

## **Mold Identification, Clean Up Important**

A recent decision by the Delaware Supreme Court upheld a jury's verdict of \$1 million against a landlord due to mold-related ailments residents claimed they sustained in the unit. This case is of importance to the industry since the court did not appear to raise any serious questions about the proof the renters brought forth to establish their damages.

### ***Background***

A renter, a thirty three-year-old graduate student who moved into a third-floor apartment in August 1992, noticed mold around the windows and in the bathroom. She attempted to remove the mold with bleach. However, the mold kept returning due to water leaks in her bedroom ceiling, kitchen sink and bathroom. She eventually moved to another unit. However, the bathroom ceiling in the new apartment also leaked. The leak created holes in the drywall, and the individual also noticed a black substance. She stated that black water came out of these holes when she showered.

The renter complained to management, who informed her that the upstairs residents were taking "sloppy showers". The landlord did not perform any repairs on her ceiling, and eventually the water just poured out of the opening. Management said it would address the ceiling problem as soon as it resolved the situation with the upstairs renters.

The ceiling collapsed and water flooded the resident's bathroom floor. Covering the exposed ceiling area with black, green orange, and white mold. The room had an extremely strong odor. She called the maintenance staff, who told her they could not address the problem until the next day. The individual stayed in the apartment overnight. The next morning, she could not breathe and went to the hospital.

The renter had allergies and asthma since a child, but the severity of her medical problems increased while living at this apartment community. In fact, she went to the hospital emergency room seven times while living there. She was also hospitalized for nine days during the 21 months of her residency.

Another renter at the property experienced similar problems. A pipe under her kitchen sink burst and flooded the room. Management made repairs, but did not replace the cabinets. Problems were also present in her bathroom: water leaks, rotted-out drywall and black mold spots behind the toilet. She attempted to clean up the mold with bleach.

The renter informed management of the mold, but it never addressed these issues. She also began to experience health problems, such as fatigue, frequent headaches, sinus problems, chest pains and body aches.

### ***Resident Files Suit***

Both renters brought suit against the landlord claiming negligence in maintaining safe and sanitary conditions in the apartment units. The court found ample evidence of negligence, and did not overturn the jury's verdict of proof of negligence.

## **Mold Identification, Clean Up Important**

However, the court then turned to an expert witness testimony brought forth by the renters. An architect testified that the apartments were unsanitary and management failed to adequately maintain them. The landlord argued that he was not familiar with property management or the standard of care in the industry. The court rejected his argument because he was a licensed, practicing architect.

The court then turned to medical testimony, which stated that some of the cognitive deficits experienced by one of the residents occurred because of the mold problem. In response to this statement, management argued that the physician should not have eliminated other causes of cognitive deficits in order to give such an opinion. The court rejected the landlord's argument, and indicated that the physician had taken her history and that is accepted practice in the medical community.

The landlord then challenged the testimony of expert witnesses who took air pressure readings in the units. He stated that they did not actually take these readings or determined airflow in the apartments. Without scientific data to show how air circulated in the apartments, he stated, their testimony was unreliable. This argument also did not persuade the court, as it felt the trial judge had properly inquired of the experts' methodology and it was sufficient.

Finally, the landlord argued that the expert testimony did not actually show that the mold condition caused the resident's ailments. He stated they should have tested the air outdoors and in other buildings and apartment units to establish a baseline by which to compare mold levels in the apartments in question. The landlord went on to state their testimony did not exclude other causes of their injuries. He even pointed out that evidence of mold levels in two other apartments were available, even though these renters never occupied those units.

The court simply rejected all of these arguments and upheld the jury's verdict.

The opinion points out the importance of having a proactive plan to address mold issues. This landlord offered very little evidence that he did anything to address these complaints. He took the approach that renters could not establish damages and the court would rule against them. However, the jury heard a significant amount of testimony from experts who attempted to tie the injuries to the existence of mold.

Jury members apparently took into consideration the landlord's somewhat callous approach to the situation. Under such circumstances, it was unlikely and appellate court would simply reverse a jury's findings, even with questionable expert testimony.

***By Scott M. Clark, Esq.***

3008 N. 44<sup>th</sup> Street, Phoenix, AZ 85018

602.957.7877

[sclark@scottclarklaw.com](mailto:sclark@scottclarklaw.com)

<http://www.scottclarklaw.com>