



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

A matter regarding SHALOM BRANCH #178 BUILDING SOCIETY, MAPLE CREST
HOUSING SOCIETY
and [tenant name suppressed to protect privacy]

DECISION

Dispute Codes **MNDCT, FFT**

Introduction

This hearing dealt with the Tenant's application pursuant to the *Residential Tenancy Act* (the "Act") for:

1. An Order for compensation for a monetary loss or other money owed pursuant to Section 67 of the Act; and,
2. Recovery of the application filing fee pursuant to Section 72 of the Act.

The hearing was conducted via teleconference. The Tenant attended the hearing at the appointed date and time and provided affirmed testimony. The Landlord did not attend the hearing. I confirmed that the correct call-in numbers and participant codes had been provided in the Notice of Hearing. I also confirmed from the teleconference system that the Tenant and I were the only ones who had called into this teleconference. The Tenant was given a full opportunity to be heard, to make submissions, and to call witnesses.

I advised the Tenant that Rule 6.11 of the Residential Tenancy Branch (the "RTB") Rules of Procedure prohibits the recording of dispute resolution hearings. The Tenant testified that he was not recording this dispute resolution hearing.

The Tenant testified that she served the Landlord with the Notice of Dispute Resolution Proceeding package for this hearing on January 28, 2022 by Canada Post registered mail (the "NoDRP package"). The Tenant referred me to the Canada Post registered mail receipt with tracking number submitted into documentary evidence as proof of service. I noted the registered mail tracking number on the cover sheet of this decision. I

find that the Landlord was deemed served with the NoDRP package five days after mailing them, on February 2, 2022, in accordance with Sections 89(1)(c) and 90(a) of the Act.

The Tenant served the Landlord with her evidence by Canada Post Xpresspost on August 10, 2022. The Tenant provided the Canada Post Xpresspost tracking number as proof of service. I noted the registered mail tracking number on the cover sheet of this decision. I note that the package was refused by the recipient and was returned to the sender. I find that the Tenant's evidence was deemed served on the Landlord on August 15, 2022 pursuant to Sections 88(c) and 90(a) of the Act.

Issues to be Decided

1. Is the Tenant entitled to an Order for compensation for a monetary loss or other money owed?
2. Is the Tenant entitled to recovery of the application filing fee?

Background and Evidence

I have reviewed all written and oral evidence and submissions before me; however, only the evidence and submissions relevant to the issues and findings in this matter are described in this decision.

The Tenant uploaded a copy of her tenancy agreement. The Tenant stated that this periodic tenancy began on December 1, 2014. Monthly rent was \$458.00 payable on the first day of each month. A security deposit of \$179.00 was collected at the start of the tenancy and has been returned. The Tenant said she moved out of the rental unit on February 15, 2020. The Tenant transferred to another unit in the same building on March 1, 2020 when the impacts from the mould presence continued in her unit. The Tenant ended the tenancy on October 20, 2021.

The Tenant's unit was impacted by a mould contamination which she claimed started from a water leak reported in the main building from two rental units below her. The Tenant's timeline outlined that another tenant had contacted the Landlord on July 4, 2019 to tell them he had wet carpets in his rental unit, and he was inquiring about a leak. This affected tenant wrote the Tenant and told her the Landlord had not done anything until July 14, 2019.

Holes were cut into the Tenant's bathroom wall on July 15, 2019 to investigate the source of the leak problem. The Tenant stated the plumber found the leaky pipe and clamped it. The Tenant maintains that her reaction to when the wall was opened was immediate headaches. The Tenant claims that the rental unit became permanently uninhabitable for her. A mould contamination was found.

The Tenant retained a company to do a mould inspection of her rental unit 10 days after remediation on August 19, 2019. This report cost \$708.75. The inspection report classified the rental unit as potential for: hidden mould contamination, heavy fungal growth, and high moisture readings. The overall classification was deemed "Minimal" problem which is described as:

applied to visible or anticipated surface contamination of less than 10 square feet ft². "Minimal" Problem describes situations where visible growth is mainly limited to scattered small colonies and evidence suggests that these are only present on easily accessible non-porous surfaces, or when there is a potential for hidden mould contamination where moisture levels are high in a localized area.

