



# Dispute Resolution Services

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Residential Tenancy Branch  
Office of Housing and Construction Standards

## **DECISION**

Dispute Codes      CNC, MNDC, OLC, OPT, RR, FF, O

### Introduction

This is an application filed by the Tenant for an order to cancel a notice to end tenancy issued for cause, for a monetary claim for money owed or compensation for damage or loss, an order for the Landlord to comply with the Act, to obtain an order of possession of the rental unit, to allow the Tenant to reduce rent for repairs, services or facilities agreed upon but not provided and recovery of the filing fee.

Both parties attended the hearing by conference call and gave testimony. As both parties have attended and have confirmed receipt of the notice of hearing package and the submitted documentary evidence, I am satisfied that both parties have been properly served.

The hearing was adjourned after 1 hour and 16 minutes due to a lack of time to continue. Both parties were informed that a new notice of hearing of an adjourned hearing would be sent to both parties at the listed mailing addresses. Both parties confirmed their understanding and that the mailing addresses were current. On April 24, 2014 the hearing continued via conference call where both parties participated.

Section 63 of the Residential Tenancy Act provides that the parties may attempt to settle their dispute during a hearing. Pursuant to this provision, discussion between the two parties during the hearing led to a resolution regarding possession of the rental unit. Specifically, it was agreed as follows:

Both parties agreed to mutually end the tenancy on June 16, 2014 at or before 1:00 pm and that the Landlord shall receive an order of possession to reflect this agreement.

The above particulars comprise full and final settlement of all aspects concerning possession of the rental unit arising from this application for both parties.

The tenants seeks to amend the monetary claim by withdrawing a \$500.00 portion (legal fees) lowering the claim to \$2,966.57 as the tenant was unaware that recovery of litigation costs were not covered as per section 72 of the Residential Tenancy Act. No objections were made by the landlord. As such no further action is required for this portion of the claim.

### Issue(s) to be Decided

Is the Tenant entitled to a monetary order?

### Background and Evidence

This Tenancy began on September 26, 2012 on a fixed term tenancy until September 26, 2014 for two years as shown by the submitted copy of the signed tenancy agreement. The monthly rent is \$1,800.00 and a security deposit of \$900.00 was paid.

The tenant seeks an amended monetary claim \$2,966.57. This consists of \$791.30 for recovery of hotel costs from January 1 to 7, \$703.50 for the cost of an inspection/evaluation/labour for mold review consultation at the rental property from High Maintenance Contracting, \$514.81 for the cost of medications, \$104.29 for the cost of miscellaneous food, \$154.77 for gas travelling for medical appointments, \$70.00 for cleaning and \$627.90 for veterinary hospital bills for the tenant's dog.

The tenant has provided copies of an inspection report by High Maintenance Contracting that show that mold was present and that the landlord was aware of the situation through his agent, a letter from Dr. G. Malherbe with his opinion on the likely cause of the tenant's illness and a letter from Dr. Grewal, the veterinary doctor who has diagnosed the tenant's dog with respiratory issues. The tenant has provided copies of receipts for the hotel stay, cleaning, gas, food, medication and veterinary bill.

The tenants states that the landlord was contacted over concerns of mold in March of 2013. The landlord's agent contacted a contractor, High Maintenance Contracting to assess the mold and a report was made and provided to the landlord. The tenants have provided a copy of the report which states, "The Black Mildew appears to be affecting only a small area near the floor on the north side of the master bedroom...This provides a very good growing environment for mildew." The report also lays out recommended items to improve this situation and an estimated cost to help deal with the issues. The tenant states that she was told by her doctor to leave the home immediately whereas she was told by her landlord that she could continue to live in the rental during their contractor's work. The tenant also states that it was recommended by D.B. to not live in

the rental during the work. The report by D.B. states, "Heating system not providing adequate heat to master bedroom. Mildew growing on baseboard and lower corner of drywall..." The tenant's witness, D.B. states that he saw black mold in the corner of the room in his initial assessment in March of 2013 and then again later in early January 2014. The witness, D.B. stated, "yes there was mold" The witness states that upon entering he was "struck by mold" smell in the air. The witness stated that he was a general contractor, but that he was trained in mold testing. The veterinary letter states, "Radiography test was performed and it showed changes in the lung field. The main differentials were allergic pneumonia, fungal pneumonia and bacterial pneumonia."

The landlord stated that the landlord has the right and responsibility to make any repairs to the rental and disputes the tenant's claim for the invoice from High Maintenance Contracting stating that much of the work by the tenant's contractor was duplicate work that could have been done by the landlord's contractor. The tenant disputes this stating that there were no personal assurances that her personal effects would be taken care of by the landlord or the landlord's contractor based upon her experiences in the past with the landlord and that the issue had taken almost 10 months to be addressed. The landlord also disputes that part of the report was cost of \$50.00 for the production of the report for this dispute and should be dismissed from the claim. The landlord has stated that the tenant's prescription medication were as a result of a pre-existing medical condition. The tenant disputes this stating that prior to the first claim of medication from February 2013 that she only had seasonal asthma and was not on any continuous medications. The tenant states that Dr. Malherbe report states, "Please note in this factual report how the relapses escalated throughout 2013/14 ending in a very serious health concern that then resulted in the emergency need for residential repair work...I want to point out that I am comfortable to suggest the mold had to be the single most important reason for the progress in her symptoms in 2013/14." The tenant stated during the hearing that based upon her prior experiences with the landlord that she received no personal assurances that her concerns would be looked after and that is why she retained the witness, D.B. to help advocate her issues. The landlord also questions the tenant's claim for hotel costs as the Squamish Hotel is the most expensive in the area and that the work scope took only 4 days as opposed to the tenant's stay of 7 days. The tenant dispute this stating that they were just trying to find a temporary place while the work was being completed and that this period of time was during the holidays making it harder to find a location. The landlord states that more reasonable costs should be at \$89.00 per night. The tenant responded stating that after receiving the assurances by the witness, D.B. that the ozone generator and cleaning was done at 7pm that she immediately moved back that same evening on her last day at the hotel. The landlord has also stated that 2 ½ hours for cleaning was excessive for

