

Date Issued: May 7, 2024

File: CS-002572

Indexed as: Krupinski v. Alexander Laidlaw Housing Co-operative, 2024 BCHRT 139

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:

Zbigniew Krupinski

COMPLAINANT

AND:

Alexander Laidlaw Housing Co-operative

RESPONDENT

REASONS FOR DECISION
APPLICATION TO DISMISS A COMPLAINT
Section 27(1)(c) and (d)(ii)

Tribunal Member:

Kylie Buday

On his own behalf:

Zbigniew Krupinski

Counsel for the Respondent:

Lee Marriner

I INTRODUCTION

[1] Zbigniew Krupinski is a resident of a co-op housing community and associate member of the Alexander Laidlaw Housing Co-operative [the **Co-op**]. He alleges the Co-op discriminated against him in tenancy on the ground of physical disability contrary to s. 10 of the *Human Rights Code*. He says the Co-op failed to adequately address his complaints about toxic mould in the townhouse unit [the **Unit**] where he lives with his spouse. He alleges the Co-op's failure to do so adversely impacted him in relation to a lung condition he says he developed after a water leak in the Unit in 2012. He alleges that the Co-op's failure to remediate the Unit has exacerbated his physical disability and that overall, his health has seriously declined because of the alleged discrimination.

[2] The Co-op denies discriminating and applies to dismiss the complaint under s. 27(1)(c) and (d)(ii) of the *Code*. Under s. 27(1)(c), the Co-op submits there is no reasonable prospect Mr. Krupinski will prove a past diagnosis of pneumonia made him vulnerable to lung infections such that it amounts to a physical disability under the *Code*. The Co-op also argues there is no reasonable prospect Mr. Krupinski will prove his health has deteriorated because of abnormal levels of mould in the Unit or that he suffered adverse impacts in tenancy in connection with a physical disability because of the alleged deterioration in his health.

[3] The Co-op also submits that even if Mr. Krupinski proves the three elements of his case, it is reasonably certain to prove it satisfied its duty to accommodate Mr. Krupinski. The Co-op says it acted quickly to investigate the alleged mould issues in response to Mr. Krupinski's complaints and that Mr. Krupinski rejected its reasonable offers to remediate the Unit, discharging the Co-op of its duty to accommodate Mr. Krupinski.

[4] The Co-op also applies for dismissal under s. 27(1)(d)(ii) on the ground that it would not further the purposes of the *Code* to proceed because it has made a reasonable, with prejudice, settlement offer to Mr. Krupinski.

[5] For the following reasons, I allow the Co-op's application under ss. 27(1)(c). I am satisfied that even if Mr. Krupinski proves the three elements of his case at a hearing, the Co-op

is reasonably certain to prove its defence that it satisfied its part of the duty to accommodate him.

[6] To make this decision, I have considered all the information filed by the parties. In these reasons, I only refer to what is necessary to explain my decision. I make no findings of fact.

II SCOPE OF COMPLAINT

[7] Mr. Krupinski is a self-represented litigant. He is an impressive advocate and has undertaken a lot of research in his pursuit of a solution to the issues that led him to file his complaint with the Tribunal. Given the breadth of information in the materials before me, I find it is necessary to clarify the scope of the complaint for the parties so there is no confusion.

[8] The parties submitted numerous documents in support of their respective positions on the present application. Some of those documents are copies of letters Mr. Krupinski sent to the Co-op, including to the Co-op's legal counsel once they became involved. In several of those letters, Mr. Krupinski makes allegations against the Co-op that he did not include in his Form 1.1 – Complaint Form. As such, those allegations are not part of this complaint and I do not consider them. Without listing them all, the allegations that are not part of the complaint are that the Co-op:

- a. caused the alleged toxic mould problem in the Unit,
- b. caused Mr. Krupinski's alleged disability,
- c. is responsible for adverse impacts of toxic mould on Mr. Krupinski's spouse and dog,
- d. tried to "cover-up" the mould problem to avoid liability by using a fabricated report,
- e. is not compliant with City of Vancouver Standards of Maintenance,

- f. did not meet its responsibilities under the *Cooperatives Association Act*, and
- g. has not complied with/violated the *BC Residential Tenancy Act*, the *Canadian Charter of Rights and Freedoms*, and the *BC Public Health Act*.

