



# Dispute Resolution Services

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Residential Tenancy Branch  
Office of Housing and Construction Standards

A matter regarding Optimum Realty Inc.  
and [tenant name suppressed to protect privacy]

## **DECISION**

Dispute Codes      RP, ERP, OLC, MNDC

### Introduction

This hearing was convened by way of conference call concerning an application made by the tenant for an order that the landlord make repairs to the unit or site; for an order that the landlord make emergency repairs for health or safety reasons; for an order that the landlord comply with the *Act*, regulation or tenancy agreement; and for a monetary order for money owed or compensation for damage or loss under the *Act*, regulation or tenancy agreement.

The tenant and an agent for the landlord company attended the hearing, and each gave affirmed testimony. The tenant also provided evidentiary material to the Residential Tenancy Branch and to the landlord.

During the course of the hearing, the parties agreed that the tenancy will end on April 30, 2014 at 1:00 p.m., for all occupants of the rental unit, without penalty for ending the fixed-term tenancy prior to the end of the term; and the tenant withdraws the applications for an order that the landlord make repairs to the unit or site; for an order that the landlord make emergency repairs for health or safety reasons; and for an order that the landlord comply with the *Act*, regulation or tenancy agreement.

All evidence and testimony provided has been reviewed and is considered in this Decision.

### Issue(s) to be Decided

The only issue remaining to be decided is:

- Has the tenant established a monetary claim as against the landlord for money owed or compensation for damage or loss under the *Act*, regulation or tenancy agreement, and more specifically for physical and mental suffering for the landlord's breach of the *Act*?

### Background and Evidence

The tenant testified that this fixed term tenancy began on June 1, 2013 and expires on July 31, 2014. The tenant still resides in the rental unit, and there is a written tenancy agreement. Rent in the amount of \$3,150.00 per month is payable in advance at the end of each month for the following month, and there are no rental arrears. The rental unit is a 5 bedroom townhouse and 5 people are currently residing in it, although only 2 are on the lease.

The tenant further testified that close to the beginning of the tenancy the tenant told the landlord of a mold issue in the rental unit. The landlord's maintenance person attended the rental unit and advised that the landlord did not believe it was mold and it was painted over. The tenant thought it had been dealt with but the tenant got a chronic cough causing gagging and vomiting. The tenant sought medical attention and an asthma test indicated no severe breathing problems and determined that that mold has not triggered asthma. However, the symptoms persisted. The tenant also had allergy testing completed and is awaiting the results. Photographs of the mold build-up on the walls and windows have also been provided.

The tenant got ahold of a new manager of the landlord company who had a mold test done on December 18, 2013 which showed elevated levels of mold. Work has been continuous on the rental unit since, and the tenants have had to endure the kitchen missing entirely and other rooms being affected, with dishes moved into other rooms, etc. The tenant is a student attending university, and workers being in the rental unit continuously has made studying very difficult. The tenant also testified that he has to eat out virtually every day.

The landlord gave the tenant one free month of rent for the renovations and repairs, and the tenant applies for a monetary order for \$2,500.00 for loss of use of the rental unit and inconvenience, as well as the landlord's failure to address the issue when it was first reported by the tenant resulting in illness. The tenant testified that the tenants have had no kitchen, loss of bathroom facilities and loss of access to water. The entire kitchen has been removed for repairs.

The landlord's agent testified that he became a manager of the rental unit for the landlord company in July, 2013, and nothing was reported to him by the tenant until December 17, 2013. The tenant attended to the office saying that he suspected mold in the rental unit and had some health issues which he believed was associated to the mold. The mold inspection was completed the next day and the report was provided to

the tenant on the 24<sup>th</sup> of December. On January 3, 2014 the scope of work was investigated by the landlord's office and contractors. On January 6, 2014 the downstairs bathroom was started and was completed by the 15<sup>th</sup>. Then the contractors started in the kitchen and upstairs bathroom. By January 31, 2014 the clean-up was done. The drywall, insulation, kitchen cupboards and paint were all newly completed as well as a complete renovation of the bathrooms. Further, only one bathroom was done at a time so the tenants were never without one entirely.

With respect to the tenant's complaint prior to July, 2013 when the landlord's agent took over as manager, the landlord's agent testified that the file shows that some work was done in the rental unit but does not specify what.

### Analysis

The parties agree that the tenant spoke to the current manager of the landlord company on December 17, 2013 and a mold test was initiated the next day. The tenant and room-mates have had to endure major construction of the rental unit for all of January, 2014. In the circumstances, and considering the time of year, I find that the landlord completed its responsibilities in getting the issue fixed as soon as one could expect.

However, the tenant spoke to a previous manager of the landlord company at the commencement of the tenancy who concluded that there was no mold and had the walls painted. I think it's clear in the evidence that there was a much bigger problem, and the tenant resided in the rental unit in that condition from June to December, 2013. The tenant claims that health issues persisted during that time.

The landlord reimbursed the tenants the equivalent of one months' rent, and therefore I find that the landlord has already provided the tenant with \$3,150.00 for the inconveniences during the month of January, 2014. The tenant testified that because of the number of tenants, that only equated to about \$500.00 for the tenant. If one does the math, it actually equates to \$630.00 per tenant, if each tenant pays an equal portion of rent. However, to the landlord, it is a reimbursement of an entire month of rental income. I find that the tenant has been reimbursed for the month of January while renovations were being completed by paying no rent for a month.

The remaining issue before me is whether or not the tenant has established that the landlord should compensate the tenant for illness during the months of June through December, 2013. In order to be successful with such a claim, the onus is on the tenant to establish that the landlord breached the *Residential Tenancy Act* or the tenancy agreement which caused the tenant to suffer health-related issues.

There is no evidence of what exactly the previous manager of the landlord did to determine that the problem was not mold near the beginning of the tenancy and what prompted that manager to simply cover up the problem with new paint. There is no report to conclude that it was or was not a problem, however I am satisfied that a problem existed that was not correctly dealt with by the landlord. With respect to the damages suffered by the tenant, the tenant testified that he has had continued coughing and sought medical attention. Testing determined that mold had not triggered asthma, but perhaps the tenant is allergic to mold. The tenant has not provided any evidence of that. The only evidence before me is a report indicating that mold existed in the rental unit, but no evidence has been provided to establish that the tenant suffered any health-related issues; no doctor report and no prescriptions.

The tenant claims \$2,500.00 including damages for loss of the rental unit during the month of January, 2014, but has not separated that part of the monetary claim from the portion dealing with the landlord's failure to deal with the problem correctly before painting over the mold. Having found that the tenant has been adequately reimbursed for loss of the rental unit for the month of January, 2014 while renovations took place, I find that the tenant has failed to establish that the landlord is liable for anymore.

### Conclusion

For the reasons set out above, the tenant's application is hereby dismissed without 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: April 03, 2014

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Residential Tenancy Branch

