the landlord to take the necessary steps to ensure the landlords complies with s. 32 of the *Act* and takes more proactive steps to eliminate the mould and prevent its return.

I find the landlords agents have not always complied with s. 29 of the *Act* with regard to service of the Notices to enter the tenants rental; unit. If these notices are placed either on the tenant's door or in the tenant's mail slot then the landlord must allow an additional three days on the Notice before entry can be made.

I do commend the landlord's agent for agreeing that the tenant's baseboard heaters will be replaced with more efficient models, for sending in a window company to compile a report on the state of the windows and for the steps taken to ensure an air quality test is completed. My expectation is now that the landlord's agent will follow through on these to protect the tenant's rights under the *Act* and an Order has been made to this effect.

With regard to the tenants application for a rent reduction; I have considered this and find the value of the tenancy has been reduced and the tenant has lost some quiet enjoyment of her tenancy. I therefore find the tenant is entitled to a rent reduction of \$75.00 per month from July, 2012 to February, 2013 and a further \$75.00 per month until the mould issue has been addressed.

With regard to the tenants claim for compensation of \$500.00 as I have awarded the tenant a rent reduction from July, 2012 to February 2013 I find any further compensation would be giving the tenant a Monetary award for the same issues. Therefore this section of the tenants claim is denied.

With regard to the tenants claim for compensation due to a higher Hydro bill; the tenant has the burden of proof in this matter to show that the Higher Hydro bill was as a result of the landlord's actions or neglect and not due to the tenants actions. Furthermore the tenant has not provided a copy of either of the Hydro bills in evidence. Therefore I must deny this section of the tenants claim as the tenant has not met the burden of proof in this matter.

### Conclusion

I find the tenant is entitled to a rent reduction to the amount of \$75.00 per month from July, 2012 to February, 2013 to the amount of **\$600.00**. A Monetary Order has been issued to the tenant for this amount pursuant to s. 67 of the *Act*. The order must be served on the respondent and is enforceable through the Provincial Court as an order of that Court.

I ORDER the tenant to reduce rent due and payable to the landlord to the amount of **\$75.00** a month for the next **three months** or until the mould issue is eliminated if that occurs



sooner. If the landlord does not take the necessary steps within three months to reduce or eliminate the mould the tenant is at liberty to file a new application seeking compensation.

I therefore **Order** the landlord to take the necessary steps to ensure the landlords complies with s. 32 of the *Act* and takes proactive steps to eliminate the mould and prevent its return.

I ORDER the landlord to complete an air quality test with 15 days of receiving this decision.

I ORDER the landlord to replace the baseboard heaters as agreed within 30 days of receiving this decision.

I ORDER the landlord to comply with s.29 of the *Act* with regard to providing proper notice and observing the timelines established under the *Act* for service of the Notice of Entry

The tenant's application for further compensation is dismissed with leave to reapply.

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: February 27, 2013

---

Residential Tenancy Branch

