Dispute Resolution Services

Residential Tenancy Branch
Office of Housing and Construction Standards

A matter regarding PACIFICA HOUSING
and [tenant name suppressed to protect privacy]

DECISION

Dispute Codes MNDC, OLC, O; FF

Introduction

A previous hearing was heard concerning the tenant's application, a decision was made and the tenant's application was dismissed as the tenant did not appear at the hearing. The tenant filed for a review consideration of that decision and that application was dismissed. The tenant filed for a Judicial Review with Supreme Court and a Consent Order was filed with Supreme Court Registry on June 09, 2016. This set aside the original decision and the review consideration decision and remitted the matter back to the Residential Tenancy Branch for a new hearing before a different Arbitrator.

This hearing was convened as Ordered by way of conference call in response to the tenant's application for a Monetary Order for money owed or compensation for damage or loss under the *Residential Tenancy Act (Act*), regulations or tenancy agreement; for an Order for the landlord to comply with the *Act*, regulations or tenancy agreement, other issues; and to recover the filing fee from the landlord for the cost of this application.

The tenant and two representatives for the landlord attended the conference call hearing; the tenant was assisted by her Legal Counsel. The parties were given the opportunity to be heard, to present evidence and to make submissions. The landlord provided documentary evidence to the Residential Tenancy Branch and to the other party in advance of this hearing, The tenant provided documentary evidence to the landlord in advance of this hearing but there is insufficient evidence to show that the

tenant's documentary evidence was provided to the Residential Tenancy Branch pursuant to Rule 3.14 of the Rules of Procedure.

Procedural issues – The tenant's evidence was provided to the landlord on July 15, 2016 for this hearing. The tenant's Counsel stated that the tenant's evidence was also submitted to the Residential Tenancy Branch with the tenant's application; however, this evidence was not before the Arbitrator for this file and the tenant's Counsel was unable to provide evidence of when, where and how this evidence was submitted to the Residential Tenancy Branch. In accordance with Rule 3.19 of the current Rules of Procedure I allowed Legal Counsel for the tenant to fax the tenant's evidence in again during the hearing. By accepting this evidence, which the landlord had already received, I believe that this would not unreasonable prejudice the landlord or breach the principals of natural justice. Counsel for the tenant subsequently faxed in documentary evidence; however this consisted of two pages only, not including the cover pages.

I have reviewed all oral and written evidence before me that met the requirements of the rules of procedure; however, only the evidence relevant to the issues and findings in this matter are described in this Decision.

Issue(s) to be Decided

- Is the tenant entitled to a Monetary Order for money owed or compensation for damage or loss?
- Is the tenant entitled to an Order for the landlord to comply with the *Act*, regulations or tenancy agreement?

Background and Evidence

The parties agreed that this month to month tenancy started on April 01, 2014. The rent for this unit is $771.00 per month and the tenants pay a subsidized rent of $638.00 per month.

The tenant testified that she seeks a Monetary Order for the following items:
The loss of hundreds of books due to mould damage - The tenant testified that she went onto a book store website and the Amazon site to determine the costs to replace the books and to determine the value of the books as she was told by a mould remediation specialist that any mould damage on her books has to be cleaned by a specialist. The tenant agreed that this mould specialist did not see her books. The tenant seeks to recover a total amount for her books of $1,687.40.

The tenant testified that she had to leave some of her furniture at the unit when they were rehoused in another unit due to mould on her furniture. The tenant testified that she left behind couches, beds, dressers and other wooden furniture such as picture frames and side chairs. The tenant testified that the landlord denied the tenant's request to have a mould test done on her furniture as a mould specialist told the tenant that her furniture should be tested and cleaned by a specialist. As the tenant could not afford to do this she left a number of items in the unit. The tenant testified that she had marked down the cost of what she had paid for the furniture but has not provided this in documentary evidence and testified she no longer has the receipts for this furniture. The tenant testified that the furniture was purchased in 2013 and 2014. The tenant seeks to recover costs to replace the furniture of $8,319.91.

