

**Charles v Yannakolu (Tenancy) [2008] NSWCTTT 796 (24
January 2008)**

**CONSUMER, TRADER & TENANCY TRIBUNAL
Tenancy Division**

APPLICATION NO: RT 07/46952
APPLICANTS: Dane and Kerry Charles
RESPONDENT: Kleanthes Yannakolu
HEARING: 11 December 2007 at Sydney
LEGISLATION: *Residential Tenancies Act 1987*
KEYWORDS: Section 25, landlord's obligations, mould

ORDERS

1. I order the Respondent to pay the Applicants the sum of \$10,000.00 on or before 22 February 2008.

REASONS FOR DECISION

APPLICATION

The Applicants entered into a tenancy agreement in relation to premises at "...." Forestville NSW at the beginning of 2005. The initial one year tenancy was subsequently renewed by a tenancy agreement made on 28 August 2006 for a term expiring on 24 September 2007 (rent \$540.00 per week).

The Applicants now claim compensation of \$10,000.00 for damages resulting from the growth of mould in the rental premises over the period of the tenancy.

According to the Applicants there was some evidence of mould at the commencement of their lease. They were told by the owner 'Carrie' that this was a common problem in Sydney. The owner had previously resided in the premises and had taken the action of installing pumps underneath the house in an attempt to remove excess dampness. The owner advised the Applicants to purchase a product 'Damp Rid' and to use this in their wardrobes to minimise the growth of mould. The Applicants did this. They also cleaned areas of mould as it became apparent.

The tenants gave evidence that the mould problem increased in severity during the winter of 2007. In June 2007 Mrs Charles developed a severe chest infection which required several weeks away from work and three courses of antibiotics, according to a report provided by Dr M. Sydney-Smith. During the course of this illness, the Applicants came to suspect that the condition of the premises may have played a causative role in this illness and may have also been a factor in the frequent respiratory illnesses suffered by their young daughter in 2006. In July 2007 the Applicants purchased 2 dehumidifiers at a cost of \$1,600.00 in an attempt to minimise the damp problem.

Also in July, the landlord's agent (Jonathan) carried out an inspection of the premises. At the time the Applicants drew attention to the mould which was increasing in severity. According to Mr Charles, he and Jonathan both took digital photographs of the mould present at that time. Mr Charles presented the same photographs at the hearing.

Subsequently the Applicants engaged Dr Kemp of Mycologia Australia Pty Ltd to analyse samples of mould taken from the premises and to provide recommendations. The Applicants were advised that extremely high concentrations of mould found in the rental premises could pose a health risk, and further that the soft furnishings were infected with mould spores and would have to be decontaminated or disposed of. In light of this advice the Applicants advised the landlord's agent that they would be terminating their lease and seeking compensation.

On 31 August 2007 the premises were inspected by Mr Vince Neil of Network Restoration Services. He provided a report to the tenants dated 2 September 2007. In his report he identifies those items which would need to be destroyed and those which could be decontaminated. He provides the following quotation for the decontamination work:

- Treat all clothing with SOB and dryclean \$2,900.00
- Provide a downdraught table with heap cleaning system for a week to include replacement filters \$650.00
- Provide cleaning chemicals to include SOB \$560.00
- Cleaning staff to carry out the above remediation \$6,300.00

The list of goods to be destroyed include all bedding. The said goods are valued by the applicants at a figure in excess of \$10,000.00.

RESPONDENT'S EVIDENCE

The landlord's managing agent gave evidence that the first written complaint in relation to mould was only received from the tenants on 24 August 2007. On 28 August 2007 the agent attended with the landlord to inspect the premises. At the time they could not identify mould growth.

The agent also stated that the premises have been relet to new tenants, without any work being done to address the alleged mould problem. There have been no complaints from the new tenants, to date.

FINDINGS

Pursuant to section 16 of the *Residential Tenancies Act 1987* ('the Act') the Tribunal may order the payment of compensation for breach of a residential tenancy agreement. Section 25 of the Act provides that it is a term of every residential tenancy agreement that the landlord provide the premises in a state fit for habitation by the tenant, and that the landlord maintain the premises in a reasonable state of repair having regard to its age, the rent payable and the prospective life of the premises.

