

MOULD: Everything you didn't want to know

Exposure to mould can cause throat, eye and nose irritations, respiratory complaints or allergic reactions in some people. The most vulnerable people to mould related illnesses are infants, young children, the elderly, immunodepressed individuals and those suffering from asthma.

Mould can be a very bad thing. It can be a sign that other bad things are happening to a property, such as serious leaks, damp, or ventilation problems. A landlord or tenant can be found to be liable if they do something, or don't do something that they should have done, that encourages mould to spread.

Landlords must maintain premises in a healthy condition. If mould is a result of a landlord's failure to properly maintain premises, the landlord can be in breach of the Residential Tenancy Agreement. The landlord is obliged to repair the problem, and could also be liable to pay compensation to the tenant for loss of use of the property and damage to the tenant's goods.

By the same token, if a tenant can be shown to be responsible for mould, such as by not allowing reasonable ventilation in the premises, they may have to pay compensation to the landlord.

A tenant who wants to get their landlord to fix a mould problem or is claiming compensation for damage caused to their goods by mould will need good evidence. If a landlord is claiming that the tenant caused the mould, the tenant should obtain good evidence to show that the mould is not their fault.

With the onset of cooler, wet weather more tenants are finding mould in their homes. Many are concerned about the health issues of living in mouldy premises and are unsure what their rights and responsibilities are.

Mould is the name given to any type of fungi that grows on food or damp building materials (such as walls). It comes in a variety of colours; green, white and black are most prevalent. Mould can have a musty smell, which is often likened to a 'wet dog' odour. It spreads through spores, which are released into the air. With persistent exposure, these spores can cause sometimes serious health problems.

Mould needs moisture and a certain level of heat to survive. Mould can exist at temperatures between 10C and 40C. Humidity and condensation from driers, heaters, cooking or showering, combined with poor ventilation, creates the ideal environment for mould. Using heaters to deal with cold, wet weather can create an ideal situation for mould to grow. The problem with mould is that once you've got it, it gets everywhere. Mould can destroy your clothes and other household items, like mattresses and furniture. Once mould gets inside these larger items it is almost impossible to remove.

A landlord has a responsibility to provide a premise that is fit for habitation. The existence of persistent and severe mould could indicate inadequate ventilation or a structural problem with the premise, such as a hidden leak or rising damp. A landlord that does nothing to solve a mould problem, once they have been notified by the tenant that there is an issue is in breach of the Residential Tenancy Agreement and the tenant can apply to the Consumer, Trader and Tenancy Tribunal for a variety of orders, including an order that the landlord resolve the mould issues, an order that you can leave, an order for rent reduction and an order for compensation for damaged or destroyed goods. But before you jump online to lodge your application there are some things you need to keep in mind.

Firstly, you have a duty to mitigate the landlord's loss – many landlords on hearing that their premise has a mould issue will try to blame the tenant. Many a tenant has been chastised for failure to turn on exhaust fans while showering or to open windows to reduce condensation. Mitigating the landlord's loss basically means that you need to prevent the mould as much as possible.

The key here is commonsense. You need to keep the premises reasonably clean and notify the landlord in writing as soon as you notice mould in the premises. If your goods are being affected by mould, get them cleaned quickly and store them where they will not be exposed further.

Prevent mould as much as possible by using exhaust fans or opening windows to prevent condensation as much as possible. A tenant recently told me that her agent had blamed her for mould because she failed to keep her windows open at all times. Again, the key here is commonsense. If you work and live in a ground floor flat you can't leave your windows open all day and should not be expected to. It is reasonable to open the windows or use an exhaust fan while showering, cooking or using the drier.

If you go to the Tribunal seeking orders that the landlord fixes the mould problem and it can be shown that your actions contributed to the mould you could be held liable to compensate the landlord for damaging their property. You could be in breach of your agreement by failing to keep the premises in a reasonable state of cleanliness or for failing to advise the landlord of the need for repairs. These could be grounds for termination. If you try to claim compensation for goods that you willingly left exposed to mould, you may run into problems.

The second thing to keep in mind is that you'll need good evidence to go to the Tribunal. Photographs are great – a tenant with a serious mould issue took photographs of the liquid that came out of damp rid containers poured into measuring jugs. This was very effective.

Another really great piece of evidence is a report from a company that assesses mould contamination in premises. These can be pricy, but can often definitively isolate the cause of the mould and give an indication as to how safe the place is to live in. If you want to claim for goods that you have lost or had to have cleaned you should make an itemised list and include invoices/receipts.

You can also claim for cleaning products or damp removing products that you have used. You will need receipts or invoices. You are not able to get compensation from the Tribunal for medical illnesses arising from mould but a medical certificate from your doctor or specialist can show that the landlord did not maintain the premises in a habitable state. The medical report should clearly state that, in the doctor's opinion, mould is a major contributor to the illness.

Repairs needed to properly remove mould (and damp etc) can be quite serious and may involve a level of disruption to tenants. If you would like to stay it is important to know the expected impact of the work the landlord is planning to do. It is a good idea to discuss this with your landlord. Discuss whether you will need to be out of the premises for a period of time and how your goods will be stored. You are able to ask for a rent reduction if your use of the premises is limited while work is carried out.

If you would like to leave, you should apply to the Consumer, Trader and Tenancy Tribunal first to get an order that you can break the agreement. This is very important, as a failure to get an order from the Tribunal could result in you having to pay the landlord up to 6 weeks rent as compensation.

If you are considering leaving the premises due to mould call your tenant's advice and advocacy service BEFORE you act, and their advocates will talk you through the possible pitfalls. A tenant advocate can also help you prepare the best possible case to minimise the risk of having to 'pay out the landlord'. Check out E!TS' factsheets on leaving early for more information.

To a certain extent, some mould is to be expected when we live in a humid and temperate climate like Sydney. Many, if not all premises in Sydney suffer from some mould, particularly in autumn and winter. The thing is that, in the words of one EATS client, "there is mould and there is *mould*". Serious and persistent mould is unhealthy and should not be tolerated.

For more on mould there is a factsheet on the Tenants NSW website – www.tenants.org.au, or you could try a google search. Some useful sites include the following:

<http://www.public.health.wa.gov.au/cproot/2887/2/Mould%20Fact%20Sheet.pdf> – Factsheet from the Western Australian Government. It has lots of hints and tips to prevent and deal with mould and some spectacular pictures of mould growth;

<http://www.health.vic.gov.au/environment/home/mould.htm> -Victorian government webpage dealing with mould, including what mould looks like, how to control mould and how to remove it;

<http://www.health.nsw.gov.au/factsheets/environmental/mould.html> -webpage from NSW government on how to deal with mould and the health risks associated with mould exposure. It provides the phone numbers of Public Health Units in NSW where you can get additional advice on health issues that can arise from mould.