The tenant testified that she incurred costs to move from the unit to her new unit of $190.40. These costs consist of costs for the rental truck, for gas and for labour to move her belongings. The tenant agreed she does not have any receipts for the costs claimed.

The tenant seeks to recover the amount of $7,000.00 for the pain and suffering caused by her daughter. The tenant testified that she has three daughters and only one of them became sick. Her daughter first became ill about a month after moving into this unit and she had to go on antibiotics. The tenant referred to two letters provided in evidence from her daughter's doctors. One letter is dated July 15, 2015 in which the doctor states "that this child has had respiratory tract infections over the past year. It is difficult to say what exactly has caused these infections, as a child in her age group will be exposed to numerous microbes on a daily basis and will experience six to eight viral infections a year but one cannot exclude that she may be responding to the recent mould that was discovered in her living environment. The child's mother reports that testing is currently being carried out on the mould that was discovered in their home. Given this, it is possible that the child may be experiencing URTI symptoms to this mould.

[Tenant's daughter's name removed)

The second doctor's letter provided by the tenant is dated October, 23, 2015; this is after the tenant and her family had vacated the rental unit. This letter states: "The child had had a cough and sinus congestion for over a year. This has been accompanied by ear infections. She has a positive Apergillus antibody test indicating prior exposure to Apergillus. Apparently a test revelled Apergillus in the residence in which she resided. Pulmonary function tests are pending in the next two months. It is possible that mould exposure could either trigger or aggravate airway inflammation resulting in cough and sinus congestion".

[Tenant's daughter's name removed)

The tenant testified that her daughter's body is still trying to process trying to get rid of the mould even after moving to their new unit in August, 2015. Her daughter last attended the doctors about a month ago but there is no report from that visit available.

Counsel asked the tenant when she first found mould. The tenant responded a few weeks before the flood and in June, 2015 the hot water tank burst and flooded the basement. The tenant testified that she contacted the landlord and spoke to their

maintenance man and to a director. The tenant testified that she had spoken to the maintenance man before this flood occurred to ask if there was mould but he informed the tenant that there was no mould and mould testing had been done prior to the tenants moving in. When the tenant asked to see that report she was told it was lost. The tenant testified that she asked for another test to be done and was told BC Housing had the document. The tenant contacted BC Housing and was told that they did not own the building and have nothing to do with a mould report.

The tenant testified that she contacted the director and asked for a mould test to be done after the flood. The landlord came and checked the unit in June, 2015. When they looked in the crawl space they found mouldy cardboard. This was removed and fans were put in. A few days later there was still a smell of mould throughout the basement even through everything was dry. The mould test was not done until two weeks after the flood and the tenant did not receive a copy of that report until a week after she had moved out. The tenant testified that she left her furniture in the unit until she saw the mould report. When she received the mould report it showed that it came up positive for high levels of mould in three out of five locations in the unit.

The tenant testified that she had asked a man from the mould company what kind of mould she had when he was testing other units. This man told the tenant she had Apergillus in her unit.

Counsel for the tenant asked the tenant what kind of heating she had in the unit. The tenant responded oil furnace and baseboard electric heaters. The furnace pulls air from the crawl space and blows this out through vents in the kitchen and living room. The tenant testified that she keeps her windows open all year round. Counsel asked the tenant if she moved into the new unit the landlord offered in August, 2015. The tenant responded yes. Counsel asked the tenant who her witness is. The tenant responded her neighbour and daycare provider. The witness used to work for the previous owners and looked after collecting rent and doing inspections. Counsel asked the tenant if she saw any mould and who else saw the mould. The tenant responded yes in the roof above

her daughter's room and in the crawl space; her witness also saw it and another person. BC Hydro was contacted because the tenant could smell a funny smell like gas. It was BC Hydro who found the flood and it was the plumbers who came in that told the tenant about mould in the crawl space. The tenant testified that she witnessed this along with her witness, her co-tenant, another man, the person from BC Hydro and the plumber.

