



# Dispute Resolution Services

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Residential Tenancy Branch  
Office of Housing and Construction Standards

## DECISION

Dispute Codes      MNDC, FF

### Introduction

This hearing dealt with an application by the tenant for a monetary order. Both parties appeared and had an opportunity to be heard.

### Issue(s) to be Decided

Is the tenant entitled to a monetary order and, if so, in what amount?

### Background and Evidence

This one year fixed term tenancy commenced July 1, 2012. The monthly rent of \$1500.00 was due on the first day of the month. There was a written tenancy agreement.

A move-in inspection was conducted and a move-in condition inspection report completed. The form included the following reminder: "Always leave the bathroom exhaust fan on. (Thermostat @ 60-70)."

The rental unit is a two bedroom apartment located in a concrete high rise built in 1999. According to the landlord the kitchen fan and the bathroom fan were replaced in 2011. The landlord's evidence is that the bathroom fan is automatic based on humidity. All windows and sliding doors are double glazed. The unit is heated by electric baseboards which have individual thermostats.

The landlords had lived in the unit before the tenants. They had renovated the unit to prepare it for sale but market conditions resulted in a decision to rent it out instead.

The tenant lived in the unit with his wife and young son. The tenant works in a hospital hematology and immunology laboratory. His wife works casual hours in a hospital so is mostly at home.

The landlords' evidence is that on July 8 the tenant sent them an e-mail advising them there was mail at the unit for them. When the landlord went to the unit a few days later

the tenant expressed a concern about the stove. The landlord had the stove serviced and a part was replaced

The tenant testified that a few days after moving into the unit, while cleaning the windows, he discovered a black substance on the top of the windows, behind the blinds, in the master bedroom. He contacted the landlords. He told the landlords it was mold and expressed his concern to the landlords. The landlords brought over a jug of white vinegar and told the tenants to clean the mold with the vinegar. The tenant testified that in July and August they tried to clean the black substance with vinegar and with bleach but were unsuccessful. The tenant submitted photographs taken in July which show a black substance on the ceiling. The tenant testified that he told the landlord of the problem but they did nothing.

When winter came and the weather got cold and rainy they observed heavy condensation on all the windows.

On November 3 the sent the landlord an e-mail: "I wanted to talk to you about the ceiling of the room beside the garden. There is a bit water leakage around the ceiling toward the outside."

The next day the tenant sent the following e-mail: "As I have sent you an e-mail regarding the water leak on the small bedroom ceiling, I am sending you these pics to have a look. I think it needs your attention as soon as possible." The photographs, which were filed in evidence, show some black marks on the textured ceiling. They show that the black substance is thickest in the small bedroom and the living room.

The tenant testified that the landlord came to the unit to look at the situation. The landlord thought the issue may be a leak from the balcony, which would be a strata responsibility.

The landlord's evidence is that when he went to the unit he thought it was humid. He observed that the air funnel to the left of the sliding glass door in the living room had been closed and the bathroom exhaust fan was off. His evidence is that when he reminded the tenant of the importance of the bathroom fan staying on, the tenant replied that his son could not sleep with it on.

The landlord filed a copy of a photograph submitted by the tenant in a previous hearing between the parties. This photograph is date stamped January 13, 2013 and show the air funnel is closed.

When the tenant gave his evidence-in-chief he testified that he could not say that they ran the bathroom fan a lot. He said they did not run it all the time because it was noisy. In his rebuttal evidence the tenant insisted that they did not turn the fan off nor did they adjust it.

The tenant testified that they moved their young son out of the small bedroom in November. After that they did not use the small bedroom. They shut the door of the bedroom. They also put a fan in the room which they used from time to time to deep the room cooler.

There does not appear to have been any other communication between the parties or action by either of them until December 15, 2012, when the tenant sent the landlord and e-mail: "I wanted to bother you because although we follow your instructions we even moved [our son] to the master bedroom, and we completely closed the door, the problem still exists. Considering the huge amount of water. It is unlikely that the problem is from cooking because very often there is no cooking at all . . . This point has to be completed clear, we do not legally take any responsibility for any damages to the apartment due to water . . .".

The tenant testified that he was at an disadvantage when dealing with the strata management because they only wanted to talk to strata owners, not their tenants. On January 13, 2013, the tenant sent the following e-mail to the strata management regarding ". . .rain leaking through the ceiling and the mold that is growing fast in the rooms, we have not seen any action from you. The owner of the apartment said that the strata is responsible for fixing the problem. Please kindly open the attachment to view the leakage and mold growth. As we have small kid that should not breath the spors from these molds due to high risk of allergy. Please advise us for any further action."

The landlord admitted receiving a copy of this e-mail.

The strata management responded the next day: "Thank you for your email and photo. I believe that here might be leak from the upstairs balcony. This has been forwarded to Council and the repair list."