[9] Mr. Krupinski's complaint also includes allegations about the Co-op's response to a water leak in his basement that occurred in 2012. To the extent that he makes allegations about that event, those allegations are background information only, and are not part of the complaint. They do not set out an arguable contravention of the *Code*. Mr. Krupinski's complaint also refers to when he lived in a Co-op unit on Skana Drive. To the extent that he makes allegations about a "large mould outbreak" on Skana Drive, those are also beyond the scope of the complaint.

[10] The complaint before me is that, between November 2018 and September 2020, the Co-op discriminated against Mr. Krupinski in its response to his complaints about "toxic mould."

III BACKGROUND

[11] The Co-op is a non-profit housing co-operative incorporated under the *Cooperative Association Act* of British Columbia. It consists of 84 housing units, including the Unit where Mr. Krupinski has lived since 2008.

[12] Mr. Krupinski submitted medical information that outlines various health problems. He says that by 2018, he had a lung condition that made him vulnerable to toxic mould.

[13] In or around October 2018, Mr. Krupinski's spouse reported a smell of mildew in the Unit. In response, the Co-op arranged to have the Unit tested for mould.

[14] The Co-op hired EcoHazMat to investigate the potential mould issue. EcoHazMat inspected the Unit on October 23, 2018, and sent samples it collected to Mold & Bacteria Consulting Laboratories [MBL] for analysis. EcoHazMat set out the results of its inspection in a report, dated October 29, 2018 [the **First Report**]. The First Report describes the levels of fungal spores in the upper and main levels of the Unit as "likely background levels" and recommends

the Unit be kept dry and humidity be controlled. At some point, the Co-op provided Mr. Krupinski with a copy of the First Report.

[15] In late November 2018, Mr. Krupinski raised concerns about the air quality in his Unit and concerns about the “air sniffer tests” performed by EcoHazMat. In response, the Co-op informed Mr. Krupinski that it had decided to get a second opinion and would “requisition an alternate company to the one we used in October 2018 to ensure the test is unbiased.” In addition, the Co-op noted they would “request this test be more inclusive of the entire unit.”

[16] Mr. Krupinski replied on November 29, 2018, stating that he appreciated the Co-op’s offer to conduct an additional set of mould tests. He also provided the Co-op with copies of test results he had obtained through a company called the Great Plains Laboratory Inc., based in the United States. Mr. Krupinski informed the Co-op that these test results showed there were “deadly toxins” in his body, specifically, Ochratoxin, Mycophenolic Acid and Dihydrocitrinone. He explained that these toxins are caused by exposure to Aspergillus and Penicillium. He asked that the Co-op use a company “capable of measuring at least these two types of very toxic mould.” He also informed the Co-op: “in the last six months I have had a heart attack, a trip to emergency because of an inability to breathe, and am now experiencing kidney pain.”

[17] On January 18, 2019, the Co-op wrote to Mr. Krupinski and informed him that they had instructed Antiquity Environmental Consulting [**Antiquity**] to “do air testing and lift testing in every room in your unit.” The Co-op also noted Antiquity was willing to discuss “your particular requirements when they are on site.”

[18] On or around January 25, 2019, Mr. Krupinski agreed to further testing in the Unit, if the samples were “properly collected” and were tested by MBL. He also informed the Co-op that he had sent his own sample from his kitchen to MBL and that MBL found “heavy growth” of Aspergillus on “Black Mould On Multiple Sourced Food Items/Kitchen.”

[19] Mr. Krupinski also informed the Co-op:

I want this mould problem fixed. I want support to offset the health problems the mould is causing. I know I have a mould problem in the unit; I know I have a mould problem in my body; what I need is professional help to find out where the mould is coming from and professional help to get rid of it. If that cannot be done then I would ask to be moved into a comparable unit somewhere else in the co-op where the same mould issue doesn't exist. Doctors have given me two options; either eliminate the mould, or move away from it; otherwise my health will continue to deteriorate.

