



MY APARTMENT IS UNHEALTHY

You are the tenant of an apartment that has become unhealthy. Can you stop paying your rent to your landlord for that reason?

THE FACTS

A tenant lives in an apartment with his two children. Sometime in December 2003, he notices mildew in the only bedroom, mainly on the walls, but also on the floor, ceiling and curtains. He immediately informs the landlord of the situation. Despite several promises made by the landlord, no repairs are made. Time passes and the situation gets worse. The tenant and his children have to leave their apartment as soon as possible, but in the meantime they have to sleep in the kitchen and living room. Because of the situation, the tenant doesn't pay the rent for March, May and June 2004. But he did pay the rent for April after the landlord promised to do the necessary repairs, a promise he failed to keep. The landlord then institutes proceedings with the Régie du logement and asks for cancellation of the lease and payment of the outstanding rent. Because the tenant never filed an application concerning the unhealthy situation before the hearing, the Régie refused to hear any evidence concerning the unhealthiness of the apartment and granted the landlord's application. The tenant then appealed that decision before the Court of Québec.

THE ISSUE

Was the tenant entitled to withhold his rent?

THE DECISION

The appeal was allowed.

THE GROUNDS

The landlord has an obligation to provide an item that could be used for the purpose

for which it was rented. The apartment must be in a proper state of habitation and the landlord must maintain it in that condition for the entire term of the lease. According to the judge, the Régie du logement should have allowed the tenant to submit evidence proving the unhealthy state of his apartment. Rather than force the landlord to make the necessary repairs, the tenant decided to wait in the hope the landlord would keep his numerous promises. According to the judge, the Régie's refusal to hear that evidence did not respect the tenant's right to a full and complete defense. Therefore, in his opinion, the arrears in rent were not owing because the apartment was unfit for human habitation.

References

Mchanga v. Huang, Court of Québec – Civil Division (C.Q.) Montréal 500-80-003580-041, January 18, 2005, Judge: Michel A. Pinsonnault (J.E. 2005-390; available on the Web at the following address: www.jugements.qc.ca)

Civil of Québec, (S.Q. 1991, chapter 64), sections 1854, 1910 and 1917.

The judgement discussed in this article was rendered based on the evidence submitted to the court.

Each situation is unique. If in doubt, we suggest you consult a legal aid lawyer.

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