



What Are Your Rights?

The Landscape of Mold Litigation

In the past decade, increasing public awareness about the health impacts of indoor fungal and toxic mold contamination has spurred a surge of litigation involving mold. To date, most cases have concerned single-family homes, but mold claims increasingly involve multi-family apartment and condominium complexes and other commercial structures.

The economic interests at stake have also risen. Damage awards can be in the millions of dollars – one jury awarded plaintiff \$32 million for mold damages to her health and single-family home.¹ However, mold litigation can be expensive. Mold-related claims now cost between \$30,000 and \$40,000 to prosecute² and require an army of experts, ranging from microbiologists to environmental hygienists, to prove.

In New York City, mold litigation has centered on co-ops and condominiums; few have involved residential rental units.³ Our preliminary research suggest that fewer low-income residential tenants bring suits against their landlords for mold-related problems because of the prohibitive cost of prosecuting mold claims, inaccessibility of legal assistance, and lack of awareness of their legal rights. Moreover, tenants often do not realize their apartments are infested with mold or that their health problems are mold-related until it is too late to file suit.⁴ Given the aged housing stock and most landlords' reticence in making timely repairs, the prevalence of mold contamination will likely continue to rise as will the attendant health and legal problems.

Tenants' Rights

Despite the inability of most renters to prosecute claims for mold personal injuries, low-income tenants have legal rights that they can assert in the courts, even with minimal financial resources. However, as the legal consequences of each course of action may be serious, ***tenants should seek legal advice from an***

¹ A jury in Austin, Texas awarded Melinda Ballard \$32 million personal injuries and property damage claims against Farmers Insurance Group, although this award was later reduced to \$4 million by the Court. However, most awards are around \$75,000 for construction and management-related claims if no personal injuries are involved. Kelly Johnson, "Mold Litigation Soars: Rapid Learning Curve for Both Sides," Sacramento Business Journal (July 5, 2002).

² Kelly Johnson, above.

³ Some tenants have been "successful" at recovering at recovering compensation for their mold-related personal injuries and property damage. The most notorious of these are the cases involving the mold infestation at the Henry Phipps Plaza South Building in Manhattan. In one consolidated case, 493 residents settled their claims for a reported 1.17 million dollars.

⁴ The statute of limitations on personal injuries claims is 3 years and the courts have held that this period begins to run when an individual discovers the *health problems*, not when he/she discovers their *cause*.

experienced housing attorney before taking any action. The following are some options available to tenants who may be experiencing mold problems.⁵

Housing Part (HP) Actions

1. Notify landlord in writing of the problem and request appropriate repair/remediation.
2. If the landlord fails to make appropriate repairs/remediation, the tenant may initiate an HP action by filing a formal complaint with the Housing Court. At this time, the Clerk will assign the tenant a court hearing date and an inspection date.
3. At the hearing, the tenant can present his/her evidence⁶ of necessary but neglected repairs and obtain a court order for the landlord to fix the problems once he/she proves her case.
4. If the landlord fails to complete the court ordered repairs in a timely manner, he/she may be subject to civil fines and, if his actions are sufficiently egregious, jail time.⁷

Repair and deduct

1. The tenant must notify the landlord in writing⁸ of mold and/or repair problems, request appropriate repairs, and allow a reasonable⁹ time for the work to be completed.
2. If after such time, repairs remain incomplete or uninitiated, the tenant may notify the landlord that the problems persist and that he/she will complete the necessary repairs but deduct the cost from the rent.¹⁰

Deduction of rent for uninhabitable portion of unit

1. Notify landlord as described.
2. If the landlord fails to make the necessary repairs within a reasonable time, the tenant may notify the landlord that the problems persist and that he/she will deduct a reasonable amount (see Footnote 8) from the rent payment. The tenant may continue to deduct rent until the landlord makes the necessary repairs.

Rent Strikes

1. If the repair problems are sufficiently serious (e.g., if it denies the tenant normal use of his/her apartment) and the landlord refuses to make the necessary repairs, the tenant may stop payment of rent.
2. Instead of making payments to the landlord, the tenant must deposit the ***entire*** amount of the rent into an escrow or a dedicated bank account.¹¹ The tenant may continue to do so until the landlord makes the necessary repairs.

Because the landlord may sue the tenant for failure to pay rent, strategies involving non-payment of rent in whole or in part should only be taken as a last resort and only with appropriate legal advice. Tenants who plan to take any of these actions should establish a “repairs log” detailing the problem(s), including

⁵ These are provided solely for **informational purposes** and should not be taken as advice. Because the facts of each case are unique, only a trained professional may recommend specific action. Tenants may obtain assistance from housing advocacy groups such as Harlem Legal Services (55 West 125th Street, 10th Floor, New York, NY 10027; Tel: (212) 348-7449).

⁶ Tenants should establish a “repairs log” along with photographs of the repair problem if possible.

⁷ The tenant must petition the court for an order of contempt and prove his/her case in a formal hearing.

⁸ This is best done by registered mail with return receipt.

⁹ Reasonableness depends on the severity of the repair problems.

¹⁰ The tenant must submit the receipts for the repair work to the landlord, usually along with rent payment.

¹¹ The tenant must not withdraw or use this fund in any way. The deposits should be made in accordance with the terms and schedule with which he/she normally pays the rent.

any health effects they experience, and the required repairs. The log should describe 1) location and severity of the problems (cataloged by the room in which they occur), 2) any oral or written communications (including dates) between the tenant and the landlord or his representatives (e.g., superintendent), and 3) the results of those communications. If possible, take photographs of the problem and keep them with the log.

If you have any additional questions, please contact Julien A. Terrell, Housing and Health Campaign Coordinator at 212-961-1000 ext.319 or julien@weact.org.