the cleaning costs. The landlord disputes the veterinary costs stating that these costs could have been as a result of the tenant's 13 year old dog simply being old or pre-existing health issues.

The landlord disputes the monetary claim of the tenant. The landlord's counsel, A.H. stated that this dispute by the landlord was over what were "reasonable costs" and stated that the tenant's claims were excessive. The tenant dispute the claims made by the landlord stating that as of today (hearing date) both her and her dog are in good health with no issues since moving back into the rental in January 2014.

### Analysis

I find on a balance of probabilities that I prefer the evidence of the tenant over that of the landlord. The tenant has provided sufficient evidence to satisfy me that she likely became ill due to exposure to mold which impaired her health at the rental site. This is supported by the undisputed documented history from High Maintenance Contracting that was originally engaged by the landlord in March of 2013. This is supported by the medical letter from Dr. G. Malherbe which was not disputed by the landlord. The tenant likely became ill due to mold exposure as indicated by the witness, D.B. and based upon the opinion of Dr. G. Malherbe.

As for monetary compensation, I find that the tenant's claim of \$791.30 for 6 days of stay at a hotel during mold remediation work to be reasonable in the circumstances. The rental period was for January 1 to 7 during the holiday period. I reject the landlord's claim that the \$109.00 per night rate was unreasonable as opposed to the \$89.00 per night rate found at other hotels as the landlord has not provided sufficient evidence to show this unreasonableness.

On the tenant's claim of #2 of \$703.50 for recovery of costs for mold remediation consultation, I find that the tenant has failed to establish this portion of the claim. The landlord does have the right to effect any and all repairs to the rental property. The tenant failed to allow this by having her own contractor do the work without his permission or a clear indication from the landlord that he was refusing to do this work. The tenant's direct testimony was that she had no personal assurances that personal property would be taken care of, thus denying the landlord the opportunity as the landlord's contractor attended shortly thereafter to find that those portions of the work was already completed. Claim #2, for recovery of the \$703.50 High Maintenance Contracting Invoice is dismissed.

On Claim #3, \$514.81 for recovery of medication costs, I find that the tenant is entitled to compensation. I find that the costs of medications as detailed by the tenant's doctor coincide with the likely impairment by the mold. The landlord failed to act upon being notified in March 2013 and not effecting any remediation or repairs until December 2013. As such, I find that the landlord is responsible for all of the medication claim of \$514.81.

On Claim #4, \$104.29 in combined food costs, I find that the tenant has failed to establish. As noted by the landlord the effected area was not noted to be other than the masterbedroom, in any event not the kitchen. The tenant failed to provide any details of how the kitchen area was affected that would prevent normal use. This portion of the claim is dismissed.

On Claim #5, \$154.77 for gas, I find that the tenant has established a claim for recovery of costs for travel to and from their doctor/hospital. However the tenant has failed to satisfy me that all of these costs for gas were incurred strictly for the travel for medical appointments as disputed by the landlord. On this basis with insufficient evidence otherwise, I grant a nominal award of \$75.00.

On Claim #6, \$70.00 for the cost of deep surface cleaning the rental unit after mold remediation work was completed has been established. The tenant has provided a receipt for the work performed and the landlord has disputed that this is an excessive amount for 2 ½ hours of work. I find that the landlord has failed to provide sufficient evidence to satisfy me that 2 ½ hours of deep surface cleaning is excessive for a rental property after mold remediation. The tenant has established a claim for \$70.00 in cleaning.

On Claim #7, \$627.90 for combined veterinary bills for the tenant's dog, I find that the tenant has established a claim. The landlord has disputed this claim and the diagnosis provided for by veterinary doctor, but has failed to provide sufficient evidence to satisfy that this diagnosis is incorrect. The doctor's diagnosis coincides with the impairment of the tenant and is the likely cause as in the case of the tenant. I prefer the evidence of the tenant over that of the landlord in this respect. The tenant has provided in her direct testimony that this respiratory impairment was unusual as noted by Dr. Malherbe in his summary of the tenant's medical history. The tenant has indicated that since the remediation was completed that neither her or her dog have suffered anymore relapses or like symptoms as of the date of this hearing. The tenant has a claim for \$627.90 for veterinary bills.

The tenant has established a total monetary claim of \$2,079.01. The tenant is also entitled to recovery of the \$50.00 filing fee. I grant a monetary order under section 67 of the Act for \$2,129.01. This order may be filed in the Small Claims Division of the Provincial Court and enforced as an Order of that Court.

Conclusion

Both parties mutually agreed to end the tenancy on June 16, 2014.

The landlord is granted an order of possession for June 16, 2014.

The tenant is granted a monetary order for \$2,129.01.

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 29, 2014

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Residential Tenancy Branch

