

Date Issued: August 30, 2022

File: 17656

Indexed as: Han v. New Chelsea Society and another (No. 2), 2022 BCHRT 95

IN THE MATTER OF THE *HUMAN RIGHTS CODE*,  
RSBC 1996, c. 210 (as amended)

AND IN THE MATTER of a complaint before  
the British Columbia Human Rights Tribunal

BETWEEN:

Moonhee Han

**COMPLAINANT**

AND:

New Chelsea Society and Stefan Baune

**RESPONDENTS**

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**REASONS FOR DECISION**

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Tribunal Member:

Devyn Cousineau

Counsel for the Complainant:

Fred Wynne

Counsel for the Respondents:

Elizabeth Cordonier

Date of Hearing:

April 25-28, 2022

Location of Hearing:

Via videoconference

## I INTRODUCTION

[1] Moonhee Han was a tenant in a building operated by the Respondent, New Chelsea Society. The Respondent Stefan Baune was the Society's Director of Property Relations. In December 2017, a hot water pipe in Ms. Han's apartment was found leaking. After this, Ms. Han complained that her asthma was exacerbated by mould throughout her apartment. The Society initially denied there was any mould, but subsequent assessments confirmed that there were unhealthy levels of mould, including toxic black mould. Over the next 15 months, Ms. Han spent most of her time living in short term accommodations and advocating for the Society to address the mould. In the summer of 2018, the Society had Ms. Han's apartment professionally remediated, but Ms. Han remained unsatisfied. In March 2019, the Society facilitated her transfer to new housing.

[2] In this complaint, Ms. Han alleges that the mould in her apartment exacerbated her asthma and that the Society's response was slow and ultimately inadequate. She says that this amounts to discrimination in her tenancy, based on her disability, in violation of s. 10 of the *Human Rights Code* [**Code**].

[3] The Respondents accept that Ms. Han has asthma, but argue that she has not proven that it was exacerbated by mould for which it was responsible. In any event, they say that they took all reasonable and practical steps to accommodate Ms. Han such that any adverse impact was justified.

[4] I heard this matter over four days. For the reasons that follow, I find the complaint justified in part.

## II ISSUES

[5] There is no dispute that Ms. Han is protected from discrimination in her tenancy based on her asthma, a disability for the purposes of the *Code*. In this complaint, the burden is on her to prove that her asthma was exacerbated by mould in her apartment, and that the Respondents were responsible for addressing the mould as a term of her tenancy: *Moore v. BC*

(*Education*), 2012 SCC 61 at para. 33. If she does this, then the burden shifts to the Respondents to justify their conduct. In this case, the issue is whether they satisfied their obligation to take all reasonable and practical steps to address the mould: *Moore* at para. 49.

### III WITNESSES

[6] Ms. Han testified and called two witnesses:

- a. **Dr. David Narvas:** licensed family physician, qualified as an expert in family medicine. Dr. Narvas has been Ms. Han's family doctor since 2010. He testified about her health conditions over the relevant period.
- b. **David Kwan:** certified registered occupational hygiene technologist, and the principal of DK Environmental Consulting. Mr. Kwan was qualified as an expert in occupational hygiene. He undertook a mould inspection of Ms. Han's apartment in March 2019 and testified about his report and findings.

[7] The Respondents called four witnesses:

- a. **Patrick Buchannon:** the CEO of the Society since 1997. Mr. Buchannon testified about the Society's operations and some of his involvement in Ms. Han's tenancy.
- b. **Stefan Baune:** at the relevant time, Mr. Baune was the Society's Director of Property Operations. He was primarily responsible for responding to Ms. Han's concerns and is an individually named Respondent in this case.
- c. **Brian Mackenzie:** senior project consultant at ABM Environmental Inc., a company specializing in mould assessments and inspections. Mr. Mackenzie was qualified as an expert in mould inspections, mould assessment, and air quality assessments. He testified about his work in Ms. Han's apartment.

- d. **Andre Giasson**: the owner of PPD Restorations. Mr. Giasson has been a mould abatement technologist for 17 years. He testified about his remediation efforts at Ms. Han's apartment.
- e. **Krzysztof Niemczyk**: a contractor for the Society for 32 years. He fixed the leak at Ms. Han's apartment, and testified about that process.

[8] I am satisfied that all of the witnesses testified credibly, to the best of their ability. Many of the facts are not in dispute and, generally, I have accepted all of their evidence. To the extent that evidence was in conflict, the conflict was a matter of interpretation and perception – particularly about whether certain things were mould. On that issue, I have preferred the evidence of the experts and professionals, each of whom have decades of experience dealing with mould in residential settings. I set out my specific findings, and reasoning, below.

#### **IV FINDINGS OF FACT**

[9] In this section, I set out my findings of fact.

##### **A. Background**

[10] The Society is a non profit housing provider dedicated to providing affordable housing to low to moderate income seniors, families, and people with disabilities. Today, it operates 21 properties and is the third largest non-profit housing provider in the Lower Mainland. Most of its funding comes from BC Housing.

[11] One of the buildings that the Society operates is called "Chelsea Towers". Chelsea Towers provides subsidized housing to seniors and people with disabilities. This is the building where Ms. Han lived.

[12] Ms. Han moved into Chelsea Towers on March 1, 2011, into an apartment subsidized by BC Housing. Her tenancy agreement sets out the respective obligations of the landlord and tenant regarding repairs. The landlord is required to "provide and maintain the residential property in a reasonable state of decoration and repair, suitable for occupation by a tenant"

and to “comply with health, safety and housing standards required by law”. The tenant is required to “maintain reasonable health, cleanliness and sanitary standards throughout the rental apartment”. These obligations reflect the language of s. 32 of the *Residential Tenancy Act*.

[13] The tenancy agreement also has a section called “Tenant Insurance”. It says that the tenant is responsible for “the replacement of the contents of their suite that are lost or damaged” and “the cost of lodging should their dwelling become uninhabitable for any period”. The Society encourages its tenants to purchase tenancy insurance. It has negotiated an insurance plan for its tenants which costs about \$150 per year, and covers alternative accommodations and the loss of contents. Ms. Han specifically declined to purchase this insurance.

## **B. Mould**

[14] There are mould spores in every natural environment. Some moulds are harmless, some may trigger allergies, and some are toxic to humans. In an indoor living environment, the best-case scenario is that there is no toxic mould and that the indoor spore counts are similar to, or lower than, spore counts outside.

[15] Mould needs heat, moisture, and a food source (like dust or dirt) to grow. It can grow in a matter of days or weeks. It is important, then, to ensure that indoor areas are kept dry and clean. There are certain places, like windows or bathrooms, which may naturally have a lot of moisture and, when not properly cleaned and aired out, foster conditions for mould growth. In the event of a leak, it is important to dry the affected area as quickly as possible to prevent mould growth.

## **C. First leak in 2012**

[16] In 2012, there was a leak in a pipe located in the wall between Ms. Han’s front closet and bathroom. Ms. Han says that this is when she first developed symptoms of pain in her eyes, nose, and throat, as well as chest pain and difficulty breathing.

[17] Krzysztof Niemczyk, the Society's contractor, attended to this leak and fixed it. Ms. Han has always suspected that the leak was not fixed properly though she did not raise her concerns with the Society at any point before a second leak in 2017. The Society says that the leak was fixed properly and there has never been any evidence to suggest otherwise.

[18] I prefer the evidence of the Society that this leak was resolved in 2012. When the wall was opened again in 2017, there was no evidence of water pooling or water damage from five years of water leaking into a small space. The issue never arose in their annual inspections of the apartment. If there had been reason for Ms. Han to suspect that the leak was continuing between 2012 and 2017, she would have raised it with the Society. She did not.

[19] That said, it is not necessarily important whether the leak was properly resolved or not. The important events in this complaint begin in 2017.

#### **D. Ms. Han is diagnosed with asthma**

[20] Beginning in about December 2016, Ms. Han began complaining to Dr. Narvas about chest tightness and discomfort, especially in the colder months. She had recurrent respiratory infections, dating back to 2011. Early in 2017, Dr. Narvas sent Ms. Han for lung function testing. Initial testing raised concerns about a possible underlying respiratory condition. Dr. Narvas sent Ms. Han to a specialist, whose testing in August revealed a worsening of lung function since March.

[21] In August 2017, the respirologist determined that asthma was the most likely diagnosis to explain Ms. Han's symptoms. Dr. Narvas agreed. Ms. Han was prescribed an inhaler, but she complained that her symptoms were getting worse. Under Dr. Narvas's instruction, she discontinued the inhaler and undertook further testing, which did not reveal any other possible underlying condition.

[22] And so, as of December 2017, Ms. Han was diagnosed with atopic asthma, meaning asthma that is triggered by allergens.

## **E. Second leak in December 2017**

[23] On the morning of December 3, 2017, Ms. Han reported water leaking inside her front closet wall – the same place where the pipe had leaked five years before. The Site Manager was the first to arrive to assess the situation. He called Mr. Niemczyk to attend as soon as possible. He left and told Ms. Han they would be back shortly.

[24] Within 30 minutes, the Site Manager returned to the apartment with Mr. Niemczyk. They knocked on the door for at least five minutes, but Ms. Han did not answer. The Site Manager used his keys to open the door. Ms. Han was inside and was very upset that they came in. She complained that the Site Manager was harassing her and phoned the police. This would prompt Stefan Baune, the Society's Director of Property Operations, to get involved.

[25] As Ms. Han was arguing with the Site Manager, Mr. Niemczyk could hear water running behind the wall in the front closet. He broke open the drywall and located a "pinhole" leak in a hot water pipe. He put a temporary clamp on the pipe, which stopped the leak. Ms. Han told him that the leak was related to a previous leak which had not been repaired properly, but Mr. Niemczyk explained that it was a new leak. He said he would return the next day to complete the repair.

