DRN-1852552

The complaint

Ms S complains that Rooftop Mortgages Limited wrongly made payments to a company claiming service charges in relation to her property. She asks that it refunds her mortgage account, corrects her credit record and provides copies of correspondence.

What happened

Ms S says Rooftop made payments to a business (which I'll refer to as "E") claiming service charges in relation to her leasehold property. It added these costs to her mortgage balance. She say E isn't the freeholder and ground rent is paid to a different company.

Our investigator didn't recommend that the complaint be upheld. He said it was reasonable for Rooftop to pay the fees as it reasonably believed its security was at risk.

Ms S didn't agree, and so the complaint has been passed to me.

What I've decided – and why

I've considered all the available evidence and arguments to decide what's fair and reasonable in the circumstances of this complaint.

Ms S is in dispute with E, which is the managing agent for her property. I can't look into the dispute between Ms S and E. But I can consider whether Rooftop acted correctly and fairly when making payments to E and charging the cost to Ms S's mortgage account.

The mortgage conditions say Ms S must comply with the terms of the lease. The conditions also say Ms S is responsible for expenses incurred by Rooftop in remedying her failure to comply with the mortgage conditions, and these costs form part of the mortgage debt.

I think the mortgage conditions allow Rooftop to make payments to E, where these are due and not paid by Ms S. But I'd only consider this reasonable if Rooftop genuinely believed its security was at risk. This is not when a freeholder threatens to forfeit the lease, but when the matter has been to court or a relevant tribunal and it's been determined that there has been a breach of the lease.

There's an exception to this, if it's only ground rent that's outstanding and other conditions are met. That exception doesn't apply here.

Here, Rooftop received copies of judgements from the county court saying Ms S owed money to E. It also received a copy of a section 146 notice E said had been served on Ms S. Ms S says she's never been served with any court papers. However, Rooftop wrote to Ms each time it received a request for payment from E. It told Ms S about the requests for payment and gave her an opportunity to take action – either to pay the amount demanded or to challenge it.

Rooftop knew Ms S was in dispute with E. She'd made a complaint in 2016 about Rooftop making payments to E. And when Rooftop contacted her she said she disputed the charges.

But I haven't seen evidence that she took action – to have the county court judgements set aside or to ask a suitable tribunal to rule the charges unfair.

On this basis, I think it was reasonable for Rooftop to believe the money was owed and there was a genuine risk to its security. I think it was reasonable for it to pay the sums claimed by E and add the cost to Ms S's mortgage account.

The complaint Ms S raised with Rooftop, and then brought to us was about payments made by Rooftop to E. When Ms S brought the complaint to us her mortgage was in arrears and Rooftop had told her it intends to take action for possession of her property. This wasn't part of the complaint brought to us, and so I won't look into it here. But I'd remind Rooftop of its obligation to treat Ms S fairly, and take account of guidance issued by the regulator (the Financial Conduct Authority) related to the Covid-19 pandemic. Current guidance says lenders shouldn't start or re-start possession action until after October 2020. This gives Ms S some breathing space. I'd encourage her to use this time to contact Rooftop with the aim of agreeing an affordable repayment plan.

My final decision

My decision is that I do not uphold this complaint.

Under the rules of the Financial Ombudsman Service, I'm required to ask Ms S to accept or reject my decision before 15 September 2020.

Ruth Stevenson
Ombudsman