



# Dispute Resolution Services

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Residential Tenancy Branch  
Office of Housing and Construction Standards

A matter regarding NEW CHELSEA SOCIETY  
and [tenant name suppressed to protect privacy]

## **DECISION**

Dispute Codes      ERP LAT LRE MNDCT OLC PSF RP

### Introduction

This hearing was convened by way of conference call concerning an application made by the tenant seeking the following orders:

- that the landlords make emergency repairs for health or safety reasons;
- that the tenant be permitted to change the locks to the rental unit;
- limiting or setting conditions on the landlords' right to enter the rental unit;
- a monetary order for money owed or compensation for damage or loss under the *Act*, regulation or tenancy agreement;
- that the landlords comply with the *Act*, regulation or tenancy agreement;
- that the landlords provide services or facilities required by the tenancy agreement or the law; and
- that the landlord make repairs to the unit, site or property.

The hearing did not conclude on the first or second scheduled dates and was adjourned to allow further exchange of evidence. My Interim Decision was provided to the parties.

The tenant attended the hearing on all scheduled dates with a Legal Advocate. The named landlord also attended on all scheduled dates and an agent for the landlord company attended on two of the scheduled dates. The tenant, the named landlord and 2 witnesses of the landlords each gave affirmed testimony. The parties were given the opportunity to question each other and the witnesses and to give submissions.

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.

At the commencement of the first scheduled date of the hearing the tenant applied to have all claims except the claim for emergency repairs and monetary compensation dismissed with leave to reapply. The landlord opposed that application. The tenant did not withdraw those claims, and I ordered that all claims be heard and that the applications will not be severed.

#### Issue(s) to be Decided

- Has the tenant established that the landlords should be ordered to make emergency repairs for health or safety reasons?
- Has the tenant established that the tenant should be permitted to change the locks to the rental unit?
- Has the tenant established that an order should be made limiting or setting conditions on the landlords' right to enter the rental unit?
- Has the tenant established a monetary claim as against the landlords for money owed or compensation for damage or loss under the *Act*, regulation or tenancy agreement?
- Has the tenant established that the landlords should be ordered to comply with the *Act*, regulation or tenancy agreement?
- Has the tenant established that the landlords should be ordered to provide services or facilities required by the tenancy agreement or the law?
- Has the tenant established that the landlords should be ordered make repairs to the unit, site or property?

#### Background and Evidence

**The tenant** testified that this fixed term tenancy began on March 1, 2011 and reverted to a month-to-month tenancy after February 29, 2012, and the tenant still occupies the rental unit. Rent is subsidized, and the tenant's share is currently \$320.00 per month payable on the 1<sup>st</sup> day of each month, and there are no rental arrears. At the outset of the tenancy the landlord collected a security deposit from the tenant in the amount of \$222.50 which is still held in trust by the landlord, and no pet damage deposit was collected. The rental unit is a bachelor suite on the 4<sup>th</sup> floor of an apartment complex, and a copy of the tenancy agreement has been provided as evidence for this hearing.

The tenant further testified that on December 3, 2017 a flood occurred in the rental unit. The resident manager arrived, closed a leaking pipe to prevent future leaking and turned off the hot water. Then the tenant called the landlord's emergency line to find out when the hot water and pipe would be fixed, and the resident manager entered the rental unit without permission yelling at the tenant. The tenant called that emergency line again and

the police. The resident manager said that he could enter without permission if the tenant had called the emergency line. He left when the tenant called 911.

A plumber arrived to make the repair and promised to finish by December 8, but did not. The tenant sent a letter to the landlord on December 9, 2017 by regular mail requesting alternate accommodation. The landlord did not reply so the tenant sent the letter again on December 18 also asking for an air quality assessment and for the landlord to have the walls and ceiling cleaned in the rental unit.

The plumber moved the tenant's clothing and belongings so the tenant called police again. The tenant testified that the landlord's agents keep entering the rental unit without permission. The entrance closet area is where the mold issue is, and the landlord's agents don't need to go into the bedroom, mess up all the tenant's belongings without any real purpose. It's very disturbing; the tenant has lost her privacy and testified that it's been a very shocking experience.

About 6 years ago, there was another flood and the plumber at that time said he would apply a new pipe but the building manager said a new one was not necessary so they closed up the wall.

The tenant has had difficulty breathing, sore throat, frequent coughing, chest pain, nausea, numbness in her feet and face, itchy eyes, bleeding gums, and her whole body itches. The tenant has not been staying in the rental unit since December 10, 2017 and is currently staying at the Holiday Inn which is the least costly accommodation the tenant could find. The tenant tried to stay at the rental unit from December 18 to 20, 2017 but the symptoms persisted so the tenant went back to the hotel.