[20] Antiquity inspected the Unit on or around March 28, 2019, and reported its results to the Co-op on April 8, 2019 [the **Second Report**]. In the Second Report Antiquity concluded:

The sample results indicate no indoor air quality issues throughout the building. Visible mould was observed on food in the kitchen. Swab samples were taken from visible and possibly containing areas throughout the house. [sic]

The sample results do not indicate any indoor air quality issues in the residential building.

[21] Mr. Krupinski strongly disputes the validity of the Second Report.

[22] In May 2018, Mr. Krupinski notified the Co-op of concerns he had about Antiquity and the validity of the mould tests MBL conducted based on the samples Antiquity collected. He says the mould samples taken during the inspection were divided in two and he kept one set, which he sent for independent testing at MBL. He says the set he submitted for testing showed high concentrations of Aspergillus and Penicillium. I note, Mr. Krupinski appears to have read extensively about moulds and mould testing and shared his opinions on the Second Report with the Co-op in some detail.

[23] In response, the Co-op offered to retain another company to conduct specific tests Mr. Krupinski requested.

[24] On or around June 10, 2019, the Co-op Board and Mr. Krupinski met and agreed to the following:

1. Mr. Krupinski would select a qualified professional to test for mould in the Unit and the Co-op would retain the professional;
2. The professional would conduct the specific tests and collect the specific samples requested by Mr. Krupinski;
3. MBL would analyze the samples collected.

[25] Around late August 2019, Mr. Krupinski selected Sean Moss of Mold Insight Inc. to conduct tests. Mr. Krupinski and Mr. Moss discussed how the Unit would be tested in detail. Copies of their correspondence are before me.

[26] Mr. Moss inspected the Unit and set out his findings in a report, which Mr. Krupinski delivered to the Co-op on August 30, 2019 [the **Third Report**]. The Third Report identifies dry mould on structural beams, ceiling joists, and wood studs in the Unit's basement. Mr. Moss concluded that the dry mould was caused by high humidity and the accumulation of dust, dirt, and debris.

[27] On or around October 3, 2019, the Co-op asked Mr. Moss to interpret the Third Report and provide them a recommendation. Mr. Moss recommended the next step was to hire a remediation contractor, who would be able to decide the best course of action. Mr. Moss noted "there are a number of remediation contractors out there and they are all different in terms of prices, quality of work etc." He then recommended the Co-op hire Enviromold "as they have been very helpful to my clients, fair in prices and ethical in the past." Based on this recommendation, the Co-op contracted Enviromold to "perform an on-site assessment in order to provide the Co-op with a step by step scope of work and a mold remediation quote."

[28] On or around November 19, 2019, Enviromold sent the Co-op a "Mold Remediation Recommendation and Quote" [the **Enviromold Quote**]. The Enviromold Quote states the recommended scope of work is "to bring the unit back to a safe and habitable environment." Among other things, Enviromold recommended they remove "all mold spores and fungal particulates" through what is called a "Terminal Clean." A Terminal Clean involves:

A multi-chamber set-up of 4mm poly, segmenting each room into separate chambers. Then air is pulled through each of these chambers with a negative air machine, through a certified HEPA filter and exhausted to the outside. Starting from where the air enters the first chamber, every square inch of each chamber is systematically cleaned (floor, walls, ceiling, appliances, tables, etc).

[29] Enviromold also proposed to remove carpet and underlay in the upper floor bedrooms, hallway, and stairs. In addition, it proposed to remediate and encapsulate the basement ceiling joists and do content decontamination of all large hard surfaced personal items. However, Enviromold stated that it does not clean small, personal contents, or porous items, “due to the fact that, in most cases, the cost to clean such items is more expensive than the item is worth to purchase new.” Enviromold quoted \$18,945.00 + GST to perform the recommended remediation.

[30] Next, the Co-op sought a second opinion and quote for remediating mould in the Unit from ACTES Environmental. That quote included two options. The quote for the first option totalled \$6,749.70 (excluding GST). The scope of work included in that option was:

Removal of visible and non-visible mold spores as identified in the Mold Insight inspection report throughout the home (all three levels) at [the Unit] and removal/disposal of all carpet within home. Hepa-vacuum, apply the approved killing agent and disinfect all horizontal and vertical surface surfaces within the home. Areas of work detailed below [...]

