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When a rented water tank leaks, who pays?

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Suppose your hot water tank springs a leak and wrecks the floor, drywall and paint in your basement.

You can file an insurance claim, but you risk paying higher premiums at renewal time.

If you rent your tank, you can ask the rental company to cover the repairs. Don't your monthly fees of \$15 to \$25 protect you from property damage?

Direct Energy and Reliance Home Comfort are the two biggest rental firms in Ontario with 2.5 million customers. They bought the rentals from Enbridge and Union Gas when the utilities were deregulated in 2000.

The two firms don't maintain or inspect water heaters as they get older. Yet they tend to brush you off when you ask them to shoulder the cost of basement repairs.

Instead, they routinely tell you to file a home insurance claim. They'll cover the deductible portion that the insurance company won't pay.

Last March, I wrote about Direct Energy customers who were denied help when their tanks leaked. And last week, Reliance lost a court case involving its responsibility for property damage in a tank failure.

Two homeowners, Geoffrey and Sandra Collett and Shirley Szilvasy, won in small claims court when they challenged the firm's refusal to help. Reliance appealed to the Ontario divisional court.

The Colletts' tank was 19 years old and Szilvasy's tank was 10 years old. That's an important point, says lawyer Mark Mason of McCague Borlack LLP in Toronto, who represented the homeowners.

The higher court upheld the decisions in the two small claims court cases. Reliance was responsible for damages caused by its tanks, regardless of age.

The company had argued that the implied warranties were no longer in place 10 and 19 years after the tanks' installation.

"The court said that Reliance promised to provide the homeowners with a working hot water tank at all times. If the tank failed, Reliance undertook to replace it. If it required service, Reliance provided it," Mason said.

"There was no meaningful way to differentiate amongst Reliance's contractual obligations on the basis of the age of the tank."

Both parties agreed that there was no written contract that governs the issue of who bears the risk for consequential property damage.

In holding Reliance responsible, the trial judge said, "The rental fee does not vary from day one until the heater breaks down.

"The risk of flooding increases as time goes by, but the charges to the consumer remain constant."

Spokeswoman Jennifer Garland said that any appliance filled with water and used continuously always has the risk of a discharge.

No one can predict when any tank — whether owned or rented — will leak. Since the chance of damage is extremely small, most rental providers will replace tanks only after they leak and not after an arbitrary number of years.

Reliance warns customers of the potential for leaks and tries to minimize losses by reminding them to keep a clear path for escaping water to flow into a floor drain, she said.

"We would encourage insurers to provide similar education to customers," she said.

Insurers downplay the benefits of tank rentals in an effort to lower their costs (without any corresponding rate decreases for customers), Garland said.

"Given this new development, Reliance is considering its options, including the possibility of an appeal."

If you're asking a tank rental firm to cover losses from leakage, you can cite this case. Check McCague Borlack's website for more information.

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If your rented hot water tank leaks, who pays to clean up?

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