On January 19 there were a flurry of e-mails between the landlord and the tenant. Included in the conversation was a request from the landlord for copies of the photographs sent to the strata by the tenant. The tenant complied. The photographs are of the same areas depicted in the July photographs. They show a heavier concentration of the black substance.

On January 25 the landlord wrote the tenant: "Do you think there is a need to follow up with Strata once again?", to which the tenant responded the next day: "I am not confident if they will fix the problem any time soon . . . we have no choice then to look for another place. The apartment needs professional help and it needs it soon. I should not and can not let my family live in this condition. I would strongly recommend that you watch the following movie so you can familiarize yourself with the dangers that mold can impose upon people's life."

The landlord replied: "Thank you for your email I am really sorry for this situation and that Strata has not yet taken any actions, your well-being means the most to us at this point. As we had a telephone conversation on Friday January 18<sup>th</sup> you do not have to stay in these conditions . . . Although we are persisting this problem with Strata in order to get it fix as soon as possible. If you would like to leave, please inform us."

On January 27 the tenant responded to the landlord: "Thank you for your E-mail and your concern. It is not going to be easy for us but we will be looking for another place and another school. We hope you can resolve this problem with strata.", to which the landlord replied "It's fine with us, I was wondering if you are planning to move out (of the apartment) either on Jan. 31, 2013 or Feb.28, 2013. Please me know in advance." The next day the tenant wrote back: "The time for moving out depends on if you need a one month notice or not. We can work on moving out by the end of January if you could let us know that you do not need a one month notice otherwise we have to plan for the next month. I also need to be clear that because of the mold problem in the apartment we both have agreed on breaking the lease earlier and we are not responsible for the remaining months of our lease."

There were then some telephone conversations between the landlord and the tenant. As a result of those conversations the tenant prepared the Mutual Agreement to End Tenancy with a termination date of February 28, 2013 and both parties signed it.

The landlord's evidence is that the tenant could have moved out at the end of January but choose to stay until the end of February. The tenant's evidence is that the landlord was insisting on one month's notice which is why the effective date of the Mutual Agreement to End Tenancy was made February 28.

The tenant did confirm that it was not until January that he asked to be released from the tenancy agreement.

It took the strata some time to organize it but on February 20 the strata's contractor inspected the rental unit. Its' report stated:

"Investigated the unit and found extreme cases of condensation and mold issues throughout the suite. The ceilings were black along the exterior walls and the walls were showing signs of mold forming. There was condensation on all windows of every room.

Investigated the balcony of the unit above and found no sign of possible water leaks.

Talked with the tenant to discuss lifestyle and found they hadn't cooked anything in the apartment in three months, so boiling water was not causing the condensation. They also used the bathroom fan when taking showers.

The dryer appeared to be working order without any apparent blockages.

My experience with these types of situations leads me to believe that there is an internal plumbing leak either in the apartment or very close to it causing all the damage – possible a hot water line with a pinhole.

I investigated [the units directly below this unit] in November 2010 and those units had similar condensation problems. At the time I dismissed it as lifestyle, but I do know that there has been plumbing leaks in this tower (January 2012 I believe).

Recommendation – To bring in a mechanical company to investigate for leaks in the hot water lines on the third and fifth floors."

On February 27 the strata wrote to the landlord:

"We received your report that there is mould inside your strata lot. The Strata Corporation dispatch a contactor to investigate if there was any leak from the upstairs balcony but the balcony was found OK. Therefore, it is necessary the investigate the plumbing pipes or the exhaust fans."

The tenant and his family moved out at the end of February. A move-out inspection was conducted on February 28 and a move-out condition inspection report completed. The report was signed by both parties. The only references to mold are in relation to the second bedroom "mold, caused paint to peel" and a second note "awaiting strata's reply (mold)".

On March 8 the landlord received the plumber's report from the strata management:

". . . on the perimeter wall facing North and West has mold all around the perimeter on the ceiling and down the laws beneath and beside the windows. The perimeter rooms and livingroom and there is no plumbing or piping in this area. This is not a plumbing issue. Recommend contacting a structural engineer for advice."

On April 18 the strata council sent the landlord the following:

“Following receipt of your above mentioned report, the Strata Corporation dispatched contactors to investigate if the Strata’s responsibility is involved in forming such mould, including possibility of leaking from the balcony above your unit or from the plumbing pipes. After investigation, no contractor has found that the responsibility of the Strata Corporation causes the mould in your strata lot. For your information, please find enclosed the reports from both contractors.

In addition to the reports, in view of the fact that the affected area remains dry, it leads to understand that the mould in your unit appeared most likely to be caused by condensation insider your unit. Therefore, at this stage, it is suggest that your unit would properly repair and repaint the mould-affected area at your own cost and closely monitor the situation. Please report immediately if any mould recurs after repairing and repainting. . .