- Basement: All walls, open ceiling, floor and 1st stairwell.
- Main Flr: Kitchen, all walls, floor and within cabinetry / Living rm & Common Hallway all surfaces.
- 2nd Flr: 2 bedrooms, 1 Bathroom, Common Hallway, All closets, and 2nd stairwell.

[31] The second option was to remediate the basement only. The quote for that option totalled \$1,673.10 (excluding GST). On January 10, 2020, for reasons that are not entirely clear, ACTES provided the Co-op a revised quote totalling \$21,750.00 (excluding GST).

[32] On January 16, 2020, the Co-op informed Mr. Krupinski that it would:

- a. Hire Enviromold to remediate the Unit as contemplated in the Enviromold Quote;
- b. Provide Mr. Krupinski with a \$200 per day living allowance, if he had to leave the Unit during remediation;
- c. Install new vinyl laminate flooring in the Unit;
- d. Install new carpet on the stairs in the Unit.

[33] The Co-op stated it would not, however, replace or clean any of Mr. Krupinski's personal items, beyond what Enviromold proposed to clean.

[34] On or around January 25, 2020, Mr. Krupinski told the Co-op he would like to proceed but that proposal was not acceptable because the Co-op did not agree to take any responsibility for his personal belongings. He stated, "the first thing I need from Enviromold is a list of all items that can be cleaned or salvaged, as well as a list of everything that must be disposed of because of the toxic mould."

[35] The parties continued to communicate in writing with each other over the proposed way forward. In one response, Mr. Krupinski outlined his ongoing concern about who would be responsible for his personal belongings that would have to be destroyed. He expressed his concerns about making an insurance claim for such items and stated that he would agree to the January 16, 2020 proposal but stated that, if his insurer does not pay his claim, he would bring an action against the Co-op to "recover my costs through the Courts."

[36] On May 15, 2020, Mr. Krupinski again rejected an offer from the Co-op to remediate with Enviromold and stated again that the Co-op's proposal was untenable, in part because:

the Board refuses to acknowledge their legal responsibility to repair and maintain our housing units, as safe and habitable, as the law requires, and because the Board refuses to pay for the property damage caused by the toxic mould.

[37] In this letter Mr. Krupinski also states: the Co-op “ignored my request to find an alternate unit within the Co-op that did not have toxic mould for us to move to” and to find an alternative “safe” place to live until the mould could be remediated. Aside from the statement, referred to earlier in this decision, that Mr. Krupinski informed the Co-op in January 2019 that Doctors had given him two options, eliminate the mould or move, there is no other information before me on this issue.

[38] Mr. Krupinski filed his complaint on September 2, 2020.

[39] On September 10, 2021, the Co-op made a “with prejudice” settlement offer to Mr. Krupinski. The September offer remains open to Mr. Krupinski for 30 days following the issuance of this decision, regardless of outcome.

IV DECISION

[40] I find the application can be decided in full under s. 27(1)(c).

A. Section 27(1)(c) – No reasonable prospect of success

[41] The Co-op applies to dismiss Mr. Krupinski’s complaint on the basis that it has no reasonable prospect of success: *Code*, s. 27(1)(c). The onus is on the Co-op to establish the basis for dismissal.

[42] Section 27(1)(c) is part of the Tribunal’s gate-keeping function. It allows the Tribunal to remove complaints which do not warrant the time and expense of a hearing.

[43] The Tribunal does not make findings of fact under s. 27(1)(c). Instead, the Tribunal looks at the evidence to decide whether “there is no reasonable prospect that findings of fact that would support the complaint could be made on a balance of probabilities after a full hearing of the evidence”: *Berezoutskaia v. British Columbia (Human Rights Tribunal)*, 2006 BCCA 95 at para. 22, leave to appeal ref’d [2006] SCCA No. 171. The Tribunal must base its decision on the materials filed by the parties, and not on speculation about what evidence may be filed at the hearing: *University of British Columbia v. Chan*, 2013 BCSC 942 at para. 77.

[44] A dismissal application is not the same as a hearing: *Lord v. Fraser Health Authority*, 2021 BCSC 2176 at para. 20; *SEPQA v. Canadian Human Rights Commission*, [1989] 2 SCR 879 at 899. The threshold to advance a complaint to a hearing is low. In a dismissal application, a complainant does not have to prove their complaint or show the Tribunal all the evidence they may introduce at a hearing. They only have to show that the evidence takes their complaint out of the realm of conjecture: *Workers' Compensation Appeal Tribunal v. Hill*, 2011 BCCA 49 [**Hill**] at para. 27.