[26] The next day, Mr. Niemczyk returned. He opened the wall in the closet, an area of about 3 or 4 square feet.

[27] Ms. Han says that this is when "I saw the mould". She felt the pieces of a puzzle coming together. She says she could smell the mould, and could see that the inside of the wall and ceiling was "all mould". She says that the "insulator pole" was covered with mould. She took pictures, which were submitted in the hearing. In the pictures submitted at the hearing, she identified all dark or black spots as mould, and potentially toxic.

[28] Mr. Niemczyk, on the other hand, did not see any mould inside the closet wall cavity. He agrees that the usually pink insulation was black but says that this was not mould. Rather, this is common and caused by the insulation collecting dust in a drafty concrete building. He also saw

the black marks that Ms. Han pointed out inside the drywall, but he says that those marks were “due to torches from the pipes being replaced a long time ago”. Aside from the areas directly impacted by the leak, the insulation was dry and there was no evidence of ongoing water damage. The only place that Mr. Niemczyk saw mould in Ms. Han’s apartment was around the bathroom window.

[29] I prefer Mr. Niemczyk’s evidence about the state of the closet wall cavity. He has been a contractor and plumber for 42 years, including 32 years working for the Society in buildings like Chelsea Towers. He has experience doing mould removal and restoration and knows how to identify mould. If he had opened the wall and seen, as Ms. Han described, mould everywhere, then he would have dealt with that issue. Mr. Niemczyk’s assessment would later be corroborated by the other experts who saw inside this wall, including those markings that Ms. Han identified as mould but were in fact caused by other factors.

[30] This does not end the issue, however, because Ms. Han was correct that there was unhealthy and toxic mould in her apartment. I return to this below.

[31] That day, Mr. Niemczyk finished removing the wet drywall and insulation. He needed more material and told Ms. Han he would return the next day, which he did.

[32] On December 5, Mr. Niemczyk completed his repair of the leaking pipe. He determined that they would need to completely dry the area before closing the wall back up. Again, this is important to prevent mould from growing. He set up a high-powered fan to speed up the drying process, and told Ms. Han to keep the fan running as much as possible.

[33] However, unbeknownst to Mr. Niemczyk at the time, Ms. Han did not run the fan. She explains that her symptoms had become way worse after the wall was opened up, to the point that she was so nauseous she could barely eat. She found that the fan was too loud to have on while she was in the apartment, and she was afraid that it would just be blowing mould spores all over her apartment. She made several more calls to the Society’s after-hours hotline to complain about the situation and the Site Manager’s behaviour. At the same time, she would



not consent to have anyone – including Mr. Niemczyk - enter her apartment when she was not present.

[34] On December 9, Ms. Han sent a letter to Mr. Baune to request alternate accommodation while “hot water pipes are repaired, visible mold is cleaned, and wet wall caused by flood is drying by power equipment generating dry air with noise in my rental apartment”. She accused the Society of violating the *Residential Tenancy Act* and various City bylaws. She advised:

I have had worsen breath difficulty, frequent cough, chest pain, paralyzed my both foot and whole body itching day [and] night since repairing leaked hot water pipes and drying moldy wet wall.

This was Ms. Han’s first formal, written complaint about mould negatively affecting her health, though she had been complaining to Mr. Baune about these issues for days. I accept that, from the Society’s perspective, this is the first time it became aware that Ms. Han was reporting health problems from mould in her apartment.

[35] After the leak, Ms. Han said that it was “so so terrible”. She kept the air purifier running 24 hours per day. She had difficulty breathing, chest pain, cough, eye pain, leg numbness, sore throat, poor digestion, body pain, headaches, bleeding gums and sometimes a bleeding nose. The smell of mould was strong, and she could not eat. On December 10, she moved out of her apartment into a hotel. She continued to visit her apartment.

[36] Mr. Niemczyk returned to the apartment on December 11. Mr. Niemczyk closed the drywall and put on a first coat of mud. He noticed that the windows were open and the fan was not running. Ms. Han told him that the fan was “noise pollution and ... making a bad smell come from the drywall”. They had a difficult interaction, and Ms. Han followed him to the elevator to demand accommodation. He tried to explain that she would have to raise her complaints with the Society and there was nothing that he could do.

[37] On December 14, Ms. Han saw Dr. Narvas about her escalating symptoms. She told him about the leak, and her view that there was extensive mould in the area of the leak. Dr. Narvas

explains that mould and fungi are known to exacerbate asthma, and so she should not be living in an apartment with mould present. He recommended to Ms. Han that she find alternative housing until the apartment was clear of mould or ongoing moisture that could facilitate mould growth. At her request, he also provided the following note addressed to Mr. Baune:

The above is a patient of mine for several years. This letter is in support of Moonhee staying temporarily in an alternate living arrangements while her building/suite are fully fixed following the water leak in her apartment. Unfortunately, due to the moisture in the apartment and consequential mold in the environment her chronic, underlying medical conditions have been exacerbated.

[38] Ms. Han gave a copy of this note to the Society, along with another letter dated December 18. In that letter, she reiterated her view that the Society was violating the *Residential Tenancy Act* and City bylaws, and was treating her poorly. She said she would continue to stay in a hotel until she received an air quality assessment report affirming that her apartment was habitable.

[39] Mr. Baune was frank in acknowledging that the Society had its “doubts” about the link made in Dr. Narvas’s note between the exacerbation of Ms. Han’s medical conditions and the conditions in her apartment. He continued to rely on, and prefer, the information from Mr. Niemczyk and the Operations Manager (who had also inspected the area) that there was no visible mould in the closet. He looked at Ms. Han’s pictures, and could see that the marks she thought were mould were not mould. He did not see a basis for any health-related concerns, or to support alternative accommodations for Ms. Han. He agreed in cross-examination that Dr. Narvas’s note had no impact on the Society’s actions. In hindsight, he acknowledges that the Society did not undertake sufficient investigations at this time.

[40] On December 20, Mr. Baune responded to Ms. Han’s December 9 and December 18 letters. He advised that the Society had fulfilled its obligations to Ms. Han. He said that the leak had been stopped and that “[t]here was no indication that mold was present within the drywall when it was opened to deal with the repair”. From the Society’s perspective, the apartment had been habitable throughout the period of the repair and remained so. The Society would not

compensate Ms. Han for the cost of her hotel. Mr. Baune said that Ms. Han's resistance to running the fan prolonged the period of the repair, but that he anticipated the repair would be completed by December 22. Finally, he declined to provide Ms. Han with an air quality assessment. Ms. Han says that this letter made her feel that she was being treated like a "stupid person".

[41] Mr. Niemczyk completed his work on December 22. From this point on, the closet wall was closed.

[42] Ms. Han continued to email and call the Society to complain about mould, but did not receive any reply. In a letter dated December 26, she referred to mould on her ceiling and bathroom window frame. She again reiterated her symptoms of "sore throat, breath difficulty, frequent cough, chest pain, nausea, both feet pain, and whole body itching as an asthma patient". She provided pictures which she said depicted mould on the ceilings and the wall.

[43] On January 3, 2018, Ms. Han filed a complaint with the Residential Tenancy Branch about, among other things, the mould in her apartment.

#### **F. First mould inspection – Axiom Mould Expert (January 11, 2018)**

[44] In January 2018, the Society contacted Ms. Han to advise that it had scheduled a mould inspector to attend her apartment. She told them to cancel it. She was unhappy that the Society had not given proper notice of its intention to enter her apartment. In a letter to Mr. Baune dated January 17, she explained:

... you tried to enter my unit for mold test on January 12, 2018 without proper notice: attached entering notice without at least 4 days advance and entering time.

In the Morning of January 11, 2018 followings happened. I told [the Site Manager] about not proper notice of entry but as usual he was just yelling me. I called Stefan Baune several time but I could not connect with you. I called and left messages to Stefan Baune by New Chelsea Society hot telephone line about "stop illegal entry if someone enter my unit I will call a police, and I did mold test so reimburse the fee"... [as written]

Brian Mackenzie – the senior project consultant at ABM Environmental Inc - recalls that he attended at the building but only “made it as far as the lobby” before being turned away. He would return in February.

[45] Ms. Han retained an Axiom Mould Expert to conduct a fungal inspection and moisture survey. As background, she told Axiom that water had been leaking in her closet wall since 2012.

[46] In its report dated January 11, 2018, Axiom reported that it had found “very high” levels of Penicillium/Aspergillus sp and Stachybotrys mould. Penicillium/Aspergillus mould is allergenic and Stachybotrys is toxic. Axiom reported:

There is visible fungal growth (Stachybotrys sp) in the hallway closet, within the hallway wall cavity, as well as in the bathroom. This is a toxigenic variety of mould that may be harmful to ones health depending on the sensitivity of the individual to microbial infestation. Due to the fact that the water leak has occurred over a number of years one can be certain that there is hidden fungal growth within the walls of the bathroom/hallway/closet area.

[47] Axiom also noted high moisture content in the bathroom wall, and a “high single spore count of Penicillium/Aspergillus sp within the suite”. It set out specific findings, and their implications for Ms. Han’s health, as follows:

#### **Results – Bio-tape Lift Samples**

Bio-tape samples lifted directly from the visible mould in the bathroom and closet confirm mould growth type Stachbotrys sp. This is a high moisture activity mould that is a toxigenic variety of mould. This type of mould may release Trichothecenes which are mycotoxins that may be harmful to ones health.