The tenant testified that her witness also told the tenant that there was mould in the unit before the flood occurred because when the building was built they had vented the bathroom fan into the attic space and not outside. This was later fixed and a vent was put in but this air still vents back into the bathroom and not outside. The mould company told the tenant that moisture is being created because the vents go down instead of up.

The landlord asked the tenant if the Residential Tenancy Agreement s. 21 states that the tenant is required to carry adequate insurance coverage and did the tenant read and initial this page of the agreement. The tenant responded yes she initialled and signed the agreement. The landlord asked the tenant if she can acknowledge that she had a turtle as a pet and did she inform her doctor of this. The tenant responded yes they did have a turtle but only for two to three weeks about a month and a half before the flood and she did inform her doctor of this but her children did not touch the turtle.

The tenant calls her witness BF. BF confirmed that she was the tenant's neighbour but could not confirm when they first met but thinks it was when the tenant moved in. Counsel asked BF if she used to work for the previous landlord. BF responded that yes she did. She used to collect rent and occasionally unlock a unit to let a worker in if the manager was not there. Counsel asked BF if she went into the tenant's unit at that time. BF responded that she had to let a worker into the attic and he had to cut a hole in the firewall to access the bathroom venting and that is when BF saw mould in the attic. This was before the tenant moved in and the unit was occupied by a different tenant. Counsel asked BF what she observed. BF responded that she saw the worker cut the hole and she saw solid black. BF testified that when the previous landlord realized there was no ventilation for the unit they pulled off the soffits and BF saw black mould there

too. This occurred in 2010/11. BF testified that when the windows were replaced in other units she saw mould on the sides. There was a meeting when the building was sold to these landlords and they were discussing issues but no mention was made of the mould. When the new landlords set up a meeting for tenants to sign new tenancy agreements there were two representatives from the new landlord sitting at one end of a table and BF informed them that there was mould and they stated that they did not want to hear that word. Counsel asked BF if the present landlord knew about the mould in the building. BF responded yes she had told the representatives at that meeting.

The landlord asked BF if she could provide some background information about herself. BF responded that she is not employed and is on disability and she has no training as a property manager. She started of just collecting rents for the previous landlord but then also started to help do move in and move out inspections for units. The landlord asks BF what work the previous landlord did to the building in 2009 and 2010. BF responded that they replaced windows with plastic frames and double pane windows and bathroom fans were replaced and vented out through the roof.

The landlord asked BF that during the changeover when tenants were singing new agreements and BF said you raised issue of mould with two of the landlord's representatives, did BF ever raise these issues of mould with the old landlord. BF responded that when construction was going on the manager at the time had conversations with BC Housing and BF asked why there were replacing the toilets and not addressing the mould issues instead. BF was told that this was the only work they were doing. The landlord asked BF if the issue with moisture was adequately dealt with at that time by venting the fans outside. BF responded that the fans were vented outside but the previous landlord was only doing the jobs they had been allocated money for from the government and BC Housing and the previous landlord had no say in the renovations.

The landlord asked BF if she renewed her lease. BF responded yes as she did not have an issue with mould. The landlord asked BF when she did move in and out reports did

she raise any issues of her concerns about mould. BF responded no, the only unit she knew that had an issue was this tenant's unit and she did not do the inspection for that unit. The landlord asked BF if she had said she saw mould in other units. BF responded that shortly after the work was done this landlord took over and no one moved into this unit. The landlord asked BF if she had put anything in writing to the previous landlord about mould in the building or this unit. BF responded no.

The landlord testified that they were not provided with any information from the previous landlord when they took over the building concerning any existing mould issues in this unit or the building.

