

IN THE SMALL CLAIMS COURT OF NOVA SCOTIA

CITATION: Church v. Colchester County (Municipality), 2018 NSSM 94

Form 7(c)

Claim No: SCT474908

Order

in the Small Claims Court of Nova Scotia

BETWEEN:

Name Bonnie L. Church Claimant
Address [address removed]

Phone [removed]

Name Municipality of the County of Colchester
Tatamagouche Water Utility Defendants

Address 1 Church Street, Truro, NS
B2N 3Z5

Phone 902 897-3150

Name Economical Mutual Insurance Company
238A Brownlow Avenue, Park Place II
Suite 310, Brownlow Avenue, Dartmouth, NS
B3B 2B4

Phone 902 835-6214



On September 17th, 2018, this matter came on for hearing, and the following order is made:

This matter arises as the result of water damage to the Claimant's building on Main Street in Tatamagouche. On or about April 1, 2017, a water pipe in the building froze, and forced open a valve that allowed water to flood the building. The county had been contracted to turn off the water to the building in the fall of 2016, but apparently the actions of its workers were not effective. A claim was lodged with the building's insurer, which cited a term in the policy denying coverage to "property at locations, which to the knowledge of the insured, are vacant, unoccupied or shut down for more than 30 days". The Claimant commenced this action against the county and the insurer. The insurer defendant relies on the exclusion noted above, while the county alleges that it is protected by the provisions of the Municipal Government Act.

As I indicated at the hearing, I am convinced that the MGA provisions provide a complete indemnity for the county, and I dismiss the claim as against the municipality. As for the insurer, I note that the first policy was obtained by the Claimant after the death of her husband, who had operated a barber shop in the building. It was effective from April of 2015 to April of 2016. The building was being used for storage and was the base for yard sales. In December of 2015 the Claimant rented half of the building to a barber,

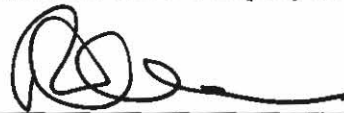
who remained as a tenant until June or July of 2016. Meanwhile, the policy had been renewed, giving coverage to the Claimant until after the date of the damage in 2017.

I note that when first insured, the building was essentially being used for storage. The first policy describes it as being “occupied by insured as” a “storage building”. The code which appears on the policy is “wholesale trade & private storage”. The second policy, in force at the time of the loss, is somewhat different, in that the phrase which follows the term “occupied by insured as” is “building owner”. The code which follows this is the same as the first policy. Therefore, apart from the seven or eight months when a tenant occupied half of the building, it was used essentially for storage by the Claimant. Her evidence was that in the months before the loss, she checked the building two or three times per week. Indeed, it was during one of these checks that she noticed the water damage.

It seems obvious to me that when first insured the building had no full time resident such as is found in a residential tenancy. To the extent that it was “occupied”, its occupation was for use as a place for storage of personal property. Apart from the rental to a tenant barber, it was never occupied in the sense that someone was habitually there on a day by day basis. When the damage occurred, it was being used for storage, as it was when first insured in 2015. Because it was being used for its original purpose, it clearly continued to be at all times occupied and not vacant. As for being “shut down for more than 30 days”, that makes no sense, because the state of being “shut down” implies that there was a sense in which the building was not “shut down” previously, and that is not the case. The Claimant clearly occupied the building since she owned it, controlled access to it and checked it two or three times per week, as any prudent owner would. I find that the exclusion cited by the insurer is not applicable and that it is liable for the loss.

Insofar as damages are concerned, the Claimant presented two quotes for repairs, the lowest of which is \$14,204.89. The policy appears to have a deductible of \$1,000.00 and I therefore allow the claim against Economical Mutual Insurance Company in the amount of \$13,204.89, plus costs of \$199.35.

Dated this 6th day of October, 2018.



Peter Lederman, Q.C. , Adjudicator

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