#### **Results – Air Cassette samples**

We enclose a copy of the laboratory report received from MBL Laboratories (Burnaby, BC.) for your perusal. The high spore count of 46869 for Penicillium/Aspergillus sp is a health hazard for Ms. Han. These levels of indoor mould spore is very high. These high levels of mould spore is indicative of hidden indoor mould contamination as well as cross

contamination due to no containment barriers being in place. We noted mould spores (11) for *Stachbotrys* sp. This type of mould is also toxigenic. This is heavy moisture activity mould that does not become airborne very easily and therefore a spore count of 11 for the species of mould is high. **The indoor environment is very poor and a potential health hazard to Ms. Han.** Entry into the suite at this stage should only be undertaken with a least at a P100 respirator rated for organic vapour, as well as dust suit and P.P.E. [emphasis added]

[48] Axiom observed that the Society had not followed proper mould remediation safety protocols in the December remediation (specifically, the full containment of the infected area under negative air pressure) and so it was likely that there was “cross contamination” within the apartment. It said that cross-contamination was confirmed “by the [presence] of high spore count *Penicillium/Aspergillus* sp (toxigenic variety of mould)”. Axiom recommended professional mould remediation “to remove the damaged building material and to decontaminate the affected areas and return the internal environment to normal conditions”. Specifically, it recommended:

... that all surfaces within the apartment be HEPA vacuumed (ceilings, floors, walls) and wipe[d] with 3% Hydrogen Peroxide. All the personal effects within the suite should be HEPA vacuumed as well and clothing to be washed.

All mould growth must be removed whether or not the mould is in dry conditions or not. All hidden mould contamination must be removed as this poses a health hazard to anyone who is sensitive to microbial infestation as is the case with Ms. Han.

In the bathroom, it recommended that the tiles in the tub area be removed “up to row 4” on the faucet side of the wall.

[49] The report concluded that “the suite is heavy contaminated and not presently fit for habitation” [as written]. The inspector told Ms. Han not to stay in the apartment.

[50] Ms. Han says that this report validated her concerns and “changed my perceptions”. She concluded that the Society felt it could treat her poorly and not trust her because she is

disabled. She lost her self-esteem and felt that the Society did not care if she lived or died. It was a “very sad time”.

[51] On January 17, Ms. Han wrote to Mr. Baune. She requested that the Society reimburse her for the cost of obtaining the mould assessment, following which she would provide them with a copy of the report. She attached Axiom’s invoice for \$525. The Society did not respond.

[52] Ms. Han showed the Axiom report to Dr. Narvas, who says that the results were “alarming” to him. He wrote another note dated February 7, expressing his concern about the presence of *Stachybotrys* in Ms. Han’s apartment. He wrote:

It is my understanding that Moonhee moved into this apartment on March 1, 2011. Since that date she has presented to my office on a number of occasions with significant respiratory complaints. In fact, she has required multiple treatments for presumed lower respiratory tract infections since. She has also had to undergo numerous tests, investigations and referrals to specialists to evaluate her respiratory symptoms which include a chronic cough beginning in 2011. Most recently she has been formally diagnosed with asthma. Although there is conflicting studies regarding fungal exposure and the risk of development of asthma, it is well established that exposure to moulds or fungi can be triggers for asthma exacerbations. My main concern is that the longstanding issues of moisture in her apartment and consequential mould in her environment have likely been exacerbating her chronic, underlying medical conditions.

Please take the appropriate steps as recommended by Axiom Mould experts to clear her apartment of the mould and fungus contamination. Failing to do this would be detrimental to Moonhee’s health.

Dr. Narvas explains that his biggest concern was that ongoing exposure could continue to exacerbate Ms. Han’s symptoms and lead to recurrent infections, distress, hospitalization, or even – eventually – death. He was particularly concerned because of Ms. Han’s history of decreasing lung function and the potential risk of her developing further disease.

[53] Ms. Han gave the Society a copy of the Axiom report, along with Dr. Narvas’s note, around February 8. She reiterated her request to be placed in alternative accommodation and that the Society undertake proper repairs. The Society says that the Axiom report was the first time

it understood that Ms. Han was complaining of mould in other areas of her apartment – specifically the bathroom. It did not respond to her regarding either the Axiom report or Dr. Narvas’s note.

[54] Ms. Han applied for an urgent transfer through BC Housing, referencing the Axiom report, her multiple health issues, and her ongoing conflict with the Society. She would not be transferred for another year.

### **G. Second mould inspection - ABM Environmental (February 15, 2018)**

[55] The Society was skeptical of the findings in the Axiom report. In particular, Mr. Baune suspected the results may have been influenced by Ms. Han’s inaccurate report that the pipe had been leaking for six years. The report also noted “visible fungal growth (*Stachybotrys* sp)” inside the closet wall. Mr. Baune understood that the Axiom inspector could not have seen inside the wall, and so this finding could not be accurate. In fact, the report refers to an “access wall panel”, which is also depicted in other photographs submitted in evidence and would allow some limited visual inspection inside the wall. Due to what I think was likely a misunderstanding, Mr. Baune continued to rely on Mr. Niemczyk’s opinion that there was no mould inside the wall.

[56] The Society retained ABM Environmental Inc (again) to undertake an “independent” mould assessment. Ms. Han interpreted this to mean that the Society did not trust her and simply wanted to prove that there was no mould in the apartment.

[57] Mr. Mackenzie completed his assessment on February 15 and provided a written report. He observed a “small spot of about 2 inches in diameter of visible mold growth” near the bathroom window, and another spot of mould growth at the base of the closet wall. The spots were identified as *Stachybotrys* and *Aspergillus fumigatus*. He took an indoor air sample which corroborated Axiom’s finding of “elevated mold spore concentrations”, particularly of *Penicillium/Aspergillus* and *Stachybotrys*.

[58] In the closet area, Mr. Mackenzie found that the moisture levels in the drywall were normal, meaning there was no active moisture source. This suggested that something in the past had caused the mould growth – most likely the leak. He explains that where there is a water leak inside a wall, as in Ms. Han’s case, mould on the outside of the wall is an indication that there is likely also mould inside the wall. Mr. Mackenzie did not open the closet wall in this inspection, but opined that there was a high probability of some mould behind the wall where the leak originated. The mould in the bathroom, on the other hand, was more likely from condensation. This is very common, especially in cold months when condensation collects on cold windows and creates conditions for mould to grow.

[59] Mr. Mackenzie concluded that the apartment “requires mold removal in both the window area and the closet wall area which should include removal of all mold impacted drywall and cleaning of any mold growth behind”.

[60] The Society did not give Mr. Mackenzie a copy of the Axiom report before his inspection, but he did review it later. From his perspective, the findings in each report were consistent. I agree. Both inspections identified elevated mould spores in the air, including *Aspergillus* and *Stachybotrys*, and visible mould on the closet wall and bathroom.

[61] From Mr. Baune’s perspective, however, the results of the ABM report were slightly different than the Axiom report. He continued to rely on Mr. Niemczyk’s assessment that there was no mould inside the wall where the leak was. He interpreted the ABM report to mean that there were only small, isolated areas of visible mould, which are not unusual in the cold and damp months of winter. The Society cleaned these isolated areas with a bleach solution and considered the matter resolved. Mr. Baune agreed in cross-examination that the Society did not comply with all of ABM’s recommendations.

[62] In the meantime, the parties were dealing with Ms. Han’s applications to the Residential Tenancy Branch, seeking various orders including that the Society make emergency repairs to address the mould. Mr. Baune explains that, aside from the ABM report and the spot cleaning it



had done, the Society was waiting to see the outcome of the Residential Tenancy Branch process before taking any further steps in Ms. Han's apartment.

[63] The Branch held a hearing in March and issued its decision on April 4. It denied Ms. Han's application, finding that the Society had complied with its duties and no further repairs were necessary. That decision would later be overturned by the BC Court of Appeal: *Han v. Baune*, 2021 BCCA 139. However, at the time, the Society understood that it had fulfilled its obligations to Ms. Han. For her part, on the same day that the Branch released its decision, Ms. Han filed this human rights complaint.

[64] Ms. Han continued to complain about mould. The Society finally decided to do a professional mould remediation in May. Mr. Baune saw this as "going the extra mile". However, during this hearing, he acknowledged that there was a "long delay" between the ABM report in mid-February and the Society's more robust efforts to address the mould beginning in May.

[65] During this period, Ms. Han continued to live in hotels and Airbnbs. She would return to her apartment every week or so to collect her mail and visit her apartment. When she was away from the apartment, she monitored it via security camera. She says it was very hard to shuffle between various short term accommodations. She was making her reservations for one or two days at a time, hoping to return to her apartment or some other safe alternative housing. She lived day by day. While she was out of her apartment, her symptoms improved. She breathed more easily.

#### **H. Third mould inspection and remediation (May 2017)**

[66] In May, the Society hired ABM Environmental to return for another inspection and to define the scope of necessary work. Mr. Mackenzie carried out this inspection on May 7. He observed that the Society had not followed his earlier recommendations to remove the drywall in the closet wall and clean any mould growth behind the wall. He concluded:

The mold growth has not been [adequately] removed from the apartment. Due to the type of mold detected (*stachybotrys chartarum*)

which is a toxigenic mold, professional remediation is recommended by a qualified restoration or mold abatement company.

Remediation of all visible and concealed mold is required.... All of the water damaged or mold impacted drywall should be removed and disposed. This includes the drywall in the closet and on the bathroom window frame. Generally at least 2 feet of drywall should be removed from the floor throughout the closet area. ... All mold impacted drywall requires complete removal a minimum of 18 inches past the last contamination point...

[67] On May 19, the Society wrote to Ms. Han to advise that it would undertake remediation in her apartment between May 23 and June 1. It identified the scope of work as:

- Drywall in the entrance hall, closet space and in areas of the bathroom will be removed and replaced;
- A poly wall will be erected to separate clean space and work areas;
- Air purification will run for an extended period of time within the apartment (24hrs for a period of time);
- Air sampling will be performed and an air clearance letter will be obtained;
- Once clearance has been granted, drywall repairs will commence and painting will be performed.