It is suggested that you would better try reducing condensation in your unit, especially the amount condensation and moisture to be exhausted from the bathroom or the kitchen. Please constantly use the exhaust fan while take bath (shower) or cooking and open the window to keep the air in circulation especially in winter. Another helpful practise is to replace the existing bathroom fan with a model that has a humidistat, which will start ventilation automatically as soon as a a certain threshold (I.e. 60% of relative humidity is reached. This will ensure that your unit is constantly ventilated and the excess air moisture is removed.

Please not that the above understanding is made based on the contractors’ reports, but no test or exploratory openings were performed to assess the condition or to determine the properties of the elements comprising the building envelope underlying assembly components and other reviewed systems.”

The landlord had a remediation service look at their unit. The quote for remediation was \$1633.21. Their initial report said “Mold was found present in both bedrooms and living room on exterior walls and closet. This type of mold contamination is very typical to excessive vapour pressure caused by lack of adequate ventilation in the unit.” The landlord thought the price quoted was too high and did not retain the company to take any further action.

The tenant filed a copy of a report, dated June 2, 1013, from the remediation company. The company\s representative says he was contracted to perform a mold assessment and remediation estimate for the rental unit on April 22. He says “There was a fairly

significant mold presence in the unit and the homeowner express concern that the mold was a result of neglect and abuse of the previous tenant". He goes on to say that thick black mold was found in both bedrooms and livingroom on exterior walls and closet, and around the window frames. This type of mold growth is consistent with that found in homes with electric heat and poor ventilation, which can be amplified by a hidden moisture ingress. This causes exterior condensation on the windows and cooler drywall surfaces in the corners of exterior walls, ceilings, etc. The report states:

"I was clear with the homeowner at the time of my inspection that it is my expert opinion that this mold is not a result of poor maintenance or neglect on behalf of the tenant and aside from installing additional fans there was nothing the tenant could have done to avoid or stop this growth."

The landlord hired a painting company. A report from the painter states:

"In regards to my over twenty years of experience I believe that it was surface mold and began to scrape the thin layer off the ceilings and couldn't find any sort of dampness on the concrete. I then removed the dry walls; I found that the insulations were dry and clean. Throughout the exploratory openings I did not find any moisture beneath contaminated areas."

The landlord filed photographs of the repair work done to the rental unit. They show that when the textured finish on the ceiling was scraped off there was no evidence of dampness on the concrete beneath. The owner was also required to open up the walls to confirm there were no leaks. The photographs show that the drywall is dry, the wooden studs are unmarked, and the screws are still shiny.

The tenant dismisses the painter's evidence arguing that the painter is not qualified to provide evidence about mold.

At the landlord's request the strata provided the landlord with a report dated June 20, 2013. After reiterating that their investigations had ascertained that neither exterior walls nor the pipes nor the balcony above contributed to the mould growth in the rental unit, goes on to say that the strata had retained an engineering firm to carry out a building envelope condition assessment and had had the exterior building walls repainted in 2011. The results of these measures were that "your exterior building walls to be in a satisfactory status. The letter concludes:

"As it was determined and obvious that the mould accumulated on the ceiling of your unit was caused by condensation, with consideration of the best interests of the owners, the best solution is to treat the affected area properly, repaint it, reduce the condensations and continue monitoring the situation unless the owner prefers other options."

The landlord's evidence is that the unit has not been re-rented and has been on the market since this tenancy ended. There has been no reappearance of mold.

With regard to his medical history the tenant testified that at the end of July he had cold symptoms. There was no evidence of any medication having been prescribed for the tenant at that time.

The tenant testified that over the next six weeks he continued to experience an ever-worsening cough, throat irritation, and occasional headaches. He went to a different doctor for a second opinion. The doctor prescribed a series of tests the result of which were unremarkable. Allergy testing was not recommended or undertaken. In mid-September the tenant received a prescription for Braxine. No information was provided about the purpose of this prescription.

In mid-October the tenant was prescribed Nasonex and Montelukast. The information provided about Montelukast is that it is "used to prevent wheezing, difficult breathing, chest tightness, and coughing caused by asthma . . . also use to treat symptoms of seasonal and perennial allergic rhinitis ( a condition associated with sneezing and stuffy, running or itchy nose).

A doctor's note dated November 7, 2012, while largely illegible, notes an allergy to dust. The tenant said he never had any allergies prior to this.

On November 23 the tenant saw the first doctor again. The doctor's report is that the visit is about symptoms of upper respiratory infection. There are no prescriptions or tests ordered by this doctor.

The tenant testified that during this period he lost time at work because of his health issues but he was not able to provide any particulars. He said the medication was helpful in suppressing the cough. He continued to suffer from headaches and sometimes sneezing.

