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Warranty will cover some mould damage

Home's contents, improvements are not covered

Ensure adequate ventilation to offset moisture

Is mould or mould damage covered under the Tarion new home warranty program?

That question arises out of my May 1 column about Karen Somerville. She and her husband purchased a new home in Ottawa and are suing the builder, alleging that the house has various defects, including water seepage and mould. (See <http://www.aaron.ca/columns/2004-05-01a.htm> for an archived copy.)

After the column appeared, I received an e-mail from Kevin Macintosh, the director of government and industry relations at Tarion (previously the Ontario New Home Warranty Program). He told me that the column incorrectly left the impression that mould is not a warranty issue, and suggested that I clarify the subject.

I had a lengthy meeting with Macintosh and Tarion's general counsel, Mary Mullens, to discuss the program's position on mould. Here is what I learned.

Tarion protects consumers for damages arising out of defects in workmanship and materials or breaches of the Ontario Building Code in the construction of a new home, where the builder fails to fulfill its statutory warranty. Under some circumstances, mould is covered.

If, for example, a homeowner discovers a defect in workmanship or materials that results in mould in the house (such as use of mouldy construction materials), Tarion would cover the damage to the house. Any defect of this nature would be covered under the one-year warranty.

A breach in the building envelope resulting from poor workmanship or materials, which results in water leakage and then mould, would be covered under the two-year water-penetration warranty.

A major structural defect that relates to the failure of a load-bearing portion of the home, such as a substantial crack in the basement foundation, is covered under Tarion's seven-year warranty, as is any mould damage to the house resulting from that defect.

However, it is important to remember that Tarion does not cover any damage caused by mould to the home's contents, even if the underlying cause is warranted by the program. For mould damage to improvements in the home (such as a finished basement) or the contents of the house, a homeowner has to look to his or her home insurance policy.

Mould damage resulting from activities of the homeowner, such as a marijuana grow operation, hordes of more conventional house plants, or a humidifier cranked up to the highest setting, would not be covered.

Owners of new homes should be aware that building materials such as wood and concrete give off moisture in the early years.

Showers and baths, washing machines, aquariums, humidifiers and cooking also produce considerable moisture.

For this reason, it is important that homeowners ensure their new homes are adequately ventilated year-round.

An excellent guide to controlling moisture in a new home and avoiding moisture damage can be found on the Tarion Web site at <http://www.tarion.com>. Click on the New Home Buyers tab on the home page, and then the link to Maintaining Your Home on the left side of the second page. Homeowners without Internet access can contact Tarion directly for paper copies of the guides by phoning 1-800-668-0124.

Whatever the cause of the mould or any other damage to a new home, it is important that formal notice of the claim be filed with Tarion before the relevant time limit expires.

Patrick and Debra Devlin found this out the hard way. They moved into their new home in late 1997, and experienced significant water penetration and mould. One expert testified he had never seen so much mould in the hundreds of homes he had examined.

When the case came before the Licence Appeal Tribunal in 2002, the panel came to the conclusion that the Aspenite exterior wall sheathing used in construction was supporting mould growth at the time it was installed, or was wet at the time of application. In either event, the tribunal found that the home was not constructed in a workmanlike manner or was not free from defects in material.

Unfortunately, the Devlins failed to make their warranty claim to ONHWP within the one-year period after moving in. Their claim was also filed after the two-year time limit for complaints about water penetration.

As a result, they were not eligible for compensation.

The lesson from their experience is clear: if you have what might be a warranty claim, file it in time. Mark your calendars for 11 months after you move into a new home, and take stock of the house at that point to decide whether a claim should be made.