The Society compensated Ms. Han with one month of free rent.

[68] Ms. Han says she did not receive this letter until May 24 or 25, by which time she had already phoned the police to report people entering her apartment on May 23. She was shocked to see they were wearing full personal protective equipment, including P-100 respirators, Tyvek suits, and rubber gloves. She says this made her feel even more depressed that she had been treated like “a killing animal”. She felt that if she had stayed in the apartment, like the Society expected her to, she would have been “a dead person”.

[69] Andre Giasson, owner of PPD Restorations, oversaw the remediation. He used the ABM report as a guide but ultimately exercised his own judgment about what work was necessary. The work took under a week. Mr. Giasson summarized the work in a report dated June 8. He noted that:

- a. There was no mould observed on the window sills, but there were conditions to promote growth in those areas. As a precautionary measure, he applied antimicrobial treatment. He recommended regular cleaning.
- b. There was a “minor amount of mold in the wall cavity behind the tub faucet”. He applied antimicrobial treatment and encapsulated the area.
- c. He cut out the drywall in two walls of the closet, to a height of about two feet. He did not find any mould growth in the drywall.
- d. Caulking around the tub had visible mould growth. It was removed, cleaned, and reapplied. Mr. Giasson again stressed the importance of cleaning these areas.

At the Society’s request, PPD also cleaned all the contents in the apartment as a safety or “feel good” measure.

[70] On May 31, the Society gave Ms. Han a letter saying that “due to unforeseen complications it has become necessary to extend the remediation time frame for your unit”, and issuing a notice of their intention to enter her unit up to June 12. However, on June 1, the Operations Manager emailed Ms. Han to advise that they had “resolved all issues” and that the apartment would be ready for her to return on June 4. Ms. Han found this very confusing. She says that they did not do “anything” between June 1 and 4 to complete the remediation.

[71] On June 1, Mr. Mackenzie returned to the apartment to inspect the work and complete air quality testing. He focused on the bathroom, closet, and hall entrance area. This time, the wall cavity in the closet was open and he could visually inspect and confirm there was no more visible mould growth inside the closet wall. He tested the air in the hall entrance area. There was no *Stachybotrus*, and the indoor spore levels were normal. He concluded that “All mold growth appeared to have been removed and the apartment was cleaned to remove any cross contamination of mold spores”. Based on these results, Mr. Mackenzie was satisfied that the apartment was safe for habitation, and he had no further recommendations.

[72] On June 11, the Operations Manager sent Ms. Han a copy of ABM's Final Air Quality Assessment Report, confirming the apartment was safe for habitation. Ms. Han moved back in on June 15.

[73] Ms. Han says that the remediation was not done properly. Contrary to the Axiom recommendations, they did not clean the ceiling mould properly, demolish the bathroom wall, or change the bathroom faucet. She says there was mould on the floor and all over the ceiling. Instead of doing a proper remediation, she says that they just did "patches". She says that the Society's claims that the apartment was fixed cost her the opportunity to move to another apartment through BC Housing. This claim is supported by an email from BC Housing dated June 27, which referenced the Society's air quality tests confirming that mould had been removed. She continued to complain that her apartment was not habitable. She says that she continued to feel upset, her brain was "chaos", and she continued to look for other housing.

[74] On June 18, Mr. Stewart re-sent Ms. Han the Final Air Quality Assessment Report and reiterated that her apartment had been "cleared" for her return as of June 4. Ms. Han felt that once again she was being ignored and discounted.

[75] On June 22, in response to Ms. Han's ongoing complaints, the Society hired Mr. Giasson to return and inspect Ms. Han's apartment again. On June 22, he attended the apartment to inspect the ceilings and areas where Ms. Han was reporting mould. Mr. Giasson concluded that the shadows that Ms. Han pointed out on the ceilings were common in older buildings, and were not mould. He did see a "small mold colony to the left of the living room window on the ceiling" and recommended that the area be treated and re-painted. The Society approved this work, and it was done on July 4. PPD treated the entire ceiling, encapsulated it, and re-painted it. That same day, Mr. Mackenzie returned to do another assessment. He concluded that the apartment, including the ceiling, was clean and appeared free of visible mould growth. The indoor air sample was normal. There were no further recommendations. In his testimony, Mr. Mackenzie confirmed that he had no concerns about how PPD undertook its work to remediate the ceiling.

[76] Ms. Han, however, says that the problem was still not fixed. She says the remediation focused only on the living room ceiling and still did not address the closet, hallway, or bathroom ceiling. On July 10, she wrote to the Society again to say that there was still mould on the walls and floors and that the bathroom tiles still had not been demolished, per the recommendations of the Axiom report.

[77] On June 24, Ms. Han confronted Mr. Buchannon at a community barbeque. The confrontation grew heated, and Mr. Buchannon felt compelled to leave the barbeque. Ms. Han was escorted away.

[78] Mr. Buchannon says that, by this point, Ms. Han's behaviour was disruptive and disturbing to the Society and its staff. She was writing "nasty" letters of complaint to various people, including members of the Board, BC Housing, and other community partners. He sought legal advice and considered suing Ms. Han for defamation. He says it was the first time in his 25 years at the Society when he had dealt with this level of conflict with a tenant. Ultimately, Ms. Han apologized for some of her behaviour and the Society did not take it any further. However, Mr. Baune says that throughout this period, Ms. Han continued to send "very unpleasant and defamatory" emails to the Society and its affiliates, accusing the Society and its staff of being a criminal organization, fraudulent, and abusive.

[79] On July 25, the Society gave Ms. Han a notice to end her tenancy. Ms. Han disputed her eviction at the Residential Tenancy Branch. From this point on, the Respondents did not communicate directly with Ms. Han about the mould issue.

[80] Ms. Han lived in her apartment from June 15 until September 17. She says that, during this period, her symptoms returned, albeit not as bad as they had been in December. She had chest pain, blood in her mouth, itchy eyes, and a sore throat and nose. She spent her days in the parks and public spaces of the city. At night, she ran an air purifier and kept her windows open. She wore her winter clothing to bed. When the weather was bad and she had to be in her apartment, she says it was a "nightmare". She lost weight.

[81] Testing in July 2018 revealed that Ms. Han’s lung functioning had improved since March 2017. In the note made by the respirologist, he recorded:

... There was extensive mold throughout her washroom and into her bedroom. She had to move out to a hotel for 6 months. During this time, her asthma symptoms improve[d] significantly. Her chest tightness disappeared altogether. Prior to that, she had been coughing with thick phlegm and occasional blood-tinged phlegm production. When she was living in a hotel, all of these symptoms have disappeared. .... [S]he moved back into [her apartment] in mid June 2018. Since then, her symptoms have recurred, but not to the same extent prior to her move to the hotel.

A blood test on July 19 was negative for the presence of *Aspergillus*, suggesting Ms. Han may not have been exposed to *Aspergillus* at this time.

[82] On August 22, 2018, Ms. Han’s respirologist wrote another letter to request that her apartment be “professionally cleansed” to reduce her exposure to “fungal elements”. He noted that such exposures exacerbate Ms. Han’s asthma, and that he had observed a significant improvement in her lung functioning during the period she was not living in her apartment (from 66% to 77%). It is not clear whether Ms. Han gave this letter to the Society.

### **I. Ms. Han moves out – September 17, 2018**

[83] On September 17, Ms. Han moved back out of her apartment, into a hotel. On September 19, she wrote to the Society, again requesting alternate accommodation and referencing the *Human Rights Code*. She continued to complain that there was mould on her “surface walls, floors and ceiling” and to request that the bathroom tiles be demolished. She attached a note from Dr. Narvas, dated September 18, which said:

... Moonhee has been diagnosed with atopic asthma that is exacerbated by environmental factors including fungal elements that have been found in her apartment. I am in full support of her home being professionally cleansed of the molds and fungi in her apartment. In the interim, I am in full support of her staying temporarily in a hotel or B&B to avoid ongoing exposure to her apartment environment which continues to worsen her asthma symptoms.

In his testimony, Dr. Narvas acknowledged that he was not aware of the efforts that had been made to remediate Ms. Han's apartment, or of the air quality assessments completed in June and July. He was relying on Ms. Han's reports about the ongoing presence of mould.

[84] At some point - it is not clear when - the Society did inquire about options for Ms. Han to transfer to another Society apartment, but there were no openings. These efforts were not extensive, and until early 2019 the Society did not otherwise support or help facilitate Ms. Han's requests to transfer to another subsidized apartment.

[85] Ms. Han would never return to her apartment at Chelsea Towers.

#### **J. Fourth mould inspection – March 2019**

[86] In March 2019, in order to support her legal actions against the Society, Ms. Han commissioned another mould inspection. This inspection was performed by David Kwan of DK Environmental Consulting.

[87] In his report, Mr. Kwan set out the background to his inspection as follows:

Ms. Han described that the apartment had experienced two separate incidents (circa 2011/2012 & 2017) where a leaky bathroom pipe inside a wall cavity led to flooding, and that repair of the pipe and subsequent remediation of the apartment following the floods had exposed visible mould inside the wall cavities, which was not properly abated/remediated. According to Ms. Han, no barriers were in place during any repair/remediation activities to prevent any cross contamination of mould to the other areas of the apartment unit. Ms. Han stated that she has since experienced a range of symptoms, mostly related to respiratory issues (eg. asthma, sore throat, tightness in chest, etc) in addition to those commonly related to allergic reactions (eg. eye & skin irritation).

Ms. Han provided Mr. Kwan with a copy of the Axiom report and told him that some work had been done in May and June. Mr. Kwan did not have any further information about the remediation efforts that had taken place. He did not have a copy of the ABM inspection reports or any of its air quality assessments.