The landlord testified that the tenancy agreement provided in evidence shows the tenancy started April 01, 2014. The landlord's evidence shows the tenant gave written notice to end the tenancy on May 30, 2015 effective at the end of July, 2015. The landlords were notified about the flood on June 03, 2015. The plumber was immediately contacted and arrived at the unit on June 04, 2015; the landlord's workers put fans in the unit. On June 05, 2015 the tenant requested a mould test. On June 09, 2015 the crawlspace was revisited and wet cardboard was cleaned out. On June 12, 2015 maintenance goes to inspect and on July 13, 2015 a mould inspection was conducted and a copy of this has been provided in documentary evidence. The tenant was also offered a new unit on that date but she declined the first offer. The tenant did accept the offer of a different unit where she relocated on July 31, 2015. The tenant had been asked to get her own fungal inspection of her furniture when she left her furniture but she refused, so the landlord had one done and a copy of this has been provided in documentary evidence. A copy of the inspection report was given to the tenant on August 14, 2015. On December 08, 2015 the landlord received the fungal contamination assessment of the tenant's furniture and household items.

The landlord testified that the landlord acted in a responsible and competent manner and was not negligent, wilful or reckless in dealing with the issues and the tenant's concerns. The spore counts are for active and airborne spores of concern and the

historic presence of mould that is inactive is not concerning. Mould becomes active when it gets wet and it is a growing culture that then releases spores.

In the report it states that the concentration in typical residential buildings can be as high as 40,000 pores per m2. Buildings with doors and windows, often similar to the levels detected outdoors. If specific spore types are significantly greater than the concentration outdoors, it indicates that there may be an indoor source for fungal contamination. The report documents the following concentrations:
Indoor count 32,956
Outdoor count: 30,003
Crawl space count: 307,027
Apergillus/Penicillium (kitchen): 13,609
Apergillus/Penicillium (crawl space): 299,520
Apergillus/ Penicillium (outside): 141

The landlord testified that the mould count inside the kitchen is very similar to the air outside the building. The exception is in the Apergillus/ Penicillium spores. The crawl space is external to the living areas and should not be accessed by the tenant. The landlord submits that it is reasonable to conclude that the high level of spores in the crawl space were activated by the flood from the water tank and there is no evidence to suggest this mould was present and active previous to the water tank flood. The landlord submits that the when workers opened up the crawl space this allowed the Apergillus/ Penicillium spores to enter the living quarters. It was; however, necessary to investigate and deal with the flood and related issues but is the most likely reason for the presence of elevated Apergillus/ Penicillium in the kitchen when the mould testing was carried out. There is no evidence to show that any inactive mould in the attic caused any health issues and the attic mould and window mould was dealt with by the previous landlords in 2010.

The landlord testified that the tenant’s witness BF says she saw mould and reported this to representatives of the landlord when they signed new tenancy agreements with the

tenants; however, that witness did not report her concerns to the previous landlord when she saw mould while they owned the building and BF still signed a new tenancy agreement. There was no information provided by the previous landlord to start an investigation about mould in the attic or walls when the landlord took over the building. The landlord refers to their mould report which states samples were taken from the attic and there were dry conditions and there was no mould growth of any concern.

The landlord testified that the tenant has not met the burden of proof regarding her claim for damage to her goods or for moving costs. There is no evidence of active mould on her belongings and the landlord has not acted negligently in this matter but rather they had a fungus test done for the tenant and they continue to store the tenant's belongings. Had the tenant had concerns about mould spores on her furniture she could have taken action to wipe it down with bleach and water to mitigate her loss. The tenant was also required under the tenancy agreement to carry adequate insurance coverage and she did not. The tenant has not provided any evidence to show estimates or receipts for the value of the furniture and no evidence to support her claim for moving costs.

The landlord testified that they regret that the tenant's daughter has a medical condition and that the tenant has to deal with this; however, the landlord has not acted in a wilful or reckless manner. The doctors' letters state that it is difficult to know what caused the viral infections and that children of this age often have six to eight infections a year. The doctor states it is only possible the child may be suffering from mould related illness but this is not conclusive. Three months after the tenant and her family moved out the tenant's child went to a different doctor and at that time she gave a positive test for Apergillus. The doctors say it is difficult to determine not that it is likely or even most likely to be mould related. The tenant had kept a turtle in the home and these can also carry potentially dangerous bacteria called Salmonella and there is insufficient evidence to show the tenant informed her doctor of their pet turtle. Furthermore, the landlord testified that they did not know if the doctors were provided with information of the various spores that were in the general environment or what other causes were pursued

or suspected. The landlord submits that this disadvantages the landlord and the Arbitrator in applying any weight to the doctors' statements. The landlord testified that there is no basis for the tenant's claim for $7,000.00. There are no receipts for medications.

