

9:40

You were selected as a juror to come to this courthouse in Middlesex County to enforce the common sense safety practices a property owner must follow to keep us all safe. These safety practices, as well as all safety practices, will protect us only if juries like you choose to enforce them.

Common Sense Safety Practice No. 1 – landlords must prepare their property for winter to prevent serious injury ~~or death~~.

Common sense safety Practice No. 2 - landlords must keep their property free of known hazards in order to prevent serious injury ~~or death~~.

If a landlord violates these common sense safety practices and someone gets hurt, then the landlord is responsible for all the damages caused.

Let me tell you the story of what happened in this case//

Landlord owns multiple rental properties. // One of those rental properties has an outdoor water faucet at the base of the driveway. // Before winter, landlord winterizes her personal residence // But, Landlord does not winterize the rental property. // The rental property has a drain at the base of the driveway that prevents

water from draining. // Before winter, Landlord learns the drain backs up. // But, Landlord does nothing to fix the backed up drain.

In the winter, water bursts out of the outdoor faucet and sprays the base of the driveway around the backed up drain. One night, a tenant not knowing ice formed over the backed up drain drives into the driveway, exits her car at the base of the driveway and falls on the pooled ice and water.

The Story (explained)

Let me take you back to 2012.

We are in Watertown, Massachusetts. **Imagine**, for more than five (5) years landlord owns multiple rental properties in Massachusetts. Landlord rents out a two family home.

Landlord does not use a written lease with any of their tenants. The tenants are tenants. In other words, the landlord tenant relationship exists between them but without a written lease.

Many children frequently come to this rental property to play. The Tenants' friends and family go there to watch sports and to celebrate occasions .

[SHOW PHOTO]

The rental property has a drain in the driveway near the garage. The garage is attached to the house. The drain collects the water that flows down the driveway towards the house.

On the garage, there is an outdoor faucet with a garden hose attached.

Landlord learns that the driveway drain does not work properly and water pools above ground near the drain.

It's Summer 2012. Landlord knows water pooling near the drain enters the garage. Landlord hires a contractor to evaluate the drain problem. Landlord withholds information from the contractor..

In August 2012, the contractor does the work that landlord directs.

A few weeks later, the landlord receives a text from the tenants with photographs showing that the drain still does not work.

Landlord never informs the contractor. Landlord does nothing more to fix the drain.

As winter approaches, landlord knows that property owners need to prepare their properties for winter (in other words, winterize the property). Landlord knows to shut off the water supply for exterior pipes and to drain water out of exterior pipes and connectors. Landlord winterizes her own home to prepare for winter. Landlord never directs tenants to prepare the rental property for winter. Landlord never prepares the rental property for winter. Landlord does not winterize the rental property.

Over the winter, the water supply remains on at the exterior pipes and connectors of the rental property.

In the winter 2012/2013, as snow accumulates and melts, the drain fills with water.

Predictably, on February 21, 2013, mid-morning, water bursts from the outdoor faucet and hose // and sprays onto the base of the driveway.

Ice forms.

That evening, the sun sets, and it becomes dark.

Tenant returns from work and parks her car in the driveway. Tenant exits the car // takes a couple steps on dry pavement // she takes another step and slips on ice near the drain. The tenant lays there with a right knee medial tibial plateau fracture requiring metal plates and screws surgically inserted to stabilize her leg. It leaves her permanently injured.

That tenant is Cathrine Erickson, and I am proud to represent her before you.

The simple truth is, if landlord prepared the rental property for winter there// We would not be here.

Who suing and why

Now let me tell you who we are suing and why.

We're suing Defendants, Landlords, Rosalie Cunio and her two professional sons. They all own the rental property together.

We're suing the landlords because they refuse to accept responsibility for their actions. We are suing Landlords for two main reasons:

First, we are suing Landlords because they did not prepare the rental property for a safe winter. Every winter, landlord winterizes her personal residence. For example, Landlord shuts off the water supply for the outside faucets on her own home. And she hires a contractor to drain her sprinkler system. When it came to the rental property, Landlord chose not to shut off the water supply for the exterior pipes and chose not to drain the water from the exterior pipes, lines and connectors . Landlords chose not to direct tenants to winterize the property. If they had, we would not be here.

Second, we are suing Landlords because they chose not to prioritize tenant's safety and chose not to keep the rental property free of known safety hazards.