[88] In his inspection, Mr. Kwan observed that “the areas noted in the Axiom 2018 report had appeared to be remediated”. There were some “tiny black speckles/spotting that resemble artillery fungus” (not mould) on some wall and ceiling areas. However, airborne sampling revealed “elevated levels of several mould species” which were “known to have the potential of causing allergy-like symptoms in individuals, particularly those who are sensitive to moulds”. Mr. Kwan concluded:

These results suggest that any remediation efforts that has taken place within the apartment has largely been unsuccessful at mitigating the mould issue. The removal of selective walls within the apartment, as per Ms. Han’s account of the events, appears to have only removed the *Stachybotrys* mould (commonly referred to as ‘black mould’) species found within the apartment by Axiom during their mould investigation. Airborne levels of other mould species remain elevated in the apartment.

The Axiom report noted that there is a strong potential for hidden mould contamination to exist within wall/ceiling cavities of the apartment, based on the elevated airborne mould levels they obtained. DK Environmental Consulting agrees with and echoes this statement based on the current airborne mould sampling results and on the events that had taken place within the apartment as per Ms. Han’s account.

***Conclusion:***

Due to the elevated mould levels found within the apartment unit, the apartment is not considered safe for occupancy. [emphasis in original]

Mr. Kwan made a number of recommendations for remediation, including to “remove the walls/flooring within the unit in efforts to uncover any mould contamination”, starting with the “bathroom walls around the tub, the entry foyer closet walls, and the kitchen wall (behind cabinets)”. He also recommended that Ms. Han either wash or dispose of all fabrics/linens and non-porous items in the apartment.

[89] In his testimony, Mr. Kwan resiled from the conclusion in his report that previous remediation efforts had been unsuccessful. He says that he may have reached a different conclusion if he had been provided with all of the relevant information. He explains that his findings of elevated mould levels in March 2019 did not necessarily mean that the remediations



in the summer of 2018 had been unsuccessful. Mould can grow in a matter of weeks. Mr. Mackenzie was also asked to review Mr. Kwan's findings. He testified, and I accept, that the mould detected in Mr. Kwan's inspection would have grown after his last inspection in July 2018. It does not reflect on the effectiveness or success of PPD's earlier remediation.

[90] Nevertheless, Mr. Kwan's findings regarding the levels of mould in the indoor air sample were based on objective testing. The fact is that, in March 2019, Ms. Han's apartment was again not safe for occupancy because of the levels of mould.

[91] As I have said, Ms. Han never returned to her apartment. She continued to live in temporary accommodations, including hotels and Airbnbs. She continued to pay her rent at the Society. To afford these significant expenses, she cashed out all her savings and then sold her valuables. She disposed of most of her belongings.

[92] In February 2019, Mr. Buchannon made inquiries about other options to re-house Ms. Han. As a result of these inquiries, Ms. Han was offered another social housing apartment. She moved into the new apartment on March 31, 2019.

## **V ANALYSIS AND DECISION**

[93] As I have said, the burden is on Ms. Han to prove that her asthma was exacerbated by mould in her apartment, and that the Respondents were responsible for addressing the mould as a term of her tenancy: *Moore* at para. 33. I begin with these issues, and then consider whether the Respondents have justified their conduct.

### **A. Ms. Han's case**

#### *1. The mould*

[94] I am satisfied that there was mould in Ms. Han's apartment, including toxic mould and allergenic mould, between December 3, 2017 and July 4, 2018 and between March 19 and March 31, 2019.

[95] To begin, Mr. Niemczyk observed mould in Ms. Han's bathroom when he attended to repair the leak. It is likely that mould had been present before the leak, although the evidence does not allow me to make any conclusions about when it developed.

[96] Most significantly, the expert reports were consistent about the unhealthy levels of mould in Ms. Han's apartment during the relevant period.

[97] The Axiom report dated January 11, 2018, was the first objective testing for mould in Ms. Han's apartment. Its conclusion, which was later corroborated by the ABM reports in February and May 2018, was that there were high levels of Penicillium/Aspergillus and Stachybotrys (toxic) mould. The mould was specifically identified in two areas, which help to identify the most likely causes:

- a. The closet wall. The most likely cause for this was the leak in December 2017 and subsequent period where the area remained damp. In this area, I have not accepted Ms. Han's perception that there was mould all over the inside of the wall and around the outside. Rather, there were spots of mould on the wall as identified in the professional reports, and on the area behind the tub faucet. This mould may have been present as early as December 3.
- b. The bathroom, including the tub, caulking, and window area. The most likely cause for this was the accumulation of moisture and dirt, over an unknown period. I cannot determine when this mould grew.

Later, small spots of mould were also located on the ceiling. Again, I do not accept Ms. Han's perception that larger markings on the ceilings and floors were evidence of widespread mould. I prefer the expertise of the professionals involved, who explained that those markings did not resemble mould and were not mould.

[98] I find that the remediation work completed by PPD on June 4, 2017 was appropriate and largely sufficient to address the issue. I say this acknowledging that this work did not comply precisely with all of the recommendations in the Axiom or ABM reports. For example, PPD did

not remove tiles in the bathtub (per Axiom) or remove “at least 2 feet of drywall ... throughout... the walls in the closets” (per ABM). However, Mr. Giasson has substantial experience and expertise doing mould abatements. He estimates he does about 600-1000 mould abatements every year. He has been doing the work for 17 years. He exercised his professional judgment to complete the work. Mr. Mackenzie testified that he had no concerns about how Mr. Giasson completed his work, including in light of his recommendations. Most significantly, the objective test results showed that the remediation had been successful in restoring the indoor air quality to safe levels. As the Respondents point out, it is not possible to do better than the results as of June 1, which is to have lower spore counts inside the apartment than outside.

[99] After June 4, there was still a small mould colony on the ceiling. PPD addressed this issue, and treated the entire ceiling, on July 4. Again, I am satisfied that this remediation was appropriate and successful at addressing any mould on the ceiling. Though Ms. Han argues that the ceiling material should have been removed and replaced, I prefer the evidence of the professionals that this would not be appropriate in light of the materials at issue. The work was approved by Mr. Mackenzie, and the air quality was again measured to be acceptable. With this work completed, I find that the Respondents had fully addressed the mould issue in Ms. Han’s apartment, and it was safe for habitation.

[100] Ms. Han argues that the air quality assessments completed at this time are not sufficient to establish that the apartment was safe for her, in light of her allergies. She says she continued to identify mould on the windows, floors, and ceilings of her apartment and continued to experience mould-related symptoms. Above I have preferred the evidence of Mr. Giasson and Mr. Mackenzie that the marks she was identifying on her ceiling and floors were not mould. Her entire ceiling was treated and then re-inspected on July 4, and I do not accept that there continued to be mould on the ceiling after that. In June, PPD did not identify any mould on the windowsills (likely because the Society had spot cleaned them in March). They treated the windowsills anyway. None of the professionals identified mould on the floor, and the marks that Ms. Han pointed out in the photograph submitted in evidence do not resemble the type of

patterns that the professionals testified would indicate the presence of mould. Each of the previously affected areas had been professionally cleaned and inspected. I am not satisfied, on a balance of probabilities, that there continued to be unhealthy levels of mould in Ms. Han's apartment after the final cleaning on July 4.

[101] By March 19, 2019, it is clear that Ms. Han's apartment was once again not safe because of elevated mould levels. However, I do not accept that this finding is evidence that earlier remediation efforts were unsuccessful. I prefer Mr. Mackenzie's explanation, supported by Mr. Kwan in his testimony, that the mould would more likely have grown sometime after the final air quality assessment in July 2018. I cannot, based on the evidence before me, determine when or how the mould returned. For most of this period – from September onward – Ms. Han was not living in the apartment. The most I can conclude is that mould was once again present at unhealthy levels between March 19 and the end of Ms. Han's tenancy on March 31, 2019.

[102] The Respondents argue that Ms. Han was responsible for mould growing in the apartment, because she refused to run the dryer fans following the leak and did not adequately clean and remove condensation in her bathroom. Ms. Han agrees, and accepts, that she is responsible to clean the inside of her apartment. However, she says that the trigger for the events in this complaint was the leak, which the Society was responsible for, as well as the Society's subsequent actions in opening the wall and allowing mould from inside the wall cavity to disperse throughout the apartment.

[103] For the purpose of this complaint, I am satisfied that the hazardous levels of mould in Ms. Han's apartment fell within the scope of what the Society was responsible to address. Under the terms of their tenancy agreement, which reflect s. 32 of the *Residential Tenancy Act*, the landlord is responsible to maintain the property in a state that "complies with the health, safety and housing standards required by law" and makes it "suitable for occupation by a tenant". It was responsible for addressing the December 3 leak, including opening and closing the wall. While I cannot precisely define the significance of the leak and subsequent repairs to the unhealthy levels of mould found in January, I find it more likely than not that there is some link. Mould was later found inside the wall cavity, on the part of the wall behind the tub faucet,

as well as on the outside of the wall. The leak would have created the conditions for growth, including moisture and a food source. While Ms. Han did fail to follow the instructions to keep the fan running, the Society did not provide her with the fan until two days after the leak was discovered and did not undertake any further efforts to mitigate or manage the possibility of mould growing or spreading, even in the face of Ms. Han's ongoing complaints.