Counsel asked the landlord if the two representatives of the landlord that were at the meeting are still with the landlord. The landlord responded not for a few years. Counsel asked the landlord if he ever met with them. The landlord responded no they had left before he started a year ago. Counsel asked the landlord if he had any knowledge about the building prior to joining the landlord's company. The landlord responded only written documents and conversations with employees who remain and who confirmed the landlord's position. Counsel asked the landlord if he has any evidence to dispute BF testimony that the landlord was notified of mould. The landlord responded no. Counsel asked the landlord if he can confirm that unit is oil heated and that the furnace is located in the crawl space and is the landlord satisfied with the report. The landlord responded yes.

Counsel asked the landlord about the total fungal spores in the crawl space. The landlord responded yes the count was 300,000. Counsel referred to the report and asked the landlord if the table on page two shows profuse Chlanydospore in the attic and water under the suspended furnace. Could the wet concrete be water rising up through penetration in the concrete into the crawl space? The report refers to this on page six and recommends that further investigation should be done. Did the inspection happen in the summer? The landlord responded yes.

Counsel asked the landlord about the next section of the report in which it discusses that tape surface testing done in the attic and whether or not work has been carried out on the recommendations made concerning safe remediation of the mould in this area. The landlord responded that work has been done but he did not provide evidence of this for the hearing as the tenant has since moved out. SF addressed this question and testified that since the tenant moved out the landlord has continued to carry out work on

all the units in their attics and with the drainage issues to ensure water does not come into crawl spaces under the concrete. The recommendations made on the report are continuing to be done. Subsequent testing has not yet been carried out as the work is still ongoing and this was not provided as it was not relevant to the tenant after she moved out.

Counsel asked the landlord if he said there was a forced air heating furnace located in the crawl space. The landlord responded that the furnace has a system that does not draw air from outside the furnace in the crawl space. Counsel suggested to the landlord that the tenant says the furnace does draw air from the crawl space. The landlord responded that the tenant is not a professional furnace person.

The tenant responded and testified that this is an old style furnace and the landlord had said it would be taken out. Air is taken from the crawl space and pushed through the vents.

Counsel asked the landlord when the tenant's furniture was removed from the unit. The landlord responded that the furniture was left in her unit until late October. When she did not collect it, it had to be moved out to get the unit ready for rental. It is located in a common room. Counsel asked the landlord if the common room is in a different building and is it heated and ventilated and was the fungal test conducted there. The landlord responded yes the test was done approximately 30 days after the furniture was removed from the unit; however, because it was moved this does not invalidate the fungal test done on the furniture. The landlord testified that they have a right to remove and store any abandoned items.

The tenant testified that the date on her notice to end tenancy says May 30, 2015 but it was given to the landlord on June 30 and this should be evident that the date was wrong as it was a 30 day notice effective on July 31, 2015. The landlord responded to this and testified that they do not recall when the notice was given but it was the

tenant's intention to vacate the unit before the flood occurred and the notice is dated May 30, 2015.

Counsel submits that the report shows 10 times the normal amount of spores. The tenant's testimony shows the furnace draws air from the crawl space with a high concentration of mould spores. Confirmation from the tenant's daughter's doctor states that the child was exposed to mould and the mould inspection report details the type of illnesses associated with exposure to mould. The issue is whether the landlord had prior knowledge of mould in this unit before the tenant moved in. The health of a child is paramount and it is clear this child had health difficulties. The tenant agrees the landlord did relocate the tenant but the spores remained on her furniture and the testing was only conducted six months later and then showed no active spores. Counsel suggests that $7,000.00 is an appropriate amount for a claim for damage caused to the child's inhalation.

