



## **AM I LIABLE FOR THE WATER DAMAGE?**

**You're a tenant in an apartment building. One afternoon, you decide to do a wash. Unfortunately your washing machine breaks while you're out and your downstairs neighbour sustains water damage as a result of the overflow from your washing machine. Are you liable for the damage?**

### **THE FACTS**

On August 20, 1999, a tenant was doing her laundry. Her washing machine was purchased new in 1993. She decided to leave her apartment during the third load after the first cycle had finished. When she came back, she noticed water leaking from the outer tub of her washer. As a result of the overflow, her downstairs neighbour sustained serious damage. The tenant was then sued in damages as the owner of the washing machine. She denied liability and maintained that she had not been careless in leaving her apartment while her washer was running. She also alleged that she had never had any problems with her washing machine prior to the event in question.

### **THE ISSUE**

Was the tenant at fault in leaving her apartment while her washer was running?

### **THE DECISION**

The action in damages was dismissed.

### **THE GROUNDS**

In law, there is a presumption of fault against a tenant who owns an item that causes damage. To refute that presumption, the tenant must prove that she did not commit any fault. The fact that she left her apartment while her washing machine was running does not in itself constitute fault. She had no reason to believe that her washing machine was defective and would cause damage. It had been working properly all day. The judge held that it was an unforeseeable accident and noted that

technological developments allowed for the manufacture of appliances that can function without the person being present. How could it be claimed that the sole fact of not being present while the washer was running puts the tenant at fault? Because the tenant acted like any prudent and diligent person would act in the same circumstances, she is therefore not liable for the damage caused by the overflow of her washer.

***How could it be claimed that the sole fact of not being present while the washer was running puts the tenant at fault?***

#### **References**

*Axa Assurances inc. v. Charest*, Superior Court (S.C.) Saint-Maurice 410-17-000077-003, November 28, 2001, Judge: Raymond W. Pronovost (J.E. 2002-98; [www.jugements.qc.ca](http://www.jugements.qc.ca))

*Axa Assurances inc. v. Charest*, Court of Appeal (C.A.) Québec 200-09-003879-027, April 10, 2003, Judges: Brossard, Dussault and Forget (REJB 2003-42281)

*Civil Code of Québec*, (S.Q. 1991, chapitre 64), section 1862

The judgement discussed in this article was rendered based on the evidence submitted to the court.

Each situation is unique. If in doubt, we suggest you consult a legal aid lawyer.

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