



# Dispute Resolution Services

Page: 1

Residential Tenancy Branch  
Office of Housing and Construction Standards

A matter regarding Gur Aasra Holdings Ltd.  
and [tenant name suppressed to protect privacy]

## **DECISION**

Dispute Codes      CNR, MNDC, OLC, ERP, RP, RR, FF

### Introduction

This hearing was convened by way of conference call concerning an application made by the tenants seeking an order cancelling a notice to end the tenancy for unpaid rent or utilities; for a monetary order for money owed or compensation for damage or loss under the *Act*, regulation or tenancy agreement; for an order that the landlord comply with the *Act*, regulation or tenancy agreement; for an order that the landlord make emergency repairs for health or safety reasons; for an order that the landlord make repairs to the unit, site or property; for an order reducing rent for repairs, services or facilities agreed upon but not provided; and to recover the filing fee from the landlord for the cost of the application.

The landlord company was represented at the hearing by an agent who gave affirmed testimony and called one witness, the property manager, who also gave affirmed testimony. Both tenants also attended and each gave affirmed testimony. The parties were given the opportunity to question each other and the landlord's witness and to give closing submissions.

During the course of the hearing, the parties advised that the tenants have vacated the rental unit and the tenants withdraw all claims with the exception of the monetary claim for money owed or compensation for damage or loss under the *Act*, regulation or tenancy agreement.

Since the tenants have not paid a filing fee, I dismiss the tenants' application for a monetary order to recover it from the landlord.

Also, during the course of the hearing one of the tenants testified that the landlord's evidentiary material was not received by the tenants. The Tenant's Application for Dispute Resolution contains an address of the tenants being that of the rental unit, and the landlord's agent testified that each of the tenants was provided with the evidentiary material at that address by registered mail and provided tracking numbers. The parties

agree that the tenants have not provided the landlord with a forwarding address, and I found that the evidence was served in accordance with the *Residential Tenancy Act*.

No further issues with respect to service or delivery of documents or evidence were raised, and all evidence provided by the parties has been reviewed and is considered in this Decision.

#### Issue(s) to be Decided

The issue remaining to be decided is:

- Have the tenants 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 damages caused to the tenants or their children due to mould in the rental unit?

#### Background and Evidence

**The first tenant** (GWM) testified that this tenancy began on October 31, 2015 and the tenants ultimately moved out of the rental unit on December 12, 2016. The rental unit is an apartment within an apartment complex.

The tenant also testified that rent in the amount of \$890.00 per month was payable on the 1<sup>st</sup> day of each month, but the property manager told the tenants in August that the rent would be increased to \$930.00 effective in September, 2016 without giving the tenants anything in writing. The tenants paid \$930.00 in September and October but have not paid any rent for November or December, 2016.

The tenant further testified that he was not present when the move-in condition inspection report was completed; his girlfriend, who was expecting a baby at the time and anxious to move in attended for the inspection while he was at work. A copy of the report has been provided by the landlord. It shows a check-mark in every room and on every appliance, and is signed by the tenant.

The tenants claim \$15,000.00 for mould exposure to the tenant's girlfriend and their children. The tenant's girlfriend, who is the other applicant in this hearing, has major health problems that have come up due to mould. She has been to a physician who said that they don't do mould testing, and the tenants are still in the process of finding a doctor that does mould testing.

About 2 months after moving in the tenant noticed his girlfriend with colds, weakness, poor memory, fatigue, difficulty with speech, unusual tingling and numbness in her skin, shortness of breath, sinus congestion, chronic cough, headaches, difficulty concentrating, morning stiffness in her joints, muscle spasms and nose bleeds regularly. The tenants had windows open and tried to keep fans going to circulate the air in the rental unit thinking there was a circulation problem. The tenant also suffered muscle spasms and the tenants' 3 year old child was also waking up with muscle spasms, and all of them got nose bleeds.

