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Warranty program needs more scope

Mandate should protect buyers

Couple sue builder over mould woes Ottawa homeowner Karen Somerville says she became so sick living in her new home that she had to move out last October and leave everything behind. Her health is much improved now, but she is involved in a bitter legal dispute with the builder.

Ashcroft Homes is the only defendant. Somerville chose not to make a claim in court against the Ontario New Home Warranty Program (ONHWP), now re-branded under its new name of Tarion Warranty Corporation.

Somerville's problems began in August, 2000, when she and her husband, Alan Greenberg, moved into their new \$450,000 home in Ottawa's Central Park subdivision.

By last September, her doctor had diagnosed Somerville with asthma, sick building syndrome and a sinus infection. On her doctor's orders, she moved out of the home.

The engineering company she consulted told her to leave behind all her possessions and furniture for fear of cross-contamination.

Somerville and Greenberg are now living in a furnished rental apartment. They are suing Ashcroft Homes for \$2 million and have a trial date scheduled for September.

In March, CBC's Ottawa Morning program featured Somerville and Greenberg in a two-part documentary about their home.

(The two-part documentary by reporter Susan Burgess can be heard online at http://ottawa.cbc.ca/regional/servlet/View?filename=ot_homelawsuit20040303 and http://ottawa.cbc.ca/regional/servlet/View?filename=ot_somerville20040304).

Somerville's Statement of Claim filed with the court alleges that the house has numerous defects and code violations, including an undersized heating and ventilation system, and a flaw that permits water to seep into the basement.

Ashcroft has denied the claim and says it delivered the home the couple contracted to purchase.

Somerville told the CBC that Ontario's Building Code is silent on mould, except for rules about building with mouldy materials. The code, she says, does not ensure that homes are fit to live in.

Now, when Somerville visits her abandoned but fully furnished home, she wears a hazardous materials suit complete with gas mask on the advice of her engineering consultants.

Her insurance company cancelled her policy when they found out about the mould and the building code violations cited by her engineers.

One preliminary estimate pegs the cost of decontaminating just the contents of the house at \$65,000.

To date, Somerville and Greenberg have spent about \$150,000 on legal and engineering bills, and her engineering consultants say it will cost substantially more than ONHWP's \$100,000 warranty limit to fix the problems with the house.

I spoke to Karen Somerville by telephone several times last week.

On her lawyer's advice, she wouldn't talk about the court case, but she was willing to discuss her experiences with the warranty program.

She told me that ONHWP/Tarion is not a defendant in the lawsuit because her damages far exceed the \$100,000 statutory maximum.

After speaking to Somerville, I had two lengthy conversations with David Choo, president of Ashcroft Homes.

He faxed me a report from a structural mycologist (mould expert), which states, when translated into lay terms, that the house is mould-free.

In sharp contrast, Somerville's engineering experts have produced written reports stating that the house contains five different moulds, one of them toxicogenic.

Choo told me that the mould claim was first raised two years after the owners took possession of the house and that there must be a time limit on builder's responsibility for such things.

He added he is willing to buy the house back at the current selling price of houses in the Central Park subdivision.

To nail down Tarion's position in all this, I spoke to its public relations people, Kevin Macintosh and Tannis Rutherford.

They explained that a homeowner can make a claim for warranty items such as building code violations and simultaneously sue a builder for non-warranty items.

Somerville is unhappy with Tarion. It's not a consumer protection organization at all, she complained it's an organization for builders by builders, she says.

She would like to see more consumer representation on its board of directors.

That's not the only problem. According to its enabling statute, Tarion exists to administer the warranty plan, establish a guarantee fund, assist in conciliating disputes, and improve communications between vendors and owners.

I believe that Tarion does not have a written mandate to protect the public interest.

Until the Act is changed to require the program to serve the public interest and to widen the scope and amount of the warranty coverage, there are going to be many more couples like Somerville and Greenberg, who are unhappy with Tarion's coverage.