



# Dispute Resolution Services

Residential Tenancy Branch  
Office of Housing and Construction Standards

## **DECISION**

Dispute Codes                      MNDC, FF

### Introduction

This hearing dealt with an application by the tenant for a monetary order. Both parties participated in the conference call hearing.

The hearing originally took place on April 14, a hearing at which another arbitrator presided. That arbitrator was taken ill and unable to complete the decision so the hearing was rescheduled to today's date. I did not discuss this matter with the previous arbitrator, nor did he provide me with any notes taken during the original hearing. The parties were advised at the hearing that I was unaware of anything which had been said in the prior hearing and the hearing was treated as a completely new event.

### Issue to be Decided

Is the tenant entitled to a monetary order as claimed?

### Background and Evidence

The parties agreed that the tenancy was set to begin on May 1, 2014 but began a few days early, on April 28 when the landlord made the rental unit available for the tenant. The rental unit is in the basement of a 3 level home in which each of the levels houses a separate self-contained suite.

The tenant gave evidence that when he arrived at the unit at approximately noon on April 28, he was informed by the landlord that a leak had been discovered and that the leak had been repaired after having cut open the drywall. The tenant claimed that the landlord advised that mold had been discovered and told him that he would spray the area and re-seal the hole in the drywall. The tenant stated in his written evidence that his partner, a veterinary surgical assistant, arrived at the rental unit with several birds which she was to care for at home as they were patients at the clinic at which she worked. She immediately expressed concern about potential for exposing the birds to a contaminated area and arranged that same day for the birds to be boarded elsewhere.

The tenant testified that over the following 3 days, he and his partner “developed sinus and respiratory problems along with watering eyes when in the bathroom or bedroom”. He stated that he contacted the tenants in other suites and advised them of his concerns regarding airborne mold spores being disseminated through the central heating system, so the occupants agreed to turn off the furnace.

The tenant stated that by May 1, it was clear to him and his partner that they could not continue to live in the rental unit and they found a smaller apartment for which they had to pay an increased rent. The tenant vacated the rental unit on May 1. He testified that the landlord offered him \$200.00 to cover his moving expenses, but he told the landlord that a \$400.00 payment would be more suitable and the tenant accepted \$400.00 from the landlord.

The tenant provided a copy of a mold contamination report which was performed at the behest of the landlord on or about May 8, 2014. The report lists the raw count and percentage of spores outside the unit, inside the unit and inside the unit immediately above the rental unit. The tenant also submitted a printout of a webpage entitled “Aspergillus Mold in your Home”.

The tenant claimed that as a result of exposure to the mold, his partner’s parrots had to receive emergency boarding and medical treatment. He claimed that he and his partner incurred an additional \$560.00 in moving costs of which he seeks to recover \$260.00, they had to pay a higher rate of rent over the next year as well as pay for additional storage as their new unit was not as spacious as the rental unit and they had to close their business for 3 days. The tenant also appears to be claiming the cost of items he disposed of as he was concerned about them being contaminated by mold spores, although he did not include this cost in the total amount for his claim. The tenant seeks to recover these losses as well as the \$100.00 filing fee paid to bring his claim.

The landlord testified that when the person who occupied the unit immediately before the tenant vacated the unit, he advised the landlord that the tap in the bathtub had broken and was leaking. The landlord immediately arranged for a plumber to attend and in order to access the tap to replace it, they had to cut through the drywall. He denied having told the tenant that mold had been discovered in the wall and he provided letters from the plumber who attended the unit in which the plumber stated that he observed no evidence of mold in the area in which he worked. He took the position that he tested for mold and had the ventilation ducts cleaned out of an abundance of caution, but does not believe toxic mold was present in the unit.

The landlord testified that he paid \$400.00 to the tenant to assist him with moving costs because it was apparent that the tenant would not be happy in the rental unit.

The landlord provided written statements from his current tenants in which they confirmed that they have not experienced any illness related to mold. The landlord argued that when the tenant made him aware of his concerns about mold, he acted quickly in retaining a company to test the unit. The landlord questioned whether the tenant’s birds were ever in the rental unit as they were not heard by any of the other tenants.

### Analysis

The tenant bears the burden of proving his claim on the balance of probabilities. The *Residential Tenancy Act* (the “Act”) establishes the following test which must be met in order for a party to succeed in a monetary claim.

1. Proof that the respondent failed to comply with the Act, Regulations or tenancy agreement;
2. Proof that the applicant suffered a compensable loss as a result of the respondent’s action or inaction;
3. Proof of the value of that loss; and (where applicable)
4. Proof that the applicant took reasonable steps to minimize the loss.

The first step of this test requires that the tenant prove that the landlord in some way failed to comply with his obligations under the Act, Regulations or tenancy agreement.

Section 32 of the Act requires landlords to provide and maintain residential property in a state of decoration and repair that complies with health, safety and housing standards required by law and makes it suitable for occupation by the tenant. Repair issues will arise in any living situation and the responsibility of landlords is to perform repairs within a reasonable period of becoming aware of the issues. In this case, the landlord performed a repair immediately when the outgoing occupant advised him that a repair was required and the rental unit was fully functional when the tenant began occupancy.

When the tenant advised the landlord about his concerns around mold, the landlord arranged for testing to be performed. If the tests showed that the air quality in the unit rendered in uninhabitable and if the tenant proved that the landlord did not act reasonably to correct the situation, the tenant could have been successful in his claim. However, although both parties provided me a copy of the laboratory analysis of the samples, neither party provided expert evidence to show how to interpret those results. I do not accept the webpage provided by the tenant as expert evidence as it is not possible to prove the expertise of the page’s author. The report clearly shows that the level of *Penicilium/Aspergillus* is higher in the basement than it is outdoors or in the suite immediately above the rental unit, but this does not tell me whether the level is immediately harmful to the extent that an immediate evacuation is required or whether remediation within a few weeks, as is what happened in the rental unit after the tenant vacated, is sufficient.

The tenant appears to also be arguing that the rental contract should have been void as the unit was entirely uninhabitable. I find insufficient evidence to make this finding, particularly as other occupants resided in the building and shared a heating system until the tenant arranged to have it shut off during his 3 day occupancy. I would expect that other tenants would suffer some effects if the mold were as significant and toxic as is claimed by the tenant.

The tenant provided medical evidence in the form of a December 2014 referral by his doctor to another doctor, presumably a specialist, but this referral does not contain a medical opinion.

Rather, it simply states “house wall had mould [indecipherable] April 2014 – since then sinus congestion and asthma flare up requesting an antifungal but which one.” It seems that the doctor simply repeated what he was told by the tenant and I find it very possible that the doctor was unaware that the tenant had only resided in the home for 3 days. The tenant also provided a medical referral for allergy testing and an x-ray but again, there is no medical opinion accompanying the request to show how the request is related to the tenant having resided in the rental unit for such a short period. If the tenant were to prove that the unit was uninhabitable for any period of time, I would expect to at the very least see a medical report indicating that an exposure of 3 days could lead to significant health effects.

For these reasons, I find that the tenant has not proven that the landlord was in breach of the Act, Regulations or tenancy agreement. The tenant has failed to meet the first step of the test outlined above and therefore his claim must fail. I dismiss the claim in its entirety.

### Conclusion

The claim is dismissed.

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: June 12, 2015

---

Residential Tenancy Branch