[45] Many human rights complaints raise issues of credibility. This is not, by itself, a sufficient reason to deny an application to dismiss: *Evans v. University of British Columbia*, 2008 BCSC 1026 at para. 34. However, if there are foundational or key issues of credibility, the complaint must go to a hearing: *Francescutti v. Vancouver (City)*, 2017 BCCA 242 at para 67.

[46] To prove his case, Mr. Krupinski would have to prove he has a respiratory condition that constitutes a physical disability for the purposes of the *Code*. He must also prove there was mould in his Unit that adversely impacted him by exacerbating his respiratory condition: *Moore v. British Columbia (Education)*, 2012 SCC 61 at para. 33; *Han v. New Chelsea Society and another (No. 2)*, [**Han**] 2022 BCHRT 95 at para. 93.

[47] If Mr. Krupinski proves his case at a hearing, the burden would then shift to the Co-op to justify the adverse impacts. In this case, the Co-op would have to establish a *bona fide* reasonable justification.

1. *Is there no reasonable prospect Mr. Krupinski will prove his case?*

[48] Disability is not a defined term in the *Code*. However, it is well established that when the Tribunal assesses whether a person has a disability for the purposes of the *Code*, it considers whether that person has a physiological state that is involuntary, has some degree of permanence, and that impairs their ability, in some measure, to carry out the normal functions of life: *Boyce v. New Westminster (City)*, 1994 B.C.C.H.R.D. No. 33 at para. 50; *Bond and Bond v. The Owners, Strata Plan NW 2671*, 2024 BCHRT 21 at para. 27.

[49] The Co-op argues there is no reasonable prospect Mr. Krupinski would prove he had or was perceived to have had a physical disability at the time of the alleged discriminatory conduct.

[50] I noted earlier that Mr. Krupinski's allegation that the Co-op's conduct in 2012 produced a mycotoxin in his body that has subsequently caused a deterioration in health is outside of the scope of this complaint. I therefore do not address the Co-op's submission on that issue. I note, however, that an allegation that conduct has caused a disability is not an arguable contravention of the *Code*: *XS v. YP*, 2015 BCHRT 97 [XS] at para. 41.

[51] I now address the Co-op's submissions on whether Mr. Krupinski has no reasonable prospect of proving his allegation that he has a disability in relation to the events of 2018 onwards. For the following reasons, I am satisfied the documents submitted by Mr. Krupinski, coupled with his statements, take his claim that by 2018 he a lung condition that is a physical disability for the purposes of the *Code* out of the realm of conjecture. The Co-op has not persuaded me otherwise.

[52] The Co-op argues the medical documents Mr. Krupinski submitted in response to its application do not take his case out of the realm of conjecture because the documents do not show Mr. Krupinski had a vulnerability to lung infections, as alleged, whether related to mould or otherwise. The Co-op also says the documents do not include a diagnosis or state whether his alleged lung condition has a degree of permanence or impaired Mr. Krupinski's ability to carry out the normal functions of life.

[53] To support his case, Mr. Krupinski submitted two categories of medical documents: "pre-existing medical issues" and "post-mould medical issues." The documents on "pre-existing medical issues" appear to be Mr. Krupinski's medical records from the drop-in-clinic where he was a patient from 2009 to 2013. Those records appear to support Mr. Krupinski's assertion that, by 2012, he had been examined and treated numerous times for chest complaints and congestion. As is often the case with medical notes, many of the comments are illegible and would require expert witness testimony to fully understand. However, I note that, on

December 8, 2012, it appears that a physician examining Mr. Krupinski queried whether he might have “bronchial thickening,” bronchitis, or chronic obstructive pulmonary disease [COPD].

