



# Dispute Resolution Services

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Residential Tenancy Branch  
Office of Housing and Construction Standards

## **DECISION**

Dispute Codes      MNR, MNDC, ERP, RP, FF

### Introduction

The tenant applies for a monetary award for damages related to an alleged mould problem in her rental unit. Her application states that she has moved out of the premises due to mould and is staying in a motel. She seeks a repair order and an emergency repair order.

Both parties attended the hearing and were given the opportunity to be heard, to present sworn testimony and other evidence, to make submissions, to call witnesses and to question the other. Only documentary evidence that had been traded between the parties was admitted as evidence during the hearing.

### Issue(s) to be Decided

Is the rental unit subject to a mould problem? If so, what damages has the tenant suffered and what, if any, is an appropriate order regarding repair?

### Background and Evidence

The rental unit is a two bedroom “plus den” condominium townhouse. The tenant took occupancy in September 2012. The current monthly rent is \$800.00. The landlord holds a \$387.50 security deposit.

On March 9, 2016, the landlord sent the tenant, by registered mail, a two month Notice to End Tenancy pursuant to s. 49 of the *Residential Tenancy Act* (the “RTA”) claiming that the landlord or a close family member intends to occupy the premises. The

effective date of the Notice is May 31, 2016. The tenant has not applied to cancel that Notice.

The tenant testifies that since the start of the tenancy she has experience a lack of heat, dampness and draftiness in the rental unit.

The rental unit is heated by baseboard heaters. There are separate thermostats for each area.

The tenant says that during the last winter she set the thermostats at 15 degrees, a temperature she had found to be agreeable in a previous accommodation. She says the apartment never heated up. She thereafter she raised the thermostats to 22 degrees but still it was cold. Finally, she turned the heat up to its maximum setting but still the premises did not adequately heat up. She says she used supplemental portable heaters but still, the rental unit was so cold and damp that clothes hung on a drying rack would not dry.

She says she wears jacket and scarf inside the home during the winter.

She says she complained to the landlord without result. There is no evidence of any physical or electronic correspondence in that regard.

She notes that the landlord has caulked some windows and installed weather stripping at the doors but it has not improved the situation.

Cloth drapes would help, she thinks. The landlord has come to measure for them but has not provided them.

The tenant says that about six months ago she developed a problem with one of her toes. A doctor had her provide bits of her toenail and determined that she had a fungal infection. She thinks that it is as a result of the cold and damp in the rental unit.

The tenant took one of her sandals to a professional firm specializing in geotechnical, health, safety and environmental materials testing in late February or early March 2016.

The firm provided a report, dated March 10, 2016, indicating that microscopic examination of the sandal revealed the presence of mould. The mould discovered was an undescribed species of the *Aspergillus* genus. The report states that such mould

... can all be found in outdoor environments including soil, leaf litter and decaying plant material. They are also common colonizers of wet or damp paper products found in buildings such as drywall. Some species in these genera have been known to elicit allergenic reactions in some people which can vary from person to person based on individual sensitivity and susceptibility to respiratory irritations.

The use of personal protection equipment is advised when remediating significant areas of mould contamination in particular when working with mould species that could potentially cause adverse effects to human health. Equipment should include skin, eye and respiratory protection such as a half-face mask including organic vapour filters.

It is the tenant's opinion that the mould came from the outside and has been fostered in the home by the cold, damp and drafty conditions there.

She says that there is no visible mould in the home because *aspergillus* mould cannot be seen.

In response the landlord testifies that the previous tenants in the rental unit, whom she visited often, kept the home very warm; even exceedingly warm. She concludes from this that the baseboard heat is adequate to heat the rental unit.

She says that there was no complaint from the tenant about heat until this February when the tenant expressed surprise at her Hydro bill. Since then the landlord and her husband have attended the premises and confirmed that the baseboard heaters are working and that the home heats up adequately when they are in use.

The landlord says the tenant has been informed that she may replace the provided window blinds with drapes if she wishes.

She says she has inspected the home and there is no visible mould. She says that the fact of mould on a sandal is not indicative that there is a mould problem in the home.

### Analysis

The burden of proof in this matter is on the applicant tenant initially, to show on a balance of probabilities that that rental unit contains mould of some harmful kind or extent.

After weighing the evidence I must conclude that she has not provided sufficient evidence to meet that burden.

The fact that one of the tenant's sandals contains a mould of a type common to the outdoors does not lead to the conclusion that the rental unit has a significant mould problem.

The professional firm did not examine the home to confirm any such problem; the merely examined piece of footwear. It cannot be reasonably assumed that any mould on the sandal came from the inside of the rental unit. Even were that not so, it cannot be concluded from the evidence that mould in the rental unit is at a level requiring remediating steps.

The fact that there is no visible mould is telling. Without such evidence, any landlord being prompted to act on a report of invisible mould would need to be shown of a mould problem by a person knowledgeable in such matters. That has not occurred here. The landlord was right to view the premises and, in the absence of any observable mould, to decline to take mould eradication steps.

Similarly, on the competing evidence of the landlord and the tenant, and having regard to what appears to be a complete lack of formal complaint during the first three and one half years of this tenancy, it has not been proved that there is any defect in the heating system in the rental unit.

### Conclusion

The tenant's application must be 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: April 22, 2016

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Residential Tenancy Branch

