

## **RENTERS INSURANCE HELPS A RESIDENTIAL TENANT WHEN HE ACCIDENTALLY BURNS HIS APARTMENT BUT NOT WHEN HE ACCIDENTALLY FLOODS HIS APARTMENT. FULL COVERAGE SHOULD BE MANDATED BY STATUTE.**

### The Problem

Suppose you are a generally responsible residential tenant. You've purchased renter's insurance for two reasons. You want coverage in case something bad happens to your possessions (e.g. theft, a tornado destroys your possessions, etc). Also you want liability coverage in case you accidentally damage someone or something (e.g. you ruin a guest's fancy dress by spilling wine during a party in your apartment).

Now suppose that even though you are generally responsible you are human and do something careless. You accidently let an ember from a barbeque on your balcony get loose and the resulting fire destroys much of the apartment you are renting. Or you accidentally and stupidly allow your pipes to freeze by lowering the thermostat setting too far<sup>1</sup> or forgetting to close a window in February and allowing a cold draft to freeze the pipes, and the resulting burst pipes destroy much of the apartment you are renting. Or you do something else silly and damage the apartment (e.g. you forget to take off your soccer cleats and damage the fancy parquet flooring).

Once the damage is done, you meet with your landlady. She wants payment for the damage. Perhaps she is uninsured and wants full payment. Perhaps her property insurance has a deductible – usually \$5000 but sometimes a lot higher<sup>2</sup> and always a big amount for the typical low- or moderate-income tenant – and wants reimbursement for that. Eventually, if she is insured her insurer will very likely

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<sup>1</sup> By way of illustration, one such person doing this exact stupid thing was me. Many years ago, while living in Champaign, IL, I reduced the heat to my apartment and went on a two-week vacation. While I was gone, my pipes froze and burst and did thousands of dollars of damage to my apartment and also to my neighbors' apartments. At the time I was a post-doctoral fellow in the University of Illinois botany department, meaning I had a PhD in biology and was supposed to be intelligent. I later learned that the director of the U of I Tenant Union made me into a poster child when she trained students how to be good tenants. Eventually I was replaced as the poster child by a visiting professor of architecture who froze his pipes (given his stature and field of study he had even less excuse than I did.)

<sup>2</sup> For example, at least one Twin Cities landlord has a \$50,000 deductible.

seek payment for the money it paid her.<sup>3</sup> One way or another, you're going to owe her or her plus her insurance company a hefty payment.

You tell the landlady you'll submit the claim to your own (renter's) insurance company and you promptly do so. You submit a claim under the liability part of your policy, the relevant part of the policy.

Does this help you? Surprisingly, it depends on exactly what careless thing you did. The reason is that there is a common exclusion in residential renter's insurance policies (what are called "HO-4" policies by the insurance industry). The standard Minnesota HO-4 policy includes the following language or the equivalent:

2. Coverage E - Personal Liability, does not apply to ...
  - c. "Property damage" to property rented to, occupied or used by or in the care of the "insured." This exclusion does not apply to "property damage" caused by fire, smoke or explosion;

So, if your carelessness involved fire you're in good shape. Your insurance company will cover what you owe ("indemnify you") and also provide you a free attorney to defend your position. However, if your carelessness involved frozen pipes or some other non-fire act, you are out of luck. You get no free attorney and you owe a hefty sum. If you don't pay, you might get evicted or your lease non renewed; you might get sued for the money and eventually face garnished paychecks, bank accounts, etc; at the very least, your credit will be damaged. The landlady is also unhappy because if she cannot collect from you she simply eats her loss.

While most Minnesota HO-4 policies include the exclusion quoted above, a minority cover water damage as well as fire damage. Minnesota insurance policies are filed with the Department of Commerce. Some policies are available on the Department's SERFF website. To put it mildly, SERFF is not user friendly but it did provide access to policies that are a good sample of Minnesota HO-4 policies.

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<sup>3</sup> Under *Melrose Gates, LLC v. Moua*, 875 N.W.2d 814 (Minn. 2016) this "subrogation" claim by the landlady's insurance company can be asserted against the tenant for damage to the apartment itself but not to other parts of the building. As the *Melrose Gates* case illustrates, this claim can be substantial (the damage to Mr. Moua's apartment was about \$41,000). The case is available at

[https://scholar.google.com/scholar\\_case?case=10871850588190545281&hl=en&as\\_sdt=6,24](https://scholar.google.com/scholar_case?case=10871850588190545281&hl=en&as_sdt=6,24)

About a one-quarter (8 of 31) of the policies I located<sup>4</sup> cover water damage as well as fire, smoke and explosion damage. Only one covered non-fire, non-water damage.