[54] The documents before me also include what appears to be an undated medical note that referred Mr. Krupinski for an assessment to determine if he has a bronchospastic disorder or COPD. Further, though the Co-op submits the documents do not contain a diagnosis – even if a diagnosis were required to prove a disability – on my review, the documents do appear to indicate that by 2019 at latest physicians had diagnosed him with COPD. This is consistent with Mr. Krupinski’s statement that “since the toxic mould began, I have been diagnosed with asthma/COPD, and must use three types of inhalers [...] multiple times a day, in order to be able to breathe.” This appears to be further corroborated by other documents on “post-mould medical issues” Mr. Krupinski submitted in support of his case, including records from his trips to emergency. In any event, Mr. Krupinski’s statements coupled with the medical documentation before me, take his assertion that he has a lung condition that has a degree of permanence out of the realm of speculation. I am therefore not persuaded there is no reasonable prospect Mr. Krupinski would prove he has a lung condition that amounts to a physical disability under the *Code*.

[55] Next, I consider the Co-op’s position that there is no reasonable prospect Mr. Krupinski would prove the second and third elements of his case. The Co-op disputes there are or have been abnormal levels of mould in the Unit. It further argues Mr. Krupinski has not submitted any evidence to support his assertion that his health has deteriorated because of that mould.

[56] The threshold for Mr. Krupinski at this stage is not that he must prove there was mould in his Unit that adversely impacted him by exacerbating his respiratory condition. He only needs to take his case out of the realm of conjecture. In my view, he has done so.

[57] Regarding the dispute between the parties over the presence of abnormal levels of mould in Mr. Krupinski’s Unit, this is a factual dispute that cannot be resolved on the materials before me. I have numerous documents before me with competing views on the matter and in

my view while the findings of the Third Report differ from those in the First and Second Reports, they are sufficient to take this part of the case out of the realm of conjecture. The Third Report identified mould that the evidence suggests required significant remediation – at “terminal clean.” The Co-op has therefore not persuaded me there is no reasonable prospect Mr. Krupinski would prove there were abnormal levels of mould in his Unit.

[58] I am also not persuaded by the Co-op’s position that Mr. Krupinski has no reasonable prospect of proving his lung condition was exacerbated by abnormal levels of mould in the Unit. Mr. Krupinski says his health deteriorated to such an extent that he had to start using multiple inhalers and numerous medications. He also recounts that he went to emergency for acute respiratory distress. His trip to emergency is corroborated by the documentary evidence before me. Mr. Krupinski also pointed the Tribunal to numerous documents that he says show both that there was toxic mould in the Unit and that his lung condition deteriorated as a result of exposure to that mould. He says the presence of moulds in the Aspergillus and Penicillium families produced a mycotoxin, Ochratoxin-A in his Unit. He also states test results show the presence of Ochratoxin-A and other mycotoxins in his body and alleges those mycotoxins have caused him serious health problems. In support of these assertions, he submitted copies of test results, and medical documents on his deteriorating health. He also says he had to stay in various alternate accommodations at times and alleges he “created a temporary sanctuary in [his] bedroom by purchasing an IQAir hepa filter to remove mould spores from the air, and by purchasing an ODOROX hydroxyl generator to kill mould spores with ultra-violet light.”

[59] In my view, Mr. Krupinski’s statements, coupled with documents he has submitted to corroborate at least some of the above alleged adverse impacts. I am satisfied he has taken the second and third elements of his case out of the realm of conjecture. I therefore not persuaded by the Co-op that Mr. Krupinski has no reasonable prospect of proving he experienced at least some adverse impacts in relation to his tenancy in the Unit in connection with his lung condition.

[60] In sum, I am not persuaded Mr. Krupinski has no reasonable prospect of proving the three elements of his case at a hearing.

2. *Is the Co-op reasonably certain to prove it met its part of the duty to accommodate Mr. Krupinski?*

[61] The Co-op may still succeed with its application under s. 27(1)(c) by demonstrating it is responsibly certain to prove it had a *bona fide reasonable justification* for its actions. To do so, it would have to prove the following:

1. The Co-op adopted a standard for a purpose rationally connected to the function being performed;
2. The Co-op adopted the particular standard in an honest and good faith belief that it was necessary for the fulfillment of the purpose or goal;
3. The standard adopted is reasonably necessary to accomplish the purpose. To show that the standard is reasonably necessary, it must be demonstrated that it is impossible to accommodate individuals sharing the characteristics of the claimant without incurring undue hardship.