[104] In the bathroom, I accept that more frequent and rigorous cleaning *may* have prevented or mitigated the growth of mould. At the same time, however, there was no bathroom fan and the resulting condensation, and moisture, in the bathroom is a fact of life in many Vancouver apartments. A number of the witnesses testified that the type of mould in Ms. Han's bathroom and windowsill was not unusual or surprising given the conditions. Other than the observations of the professionals who attended to the bathroom, there is no evidence before me about how Ms. Han maintained the bathroom. I cannot conclude that her efforts were insufficient to satisfy her obligation to "maintain reasonable health, cleanliness and sanitary standards". Given the serious findings of the Axiom and ABM reports about the unsafe levels of mould in the unit, I am satisfied that the issue engaged the Society's obligation to maintain the property in a state of repair that complies with health and safety standards and makes it suitable for occupation by a tenant. The remediation efforts that were necessary were beyond what Ms. Han could reasonably have done herself. Indeed, the Society did ultimately accept responsibility and address the situation.

## *2. Asthma exacerbated*

[105] Accepting the presence of mould in the apartment, the Respondents argue that the evidence is insufficient to establish that the mould exacerbated Ms. Han's asthma. They argue that the alleged exacerbation of Ms. Han's symptoms when the closet wall was opened between December 3 and 9, 2017, is inconsistent with the evidence of Mr. Niemczyk and Mr. Giasson that there was no mould inside the wall. Her evidence that her symptoms were exacerbated by mould when she returned to the apartment between June 15 and September 17, 2018, is inconsistent with ABM's findings on June 4 and July 4, 2018, that the mould had been appropriately removed and the air quality was safe. It is also arguably inconsistent with

the results of her blood test dated July 20, which was negative for Aspergillus, suggesting she may not have been exposed.

[106] I am satisfied that Ms. Han's asthma was exacerbated by mould, and that her apartment was not safe for her to live in during the period where I have found that **unhealthy** levels of mould was present– between December 3, 2017, and June 4, 2018, and March 19 until March 31, 2019. In that regard, while I have accepted that there was a small mould colony on Ms. Han's ceiling as of July 4, there is no evidence to allow me to conclude that this colony was of a toxic variety of mould or impacted the air quality in any way.

[107] To begin, I accept the expert evidence of Dr. Narvas that mould is known to exacerbate or trigger asthma, and make it difficult to control. I accept his evidence that continued exposure to mould presents a risk that asthma symptoms become more significant, leading to a “severe progression of disease” and more serious health consequences. In Ms. Han's situation, she was already experiencing deteriorating lung function which made her especially vulnerable.

[108] Next, I accept Ms. Han's evidence about how her physical symptoms got worse while she was living in the apartment following the leak. This is consistent with what she was reporting to Dr. Narvas at the time, and explains her otherwise drastic decision to leave the apartment and pay for a hotel. I further accept her evidence that her symptoms improved after she left the apartment. That evidence was supported by the testing completed in July 2018, which showed that her lung functioning had improved since previous testing in March 2017, following a period of seven months where she had been out of her apartment. Based on what Ms. Han was reporting to him about her symptoms and the mould, Dr. Narvas opined that mould was aggravating her asthma symptoms.

[109] The Respondents argue that it is possible that other allergens, such as dirt, dust, or pollen, could have been the cause of Ms. Han's symptoms. They submit that Dr. Narvas's opinion that mould was the cause was based entirely on Ms. Han's subjective reporting, including her reporting about mould which was not accurate. This argument is similar to one

that the Tribunal rejected in *Cameron v. Burrardview Housing Co-Operative (No. 3)*, 2022 BCHRT 74 at para. 98:

I am not persuaded by Burrardview's argument that none of Ms. Cameron's doctors visited her home or demonstrated they had independent knowledge about her mould situation outside of her self reports. One would not expect doctors to make home visits to a patient's home or obtain independent verification about mould in such a situation. The doctor's primary purpose is to diagnose a medical condition and make recommendations on treatment. Furthermore, there is no dispute that mould existed in Ms. Cameron's unit.

[110] Here, I accept that it is possible, even likely, that other factors in the apartment were also aggravating Ms. Han's symptoms. This would explain her reaction to being in the apartment after it was professionally remediated and the air quality was restored. At the same time, however, I have found that there were toxic and unhealthy levels of mould in Ms. Han's apartment between December 3 and June 4. Taken together with Dr. Narvas's expert evidence that mould aggravates asthma in a manner consistent with the symptoms Ms. Han was reporting, I find it more likely than not that this mould would have exacerbated Ms. Han's asthma and made living in the apartment unsafe for her.

[111] I find the circumstances here distinct from the decision of the Landlord and Tenant Board of Ontario (CET-29366-13), which the Respondents rely on. In that case, the Board was not satisfied that a child's allergies were impacted by carpet in the rental unit. There was no evidence to connect the carpet to the child's allergic reactions, aside from a doctor's note that it was "preferable" that the child live in a unit without carpet. In contrast here, I do have expert evidence that asthma is exacerbated by mould, that mould was present in the apartment, and that mould was a likely cause for the exacerbation in Ms. Han's symptoms. Unlike the Ontario case, this is not a complaint that rests on "bare assertions".

[112] In reaching this conclusion, I acknowledge that I have found in this decision that Ms. Han's perceptions of the location and extent of mould in her apartment were not always accurate. I have not accepted that mould continued to be a serious issue beyond June 4, so as to warrant Ms. Han leaving her apartment again on July 17. In that regard, there is no evidence

to support Ms. Han's assertion that her asthma made her sensitive to mould at levels even as low as found after the remediation efforts. If that were the case, then her asthma should have been worse outside the apartment, where spore counts were higher than inside. Her evidence was the opposite: that the only respite she could enjoy was outside the apartment. Ultimately, though I accept that Ms. Han continued to be in distress and feel unsafe in her apartment, I cannot conclude that mould was the cause.

[113] In my view, however, these findings do not undermine the key and essentially undisputed facts that I have set out above: Ms. Han has asthma, asthma is exacerbated by mould, there was mould in Ms. Han's apartment, and Ms. Han's asthma got worse when she was inside the apartment. These facts allow me to make the reasonable inference, also drawn by Dr. Narvas, that when the mould in Ms. Han's apartment was elevated to unhealthy levels, the apartment was not safe for her to live in because of her asthma. That is all that is necessary to establish the necessary connection in this analysis.

### *3. Conclusion*

[114] In sum, I am satisfied that Ms. Han has established that the apartment was not safe for her to live in because of her asthma for the periods between December 3, 2017, and June 4, 2018, and from March 19 until March 31, 2019. For these periods, the burden shifts to the Respondents to justify their conduct.

[115] I am not satisfied that Ms. Han has proven that the apartment was unsafe for her between June 4, 2018, and March 19, 2019. I dismiss the allegations of discrimination for this period.

### **B. Justification**

[116] The Respondents' justification defence turns on whether they took all reasonable and practical steps to address the mould issue in Ms. Han's apartment. This is the concept of "accommodation" in human rights law, which requires landlords to take reasonable steps to



remove disability-related barriers which impede a tenant's ability to live safely and with dignity in their housing: *Biggings obo Walsh v. Pink and others*, 2018 BCHRT 174 at para. 87.

[117] In *Leary v. Strata Plan VR1001*, 2016 BCHRT 139, the Tribunal set out some helpful guidelines for participants in an accommodation process. Though that case concerned accommodation in a strata context, the same principles apply to tenancies. Generally, the tenant is obliged to bring forward the information related to their disability and cooperate with the landlord's reasonable efforts to accommodate them. The landlord is required to:

- a. Address requests for accommodation promptly, and take them seriously.
- b. Gather enough information to understand the nature and extent of the need for accommodation.
- c. Obtain and pay for expert opinions or advice where needed.
- d. Take the lead role in investigating possible solutions. Co-operate with the tenant to constructively explore those solutions.
- e. Rigorously assess whether the landlord can implement an appropriate accommodation solution.
- f. Ensure that the people working on the accommodation are able to approach the issue with an attitude of respect.<sup>1</sup>

The standard for accommodation is reasonableness, not perfection: *Klewchuk v. City of Burnaby (No. 6)*, 2022 BCHRT 29 at para. 425.

[118] I begin with the period between December 3, 2017, and June 4, 2018.

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<sup>1</sup> This list of obligations has been modified from the list in *Leary* to focus on issues relevant to this complaint. It is not exhaustive

1. *December 3, 2017 – June 4, 2018*

[119] I find that the Respondents' initial response to Ms. Han's complaints about mould fell short of what the *Code* requires. Ms. Han began complaining about mould immediately after the leak on December 3. From that point forward, Ms. Han was complaining that mould in her apartment was exacerbating her physical conditions. In addition to her letters and emails, she provided the Society with a note from Dr. Narvas on December 18, affirming that her "chronic, underlying medical conditions" were being exacerbated by mould. As I have said, Mr. Baune was frank in acknowledging that he and the Society doubted the accuracy of this information and did nothing to respond to it, even after they became aware that Ms. Han had moved out of her apartment altogether on December 10. This falls short of the obligation, expressed in *Leary*, to address requests for accommodation promptly and take them seriously.

[120] Clearly the Respondents were unsatisfied with the information provided by Ms. Han about her disability-related needs. In those circumstances, they were obliged to take steps to gather the information they felt they needed, for example, by undertaking a proper mould assessment and/or requesting more information from Ms. Han's doctor. It appears they did make some attempt in January to conduct an air quality assessment, but failed to give Ms. Han sufficient notice to enter her apartment and she refused to allow the inspector to enter. I have very little evidence about this attempt, and no evidence to suggest that the Respondents did anything further to gather the information they required until February 15. Again, this response was not sufficient.

