

The complaint

A is a limited company. A complains that Royal & Sun Alliance Insurance Plc (RSA) hasn't offered a fair amount to settle a claim on its commercial insurance policy.

A is represented by one of its directors, Mrs A.

What happened

The insured commercial unit was being let. Due to problems with the tenant, Mrs A made a claim under the 'legal expenses' section of A's commercial insurance policy. RSA declined the claim, and this service has previously considered a complaint about that matter.

Mrs A went on to make a claim under the 'property damage' section of the policy. This covers buildings, landlord contents, and rent.

Mrs A accepted £11,161 for the building damage and £133 for locksmith costs. However, she wanted the contents settlement and the loss of rent settlement to be increased; the excess to be waived; legal fees to be considered; and compensation for delays.

One of our investigators considered the complaint, but she didn't think it should be upheld. Because Mrs A disagreed with some of our investigator's conclusions, the complaint has been passed to me to decide.

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.

I'll set out my findings under the following five headings: 'loss of rent'; 'contents'; 'legal fees'; 'excess, recovery, and claims history'; and 'compensation'.

Loss of rent

The policy covers loss of rent as a result of damage caused by 'malicious persons' which: *"hinders or prevents the use of the Buildings or access to them"*.

As I understand it, RSA has offered to cover loss of rent for a three-month period, from when it says the property damage claim was made in October 2020. The three-month period was up to the estimated repair completion date, *i.e.* when the unit could be re-let. However, Mrs A is of the view that the claim was notified to RSA in March 2020, when the legal expenses claim was made. She would like loss of rent to be paid from March 2020.

I can understand Mrs A's view that the claim was notified to RSA in March 2020. But I'm not persuaded that matters here. I'll explain why.

Mrs A says the tenant left in May 2020. But on the other hand, she says she couldn't legally enter the property until October 2020. Mrs A says the tenant still had keys, they weren't allowing access, and A couldn't legally evict. Mrs A says she was only able to enter the building once it had been confirmed as abandoned.

Based on what Mrs A says, I consider it reasonable to conclude the property was still in the tenant's possession until October 2020. The policy doesn't cover non-payment of rent by an occupying tenant.

The policy covers malicious damage, and the lost rent whilst the property isn't in a condition to be let due to that damage. So, RSA is responsible for covering the malicious damage repairs, and the rent whilst the malicious damage prevents the property being let.

Even if I were to accept the claim was made in March 2020, and/or the tenant didn't return after May 2020; it wasn't the damage that prevented the use of, or access to the property, between March and October 2020. It was the non-paying tenant denying access. I can't reasonably hold RSA responsible for lost rent, during the time it took A to legally regain possession.

To be clear, even if RSA had registered the property damage claim in March 2020, I'm not persuaded it could have assessed the claim until A had gained access. Once access was gained by A, the damage then prevented the property being re-let. So, it's from this point that loss of rent is covered, for a period to allow the repairs to be completed.

I understand the repairs were to be completed in January 2021. So, I consider the loss of rent settlement offer, covering October 2020 to January 2021, to be in-line with the policy terms.

I note that Mrs A now says the works weren't finished until March 2021. However, she made no mention of a later completion date in an email to RSA, in March 2021. She simply noted the loss of rent payment was due until the agreed date in January 2021, but she thought it should cover the quarterly period.

I haven't seen anything that explains why the works took longer than previously agreed. I've also not seen anything that leads me to believe RSA needs to cover the rent in three-month blocks. I accept the rent may have been paid quarterly under the rental agreement that was in place with the departed tenant, but RSA only needs to cover the rent whilst the property couldn't be re-let due to the malicious damage.

So, for the above reasons, I can't reasonably direct RSA to increase its settlement offer for the loss of rent.

contents

The contents cover is limited to £5,000. Therefore, I'm satisfied RSA doesn't need to pay above this amount. I acknowledge that Mrs A has already accepted this point.

During the claim, Mrs A queried whether blinds and carpets are contents. She thought the items should be considered under the buildings cover. RSA explained why it considered these items to be contents, and its explanation is in-line with our approach.

Legal fees

It's my understanding that, after the legal expenses claim was declined by RSA, A incurred £623 legal fees in its efforts to gain access to the property. There's no cover for such fees under the property damage section, which is the cover I'm considering here. So, I can't reasonably direct RSA to pay these costs.

Excess, recovery, and claims history

I'm satisfied the excess is payable in the event of a claim; it forms part of the terms that were agreed to when the policy was taken out. Mrs A has already accepted the excess is payable. However, she says RSA needs to recover costs from the tenant, and the claim shouldn't be reflected on her (or A's) insurance record.

Whether RSA attempts to recover costs from the third party or not, is a commercial decision for RSA. Irrespective of the damage being caused by a third party or costs being recovered, a claim has been made. As such, RSA is entitled to record the claim on the relevant databases.

Compensation

Mrs A is of the view that compensation should be paid for the delay in considering a claim under the property damage section.

However, even if I were to accept that RSA ought reasonably to have registered a property damage claim when Mrs A tried to make a claim under the legal expenses section, I'm not persuaded that's delayed the repairs or the property being re-let. As noted above, Mrs A didn't gain access to the property until October 2020, so the malicious damage couldn't have been considered until that time anyway.

I haven't seen any unreasonable delays from October 2020 onwards. Although RSA offered Mrs A £200 compensation due to some oversights during the settlement discussions, in my view, A can't reasonably be said to have been inconvenienced by these issues, given they were put right quickly. I haven't seen that RSA caused A inconvenience beyond what is reasonably to be expected for a claim of this nature.

I accept the settlement offer for the building repairs was increased after discussions, but the unit was underinsured, and I don't consider RSA treated A unfairly in the first instance. RSA remained open to changing its calculations and engaged with Mrs A about this. Ultimately, the discussions were a consequence of A's declared value of the property.

My final decision

I'm sorry to disappoint Mrs A, but for the reasons above, I don't uphold this complaint. Under the rules of the Financial Ombudsman Service, I'm required to ask A to accept or reject my decision before 12 November 2021.

Vince Martin
Ombudsman