British Columbia (Superintendent of Motor Vehicles) v. British Columbia (Council of Human Rights), 1999 CanLII 646 (SCC), [1999] 3 S.C.R. 868 [**Grismer**] at para. 20.

[62] The Co-op's submissions fall under the third element of the above-outlined test from *Grismer*. This is the concept of "accommodation" in human rights law, which requires landlords, or in this case the Co-op, 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.

[63] A complainant has an obligation to participate in the accommodation process, and to accept solutions that are reasonable, without insisting on perfection: *Central Okanagan School District No. 23 v. Renaud*, [1992] 2 SCR 970 [**Renaud**] at 994-995. If a complainant rejects a reasonable proposal, the respondent's duty to accommodate is discharged: *Renaud*. The standard for accommodation is reasonableness, not perfection: *Klewchuk v. City of Burnaby (No. 6)*, 2022 BCHRT 29 at para. 425.

[64] For the following reasons, I am satisfied the Co-op is reasonably certain to prove it discharged its duty to accommodate Mr. Krupinski.

[65] I start by noting that the duty to accommodate is a consultative and cooperative process, in which all parties have duties and obligations. In my view, the Co-op is reasonably certain to prove it engaged in a consultative and cooperative process by taking Mr. Krupinski's concerns about mould seriously and diligently pursuing a resolution.

[66] The information before me shows, and there appears to be no dispute, that after Mr. Krupinski's spouse reported a smell of mildew in the Unit, the Co-op hired EcoHazMat to investigate the matter. The Co-op received the First Report and is reasonably certain to prove its initial response to the complaint about mould was both prompt and appropriate. The information also shows that when Mr. Krupinski disputed the results of the First Report, the Co-op offered to get a second opinion, demonstrating the Co-op's willingness to entertain other viewpoints and options.

[67] Around this time, Mr. Krupinski shared his test results from the Great Plains Laboratory Inc. and the Co-op appears to have taken his assertions about toxic mould seriously. It is reasonably certain to prove that it again acted promptly and reasonably by hiring a second company, Antiquity, to test for mould in the Unit, and by informing Mr. Krupinski that Antiquity was willing to discuss his requirements. There does not appear to be any dispute that the Co-op also considered and agreed to Mr. Krupinski's request that Antiquity use MBL, further evidence of its willingness to cooperate with Mr. Krupinski over proposed ways forward.

[68] Next, there also appears to be no dispute that when Mr. Krupinski raised concerns about the Second Report, the Co-op agreed to hire a third company to perform a third set of tests, using testing methods and equipment that Mr. Krupinski specifically requested. Indeed, Mr. Krupinski appears to have been very involved in organizing the testing. After receiving the Third Report, which showed mould in the Unit's basement and kitchen, the Co-op then sought Mr. Moss' opinion on how to proceed. Based on his opinion, the Co-op obtained a remediation quote from Enviromold. The Co-op also obtained a second opinion from another remediation company.

[69] The undisputed evidence also shows the Co-op offered to hire Enviromold and set out its proposed accommodation solution on January 16, 2020. Mr. Krupinski rejected this proposal and the Co-op engaged in further negotiations with Mr. Krupinski over what was an acceptable solution. Based on the above, I find the Co-op is reasonably certain to prove that it consulted with Mr. Krupinski throughout the accommodation process and took his numerous requests regarding testing for mould in the Unit into account.

[70] On May 6, 2020, the Co-op again made an offer to remediate the Unit. The proposed solution was that the Co-op would hire Enviromold to remediate the Unit, provide Mr. Krupinski a living allowance of \$250.00 for any days he would have to leave the Unit during remediation, and replace the flooring in the Unit. There does not appear to be any dispute that Mr. Krupinski rejected this proposed solution because the Co-op would not agree to accept responsibility for the replacement or cleaning of his personal items, “beyond what was included in the Enviromold proposal.”

[71] Whether the Co-op is reasonably certain to prove it discharged its duty to accommodate Mr. Krupinski thus turns on whether its final offer of May 15, 2020 was reasonable and that its duty to Mr. Krupinski ended when he rejected that offer. In my view, the Co-op is reasonably certain to prove the May 6, 2020 solution was a reasonable accommodation to the health-related barrier Mr. Krupinski faced in his tenancy.