The tenant said that his wife and son did not experience any symptoms like he did.

The tenant saw another doctor on February 28, 2013. The doctor's report says that the reason for the visit was "sore throat and upper airway irritations". The tenant testified that the cough disappeared within a few days of moving out of the rental unit.



The only other piece of medical evidence is a letter dated September 6, 2013, from the second doctor seen by the tenant which states that based upon the photographs shown to him by the tenant that they should seek alternate housing prior to the arrival of the baby expected by the family. The letter makes no reference to any symptoms being experienced by the tenant.

### Analysis

The tenant is claiming \$21,200.00 calculated as \$100.00 per day from July 28, 2012 to February 28, 2012.

On any claim for damage or loss the party making the claim must prove, on a balance of probabilities:

- that the damage or loss exists;
- that the damage or loss is attributable solely to the actions or inaction of the other party; and,
- the genuine monetary costs associated with rectifying the damage.

Section 7 of the *Residential Tenancy Act* requires any person claiming compensation for damage or loss to do whatever is reasonable to minimize the damage or loss.

The tenant's evidence does not really meet the standard of proof on any of these elements.

According to information provided to arbitrators in a training session about mold the symptoms of exposure to mold can be different for everyone. Many people have little or no reaction while others have a more intense reaction. In general, the elderly, the very young and those with compromised systems are the susceptible. Typical initial exposure symptoms include nasal congestion, sneezing, post-nasal drip with sore throat, coughing and hoarseness. However, these are very general symptoms, which may be caused by a number of different conditions. None of the medical evidence filed by the tenant actually states that his symptoms are, or could be, the result of exposure to mold – not even the one that recommends the tenant find alternate housing.

It is clear from the evidence that the mold that developed in this unit was not the result of a water leak. The investigations showed that the balcony above this unit was in good condition, as was the building envelope, and there were no leaking pipes. While these investigations did not occur as quickly as the tenant would have liked, in the end they were not a factor in the situation inside this unit.

Good air circulation is an important step in preventing mold. All of the windows and sliding doors in the unit were in good working order. . In addition, the windows are double-paned so are less susceptible to condensation forming than single-paned windows.

The unit is equipped with several devices to manage humidity levels – a kitchen fan, a bathroom fan with a humidistat, and an air funnel. There is no evidence that any of these devices were not in good working word at the start of this tenancy. The tenant’s own evidence as to whether they used the kitchen and bathroom fans on a regular basis was inconsistent. The evidence is clear that the tenant did keep the air funnel closed.

The remediation company and the strata management both concluded that the mold was the result of condensation. The contractor and the remediation company suggested the possibility of “hidden moisture ingress” – water leak – but that possibility was ruled out by the plumber.

The only remaining causes for the development of mold in this unit are a structural deficiency or some failure by the tenant to keep the unit properly ventilated or both. In neither event is the landlord responsible for the development of mold.

I recognize that both the strata’s contractor and the remediation company stated that life style was not a factor for the development of mold in this unit. However, both individuals appear to have relied on statements that the tenants were using the fans as directed. That is not the evidence that was placed before me.

The tenant argued that the problem was that the mold pre-existed the tenancy and that the landlord’s failure to properly remediate the mold before this commencement of this tenancy was the source of the problem. However, none of the reports, including the report from the remediation company, suggested this as a possibility.

The parties gave different evidence about when the landlord was alerted to the presence of mold in the unit. The tenant says he told the landlord about the issue in July; the landlord did not agree with this account. The parties filed copies of e-mails exchanged in July – they talked about mail, repairs to the stove and some other issues but there is no reference to mold or a black substance on the ceiling.

The tenant does not appear to have acted with much urgency regarding this situation. The tenant says that a problem with mold first emerged in July and in early September he obtained a letter from a doctor saying he should he move but the evidence shows that he did not write the landlord about moisture problems until the beginning of

November, two months later. His next communication is not until mid- December where the true purpose of the e-mail appears to be to limit any possible liability for damages. Finally, it is not until January when he asks to be released from the tenancy agreement.

During this period the tenant could have taken several steps to mitigate his situation. He could have:

- asked the landlord in writing to make certain repairs;
- applied to the Residential Tenancy Branch for a repair order; and/or,
- approached the landlord about ending the tenancy early;

but he did not do any of these things.

It is notable that within two weeks of asking about ending the tenancy early, the parties had signed a Mutual Agreement to End Tenancy.

In conclusion I find that the tenant has not proved, on a balance of probabilities that:

- any health difficulties he experienced were solely as a result of the exposure to mold in the rental unit;
- the development of mold was attributable solely to the action or inaction of the landlord; and,
- he took all reasonable steps to minimize the development of mold or his exposure to it.

#### Conclusion

The tenant's application is 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: April 30, 2014

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Residential Tenancy Branch