The landlord submits that the tenant has no evidence that the air is drawn from the crawl space and vented into the unit and there is no proof the landlord acted negligently or is responsible for the health issues experienced by the tenants' child.

Analysis

After careful consideration of the testimony and documentary evidence before me and on a balance of probabilities I find as follows:
In making this decision I have considered two main factors. The first being was the landlord aware of previous mould in the tenant's unit that was present prior to the landlord taking over this building and the second being did the landlord act expediently when notified of the mould or did the landlord act in a negligent or wilful manner in non-compliance with the *Act*.

I am not persuaded by the tenant's arguments that the landlord was made aware of any pre-existing mould issues in the building or to the tenant's unit prior to taking over as landlord of this building. The tenant's witness has testified that she informed two representatives of the landlord; however, there is insufficient evidence to support this and as BF did not officially work for the previous landlord she would have no knowledge of what information was passed to the landlord and any comments she would have made to the landlord's representatives would not be official and no record exists of these comments.

The evidence from this witness does suggest that these mould issues were addressed by the previous landlord when they were provided with funds from BC Housing and the government to address other issues in the building and when the bathroom venting was taken up through the roof and new windows were installed. While I accept that at that time the pre-existing mould may not have been removed from the attic space the report does show that this tested as dormant mould. I also find the mould report made some recommendations to clear certain areas in a safe manner and to deal with water penetration in the crawl space and concrete under the furnace but I also find the landlord was only made aware of these issues when the mould company did their inspection and which I understand the landlord is now working towards remediation with regards to these recommendations.
Consequently, I am satisfied that the landlord was not made aware of any pre-existing mould conditions either dormant or active in the attic areas or crawl space prior to the flood occurring in the tenant's unit.

With regard to the mould that occurred from the flood after the water tank burst. I find this flood was first reported to the landlord on June 03, 2015 and the landlord took immediate action to remedy this by sending in a plumber and workers with fans to dry the area. The wet cardboard found in the crawl space was also removed and by July 13 a mould inspection was conducted by a mould company. On the same day the tenant was offered two alternative units and the tenant choose to relocate to one of those units and did relocate on July 31, 2015. I do not find the relevance of when the tenant gave

written notice to the landlord to be an issue in this matter as it is undisputed that the flood occurred and mould was present in the unit.

I find from the evidence presented that the landlord did act in a timely manner to deal with the flood water and subsequent mould issues. The tenant has the burden of proof to show that the landlord acted in a negligent, wilful or irresponsible manner in non-compliance with the *Act* and I find the tenant has not met that burden of proof. The test reports do show a high concentration of Apergillus/ Penicillium in some areas of the unit after the flood; however, I find the landlord's explanation to be reasonable that this occurred when the crawl space was opened up and work commenced in dealing with the repair issues. I am satisfied that this would create a higher concentration of the mould spores to infiltrate other areas of the unit prior to the landlord having the mould testing done. I further find that the landlord did offer the tenant and her family alternative accommodation as a result of the tenant's concerns.

Consequently, I find the landlord acted in a reasonable manner as required under s. 32 of the *Act* which requires a landlord to provide and maintain residential property in a state of decoration and repair that complies with the health, safety and housing standards required by law I find the landlord is continuing to deal with the recommendations raised by the mould company and is carrying out remediation and repairs for pre-existing issues in the building in order to ensure that the building is suitable for occupation by tenants.

I have therefore turned my mind to the question of the tenant's monetary claim for her books to an amount of $1,687.40 and for her furniture and other household items to an amount of $8,319.91. In these matters I have applied a test used for damage or loss claims to determine if the claimant has met the burden of proof in this matter:

- Proof that the damage or loss exists;

- Proof that this damage of loss happened solely because of the actions or neglect of the respondent in violation of the *Act* or agreement;
- Verification of the actual amount required to compensate for the claimed loss or to rectify the damage;
- Proof that the claimant followed S. 7(2) of the *Act* by taking steps to mitigate or minimize the loss or damage.

