

The complaint

Mrs O and Mr P own and let a property, insured with Liverpool Victoria Insurance Company Limited. They have complained about LV because it declined their claim for loss of rent.

Mr P has mainly dealt with the claim and complaint. For ease of reading, in the main body of this decision, I'll refer only to him.

What happened

Mr P was advised of crack damage by the tenant at the let property. The tenancy was coming to an end and the tenant had had a recent bereavement. Mr P made a claim to LV for subsidence and the tenant left at the end of the tenancy. LV visited the property. Mr P reports being told not to re-let the property. He spoke to LV about a loss of rent claim. LV said it would consider that if the property was uninhabitable.

LV later told Mr P that it didn't view the property as uninhabitable. So it said it wouldn't accept a loss of rent claim. Mr P believed it was uninhabitable and wasn't fit for letting. He complained. When LV wasn't minded to change its answer Mr P complained to the Financial Ombudsman Service.

Our Investigator noted the policy offered cover for loss of rent when the property is uninhabitable. She considered photos of the property, a letter from an estate agent and comments from LV's engineer. She felt LV had made a fair and reasonable decision on this occasion to decline the loss of rent claim.

Mr P wasn't happy with the findings. He said damage had progressed since the claim was made, and even since LV had given its answer on the loss of rent, such that it was not suitable for letting. He said he had specific landlord's insurance to help protect him in this type of scenario because he couldn't be in breach of landlord/tenant law and let a property like this. He said loose and falling plaster in the kitchen and an insecure backdoor meant the kitchen wasn't usable. Mr P said the claim had been fraught with delays, including that when LV gave its decision on loss of rent it said reinstatement would start imminently. But that hadn't happened and months later work still hadn't started.

Our Investigator explained that she could only consider the complaint made to LV and to the point LV had given its decision on that. She reiterated that the policy in question offers loss of rent cover only when a property is uninhabitable – and her view on LV's decision in that respect hadn't changed. The complaint was referred for an Ombudsman's decision.

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.

When Mr P complained to LV it was about its decision on loss of rent. So that is the complaint I have considered. With regret for the disappointment caused to Mr P, I think LV made a fair and reasonable decision regarding the loss of rent.

Mr P does have a landlord's policy. That is tailored to a let property with a landlord/tenant relationship. But that doesn't mean that will necessarily protect Mr P for every eventuality that might befall a landlord. Similar to many policies of this type, the cover Mr P has does offer protection for lost rent – but not in any circumstance. Only where rent is lost because the property is uninhabitable due to damage covered by the policy. And there is a distinction to be made between an uninhabitable property, and one which cannot be let.

A letting agent might use the two terms fairly interchangeably. That's because, from their perspective, a tenant can't or shouldn't inhabit a property if doing so might breach certain letting legislation. But in terms of insurance, the phrase uninhabitable isn't linked to whether a property can or should be let. Rather, for insurers, uninhabitable means the property is lacking certain necessary facilities, or is unsafe.

Mr P's property was suffering severe cracks. And I don't doubt that was causing some dust issues in the kitchen. And I note the back door didn't function properly. But neither of those made the kitchen unusable. And I haven't seen that the door not functioning made the property unsafe. I note LV's engineer didn't consider the property was uninhabitable.

I understand that since LV made its decision on loss of rent, further investigations at the property might have changed its view on the structural stability of the property. It's not clear if that will change its view on the loss of rent issue. In any event, as our Investigator explained, this complaint can only be considered based on the evidence available when LV made its decision. Which was in May 2023.

I note that Mr P says he was told at the first visit, by LV's agent, not to re-let the property. I've no idea why that advice would have been given. But I note that LV, also from the outset, told Mr P that a claim for loss of rent would only be successful if the property was uninhabitable. Mr P was clearly in a difficult position – he wanted to be a responsible landlord, but his policy didn't offer the cover he thought it should in that instance, where the property wasn't lettable but nor was it uninhabitable. That's unfortunate. But having considered what the policy offers cover for and the known condition of the property between the claim being made and May 2023, I think LV's decision was fair and reasonable.

My final decision

I don't uphold this complaint. I don't make any award against Liverpool Victoria Insurance Company Limited. Under the rules of the Financial Ombudsman Service, I'm required to ask Mrs O and Mr P to accept or reject my decision before 2 April 2024.

Fiona Robinson

Ombudsman