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Indoor Air Quality – required if box is ticked

Dust removal from home will improve Indoor Air Quality

HEPA Vacuuming is recommended

Install Air purifier with HEPA Air Filter with activated charcoal/carbon filter

Install Dehumidification

Notable mould finds were Basidiospores (undifferentiated), *Chaetomium sp.*, *Cladosporium sp.*, *Ganoderma sp.*, and *Stachybotrys sp.* The Tenant noted that *Stachybotrys chartarum* is the toxic black mould; however, the report does not specifically say that that species was detected.

The Tenant uploaded a letter authored by an Internal Medicine specialist on September 20, 2019. This doctor noted that the Tenant "*has medical conditions that are associated with environmental sensitivities.*" The doctor stated the Tenant experienced "*clinical deterioration in the 5 years that she has lived in her suite, followed by exacerbated symptoms as soon as holes were cut in her bathroom wall to find a leaky pipe directly*

behind the wall.” After being out of her apartment for nine weeks, her symptoms had improved, and she had no flares in her symptoms.

The Tenant relocated to a different rental unit on the same floor of the building. On November 30, 2019, she retained a company to conduct an ERMI Analysis which is a relative mouldiness score for the new rental unit. It was found to have a moderate relative mouldiness score. The engineer wrote the Tenant:

...

Overall the numbers, despite the score being in the positive, are relatively low. ...

That being said, the bathroom had a whole bunch of staining on the ceiling. There were some penetrations that would allow spores to disperse throughout the apartment. If there was a significant amount of mould above that ceiling, we probably should have seen it throughout the apartment.

Next, I am considering your sensitivity level to mould and it appears to be quite high. I would love for you to live in that apartment, be local and save a ton of money, but you told me that just being in there for a short time, you had already started getting a headache. I worry that should you come back, they [sic] may be a reversal in your healing stage. Compared with your last apartment in that same building, these levels are considerably lower. With some effort, these levels could be much lower. You could utilize a permanent air scrubber as well as a hydroxyl generator for a few weeks to further decontaminate.

Due to the impacts from the mould contamination, the Tenant makes the following claims:

Item	Receipt/Estimate	For	Amount
1	Many receipts	Extra Housing Costs	\$10,925.10
2	Many receipts	Extra Food Costs	\$3,880.00
3	Many receipts	Mould Testing & Mitigation	\$4,173.96
4	Many receipts	Health costs	\$6,385.00
5	Many receipts	Storage	\$3,204.60
6	Many receipts (Actual cost 30,000)	Furniture/Clothing Replacement	\$6,431.34
TOTAL:			\$35,000.00

The Tenant seeks compensation for extra housing costs from July 15, 2019 to March 15, 2020. The Tenant states that the Landlord reimbursed her \$537.00 to cover 5 weeks of rent only, this was the period that her bathroom was completely ripped apart. The Tenant's insurance coverage ran out on September 3, 2019.

The Tenant claims she was always searching for the most inexpensive housing options. Some of the options included a nearby university dorm room accommodation, air travel to her sister's home in another province and international travel (expenses also included insurance coverage, in plane internet), Airbnb, hotels in the city and in other cities in Canada, private residences in many areas around the city and the Sunshine Coast. The Tenant also included the extra expenses she incurred for gas and ferry costs to access these other residences.

The Tenant testified that she needed to continue to pay for BC Hydro for her rental unit even when she was away. She uploaded BC Hydro bills covering the period from June 2019 to January 2020 when the account was closed.

The Tenant seeks compensation to include the extra food costs she incurred during the period she was not residing in the rental unit. While residing in the rental unit, the Tenant used a food program for people experiencing food insecurity. The Tenant said when she was moving from residence to residence, the food program would not deliver to her. The Tenant seeks \$360.00 per month, plus \$1,000.00 for when she stayed in residences with no kitchen facilities which totals \$3,880.00 for extra food costs. The Tenant seeks compensation for special cleaning products used to launder her mouldy clothes which totalled \$38.22.