In this instance the burden of proof is on the claimant to prove the existence of the damage or loss and that it stemmed directly from a violation of the agreement or contravention of the *Act* on the part of the respondent. Once that has been established, the claimant must then provide evidence that can verify the actual monetary amount of the loss or damage. Finally it must be proven that the claimant did everything possible to address the situation and to mitigate the damage or losses that were incurred.

I find the tenant has insufficient evidence to show that the damage or loss exists to her books and furniture that these items were infected by mould spores to such an extent that they could not be reasonable cleaned using a simple bleach and water solution. The tenant has failed to meet the burden of proof that any damage was caused through the landlord's actions or neglect and not because of a burst water tank that was beyond the landlord's control that created the mould spores to grow and enter into the unit. The tenant has not met the burden of proof to show the actual costs to replace or compensate the tenant for any loss. The tenant has not met the burden of proof to show any action on her behalf to attempt to mitigate any loss by cleaning her furniture herself. The tenant sought advice from a specialist who gave advice without seeing the tenant's books or furniture and therefore this advice is based on an assumption of the damage and not the actual condition of the tenant's belongings. I am satisfied that the landlords fungus testing of the tenant's belongings showed little evidence of fungus and even through these belongings were tested under different conditions away from the tenant's unit, if fungus had penetrated the tenant's belongings it would still show on a test even if at that time it was dormant.

Furthermore, I find the tenancy agreement clearly states that the tenant must obtain insurance coverage and the tenant failed to do so. Consequently, I find the tenant's claim for compensation for damage and loss to her books and furniture is dismissed. The tenant is at liberty to contact the landlord to arrange to either collect or dispose of her belongings at her earliest convenience.

With regard to the tenant's claim to recover moving costs of $190.40; the landlord offered the tenant alternative housing to alleviate the tenant's concerns over living in a unit that was exposed to moulds spores. It was still the tenant's decision to take advantage of the landlord's offer to relocate and as such the tenant must bear any moving costs. Further to this the tenant has provided no receipts showing the cost to rent a truck, for gas, or to pay for someone's labour to help them move. Consequently, the tenant's claim for moving costs is dismissed.

With regard to the tenant's claim to recover $7,000.00 for her child's pain and suffering; again due to the above I am not persuaded that the landlord can be held responsible for any pre-existing mould conditions that the previous owner of the building did not notify them of. While I have sympathy for the tenant's child and the tenant having to experience illness such as this, the tenant has the burden of proof to show the landlord acted in a negligent manner in dealing with the mould issue that was created after the flood. The tenant has insufficient evidence to show that the bathroom fan blows back into the unit as her witness testified that this was vented outside through the roof in 2010. The tenant has insufficient evidence to show that the furnace sucks air from the crawl space and that this air, containing mould spores, was then blown through the vents. It is important to note that where one party provides a version of events in one way, and the other party provides an equally probable version of events, without further evidence the party with the burden of proof has not met the onus to prove their claim and the claim fails.

I have reviewed the letters provided by the tenant from her daughter's doctors; while these letters do imply that her daughter is experiencing a range of illness that could be associated with exposure to mould spores the doctors only state that this is possible and is not definitive evidence of the cause. While the mould exposure is a strong possibility of triggering these symptoms the tenant still has to show that the landlord was negligent in responding to the mould issues after the flood and the tenant has not done so. As the tenant has insufficient evidence to support her claim that the landlord acted in a negligent or willful manner then without corroborating evidence that this is the case the tenant's claim to recover any compensation for any pain or suffering her child experienced is dismissed.

As I have found there is insufficient evidence that the landlord has failed to comply with the *Act*, regulations or tenancy agreement in this matter then there is no cause for me to issue an Order for the landlord to comply with the *Act*, regulations or tenancy agreement.

As the tenant's application is unsuccessful the tenant must bear the cost of filing her application.

Conclusion

The tenant's application is 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: September 15, 2016

Residential Tenancy Branch