



NIAGARA
REGIONAL
HOUSING
Regional
NIAGARA

NRH Notice

NUMBER: 06-03
DATE: April 25, 2006

<input type="checkbox"/>	Mandatory
<input checked="" type="checkbox"/>	For Information

Applicable to:

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| <input checked="" type="checkbox"/> | Municipal & Private Non Profit |
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Subject: Housing Provider Insurance Liability

Background:

In a recent court decision, an Ontario jury awarded \$13 million in damages for injuries sustained to a then two-year-old boy who fell from an apartment window. In the recent case, the tenant alleged that the torn screen was reported to the landlord and that the landlord did not repair it within a reasonable time, leading to the toddler crawling out of the apartment window and falling. The jury found that the landlord did not repair the screen in a timely manner (as required under the *Occupier's Liability Act*) and so did not comply with the duty of care required, and that the landlord's negligence or failure to attend to the maintenance report promptly caused the injury.

The Social Housing Services Corporation (SHSC) has prepared the following answers to questions regarding insurance liability and some tips on how to manage your risk:

What if this happened in my building?

It has been reported in this case that the landlord's insurer will pay the full award and legal costs. If that is true, the landlord must have carried sufficient limits of liability to pay \$13 million.

Generally speaking, housing providers purchased liability limits of \$2 million to \$5 million. A limit means just that – it is the maximum limit payable for any one occurrence or incident. If a court award exceeds your insurance limit, you are financially responsible to pay the balance.

Does that mean I need more coverage, with higher limits?

Very high awards are extremely rare. But a judgment for millions of dollars more than your liability limit would be devastating. There's no "right" amount of coverage that protects you from all risk. Your corporation, with advice from your broker, needs to decide how much risk is acceptable and how much you are willing to pay for additional coverage.

Is SHSC reviewing this case?

Yes. SHSC is reviewing this recent claim and court decision. SHSC monitors and researches claims and trends such as this one. This isn't the first large claim for personal injury against a landlord, but it is thought to be one of the largest ever awarded by a Canadian jury.

How can I protect against a claim like this?

Fortunately, there are a number of ways you can help to mitigate liability to your organization. As with this case, almost every legal action or claim for injury alleges a breach of the *Occupier's Liability Act*. Under the *Act*, a claimant must prove a) that there is a duty of care, b) that there was a breach of that duty, and c) that the breach of duty resulted in injury or damage.

An "Occupier" has a specific "duty of care" to ensure safety and reasonableness maintenance of the premises (units, common areas, grounds) among other obligations. Housing providers are deemed to be occupiers under this legislation.

Suggestions to minimize incidents and claims

SHSC's analysis has found that a number of instances involving tenant/member complaints of torn screens, malfunctioning windows, doors, and broken locks have resulted in provider claims and suits alleging thefts, assaults, and even home invasions in units. Here are some ways you can improve safety for your tenants/members while reducing the risk of incidents and claims in your buildings.

1. Ensure there is an effective reporting, documentation, and tracking system or procedure in place for tenants/members to report maintenance issues.
2. Ensure maintenance issues such as broken locks, window/door opening and screen problems are promptly repaired.
3. If not already in use, investigate options for various window/screen devices that restrict or limit window and screen openings.
4. Follow up on maintenance procedures involving safety issues.
5. Establish a policy and timeframe in which reports involving safety issues must be addressed.
6. Encourage tenants/members to promptly report maintenance issues in writing to ensure building staff receive these requests and can respond to each in a reasonable time.
7. Emphasize to staff the importance of managing requests involving safety issues. Share with them information regarding injuries that arise from maintenance issues.
8. Include information on child safety relating to window/screens and balconies for all tenants/members (those with children and those without as they may have children visiting) at tenant/member meetings.
9. Document all flyers, bulletins, or information sessions you have with tenants/members regarding safety issues. Documented evidence such as distribution dates, circulation lists, and copies of notices or hand-outs help confirm your organization's due diligence, and confirm that tenants/members have been advised of a particular issue.

10. Regularly inspect unit windows and screens. If your staff installs windows/screen restriction devices, ensure they have not been broken or removed by the tenant/member.
11. Familiarize yourself with the *Occupier's Liability Act*, and the various obligations imposed on housing providers regarding maintenance, repairs, hiring contractors and building/premises safety.
12. Share information about claims and legal actions relating to landlords with your staff, management, and board, so they are aware of issues that may affect your organization.
13. Review and discuss your limits of insurance with your broker, risk manager, or insurance advisor to ensure you maintain reasonable levels of coverage for your organization.
14. Periodically review and monitor your own organization's claims history, which will assist you in developing mitigation strategies for future claims.

For those providers who participate in the SHSC Insurance Program, watch for their next issue of *Risky Business* for more information on this particular case and check out their website www.shscorp.ca for tips and strategies on how to mitigate your own liability against a similar situation.

Service Manager's Role

NRH will monitor this issue through SHSC's research and analysis of this case.

Housing Provider's Role

Housing Provider should review their maintenance reporting, documentation, timeframes and tracking system to ensure due diligence as it relates to the safety of tenants/members, and reduce the risk of incidents and claims in your buildings.

If you have any questions regarding your organizations' liability limits, please contact SHSC's Risk Manager, Susan Stokes at (416) 594-9325, ext. 215.

Lora Beckwith, General Manager