

CLAIM NO. SCCH 216799  
Residential Tenancies File No. H-04-18,864  
Date: 20040405

**DECISION AND ORDER**

**IN THE SMALL CLAIMS COURT OF NOVA SCOTIA**  
**Cite as: Realco Management Ltd. v. Llewellyn, 2004 NSSM 26**

BETWEEN:

Name: REALCO MANAGEMENT LTD.

Address: c/o William L. Ryan, Q.C.

- APPELLANT

Name: CHRISTOPHER LLEWELLYN

Address: c/o Peter D. Stanhope

- RESPONDENT

**Revised Decision:** The text of the original decision has been revised to remove personal identifying information of the parties on August 8, 2007.

DATE OF HEARING: March 29, 2004

**DECISION**

Appearances: William Ryan Q.C. for the landlord, Realco Management Ltd  
Peter Stanhope for the tenant, Christopher Llewellyn

[1] Realco appeals a decision of the Director of Residential Tenancies dismissing its claim for damages allegedly caused by the negligence of the tenant, Christopher Llewellyn. On the afternoon of Saturday, January 24, 2004 a heating pipe inside an exterior corner of Mr. Llewellyn's apartment began to leak water. The water had to be cleaned up and some damage was

done to ceilings, but the major loss was an alarm panel below into which water had flowed. The heating pipe had frozen, burst, and then when the ice melted, leaked. The issue is whether the pipe froze through Mr. Llewellyn's negligence. Statutory condition 4 in the *Residential Tenancies Act* provides:

4. Obligation of the Tenant - The tenant is responsible for the ordinary cleanliness of the interior of the premises and for the repair of damage caused by wilful or negligent act of the tenant or of any person whom the tenant permits on the premises.

- [2] Realco argues that Mr. Llewellyn opened a door or window and that this, in mid-winter, constitutes negligence. I find little evidence that Mr. Llewellyn "left" the window or the door open or even opened them. There is testimony on behalf of the landlord that he acknowledged opening a door or window, but I am not persuaded by it. He stayed in the apartment Friday night and was there through Saturday. He testified, and I found him credible, that he had not opened the window or the door. I wouldn't have found him negligent even if he had for a short-time opened the window. A tenant may have some fresh air.
- [3] What caused the pipe to freeze? I disagree with the proposition that the only way the pipe could have frozen was through having left the door or the window open. The window and the door are at an exposed corner of the building. Perhaps the water in the pipe, for whatever reason, did not circulate for a time. Perhaps there were peculiar patterns of wind affecting that corner on that day. Perhaps, and there is evidence in support of this proposition, the weather stripping around the door had deteriorated somewhat and the drapes over the door and window caused the cooler air to fall over the pipe. Perhaps there were a combination of circumstances. In any event, I am not satisfied the pipe froze through Mr. Llewellyn's negligence.
- [4] Mr. Ryan argued that Mr. Llewellyn should have reacted more quickly to the leak. The pipe did not leak long. I accept Mr. Llewellyn's evidence that he did not know or understand that it was the pipe in his apartment which was leaking and was further confused when the fire alarm went off. I dismiss the argument.
- [5] I dismiss Mr. Llewellyn's claim for damage to his couch. A landlord is not an insurer. Things, such as pipes freezing, happen. There is no evidence to support an argument that the landlord was negligent. I also doubt, as

suggested by Mr. Ryan, whether a party may make a counter-claim on appeal that had not been made before the director.

**ORDER**

I confirm the decision of the Director of Residential Tenancies and dismiss the appeal.

Dated at Halifax, Nova Scotia  
this 5<sup>th</sup> day of April, 2004.

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**J. WALTER THOMPSON, Q.C.**  
**ADJUDICATOR**

Original	Court File
Copy	Claimants(s)
Copy	Defendant(s)