[121] The Respondents persisted with their skeptical approach even after Ms. Han gave them a copy of Axiom's report on February 2, which concluded that the "suite is [heavily] contaminated and not presently fit for habitation", and another letter from Dr. Narvas on February 7. They decided to undertake their own investigation by retaining ABM Environmental. This was appropriate. However, they failed to acknowledge that ABM's findings affirmed much of what Ms. Han had been saying, including that there was toxic mould in the apartment and "elevated mold spore concentrations" of moulds known to affect human health. They failed to comply with the recommendations in the ABM report, instead undertaking only

minor (and insufficient) spot cleaning. They continued to deny that the apartment was unsafe for Ms. Han, without giving any consideration to the medical information to the contrary. Again, this fell short of the duty on landlords to take accommodation seriously.

[122] After this, there was a period between February and May when the Respondents took no steps to address the mould in Ms. Han's apartment. I appreciate that they were waiting for the results of the Residential Tenancy Branch proceedings. However, given the stakes for Ms. Han – who could not safely live in her apartment given the mould – I find this three month delay was not reasonable. Mr. Baune acknowledged as much in his testimony.

[123] Throughout this entire period, the accommodation that Ms. Han was requesting was that she be re-housed, at least until the mould was addressed. The Respondents argue that it would have been undue hardship to pay for the cost of Ms. Han's hotels. They say this is the very reason the tenancy agreement says that tenants are responsible for alternative accommodations, and that the Society encourages tenants to have insurance. They say that, if they were required to pay for accommodation in the manner that Ms. Han was demanding, the Society would have been "unable to provide services in other areas".

[124] The difficulty with this argument is that, had the Respondents acted promptly to deal with the mould, the evidence establishes that the issue could have been resolved in as little as one week. There is no evidence that would allow me to conclude that the Respondents would have faced undue hardship had they complied fully with their accommodation obligations, including incurring some cost to provide Ms. Han safe housing or not charging her rent while her apartment was being remediated. As Mr. Baune acknowledged in cross-examination, the primary impediment to resolving the issue was making the decision to address it.

[125] Further, I do not find the Respondents' arguments about the effect of the tenancy agreement persuasive. I recognize that the tenancy agreement makes the tenant responsible for the cost of alternative lodging in situations such as arose here. However, this provision does not absolve the Respondents of their obligations to remove disability-related barriers impeding Ms. Han's ability to live safely in her apartment. Parties cannot contract out of the *Code*:

*Newfoundland Association of Public Employees v. Newfoundland (Green Bay Health Care Centre)*, [1996] 2 SCR 3 at para. 26. As I have said, the remediation could have been completed quickly if the Respondents had acted immediately. It is not reasonable to impose the cost of their delay on Ms. Han.

[126] The parties clearly had a difficult relationship, which created challenges in the accommodation process. I do not agree with Ms. Han's characterisation of the Respondents as cruel or uncaring. Nor do I accept the Respondents' argument that Ms. Han impeded the accommodation process so as to absolve them of their responsibilities: *Central Okanagan School District No. 23 v. Renaud*, [1992] 2 SCR 970 at 994-995. Rather, I find that their conflict with Ms. Han caused the Respondents to adopt an approach that was inconsistent with their obligations under the *Code*.

[127] I agree with the Respondents that it is generally reasonable to rely on the opinions and advice of experts. The problem here is that the Respondents selectively ignored important information, including expert information, for the sole reason that it was coming from Ms. Han. There are some similarities with *Redmund v. Hunter Hill Housing Co-op (No. 2)*, 2013 BCHRT 276, another case about a housing provider's obligation to address mould. In that case, the Tribunal observed that:

Instead of accepting that she had a legitimate problem requiring amelioration, the Co-op adopted an adversarial posture and treated Ms. Redmond as if she was a "loony tune". It is not surprising that Ms. Redmond reciprocated the Co-op's adversarial posture. It makes no difference, in my view, whether it may have been Ms. Redmond who first adopted an adversarial stance. **What would have been preferable is that the Co-op took her concerns seriously and helped her find the source of the problem causing the allergic reaction. In this way, parties could have worked together to solve what was, in fact, a joint problem.** [emphasis added, at para. 55]

While the Respondents here did not act as egregiously as the housing co-operative in *Redmund*, their attitude impeded the accommodation process in similar ways. The Respondents' obligation in the accommodation process was to take Ms. Han's request for accommodation

seriously and address it promptly: *Leary*. It was not appropriate to simply ignore information, particularly from Ms. Han's doctor, that conditions in her unit were exacerbating her medical conditions. If the Respondents had their doubts, and here they did, then it was incumbent on them to seek further information.

[128] Ultimately, I have found that once the Respondents decided to properly address Ms. Han's complaints about the mould, they did so effectively. The necessary remediation took only about one week, with some spot cleaning a month later. They did not charge Ms. Han for rent for the month of June, which I accept was a reasonable – if not perfect – solution to address her need for alternative housing while the mould was being remediated. However, by this point, over five months had passed during which Ms. Han could not safely live in her own apartment. I agree with Ms. Han that the circumstances are similar to *Bowker v. Strata Plan NWS 2539*, 2019 BCHRT 43. In *Bowker*, the Tribunal explained that “Timeliness is part and parcel of reasonableness when considering whether a duty to accommodate has been met”: para. 56. In that case, although the strata did ultimately accommodate Ms. Bowker, its delay in “meaningfully commencing” that process constituted a “failure to reasonably accommodate”. Likewise, here, I find that the Respondents' delay in meaningfully addressing the mould issue constituted a failure to reasonably accommodate Ms. Han between December 9 and June 1, which is the date when remediation was underway and the Respondents compensated Ms. Han for her rent.

## 2. *March 19 – March 31, 2019*

[129] I reach a different conclusion about the period between March 19 and March 31, 2019. During this period, I have found that the mould had returned and the apartment was again not safe for Ms. Han to live in it. However, there is no evidence that Ms. Han told the Respondents about the results of the testing in March 2019 or otherwise requested accommodation for this final period of her tenancy. In these circumstances, the Respondents did not know, and could not reasonably have known, about the possible need for further accommodation. Any adverse impact during this period is justified: *Klewchuk* at paras. 367 and 373.

## C. Conclusion

[130] I have found that that the Respondents discriminated against Ms. Han in her tenancy for the period between December 3, 2017, and June 1, 2018, in violation of s. 10 of the *Code*. I dismiss Ms. Han's complaint for the period between June 1, 2018 and March 31, 2019.

## VI REMEDY

[131] I have found Ms. Han's complaint to be justified, in part. I declare that the Respondents' conduct, as set out in this decision, was discrimination contrary to the *Code*, s. 37(2)(b). I order them to cease the contravention and refrain from committing the same or similar contravention: *Code*, s. 37(2)(a).

[132] In addition to these orders, Ms. Han seeks compensation for expenses arising from the breach of the *Code* and for injury to her dignity, feelings, and self respect.

### A. Expenses

[133] Section 37(2)(d)(ii) empowers the Tribunal to make an order to compensate Ms. Han for expenses incurred by the Respondents' contravention of the *Code*. The purpose of such an order is to, as much as possible, place the complainant in the position they would have been in but for the discrimination: *Gichuru v. Law Society of British Columbia (No. 11)*, 2011 BCHRT 185 at para. 388, upheld in 2014 BCCA 396. In this case, Ms. Han seeks compensation for a number of expenses which she says she incurred because of the discrimination.

#### 1. Accommodation

[134] Between December 10 and June 1, Ms. Han was paying to stay in hotels and short term accommodations, while at the same time still paying rent to the Society. She seeks compensation for both.

[135] The Respondents argue that, if Ms. Han were to be compensated for both her rent and the cost of alternative living arrangements, this would amount to double recovery. I agree.

Regardless of the discrimination, Ms. Han would have been required to pay for her housing somewhere. To compensate her for all housing expenses would put her in a better position than before the discrimination.

[136] Next, the Respondents argue that Ms. Han’s tenancy agreement precludes the Tribunal from ordering them to compensate her for the cost of incurring these expenses. For reasons I have set out above, I am not compelled by this argument. The *Code’s* remedial purpose takes precedence over the terms of the parties’ contract. Any remedy must focus on redressing the impacts of the discrimination on Ms. Han.

[137] I am satisfied that, but for the Respondents’ discrimination, Ms. Han would not have been required to incur the expense of staying in hotels and short-term accommodations between December 10, 2017, and June 1, 2018. Her doctor and the Axiom inspector had both advised her to move out, and I have found that the apartment was not safe for her during this period because of her asthma.

[138] In my view, it is appropriate to compensate her for those expenses as follows:

December 10 – December 18, 2017	\$1,067.12
December 17, 2017 – April 30, 2018	\$16,364.09
April 30 – May 31, 2018	\$2,644.77
May 31 – June 1, 2018	\$95
<b>Total</b>	<b>\$20,170.98</b>

*2. Cost of expert reports*

[139] Next, Ms. Han seeks compensation for the cost of obtaining the Axiom and DK Consulting mould assessments. Above, I have found that the Respondents did not discriminate against Ms. Han for the period relating to the DK Consulting assessment and so I decline to order compensation for this expense. However, I do find it appropriate to compensate Ms. Han for the Axiom report. In *Gichuru*, the Tribunal explained:

The Tribunal, and its predecessors, has long ordered compensation for the expense of expert reports, where such expert evidence is necessary to establish a contravention of the *Code*. The basic rationale is that, if an expert report is necessary to establish the contravention, then it is compensable as an expense incurred by the contravention. Compensation is necessary to make the successful complainant whole ... [at para. 389]

[140] I order the Respondents to compensate Ms. Han for the cost of the Axiom report, in the amount of \$525.

### 3. *Living expenses*

[141] Ms. Han seeks compensation for a number of her living expenses.