The tenant and the landlord had mold inspections done in the rental unit, and on December 20, 2017 the landlord sent to the tenant a letter saying that no mold was detected and it was not necessary for the tenant to stay in a hotel. However, the mold report of the company retained by the tenant shows that the rental unit is not livable and the tenant was told by the mold inspector to leave the suite. The conclusion and recommendations are as follows:

**"Conclusions and Recommendations**

1/ Air samples taken in the suite show very high levels of toxigenic variety of single mould spore in the suite ( 46869 per cubic meter *Penicillium/Aspergillus* sp ).

2/ There is visible mould contamination within the suite ( *Stachybotrys* sp ) This is also a toxigenic variety of mould.

3/ Proper mould remediation guidelines were not followed when mould contamination was removed from the hallway/closet area.

- 4/ The suite is heavy contaminated and not presently fit for habitation.
- 5/ Professional mould remediation is required in Ms Han's suite to remove this indoor biological contaminant.
- 5/ Post mould remediation air sampling testing is required to determine if the suite is safe to occupy."

The tenant has provided a monetary breakdown of the claim totaling \$34,946.43:

1. Invoice for hotel from December 10, 2017 to March 30, 2018 - \$14,768;
2. March 31 to April 14, 2018 - \$2,018.25 to stay at Holiday Inn;
3. December 16 to February 28 - \$1,613.21 for food;
4. \$500.25 for mold assessment costs;
5. Transportation between hotel and home - \$180.00;
6. Dry-cleaning reimbursement \$126.75 (as recommended by the mold inspector);
7. \$2,330.03 for chiropractor costs due to physical pain;
8. Hydro - \$37.29;
9. Shaw Cable - \$224.00;
10. \$200.00 for spoiled food;
11. Air purifier to clean the air - \$157.91;
12. December, January, February and March, 2018 rent reimbursement;
13. August 11, 2017 diagnosed with asthma - \$11,200 for aggravated damages, loss of quiet enjoyment and illegal entry.

The tenant testified that packing belongings has caused the tenant pain requiring chiropractic treatment. The tenant also seeks orders that the landlord make repairs, provide the tenant with quiet enjoyment, permission to change the lock to the rental unit, and limiting the landlord's entry only with permission of the tenant respecting repairs.

An Affidavit has also been provided by the tenant as evidence for this hearing.

**The landlord** (SB) testified that the rental unit was never neglected. The landlord's agents followed their obligation to repair and do not see any reason that the tenant has been staying at a hotel without consulting the landlord prior. The tenant never asked the landlord to provide another unit, but moved to a motel without the landlord's knowledge.

When the landlord received the tenant's call indicating a leak, the same day the leak was stopped. It was dealt with as an emergency repair and also did a follow-up. The contractor opened an area in the drywall and made a repair to the hot water pipe. The landlord's agents then took in dryer equipment and told the tenant it would take 2 or 3 days to dry the area completely on medium speed. The tenant didn't like the noise and didn't want it to run as recommended on a 24 hour basis. The landlord's agents explained to the tenant that failing to do so would extend the period needed to dry it out and it would impact the whole process. The tenant sent the landlord a letter saying the dryer equipment is

contrary to a noise by-law, but it is not. As a result of the tenant's disapproval the landlord allowed the rental unit to dry by itself which took until December 22, 2017 to finish the repair to the drywall and re-paint. A copy of the contractor's statement has been provided as evidence for this hearing, as well as condition inspection reports from 2016 and 2017, and the landlord's agent testified that there was no mention of mold.

The landlord is a society responsible for social housing and never enters a rental unit without giving notice or in emergency situations. The landlord denies that any entry existed without notice. The rental building is an older building, and considering fire, flood or other incidents the landlord must have the means to access the rental units to deal with emergencies in a timely manner.

The landlord operates 1,432 units, and of general concern are the tenant's allegations against the society, which the landlord's agents find are unproven and hurtful to the reputation of the organization and hurtful to the reputation of people who work there. Such allegations made are stealing, criminal behavior, harassment and engaging in criminal activity, all of which are disputed and denied. Further, the relationship between the tenant and the landlord has come to the point that it's difficult to provide service in a timely manner even when notice is given to the tenant.

**The landlord's first witness** (DC) testified that he is the site manager for the rental property, and maintenance and emergency protocols have been taken as much as was possible given the interruptions caused by the tenant after the flood. Each time, the tenant would demand 4 days notice and contractors couldn't get in to complete repairs as fast as possible. The witness disputes that there were any situations where he yelled at or harassed the tenant as set out in the tenant's Affidavit, but during the first day of the repair the tenant was yelling at the witness. The tenant called the hot-line saying that the witness yelled at her a number of times during this tenancy. The tenant's complaint also states that the witness' grandson entered the rental unit and stole items, but he doesn't have any access. Other statements by the tenant are ridiculous.

The witness also testified that from December 7 till the work was completed on December 21 or 22, the tenant kept the heat off and windows open to the elements. However, the witness only saw surface mold in the rental unit on the window seals, which should be cleaned by the tenant. Also, having the window open all that time may have contributed to the mold that the tenant says she found in a closet. The witness does not know the current condition in the rental unit.