The Tenant stated that one line in her insurance said it would not cover these kinds of claims. The Tenant said the Landlord would not pay for mould testing or an environmental assessment. The Tenant took it upon herself to do two different mould tests: 1) a mould spore test which measures spores in the air; and 2) an ERMI mould test that tests for mould DNA in dust and provides an overall mouldiness score.

A mould specialist told her that the walls in her unit could be washed, but there were no guarantees it would sufficiently clean her unit so she could live in it. The Tenant testified that the repairs to her rental unit were completed in September 2019, but after doing mould testing, the rental unit was still too contaminated for her to reside in the unit.

The Tenant stated she looked extensively for alternative housing, and in the last 2.5 weeks in December, she managed to find a temporary rental unit.

The Tenant seeks extra health costs. She said she developed post-traumatic stress disorder, and she still needs mental health help. She seeks a total of \$6,385.00 for counselling, acupuncture, and medications.

The Tenant claims that all her possessions got mould contamination and she had to discard a lot of her belongings. Some of her metal items could be cleaned, and jewelry items had to be stored as any mould contamination would dissipate after four years. The Tenant claims costs for a storage locker totalling \$3,204.60. She states when she goes there, she still gets sick.

The Tenant seeks compensation for home items.

Analysis

The standard of proof in a dispute resolution hearing is on a balance of probabilities, which means that it is more likely than not that the facts occurred as claimed. The onus to prove their case is on the person making the claim.

This hearing was conducted pursuant to RTB Rules of Procedure 7.3, in the Landlord's absence, therefore, all the Tenant's testimony is undisputed. Rules of Procedure 7.3 states:

Consequences of not attending the hearing: *If a party or their agent fails to attend the hearing, the arbitrator may conduct the dispute resolution hearing in the absence of that party, or dismiss the application, with or without leave to re-apply.*

Landlord and tenant obligations to repair and maintain

- 32** (1) *A landlord must provide and maintain residential property in a state of decoration and repair that*
- (a) *complies with the health, safety and housing standards required by law, and*
 - (b) *having regard to the age, character, and location of the rental unit, makes it suitable for occupation by a tenant.*

...

Liability for not complying with this Act or a tenancy agreement

- 7** (1) *If a landlord or tenant does not comply with this Act, the regulations or their tenancy agreement, the non-complying landlord or tenant must compensate the other for damage or loss that results.*
- (2) *A landlord or tenant who claims compensation for damage or loss that results from the other's non-compliance with this Act, the regulations or their tenancy agreement must do whatever is reasonable to minimize the damage or loss.*

RTB Policy Guideline #16-Compensation for Damage or Loss addresses the criteria for awarding compensation to an affected party. This guideline states, "*The purpose of compensation is to put the person who suffered the damage or loss in the same position as if the damage or loss had not occurred. It is up to the party who is claiming compensation to provide evidence to establish that compensation is due.*" This section must be read in conjunction with Section 67 of the Act.

Policy Guideline #16 asks me to analyze whether:

- a party to the tenancy agreement has failed to comply with the Act, Regulation, or tenancy agreement;
- loss or damage has resulted from this non-compliance;
- the party who suffered the damage or loss can prove the amount of or value of the damage or loss; and,
- the party who suffered the damage or loss has acted reasonably to minimize that damage or loss.

It is the Landlord's responsibility 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, and having regard to the age, character, and location of the rental unit, makes it suitable for occupation by a tenant. The Tenant claims the Landlord did not provide and maintain the residential property in a healthy state, and it was unsuitable for her occupation. The Landlord was notified about a water leak by a tenant downstairs but did not attend to the problem until almost two weeks later. I find that the Landlord failed

to comply with Section 32 of the Act and foreseeable problems arose for the Tenant and her housing.

