

VICTORIAN CIVIL AND ADMINISTRATIVE TRIBUNAL

RESIDENTIAL TENANCIES DIVISION

RESIDENTIAL TENANCIES LIST

VCAT REFERENCE NO. R2022/72

CATCHWORDS

Application for compensation by renter – alleged breach of duties by the residential rental provider regarding the presence of asbestos and of mould at the rented premises – sections 68, 452 and 472 and 210 of the *Residential Tenancies Act 1997* (Vic)

APPLICANT	Michael May
RESPONDENT	Homes Victoria
WHERE HELD	Videoconference
BEFORE	Member D Lucas
HEARING TYPE	Hearing
DATE OF HEARING	25 August 2023 and 9 October 2023
DATE OF ORDER	12 June 2024
CITATION	May v Homes Victoria (Residential Tenancies) [2024] VCAT 548

ORDER

For the written reasons provided, VCAT orders and directs:

1. The application is dismissed.

D Lucas
Member

APPEARANCES:

For Applicant Mr S Robertson, solicitor

For Respondents Ms S Varney of Counsel



REASONS

BACKGROUND

- 1 This is a claim for compensation made by the renter due to losses said to be occasioned by breaches of duty by the rental provider to maintain the premises in good repair. It relates to the presence of mould and of asbestos at the rented premises.
- 2 The parties entered into a residential rental agreement in May 2017 and this ended in September 2022.
- 3 The historical presence of asbestos and of mould in the rented premises is not disputed. However, what is in dispute is whether the Respondent was in breach of the residential rental agreement in how it addressed the concerns raised concerning the condition of the rented premises at different times. Accordingly, the questions for the Tribunal are:
 - a. whether the Respondent within a reasonable time investigated and took appropriate action following notification from the Renter of a repair issue; and
 - b. Whether the presence of exposed asbestos, or mould, was due to any breach of duty on the part of the Respondent
- 4 A tabulated chronology provide by the Respondent helpfully sets off the following sequence:

	ASBESTOS
30.09.19	Renter notifies Respondent of suspected asbestos
30.09.19	Respondent's contractor attempts to get access for assessment, fails, leaves card
07.10.19	Start of renter's rent reimbursement claim period
28.10.19	Respondent requests contractor to re-attend
18.11.19	Contractor obtains access, does assessment
21.11.19	Respondent authorises removal and repair works to be done
12.01.20	Renter is incarcerated. Respondent reduces the rent to \$15 from this date once aware
17.03.20 01.04.20	Respondent changes the locks after reported break in at premises whilst renter incarcerated

9.05.20	Renter leaves custody Respondent ends the rent rebate
July 2020	Respondent sought access to the premises and access was not given
23.05.21	End of renter's rent reimbursement claim period 2
03.06.21	Renter's lawyer writes regarding status of asbestos removal
09.06.21	Renter consents to lock change so that premises can be access for works in his absence
30.06.21	Works are complete
01.07.21	Respondent informs renter works are done and he can return
	MOULD
20.08.21	Renter notifies Respondent of mould Renter gives permission for access via key in key safe
20.08.21	Start of renter's rent reimbursement claim period
22.08.21	Respondent commences rent rebate of 100%
25.08.21	Contractor (Moretto Group) inspects premises Reports finding mild mould in bedrooms and hallway, and extreme mould in lounge room on lounge contents Finds urine, faeces and mould growth in carpeted areas Recommends stage 1 works of using anti- microbial fog, disposing of unsalvageable items (with renter) and removing carpets
13.09.21	Contractor attends and bags and places all items (contents and furniture) in kitchen (to give access to remaining rooms) Renter does not attend after agreeing to do so
17.09.21	Planned end date for stage 1 works
01.10.21	Stage 2 works of new blinds and carpets were undertaken and completed on this date
02.10.21	Respondent ends rent rebate



CONSIDERATION

- 5 The Tribunal accepts that a duty to repair is a strict and absolute obligation which requires the provider to identify and rectify any defects of which he or she is aware or ought to be aware¹.
- 6 However, in the normal course of events a breach on the part of the provider is not manifested solely by the relevant defect coming into existence. Rather, a breach of the duty to maintain premises in good repair may be established by reference to the nature and quality of a response, if any, by the provider to remedy the defect. The Tribunal accepts that the provider will not generally be in breach of this duty if it investigates and takes appropriate action within a reasonable time of the notification of the defect².
- 7 It is furthermore clear that the provider will not be in breach if the renter precludes the repair being done by failing to give access.³
- 8 The Tribunal has carefully accepted the Renter's claims, articulated in written submissions and in evidence provided over the course of two hearings. However, ultimately the Tribunal is unable to see how it is made out that the respondent has breached any duty to maintain the premises in good repair, by reference to its documented responses to repair matters raised, which the Tribunal considers were provided as proactively as possible in view of issues concerning access to the premises at different times, including during a period when the Applicant had been incarcerated.
- 9 The Tribunal finds respondent has taken all reasonable steps within its power to remedy. The Tribunal further finds that to the extent rental rebates or reductions were applied at relevant periods, these do not constitute admission of liability by the respondent for any further compensation. These are simply part of a policy developed by the government department responsible for social housing in Victoria, for circumstances when amenity in public rented premises is affected. The Tribunal considered that to the extent any compensation may have been due, it has already been effectively recompensed by these rental adjustments.

CONCLUSIONS

- 10 In any event, establishing a right to compensation, regardless of a loss that may be suffered, depends upon establishing a breach by the party against whom compensation is sought. It is trite to say that in the absence of a breach, no compensation can be considered or quantified.

¹ *Shields v Deliopoulos* [2016] VSC 500, [30] (Daly AsJ).

² *Eskander v Catanchin* (Residential Tenancies), [2014] VCAT 381, at [19].

³ *Linton-Smith v Director of Housing* (Residential Tenancies) [2020] VCAT 1355, [493].



- 11 This is such a case. The actions of the Respondent concerning both the asbestos concern and the subsequent mould problem were as practical as could be expected in all the circumstances, and having taken all reasonable steps to remediate, consistently with their repair duty under section 68 of the Act, such that no breach is established by the renter that would give rise to any consideration of compensation.
- 12 It follows that the renter's application must be dismissed.

D Lucas
Member

