



# Dispute Resolution Services

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Residential Tenancy Branch  
Office of Housing and Construction Standards

## **DECISION**

Dispute Codes      OPC, FF  
                             CNC, LAT, MNDC, FF

### Introduction

This hearing was convened by way of conference call concerning applications made by the landlord and by the tenant. The landlord has applied for an Order of Possession for cause and to recover the filing fee from the tenant. The tenant has filed amended applications seeking an order cancelling a notice to end the tenancy for cause; an order permitting the tenant to change the locks to the rental unit; a monetary order for money owed or compensation for damage or loss under the *Act*, regulation or tenancy agreement; and to recover the filing fee from the landlord.

The parties both attended the hearing and gave affirmed testimony. The landlord also called one witness who gave affirmed testimony. The parties were given the opportunity to question each other and the witness, and all evidence provided has been reviewed and is considered in this Decision. No issues with respect to service or delivery of documents or evidence were raised.

During the course of the hearing the parties agreed that the tenancy will end on September 30, 2017 at 1:00 p.m. and the landlord will have an Order of Possession effective that date and time. The tenant withdrew the application for an order cancelling the notice to end the tenancy and the application for an order permitting the tenant to change the locks to the rental unit.

### Issue(s) to be Decided

The issue remaining to be decided is:

- Has the tenant 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 costs associated with mold testing and replacement of personal items?

### Background and Evidence

**The tenant** testified that this month-to-month tenancy began in November, 2006. There is no written tenancy agreement, however rent in the amount of \$690.00 per month is payable on the 1<sup>st</sup> day of each month and there are no rental arrears. The landlord did not collect a security deposit or a per damage deposit from the tenant. The rental unit is a basement suite and the landlord resides in the upper level of the home.

The tenant has provided a Monetary Order Worksheet setting out the following claims:

- \$630.00 for air quality sampling;
- \$150.00 for a second opinion of air quality sampling;
- \$424.25 for testing by a naturopath;;
- \$269.75 for follow-up testing by a naturopath;
- \$3,895.31 for replacement of leather furniture;
- \$1,196.55 to replace a box spring, mattress and cover;
- \$10,399.84 to clean and/or dispose of all of the tenant's other items;
- \$91.76 to replace towels and other bathroom items;
- \$289.99 for bedding replacement; and
- \$2,070.00 as recovery of rent paid from July to September, 2017.

The tenant's total claim is \$19,417.45.

The tenant further testified that on July 6, 2017 the landlord was asked to retain someone to test for mold because the tenant had been sick. In 2015 the tenant was diagnosed with lung disease and in 2016 with a chronic hypersensitivity pneumonitis from inhaling toxins. A copy of a walk-in family practice document which appears to be on prescription pad paper has been provided which is dated July 25, 2017 and states that the tenant "...has a diagnosis of lung disease consistent with chronic hypersensitivity pneumonitis consistent with chronic mold exposure." The tenant's doctor said that in the past 10 years the tenant has been around something poisonous to the tenant's body. The landlord knew the tenant was sick and the tenant told the landlord what the doctor had said, but the landlord refused to have the testing done.

The tenant had a company attend on July 13, 2017 to do air quality sampling, and the tenant received the report on July 21, 2017. The assessment showed a reading of 240 spores and that there was no water damage or toxins. The tenant called the tester because it's impossible to detect water damage with air sampling, but the tester became very evasive. A copy of a letter from the testing company has been provided for this

hearing stating that there were no mycotoxins detected or water damage, and that the levels are acceptable and slightly elevated. The writer suggests possible allergies.

On August 21, 2017 the tenant had a second company test and the assessment was received on August 28, 2017 showing a reading of 4,990 spores, and the tenant testified that the allowable safe limit is under 200 spores. The tenant sent the full report to the landlord on September 11, 2017, which showed that there had been suspected water damage previously. A copy has also been provided as evidence for this hearing as well as an Interpretation document which states that high moisture levels were found at the entrance to the rental unit. It also states that the moisture readings were elevated and the smell of dampness was present in the storage room, and that moisture readings were high at the exterior wall in the storage room and tile floor due to the density of the building materials.

The tenant went to see a naturopath on July 5 or 6 for testing, which showed high sensitivity and the tenant had to start taking medicine. It took about 4 weeks before the tenant started feeling better. The tenant was to return in August for further testing, and the tenant claims the costs of both visits.