The Internal Medicine specialist noted the Tenant has medical conditions that are associated with environmental sensitivities. The Landlord did remediate the damage behind the walls and these repairs were completed on September 8, 2019. After the first mould inspection, the Tenant stated the report findings identified *Stachybotrys sp.* and she gave evidence that *Stachybotrys chartarum* is the mould genus and species that is responsible for toxic black mould. I find this mould report did not report *Stachybotrys chartarum* as being present in the Tenant's rental unit, but generally a *Stachybotrys sp.* of which there is no certainty that the genus found was the offending mould. I find, instead, this Tenant has medical conditions that are associated with environmental sensitivities, and, on account of the mould findings, which were never seriously high, needed to completely relocate her residence.

The Tenant is claiming compensation for alternative housing, but the alternative housing choices used by the Tenant were out of province, off the continent or far away from the city core. I do not find that the Tenant acted reasonably to minimize this damage or loss but do find the Tenant is entitled to compensation for her loss of housing from the period of July 15, 2019 to February 15, 2020 when she moved out of the rental unit. I find the Tenant is entitled to (7 months X \$458.00) \$3,206.00, less \$537.00 which the Landlord had reimbursed to the Tenant for housing. The total reimbursement for alternative house is **\$2,669.00**.

I find the Tenant is entitled to \$360.00 per month for extra food costs during the period of July 15, 2019 to February 15, 2020 which totals **\$2,520.00**.

The mould testing on August 19, 2019 found on that the rental unit has a *potential* for: hidden mould contamination, heavy fungal growth, and high moisture readings; however, the overall classification was deemed "Minimal" problem. Paired with the Internal Medicine specialist's determination, this minimal mould problem compromised the Tenant who has medical conditions that are associated with environmental sensitivities. I find the Tenant is entitled to reimbursement for special cleaning products to launder mouldy clothes totalling \$38.22, and for the mould testing completed on August 19, 2019 which totalled \$708.75. I do not grant reimbursement for the second ERMI Analysis as the Tenant's sensitivities were previously confirmed. The total reimbursement for mould testing and cleaning products is **\$746.97**.

The Tenant seeks compensation for counselling, acupuncture, and medications. The Tenant has pre-existing medical conditions that are associated with environmental sensitivities. If she did not know it before September 20, 2019 when the Internal Medicine specialist documented it, she definitely knew it after. However, the Tenant testified that immediately after the plumber opened her wall in her bathroom, she developed a headache and shortly after noted to the Landlord that it was most likely due to mould presence. I do not find that these compensation claims are so directly related to the Tenant's housing circumstances that compensation would flow from them. She continued to stay in the rental unit complex of her own accord after extensive travel and multiple relocations. I do not grant compensation for the Tenant's extra health costs.

I find the Tenant must bear the cost of the storage for her small personal items. The Tenant's list of home items are purchased from March 11, 2020 to May 3, 2020. Some items are glass or metal items that the Tenant stated in testimony can be sufficiently cleaned and reused. I note some items were consumable goods. I find the Tenant is entitled to reimbursement for a portion of these items totalling **\$3,215.67**.

As the Tenant is successful in most of her claims, she is entitled to recovery of the application filing fee. The Tenant's monetary award is calculated as follows:

Monetary Award

Items	Amount
Alternative housing	\$2,669.00
Extra food costs	\$2,520.00
Mould testing & cleaning products	\$746.97
Household items	\$3,215.67
Application filing fee	\$100.00
TOTAL Monetary Award:	\$9,251.64

Conclusion

I grant a Monetary Order to the Tenant in the amount of \$9,251.64. The Landlord must be served with this Order as soon as possible. Should the Landlord fail to comply with

this Order, this Order may be filed in the Small Claims Division of the Provincial Court of British Columbia and enforced as an Order of that Court.

This decision is made on authority delegated to me by the Director of the Residential Tenancy Branch under Section 9.1(1) of the Act.

Dated: September 24, 2022

Residential Tenancy Branch