Tenants who face lack of coverage after they freeze pipes or do other, non-fire careless things are always surprised. The reason for their surprise is simple: They expected that when they bought insurance it covered them for negligence (maybe, being laymen, they would have used the word “carelessness” or the like) regardless the method of negligence - fire, frozen pipes, or other things. This is an eminently reasonable expectation, especially with frozen pipes (this is Minnesota, not Arizona).

### The Solution is Legislation, Not Better Shopping by Tenants

What is the solution? The solution is not better insurance shopping by tenants. First, full coverage is essentially not available (the only full-coverage policy was an unusual and special policy). More importantly, the tenant doesn't even know about the exclusion until he buys the policy. That is when the insurance company mails him a policy (which, given that it runs many pages, he might not even read then). No insurance company advertises the details of its policies, much less this exclusion. Insurance agents don't discuss or it as best I can tell even know about it; my own experienced agent learned about the problem when I discussed it with him. Basically, lack of coverage for non-fire damage is a trap for the unwary

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<sup>4</sup> The [protocol](#) I used to locate 29 policies on SERFF is discussed [on Link 1](#). A former client gave me another policy and my own insurance agent gave me another, so I was able to read 31 policies in all. I've published the 31 policies and made them available via Links [2a](#) & [2b](#). The policies' treatments of fire- vs non-fire liability are summarized on this [spreadsheet, Link 3](#). There are other policies that were filed but are no longer available publicly (they aged out of SERFF e.g.) but I have little doubt that these 31 policies are generally representative and that roughly 3/4 Minnesota renters-insurance policies have the non-fire exclusion.

Link 1: <https://birnberglegalwebsite.files.wordpress.com/2019/10/insurance-procedure-2.pdf>

Links 2a & 2b: <https://birnberglegalwebsite.files.wordpress.com/2020/03/copies-of-renters-insurance-policies-1.docx>

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<https://birnberglegalwebsite.files.wordpress.com/2020/03/copies-of-renters-insurance-policies-2-for-pdf.pdf>

Link 3: <https://birnberglegalwebsite.files.wordpress.com/2019/10/summary-of-insurance-policies-3.pdf>

residential tenant, who also has no realistic bargaining power even if he is aware of the problem.<sup>5</sup>

The solution is legislation requiring residential renter's insurance policies to cover all liability for damage to the tenant's apartment, not just fire damage. This is eminently practical. Commercial renter's liability policies typically cover both fire and non-fire events. Mandatory coverage provisions for other things already exist. For example, fire-insurance policies (first-party insurance against loss by fire) already must cover pretty much all fire damage and auto insurance must provide no-fault coverage for wage loss and medical care.<sup>6</sup>

The legislature should enact a law mandating that residential renter's insurance policies include liability coverage for all damage, not just fire damage and damage outside the rented apartment. If the tenant does not get insurance, that is still his problem. If he chooses insurance with a high deductible, that would still be his knowing assumption of extra risk. However, if he does buy renters insurance and then is one of the unlucky ones who acts human and carelessly damages his apartment by not just fire but something else, like freezing his pipes, he will be covered. Both he and his landlady will be able to breathe a sigh of relief.

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<sup>5</sup> While Econ 101 might suggest that by excluding non-fire damage, insurance companies can lower premiums, in the real world there is little or no evidence of this occurring. Renter's insurance premiums are low but do vary somewhat. Premiums are typically \$10-\$30/month, so the variability in percentage terms is considerable. However, I obtained price quotes for a number of the policies on SERFF and there was no correlation between premium amounts and non-fire or no non-fire coverage. The single biggest factor governing premium cost is whether the renter's policy is bundled with auto insurance. Perhaps a detailed, regression analysis of scores or hundreds of policies by an insider with access to data beyond SERFF might uncover an effect of non-fire coverage on premiums but I doubt it.

<sup>6</sup> See Minn. Stat. §65A.01, subd. 3 and Minn. Stat. §65B.44, subd. 1-2, respectively. Minnesota statutes are available at <https://www.revisor.mn.gov/statutes/>