Landlord rejected the safe fix of the driveway drain. She chose the cheap fix. When she received a text showing that the cheap fix did not fix the problem // Landlord chose to do nothing.

Why case has merit:

So let me tell you what we did. We had to confirm the case had merit. So we did several things.....

1) we went to the rental property and we saw how the driveway sloped. We'll see how all water runs toward the drain at the base of the driveway.

2) we got pictures of the driveway and the drain taken shortly after the fall. We'll see those photos. They confirm that the drain was not working. That water pooled around it.

We'll see the outdoor faucet at the base of the driveway and the hose that was attached.

3) We wanted to understand how this happened. So we contacted an engineering expert. His name is Ron Tiberi. He's been a civil and environmental engineer for nearly 30 years.

Mr. Tiberi visited the rental property and inspected it.

He explained to us how landlords need to keep the rental property safe. Mr. Tiberi will discuss common sense safety practices endorsed by certified home inspectors. We will learn that landlords need to prepare the rental property for

winter by shutting off the water supply for exterior pipes and by draining water out of the exterior faucet and hose. He will explain that during cold weather, trapped water freezes, expands and bursts out of pipes, connectors and hoses.

Engineer Tiberi will also explain to us how the driveway was engineered so that it directs all water toward the drain at the bottom of the driveway. He'll show us how water from the top of the driveway, water from the downspouts and water from the outside faucet, all run towards the drain. The Engineering Expert will explain why landlords need to maintain outside drains to accommodate water on the property. He'll explain that when water backs up out of the drain and it's cold outside, the water forms a layer of dangerous ice.

Engineer Tiberi confirmed that this was a "never event." It never should have happened. He'll tell us that it never would have happened if Landlords would have winterized the property and fixed the drain. Because Landlord chose not to do either of these, water pooled at the base of the driveway causing ice to form.

4. We also contacted a Building Safety Expert, Mr. Peter Dipesa, who has fifty years of experience in construction and is a certified building official and the former building inspector for the town of Andover. Mr. Dipesa also visited the property. He will explain to us that the landlord violated the State Building Code because the defective drain was located in the means of egress from the garage and the back entrance to the building.

5. We wanted to know what work was done on the drain by the contractor hired by the Landlord so we asked the Contractor Mr. Richard Carbone. The Contractor told the landlord the safest way to fix the drain was to connect the drain to a pipe and make an exit point away from the problem area. The landlord rejected that proposal. **The landlord, told the contractor that the proposal was too expensive for a rental property.** We also learned that Landlord never told Contractor about the high water table or sump pumps in the basement.

Significantly, you'll hear that landlord never told contractor that the drain was still not working. In fact, Contractor will tell us that he specifically asked the

landlord if there were any issues since he finished the job and landlord told him
“No, Richie. It’s been great.”

6. We were also able to ask question under oath of landlord. This is called a
deposition.

There, Landlord agreed that the property needed to be winterized. She admitted
that she winterized her own home and vacation properties. She also conceded that
she did not winterize the rental property // nor did she direct the tenants to
winterize the rental property. She told us she never even checked if the water was
shut off. When we asked the Landlord who was responsible for the routine
maintenance of the common areas, the Landlord told us “it is obvious that the
owner of the property is responsible for the maintenance of the property.”

Negative attribution/comparative fault

After we confirmed the defendant violated these common sense safety
practices, we next examined whether Cathrine contributed to the event.

We learned that the Landlord did not use written leases with her tenants but the landlord admits that she was responsible for maintaining the common areas, including the exterior of the rental property. Landlord never told Cathrine to winterize the property. Landlord exclusively dealt with the contractor who fixed the drain. Cathrine did what she thought she was supposed to do. When Cathrine learned there were problems, she notified the landlord immediately and she trusted that the landlord would take care of it – the right way.

You will see that in the five years that Cathrine was a tenant, she always did her part of the contract - paid rent and helped out whenever she could// and the landlord took advantage and collected the rent// But when it was time for her to honor her side of the contract and do the right thing and maintain the property in a safe way // you'll see the landlord chose to be cheap, at the expense of her tenants.

We wanted to understand whether it mattered how water started spraying on the driveway, how long it was spraying and whether it mattered that landlord did not know about the spraying water before Cathrine fell. You'll hear that it does

not matter. We won't hear any evidence that the tenants turned on the water or used the hose that winter.