Turning now to the evidence, the photographs presented by the Applicants make it clear that the rental premises was damp and that the premises and the tenants' belongings were seriously affected by mould growth. This is further substantiated by the report from Mycologia Australia Pty Limited and the quote provided by Mr Vince Neil of Network Restoration Services who was engaged to treat some of the mould affected belongings. I do not accept the managing agents evidence that they could not see mould when they inspected the property with the landlord on 28 August 2007. I expect this problem was noted, or at least should have been, in the inspection report prepared in July 2007. The failure of the managing agent to produce this report at the hearing raises suspicion that it was not favourable to the landlord's case. Overall, I find that the premises are affected by damp and that this has caused the growth of mould which has resulted in loss to the tenants.

The Applicants have provided evidence of costs in excess of \$10,000.00, incurred as a result of this mould problem. They have reduced their claim to \$10,000.00 in light of the jurisdictional limits of the Tribunal.

I must determine whether the facts outlined above indicate a breach of the covenants implied by section 25 of the Act. Section 25 has 2 limbs. Firstly the landlord is obliged to provide premises which are in a reasonable state of cleanliness and fit for human habitation (s25(1)(a)). Secondly, the landlord is obliged to provide and maintain the premises in a reasonable state of repair having regard to the age of, rent payable for and prospective life of the premises (s25(1)(b)). These obligations have subtle differences. The obligation to provide premises which are fit for habitation is impressed on the landlord at a time when he or she has control of the premises. The question is whether on an objective basis, the premises are fit for habitation at the time when the tenancy commences. This obligation differs from the obligation to keep the premises in a reasonable state of repair, which is relevant to the time period when the tenant has control of the premises and hence the landlord depends on advice from the tenant regarding any necessary repairs.

The managing agent has placed a great deal of emphasis on the fact that the tenants did not make a formal complaint until very late in the tenancy. This is certainly relevant to a claim under the second limb of section 25, however, in my view it is not determinative of a claim under the first limb of section 25. Normally one would expect a tenant to complain about matters which affect the comfort and safety of the premises. However to some extent the problem was insidious in this case. The tenants were initially reassured by the landlord that this was not a serious issue and they remained unaware of the potential damage which could be caused to their health and the cost of decontaminating their possessions until late in the tenancy. Upon becoming aware of this potential they took action.

Although the tenant did not complain about the mould it is clear the landlord was aware of this problem prior to commencement of the tenancy. At some time prior to the commencement of the lease the landlord installed pumps underneath the house in response to the damp problem. The landlord also gave the tenant advice in relation to the use of the product 'Damp Rid'. I thus find that the landlord was aware at the commencement of the tenancy that the property was affected by damp which could lead to the growth of mould. The landlord did not provide any evidence regarding professional advice obtained or work done on the premises in order to rectify this problem prior to the commencement of the tenancy. I do not know if the action of installing pumps was considered to be sufficient or not. In any event it appears that this measure was not effective. I am concerned that the landlord has now put new tenants into the premises without taking any additional steps to rectify the damp problem. The attitude of the landlord and the agent appears dismissive and may be indicative of their attitude at the commencement of this tenancy.

Premises will be unfit for habitation if, on objective standards, they pose a risk to the health or safety of the residents. Evidence has been produced which indicates that the mould found in the premises could constitute a health risk. The Tribunal has previously held that rising damp and mould was sufficient to render a property unfit for habitation, for example, *Roberts v Bell 2001 NSWRT 6* and *Tarquino v Hanna (RT 00/43877)*. Upon reflection I have come to the view that the damp/mould problem rendered this premises unfit for habitation. I find the landlord was aware of this problem at the commencement of the tenancy. Accordingly, I find that the landlord breached the residential tenancy agreement with the result that the tenants have suffered damages of at least \$10,000.00. I am therefore inclined to order compensation in this amount.

S. Corley
Member
Consumer Trader & Tenancy Tribunal

24 January 2008