Mold was in the air and embedded in materials, and the tenant is not able to use any of the items in the rental unit, and the tenant has not stayed in the rental unit since July 5, 2017. One of the leather couches was 6 years old and was given to the tenant. The other was also given to the tenant new about 4 years ago.

When asked why the tenant had not mentioned that the tenant's doctor told the tenant repeatedly to quit smoking, the tenant replied that it was irrelevant to the tenant's illness. The tenant has also provided invoices and estimates to substantiate the claims.

**The landlord** testified that things exploded in April when the tenant attempted to prove that someone had been in the rental unit. The landlord has never entered except on one occasion to replace a shower with notice and agreement by the tenant.

The landlord contacted a fellow from the first air testing company retained by the tenant who stated that the air quality of mold spores was slightly elevated which could be from an open window or from walking in from the outside. The tenant's claim is just nonsense.

**The landlord's witness** testified that he is the adult son of the landlord and visits his mother regularly.

The witness also testified that there is no mold in the rental unit, or it would be everywhere in the whole house with constant circulation. The rental unit was renovated 10 years ago and no mold was found at all. Covering such a problem would be the worst thing the landlord could do, in that it would also jeopardize the landlord's health.

### Analysis

In order to be successful in a claim for damage or loss, the onus is on the claiming party to satisfy the 4-part test:

1. that the damage or loss exists;
2. that the damage or loss exists as a result of the other party's failure to comply with the *Residential Tenancy Act* or the tenancy agreement;
3. the amount of such damage or loss; and
4. what efforts the claiming party made to mitigate the damage or loss suffered.

A landlord is responsible for ensuring that rental units and property meet "health, safety and housing standards" established by law, and are reasonably suitable for occupation given the nature and location of the property.

I have reviewed all of the evidentiary material, and have considered the affirmed testimony of the parties and the witness., and I accept the testimony of the tenant that the landlord was asked to have the rental unit tested for mold but declined to do so, and the tenant felt a need to do so herself. That in itself is not contrary to the *Residential Tenancy Act*. The tenant was not satisfied with the results and took it upon herself to have the rental unit tested a second time. I also note that both companies sent the samples to the same laboratory and it is not clear to me why the results are different. However, the tenant testified that upon contacting the first company, the person she spoke to was evasive. The tenant has a letter from the testing company to explain the results, which I do not find is evasive at all.

The medical evidence provided by the tenant is a prescription pad note from a doctor stating that the tenant has a lung disease consistent with mold exposure. The tenant testified that she was diagnosed with the lung disease in 2015 and chronic hypersensitivity pneumonitis in 2016, and did not deny the landlord's question about the doctor telling the tenant that she had to quit smoking. The tenant dismissed that notion as being irrelevant, and I disagree and find that it is relevant. That in itself opens up the question in my mind if the prescription pad note is conclusive, or if the condition of the tenant could also be consistent with smoking. It is not up to the landlord to disprove the tenant's claim, but up to the tenant to prove the claim.

I also take note that the landlord issued the notice to end the tenancy on June 28, 2017 and the parties have provided some evidentiary material of police presence. The landlord testified that things exploded in April, 2017 when the tenant accused the landlord of entering the rental unit. The tenant has resided in the rental unit for almost 11 years, and did not request that the landlord retain air quality sampling until after the notice was issued. The tenant did nothing about her claim that she was ill from mold until after the notice to end the tenancy was issued.

I have also reviewed the estimate provided by the tenant with respect to the cost associated with cleaning and/or disposing of the tenant's items. It states that the estimate is based on information provided by the tenant that the rental unit may be contaminated, and instruction by the tenant to dispose of bed and couches due to cross contamination concerns. Further, there is no evidence supporting the tenant's testimony that all furniture, bathroom items, or bedding are infested with mold spores.

The tenant has provided numerous documents as evidence to satisfy element 3 in the test for damages, but I am not satisfied that the tenant has established that any damage or loss suffered by the tenant was a result of the landlord's failure to comply with the *Act* or the tenancy agreement. The tenant's application for monetary compensation is dismissed.

#### Conclusion

For the reasons set out above, and by consent, I hereby grant an Order of Possession in favour of the landlord effective at 1:00 p.m. on September 30, 2017.

The tenant's monetary claim is hereby 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: September 27, 2017

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Residential Tenancy Branch