[72] The Co-op took numerous steps to address Mr. Krupinski’s ongoing concerns about mould and proposed a solution to Mr. Krupinski on May 6, 2020, namely that it would hire Enviromold to remediate the Unit. Nevertheless, Mr. Krupinski remained unsatisfied and continued to negotiate for an accommodation option that would compensate him for the costs of replacing his personal items in the event that his insurance claim did not do so. In taking this stance, Mr. Krupinski appears to have misunderstood the scope of the Co-op’s obligations under *Code*. For example, in response to the Co-op’s May 6, 2020 offer to remediate the Unit, Mr. Krupinski states:

The Alexander Laidlaw Housing Co-operative Board of Directors offer, and their reasons for the offer are untenable. They are untenable because the Board refuses to acknowledge their legal responsibility to repair and maintain our housing units, as safe and habitable, as the law requires, and because the Board refuses to pay for the property damage caused by the toxic mould.

My position is that I was not responsible for the broken water main; that I was not responsible for the water leaking into my basement; that I was not responsible for the repair of the water damaged building materials; that I was not responsible for the toxic mould that accumulated in my home; that I was not responsible for the mould damage to my health; and that I was not responsible for the mould damage to my property.

[73] Mr. Krupinski then lists numerous allegations that he says “discovery” will prove to support his position that the Co-op was responsible for the mould in the Unit.

[74] I find there is no reasonable prospect Mr. Krupinski would prove that the Co-op’s proposed accommodation was somehow deficient or unreasonable because of his dispute over who bore the responsibility for his personal items, and other alleged “damages.” Under the *Code*, the Co-op’s duty to accommodate Mr. Krupinski does not require it to compensate him for all the alleged harms mould in the Unit caused. Mr. Krupinski’s insistence on being compensated appears to have prevented the Co-op from moving forward in the accommodation process, discharging it of its obligation. Mr. Krupinski’s lack of satisfaction with reasonable offers to accommodate him does not equate with discrimination. As noted earlier, the standard of accommodation is reasonableness, not perfection.

[75] I am therefore satisfied the Co-op is reasonably certain to prove it discharged its duty to Mr. Krupinski when he rejected their May 6, 2020 proposal. Mr. Krupinski’s decision to reject the Co-op’s solution appears to have been based on a misconception that the Co-op’s duty to accommodate required the Co-op to compensate Mr. Krupinski for any of the alleged impacts he says he experienced because of the mould in the Unit.

[76] There may be other avenues for Mr. Krupinski to seek compensation for the alleged damages he says he has incurred. However, having found that the Co-op is reasonably certain

to prove it met its duty to accommodate Mr. Krupinski, that remedy is not available to him. under the *Code*.

[77] Finally, I note that, to the extent that Mr. Krupinski argues the Co-op failed in its duty to accommodate him by not moving him from the Unit, the only evidence before me that he requested this as an accommodation option is from his January 25, 2019, letter to the Co-op. In that letter, he rejects their January 16, 2020, offer to remediate, and states:

I want this mould problem fixed. I want support to offset the health problems the mould is causing. I know I have a mould problem in the unit; I know I have a mould problem in my body; what I need is professional help to find out where the mould is coming from and professional help to get rid of it. **If that cannot be done** then I would ask to be moved into a comparable unit somewhere else in the co-op where the same mould issue doesn't exist. Doctors have given me two options; either eliminate the mould, or move away from it; otherwise my health will continue to deteriorate. [emphasis added]

[78] By this point the Co-op has engaged several professionals to assist in assessing the Unit for mould and setting out remediation options. Given the undisputed fact that the parties were already engaged in extensive discussions about remediation, and then continued to pursue that option for some time afterwards, I am not persuaded that by continuing to pursue options to eliminate the mould, the Co-op is not reasonably certain to prove its duty to Mr. Krupinski was satisfied when it offered to remediate the Unit on May 6, 2020.

V CONCLUSION

[79] I allow the Co-op's application under ss. 27(1)(c) and dismiss Mr. Krupinski's complaint.

[80] The Co-op's settlement offer remains open to Mr. Krupinski for 30 days following the issuance of this decision.

Kylie Buday
Tribunal Member