

The complaint

Mr K's complaint is about his mortgage with Topaz Finance Limited trading as Rosinca Mortgages. Mr K says that Rosinca unfairly paid a demand for service charges without his consent and added them to his mortgage account.

To settle the complaint, Mr K wants Rosinca to remove the charges and any interest accrued on them from his mortgage account.

Mr K is represented in the complaint by solicitors, but for clarity, I will refer to Mr K throughout.

What happened

I do not need to set out the full background to the complaint. This is because the history of the matter is set out in the correspondence between the parties and our service, so there is no need for me to repeat the details here. In addition, our decisions are published, so it's important I don't include any information that might lead to Mr K being identified. So for these reasons, I will instead concentrate on giving a brief summary of the complaint, followed by the reasons for my decision. If I don't mention something, it won't be because I've ignored it; rather, it'll be because I didn't think it was material to the outcome of the complaint.

Mr K has a buy-to-let mortgage, originally taken out with another lender in 2004, but now owned by Rosinca. The mortgage terms and conditions provide that Rosinca is allowed to pay outstanding ground rent or service charges in order to avoid forfeiture of the lease.

In July 2020 Rosinca received a demand for outstanding service charges from the Residents' Association, together with a s.146 Notice stating the lease would be forfeit if the payment wasn't made. Also provided was a link to a First-Tier Tribunal decision which found that the leaseholders were each required to pay 1/33rd of the outstanding service charges. The demand was for Mr K's 1/33rd portion of the outstanding charges.

Rosinca tried to speak to Mr K, but he refused to complete security. Although he called back the same day, this was to discuss the monthly payments. The agent he spoke to knew nothing of the s.146 notice.

The documentation provided to Rosinca showed that forfeiture action would be taken if payment wasn't made by 20 July 2020. Rosinca therefore made the payment of just over £30,000 and debited it to Mr K's mortgage.

In 2023 it appears Mr K raised a complaint with the police about the operation of the Residents' Association. The police contacted Rosinca and Mr K separately raised a complaint about the payment of the £30,000 in July 2020. Rosinca didn't uphold the complaint, saying it had made the payment in good faith on the basis of the documentation provided.

Mr K brought his complaint to our service where an Investigator looked at what had happened. She was satisfied that Rosinca was entitled to rely on the documentation and,

given the seriousness of the situation, she thought Rosinca had been entitled to make the payment.

Mr K disagreed and asked for an Ombudsman to review the complaint. His solicitors have made various points, which I summarise below.

- The party who signed the s.146 notice was not the landlord or landlord's agent.
- The solicitors refer to allegedly fraudulent activity by a third party.
- The timescale within which Rosinca paid the money was unreasonable.
- The police don't think it was reasonable for Rosinca to have paid the money and this must be taken into account.

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 note that it was not until some three years after the money was paid by Rosinca to the Residents' Association that Mr K first raised any query about this with Rosinca. Although he refers to various meetings that resulted in the removal of officers of the Residents' Association, there is no basis on which Rosinca could be expected to know the inner workings of the Residents' Association. Rosinca isn't under any obligation to carry out a forensic analysis or investigation of what appear to be legitimate documents presented to it.

There was a First-Tier Tribunal decision which provided the basis on which the s.146 notice had been issued. I'm satisfied Rosinca was entitled to rely on this, and indeed neither Mr K nor his solicitors appear to have questioned the validity of that decision. There doesn't appear to have been any appeal of the First-Tier Tribunal decision to the Upper Tribunal, and so I'm satisfied that, on the face of the documents, Rosinca had a reasonably-held belief that Mr K was liable for the 1/33rd share of the service charges specified in the demand, and that the lease would be forfeited if it was not paid.

I also note that when Rosinca tried to speak to Mr K about the demand, he wouldn't complete security. Given that Rosinca was told the lease would be forfeited if payment wasn't made by 20 July 2020, I think it was reasonable for Rosinca to go ahead and make the payment.

I've noted what the police officer purports to have said. However, the decision on whether Rosinca has acted fairly and reasonably in relation to this matter rests with me. I'm satisfied that, on the basis of the documents provided to Rosinca, it was reasonable for Rosinca to make the payment.

Any activities involving third parties are outside the scope of the Financial Ombudsman Service. I have been provided with no evidence – only accusations – about allegedly fraudulent activity by third parties. But those issues would be a matter for the police and the courts, not this service.

In all the circumstances, I'm satisfied Rosinca acted in accordance with the terms and conditions of the mortgage, which allows it to pay outstanding service charges in order to protect its security.

In the circumstances, I'm unable to find Rosinca has done anything wrong.

My final decision

My final decision is that I don't uphold this complaint.

This final decision concludes the Financial Ombudsman Service's review of this complaint. This means that we are unable to consider the complaint any further, nor enter into any discussion about it.

Under the rules of the Financial Ombudsman Service, I'm required to ask Mr K to accept or reject my decision before 19 September 2024.

Jan O'Leary
Ombudsman