**The landlord's second witness** (SS) testified that he is the operations manager of the landlord society.

The landlord retained a mold inspection company to either corroborate or disprove a mold inspection report completed by a company retained by the tenant. The intention was to get to the bottom of it and get a second opinion. The severity put forth by the tenant necessitated it for due diligence.

In cases of a water leak, the landlord starts by investigating with notice to the tenant unless an emergency exists, in order to ascertain where the leak is. Facts are gathered to ascertain the problem and have it rectified as soon as possible, and repair the unit to the original or better condition, and it all takes time.

As far as any governing body is concerned, federal, provincial or municipal, there are no guidelines for mold remediation, but expert opinion. Less than 1 square meter is considered to be a spot removal remediation. The rental unit showed a 2 inch by 2 inch spot in the window frame, which is consistent with condensation and needs to be cleaned with bleach and a rag. The landlord expects that tenants maintain such spots. There was a spot in the front closet, and to be fairly precise, the witness testified that he visually inspected the area personally and the area is 4 mm X 1 mm. The inspection report of the company retained by the landlord says it is 1 inch in diameter, and its conclusions and recommendations also say the apartment requires cleaning. It is surface mold and needs to be remediated by the tenant in a timely manner. If the tenant requires help, the landlord is willing to assist.

### Analysis

Firstly, with respect to the tenant's monetary claim, the onus is on the tenant 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 landlords' failure to comply with the *Act* or the tenancy agreement;
3. the amount of such damage or loss; and
4. what efforts the tenant made to mitigate any damage or loss suffered.

I have read all of the evidence, and particularly the mold reports completed by the company retained by the landlord and by the tenant. The tenant's company reports visible fungal growth (*Stachybotrys* sp) in the hall closet, wall cavity and bathroom. It also states that, "This is a toxigenic variety of mould that may be harmful to one's health depending on the sensitivity of the individual to microbial infestation. Due to the fact that the water leak has occurred over a number of years one can be certain that there is hidden fungal growth within the walls of the bathroom/hallway/closet area." It also

states that according to the tenant water has continued to leak for six years, and that fungal levels are an unknown size due to concealment. Although the report shows high moisture readings, I find that the report is largely based on what the tenant told the technician. The landlord disputes that the leak 6 years ago was in the same area, and testified that that leak was repaired 6 years ago. The landlord's witness testified that the visual inspection showed mould on a window consistent with condensation, and a 4 mm x 1 mm spot in the closet, both of which are surface moulds only and the responsibility of the tenant. I also find that the technician recommended that the tenant not remain in the rental unit due to the tenant disclosing asthma and other health issues.

The report provided by the landlord shows that the inspection took place on January 11, 2018 and states that visible mold growth was observed of about 2 inches in diameter on the drywall beside the bathroom window and a smaller spot on the drywall at the base of the closet wall where a baseboard had been removed, and moisture levels were normal. It also states that the mold growth on the bathroom window frame is likely from condensation, and at the base of the closet wall is likely from the past plumbing leak. It also states: "The apartment unit requires mold removal in both the window area and the closet wall area which should include removal of all mold impacted drywall and cleaning of any mold growth behind."

The reports are somewhat conflicting, and I accept the testimony of the landlord's witness (SS) that there is no governmental protocol for mold remediation. I also question, if the mold had been growing for 6 years, why the tenant didn't suffer any of the symptoms described in her testimony until after the first mold technician gave an opinion relying heavily on what the tenant had told him. I find that the tenant received that opinion and acted on it by staying in a hotel without giving the landlord an opportunity to provide other accommodation. I also accept the undisputed testimony of the site manager who testified that there were interruptions caused by the tenant who demanded a 4 day notice preventing the landlord from completing repairs as fast as possible. I also accept the undisputed testimony of the landlord (SB) that the tenant didn't like the noise of the fan, and that while staying in a hotel, the tenant left windows open and the heat off. The tenant has not mitigated any damage or loss that may have been suffered. I find that the tenant has failed to establish elements 1, 2 and 4 in the test for damages and I dismiss the tenant's monetary claim.

I am not satisfied that the tenant has established that the landlord's agents or a grandson ever entered the rental unit unlawfully. The tenant called the landlord about a leak and then didn't answer the door. I find that the landlord had reason to believe that an emergency existed. A landlord must have means of entry in case of such

emergencies, and in the absence of any evidence to corroborate the tenant's testimony that the landlord has failed to comply with the *Residential Tenancy Act*, I dismiss the tenant's applications limiting or setting conditions on the landlord's right to enter the rental unit and for an order authorizing the tenant to change the locks.

I also find that the landlord has already made the repair and the emergency repair, and the tenant's applications in that regard are dismissed.

The tenant has not lead any evidence with respect to the landlords' failure to provide services or facilities, and I dismiss that portion of the tenant's application.

### Conclusion

For the reasons set out above, the tenant's application is hereby dismissed in its entirety.

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 04, 2018

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Residential Tenancy Branch