On September 7, 2016 the tenant's mother visited and pointed out mould. The tenant cleaned it, finding green on the floor and the windows were dripping. Mould was heavy and thick in the bathroom and an inch thick on the balcony. The tenant told the landlord in September, who said he'd have someone in to look at it, but nothing happened. The tenant saw the maintenance person and asked him to look. He took a brief look at the window, but wouldn't go in the bathroom where mould was the worst. He said he didn't do cleaning and he'd get someone to clean it, but that never happened either.

The tenant started to do some research and told the landlord in October or November that he would get an inspector and that if the tenant had to do so, he would be deducting the cost from the rent. It took the landlord over a month to call a mould specialist. In November the landlord gave the tenants a dehumidifier and said that the tenants would have to empty the compartment every few hours. The tenant plugged it in and it registered at 72 and should be at 55. It took 2 weeks for it to reduce to 55.

The tenants spoke to 3 agents of the landlord, and at the end of November the tenants were told that the landlord just wanted the tenants to leave and wouldn't accept rent for December, 2016.

The tenant also testified that the tenants signed the second lease because they had no where else to go.

**The second tenant (SMC)** testified that she first noticed mould in the rental unit in September, 2016 when her partner's mother visited.

The tenant has health problems, including high anxiety, thyroid, arthritis in both knees, hips, ankles, fingers and stomach problems. The tenant has had arthritis since age 4. The tenant just learned from her physician that her heart rate is fast, which wasn't before. The tenant had tests done in November and it took over a month to get the results. The monitor determined excessive heart rate. Memory loss and headaches were not a problem before this tenancy, and the landlord said they would clean and paint. The tenant started experiencing health difficulties a few months after moving in.

The tenant also testified that she went to Emergency 4 times while living in the rental unit due to anxiety and her heart rate. The hospital physician couldn't figure out what was wrong. The tenant suffered headaches, morning sickness, sinus congestion and shortness of breath. Her daughter was coughing. The tenant didn't know why until they found out that the rental unit had mould.

The tenant has also done some research on the internet and found that her symptoms were associated with mould.

The tenant was present with the mould inspector on November 21, 2016 who tested windows and floors which registered 72%. The tenant accepts the report of the mould specialist, but believes that mould is more toxic than the professional thinks. The tenant has no previous experience with mould but testified there's black mould and other mould, and mould is mould.

The tenants' \$15,000.00 claim includes compensation for the health issues caused by the mould, as well as for items that the tenants had to get rid of including some furniture. The tenant has health problems and the mould made it worse.

**The landlord's witness** is the property manager and testified that during the move-in condition inspection, the tenant signed the report voluntarily.

The tenants' rent cheque bounced for November, 2016 and the landlord served a 10 Day Notice to End Tenancy for Unpaid Rent or Utilities, a copy of which has been provided. It is dated November 10, 2016 and contains an effective date of vacancy of November 20, 2016 for unpaid rent in the amount of \$930 that was due on November 1, 2016. It was served by placing it in the tenants' mail slot on November 10, 2016.

The property manager spoke with the tenant (SMC) on November 15, 2016, wherein the tenant told the property manager about mould. There had been no previous discussions about mould. The tenant requested a mould inspector which the property manager scheduled for November 21, 2016. A report was made and a copy given to the tenants and the tenants were told that the landlord would do what was recommended in the report. A copy has been provided for this hearing and it states, in part that general observations in the living room and bedroom showed visible fungal/contamination along the window frame/sill and sliding doors. Heavy condensation has collected creating conditions favourable to mould growth. Optimal levels of humidity would be 50% or less and the readings were on average 72%. Where readings are higher than 70% visible and non-visible mould may occur. It also states that: "The causative agents of adverse health effects have not been identified

conclusively, but an excess level of any of these agents in the indoor environment is a potential health hazard.” Several recommendations have been made in the report.

The tenants didn't pay any rent for November or December, 2016.