Even though the downstairs tenant owned the hose, the landlord knew that the hose was connected to the exterior water faucet and that the Landlord was responsible for winterizing the property. We'll hear from the next-door neighbor, Jason Corsino, a firefighter. Earlier that day, the neighbor saw the faucet spraying water. After, Cathrine felt the neighbor needed to go physically inside the basement to shut off the water supply.

We'll hear from expert Tiberi that if the property was winterized, that would have included disconnecting and blowing out all water from the hose.

When Catherine pulled down the driveway, her car did not slip or lose any traction. It was dark and she had no reason to believe there was ice on the driveway. As she pulled down the driveway, she saw a vertical spray of water. She stepped out of her car without incident. Wearing sneakers and her backpack, she went around the shadowed front corner of her car to investigate the spraying water before she encountered ice, near the drain.

We asked the experts if Catharine violated any safety practices and we learned that she did not. That the obligation and requirement was on the landlord to ensure the property was prepared for winter and it was landlords' responsibility to make sure the drain was fixed to prevent pooling.

Because Cathrine's actions were completely predictable, and her fall was completely preventable, had landlords winterized the property, or chose to fix the drain after learning it did not work, you will see Cathrine was not responsible in any way for causing this event.

Damages

So, I guess I should tell you a little about who Cathrine is, what happened to her, and how she is doing today.

Let me start by saying Cathrine is a fighter and she has never been one to sit on the sidelines.

Cathrine is currently 45 years old and married to Leigh Dalton.

In high school and college, Cathrine was an elite athlete who broke records. She was a two-sport athlete at Florida State University. Cathrine rose to prominence as a thrower -The javelin, the shot put, the discus, and the hammer.

Cathrine went on to be one of the first women in the country to be head coach of a division 1 men's and women's track and field team – right here, at Northeastern University in Boston. She was invited to the Olympic training center and became the Olympic development coordinator for the hammer.

On February 21, 2013, Cathrine's life changed. She was at Northeastern all day working with her athletes. She drove home. She got out of her car and started walking. When her right foot hit the ice it slipped out. She went airborne and landed hard on the ground.

The neighbor from the adjacent building heard Cathrine scream and found her laying on the ground at the base of the driveway in a pool of water and ice. Cathrine could not move. the neighbor and her spouse needed to lift Cathrine and put her in the car. Cathrine was driven directly to Mt. Auburn Hospital, where she had surgery and remained there for 12 days. Cathrine was immobile.

Dr. John Ritter, a board certified orthopedic surgeon with 35+ years of surgical experience, was her treating surgeon. Dr. Ritter found a comminuted fracture of the right medial tibial plateau with the latter most fracture plane extending into the base of the medial tibial spine. Dr. Ritter put a titanium rod and seven titanium screws in Cathrine's knee right away to stabilize it. We'll meet Dr. Ritter. He'll tell us about the surgery, about the two blood clots that developed and could have killed her, about Cathrine's prolonged immobility, about how therapy needed to come to her, how she needed to use a shower seat just to wash, and a device to help move her leg. We'll hear about her prolonged rehab to improve her condition. We'll hear how she fought hard to regain mobility. But, Dr. Ritter will explain to us how Cathrine's injuries are permanent and she'll likely need a knee replacement in the future.

We'll hear that Cathrine refuses to let her injury stop her from accomplishing her goals. Catherine's fighting spirit and her unwavering commitment to her student athletes, was most evident after the fall, when she coached a championship meet from her hospital bed.

Before the injury, Cathrine ran along side her athletes. After the injury, Cathrine had to be pushed across fields in a wheelchair. She missed two seasons of one-on-one, day in, day out coaching.

Cathrine has overcome much. But, Cathrine still deals with the aftermath of her injury. She looks at her scars, she feels chronic pain, she walks with difficulty and she has constant reminders that this was all preventable if only the landlord cared about her safety and did her job.

None of this stops Cathrine from serving her family, her commitments and our Country. Cathrine worked through her limitations and made a career change. In 2018, she accepted a more administrative job. Cathrine is now the director of **our** United States' Paralympic track and field team.

From the beginning to the end of this case, everything we show you is to help you decide what is the fair value to truly hold Defendants accountable for the full measure of all damages Defendant landlords caused Cathrine.

Now let's get to work.