[142] First, Ms. Han seeks compensation for the cost of eating meals at restaurants between December 16, 2017, and June 13, 2018, totalling \$2,392.81<sup>2</sup>. She argues that she did not have access to proper cooking facilities while she was living in hotels during this period and so she was required to spend more money eating out. I accept that some of these expenses likely flowed from the discrimination, but I am not persuaded it would be reasonable to compensate Ms. Han for all of them. I agree with the Respondents that Ms. Han would have been required to purchase food regardless of the discrimination. Further, this amount includes a period where I have found there was no discrimination after June 1. I exercise my discretion to award Ms. Han roughly half of this amount, being **\$1,200**.

[143] Second, Ms. Han seeks compensation for the cost of her transit pass. During the period of discrimination, this amounts to \$260. Ms. Han argues that, during this period, she needed to rely on transit to commute between her hotel and her apartment. The Respondents argue it is not reasonable to award her the cost of her transit, which she would have incurred even absent any discrimination. Again, I accept that some of this expense may have been attributed to the discrimination but I am not persuaded that it all was. Though Ms. Han testified that she did not go “anywhere” except her apartment and the hotel during this period, this seems unlikely and

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<sup>2</sup> In Ms. Han’s handwritten calculations submitted into evidence, she calculated the full amount to be \$2,452.78. However, I am relying on the amount put forward in her closing submissions.



indeed is contradicted by her restaurant receipts. I find it more likely that she would have incurred some transit expenses even without the discrimination. Again, I exercise my discretion to award her half of the amount claimed, being **\$130**.

[144] Third, Ms. Han seeks compensation in the amount of **\$106.75** for the cost of drycleaning clothes from her apartment, which was recommended to remove any possible mould. I accept this expense flowed from the discrimination and I award it.

[145] Fourth, Ms. Han seeks **\$10** to compensate for the cost of using coin laundry at the hotel. I accept this expense flowed from the discrimination and I award it.

[146] Finally, Ms. Han seeks \$57.33 to compensate for the cost of forwarding her mail for four months. This expense relates to the period between April 1, 2019 and July 31, 2019, a period which I have not found related to any discrimination. I do not award it.

[147] In summary, I order the Respondents to compensate Ms. Han for living expenses flowing from the discrimination as follows:

Meals	\$1,200
Transit	\$130
Drycleaning	\$106.75
Laundry	\$10
<b>Total</b>	<b>\$1,446.82</b>

#### *4. Purchases*

[148] Ms. Han seeks compensation for a number of items she says were purchased as a result of the discrimination.

[149] First, Ms. Han seeks **\$8.93** to compensate her for the cost of stamps to mail the Respondents letters connected to this complaint. I am satisfied that this expense flowed from the discrimination and I award it.

[150] Second, Ms. Han seeks **\$10.07** to compensate for the cost of purchasing a USB drive to manage documents related to this complaint. I am satisfied that this expense flowed from the discrimination, and I award it.

[151] Third, Ms. Han seeks \$906.96 for the cost of purchasing a new bed and chair on March 24, 2019. I am not persuaded this expense flowed from the discrimination. PPD professionally cleaned Ms. Han’s belongings on June 4. After that point, there is no evidence that it was necessary to replace Ms. Han’s furniture. I decline to award this amount.

[152] Fourth, Ms. Han seeks compensation for an air purifier which she purchased on December 20, 2017 for \$157.91. While I would have accepted that it was necessary to use an air purifier during this period, the problem is that Ms. Han was no longer living in the apartment at this point, and would not return until after the discrimination ended in June. It is not clear to me, then, why the cost of the air purifier flowed from the discrimination. I decline to award this amount.

[153] Finally, Ms. Han seeks compensation for the cost of purchasing a therapeutic sleeping pillow on January 18, 2018, for \$90.30. There is no evidence about why this expense flowed from the discrimination and I decline to award it.

[154] In sum, I order the Respondents to compensate Ms. Han for her purchases as follows:

Stamps	\$8.93
USB drive	\$10.07
<b>Total</b>	<b>\$19</b>

*5. Medical expenses*

[155] Ms. Han seeks compensation for expenses related to chiropractic treatments and new glasses.

[156] First, Ms. Han says that, because of the worsening of her asthma symptoms, shuffling between temporary accommodations, and stress of the situation, she experienced numbness in

her body and pain in her back, neck and shoulders. She required chiropractic treatments between January 18 and February 1, 2018, amounting to \$2330.30.

[157] In my view, the evidence is not sufficient to draw a link between the discrimination I have found and this claim for chiropractic expenses. There is no evidence from Dr. Narvas to support that any of these issues flowed from the exacerbation of Ms. Han’s symptoms or the stress she was under. I decline to award these expenses.

[158] Second, Ms. Han says that, in December 2017, her eyes were very painful, and it was hard to even open them. She required a special eye exam. The optometrist recommended specific glasses for reading a computer screen, which she purchased. She seeks compensation for the testing and the cost of the new glasses, in the amount of \$687 (glasses) and \$260 (appointment).

[159] Again, I am not persuaded that these expenses flowed from the discrimination. Ms. Han agrees that she did not have a specialist’s opinion that her vision trouble was caused by the mould exposure. She did not see an ophthalmologist. Ultimately, the recommendation was to use glasses while using screens. I decline to award these expenses.

*6. Summary: expenses*

[160] In summary, I order the Respondents to compensate Ms. Han for expenses incurred by the discrimination as follows:

Accommodation	\$20,170.98
Expert report	\$525
Living expenses	\$1,446.82
Purchases	\$19
<b>Total</b>	<b>\$22,161.80</b>

## **B. Injury to dignity, feelings, and self respect**

[161] A violation of a person's human rights is a violation of their dignity. That is why s. 37(2)(d)(iii) confers discretion on this Tribunal to award damages to compensate a complainant for injury to their dignity, feelings, and self-respect. The purpose of these awards is compensatory, and not punitive. In exercising this discretion, the Tribunal generally considers three broad factors: the nature of the discrimination, the complainant's social context or vulnerability, and the effect on the complainant: *Torres v. Royalty Kitchenware Ltd.*, 1982 CanLII 4886 (ON HRT); *Gichuru* at para. 260. The quantum is "highly contextual and fact-specific", and the Tribunal has considerable discretion to award an amount it deems necessary to compensate a person who has been discriminated against: *Gichuru* at para. 256; *University of British Columbia v. Kelly*, 2016 BCCA 271 at paras. 59-64. In this case, Ms. Han seeks an award of \$50,000.

[162] I begin with the nature of the discrimination. Discrimination which compromises a person's ability to live safely in their home is always very serious: *Biggings* at para. 156. Elsewhere the Tribunal has recognized that access to safe and adequate housing is a core and human need:

... to have a home is central to one's sense of self, and security, one's sense of emotional well-being and belonging in society. Having a home is a fundamental need, the second step in Maslow's "hierarchy of needs". It is the necessary base that allows one to thrive.

*James v. Silver Campsites Ltd. (No. 3)*, 2012 BCHRT 141, upheld in *Silver Campsites Ltd. v. James*, 2013 BCCA 292

Ms. Han was deprived of this security because of discrimination for five months. This is serious.

[163] Ms. Han's social context made her especially vulnerable to the impacts of the discrimination. As a tenant, she was in a vulnerable position vis a vis her landlord, and reliant on the landlord to make her apartment safe. She was unable to secure alternative subsidized housing, despite her arduous efforts, and did not have the resources to pursue alternative

housing at market rates. She had limited resources to cope with the costs of being unable to live in her apartment.

[164] The most significant consideration is the impact that the discrimination had on Ms. Han. She testified emotionally about that impact. She felt confused, powerless, ignored, and discounted because of her disabilities. She felt small. She wondered whether she had a right to expect anything from her landlord. From her perspective, she was engaged in a struggle for her life. She internalized a message that the Respondents did not care if she lived or died, and that her life was not worth any more than a “killing animal”. She sold her belongings and used her savings to stay in hotels and accommodations. She was afraid that she would run out of money and end up on the streets. She felt she was surviving day by day by herself. It was a “nightmare”.

[165] Dr. Narvas also testified that these events were very stressful for Ms. Han and negatively impacted her mental health. She began coming to see him more frequently, with ongoing concerns about her mental and physical health, which was being taxed by moving around and trying to deal with the ongoing mould situation. He describes the impact on Ms. Han as “severe”.

[166] Considering these factors, I award Ms. Han \$15,000 to compensate her for injury to her dignity, feelings, and self respect. This is within the range of the Tribunal’s awards in similar cases. In *Redmond*, a 2013 case, the Tribunal awarded \$10,000 to a complainant who was forced to move out of her apartment because of mould. More recently, in *Cameron*, the Tribunal awarded \$20,000 to a complainant whose disabilities were exacerbated by mould in her home over a period of years. In this case, I have not found all of Ms. Han’s complaint to be justified. My award reflects that the period of discrimination was roughly five months, after which the discrimination was no longer a barrier to her ability to live safely in her apartment. It also considers that the impact on Ms. Han was severe, especially accounting for her social context.

## VII ORDERS

[167] I have found that the Respondents discriminated against Ms. Han in her tenancy based on her disability, in violation of s. 10 of the *Code*. I make the following orders:

- a. I declare that the Respondents' conduct, as set out in this decision, contravened s. 10 of the *Code*: *Code*, s. 37(2)(b).
- b. I order the Respondents to cease the contraventions and refrain from committing the same or similar contraventions: *Code*, s. 37(2)(a).
- c. I order the Respondents to pay Ms. Han \$22,161.80 for expenses incurred by the contravention: *Code*, s. 37(2)(d)(ii).
- d. I order the Respondents to pay Ms. Han \$15,000 as compensation for injury to her dignity, feelings, and self-respect: *Code*, s. 37(2)(d)(iii).
- e. I order the Respondents to pay Ms. Han post-judgement interest on the damage award until paid in full, based on the rates set out in the *Court Order Interest Act*.

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Devyn Cousineau  
Tribunal Member  
Human Rights Tribunal