**The landlord's agent** (DM) testified that he was hired by the landlord as an agent to deal with the tenants for unpaid rent. He talked to the tenant (GWM) on or about December 8, 2016, after the 10 Day Notice to End Tenancy for Unpaid Rent or Utilities was served, and asked him about moving out. The tenant replied that they were having trouble finding a suite to move to and asked if they could stay longer. The landlord's agent advised that since rent had not been paid, rather than getting an Order of Possession or a Bailiff, the landlord would ask the tenants to move out and avoid that. There was no mention of mould at that time. However, the tenants moved out without letting the landlord know.

The landlord's agent submits that the landlord would not have hired a mould inspector if not acting in good faith.

#### **Tenancy Agreements:**

Copies of 2 Residential Tenancy Agreements have been provided. The first names only one of the tenants for a 12 month fixed term tenancy to begin on November 1, 2015 expiring on October 31, 2016 at which time the tenant must vacate the rental unit. Rent in the amount of \$890.00 per month is payable on the 1<sup>st</sup> day of each month and a security deposit in the amount of \$450.00 is required by October 16, 2015. It is signed by a landlord and by a tenant on October 16, 2015.

The second Residential Tenancy Agreement names both tenants for a 3 month fixed term tenancy to begin on November 1, 2016 expiring on January 31, 2017 at which time the tenancy ends and the tenants must vacate the rental unit. Rent in the amount of \$930.00 per month is payable on the 1<sup>st</sup> day of each month and a security deposit of \$450.00 is mentioned, but no date. It is signed by a landlord and both tenants on October 19, 2016.

#### Analysis

Firstly, I do not accept the tenant's testimony that the tenants paid an increase in rent for September and October, 2016 without anything in writing from the landlord. The tenancy agreements speak for themselves.

In this matter, the tenants apply for aggravated damages for decreased health due to mould in the rental unit. In order to be successful, the tenants must establish that they

have suffered damages; that the damages suffered were a result of the landlord's failure to comply with the *Residential Tenancy Act* or the tenancy agreement; and what efforts the tenants made to mitigate any damage or loss suffered.

The tenant (SMC) clearly had some medical issues prior to this tenancy, and the other tenant testified that they are still in the process of finding a doctor that does mould testing.

I have reviewed the report of the mould specialist, who goes into great detail about what tests were done, how they were done, what effects mould and humidity can have, and recommendations. The report shows evidence of mould in the rental unit and of high humidity. However, not all moulds are toxic. In order to satisfy me that the tenants are entitled to any compensation, there must be some medical evidence that the tenants suffered a health condition as a result of that mould.

Also, the parties disagree as to when the landlord was notified of the existence of mould. Both tenants testified that it was in September, 2016, and the landlord's witness and agent both testified that they heard nothing about mould until November, 2016, and by then rent was overdue. Where it boils down to one person's word over another, it hasn't been proven.

In the circumstances, I am not satisfied that the tenants have established that the tenants suffered any health issues as a result of the landlord's failure to comply with the *Act* or the tenancy agreement, nor am I satisfied that the tenants did what was reasonable to mitigate any damage or loss that they may have suffered. The tenants' application is dismissed.

### Conclusion

For the reasons set out above, the tenants' applications for an order cancelling a notice to end the tenancy for unpaid rent or utilities; and for an that the landlord comply with the *Act*, regulation or tenancy agreement; and for an order that the landlord make emergency repairs for health or safety reasons; and for an order that the landlord make repairs to the unit, site or property; and for an order reducing rent for repairs, services or facilities agreed upon but not provided are all withdrawn by the tenants.

The tenants' application for an order recovering the filing fee for the cost of this application is hereby dismissed without leave to reapply.

The tenants' application for a monetary order for money owed or compensation for damage or loss under the *Act*, regulation or tenancy agreement 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: January 13, 2017

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Residential Tenancy Branch