

## **The complaint**

Ms H complains about the decision by Aviva Insurance Limited to turn down a claim under her property owners insurance policy.

## **What happened**

Ms H's rental property is covered by her policy with Aviva. She made a claim for damage after her tenant moved out. Aviva considered the claim under the malicious damage section of cover, but turned down the claim as it didn't think the damage to the property had been caused maliciously. Unhappy with Aviva's decision, Ms H brought a complaint to this Service.

Our investigator didn't recommend the complaint be upheld. She thought the damage was due to carelessness from the tenant, so she thought Aviva's decision to turn down the claim had been correct.

Ms H didn't accept our investigator's findings, and so the matter has been passed to me for a 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.

The policy covers malicious damage. As our investigator has explained, malicious damage isn't defined in the policy and so we apply the ordinary, everyday meaning. I think this would be an intentional act to cause damage. That means there would need to be intent to cause harm, which is more than the tenant simply being neglectful.

After making a claim, Aviva sent its surveyor to carry out an inspection. However, Ms H had already had the repairs carried out and was renting out the property to new tenants. The surveyor said he couldn't confirm the condition of the property after the tenant had moved out.

I've therefore considered the other evidence Ms H has provided.

The property was inspected in February 2022 and the condition and cleanliness of the property at that time was found to be very good. However, I understand the tenant then allowed other people to stay at the property without Ms H's permission, and refused to allow further inspections to take place. The tenant moved out in November 2022, and so there was a nine-month period where Ms H/her agent hadn't been able to inspect the property.

I've read the check-out inventory report from November 2022, with accompanying photos. There's reference to various damage, such as: - marks and scuffs, soiling of carpets (I understand this was from animals), broken toilet seat, broken curtain poles, animal prints on sofa, broken door to the washing machine, broken blinds, cobwebs, spills, dog hair and claw marks, as well as dust, dirt and debris.

Ms H has also provided us with further photos of the damage.

Based on everything I've seen, I don't think it was unreasonable for Aviva to conclude that the type of damage in the property was more consistent with the tenant's lifestyle and general lack of care, rather than malicious damage.

I'll comment on a few areas of damage, to explain my reasoning.

Ms H has referred to a broken door handle, which she says was kicked with such force that the metal rod between the handles fell inside the door. However, the photos only show that the door handle was broken, which could have happened accidentally. There's nothing to suggest the door had been kicked and the handle broken deliberately.

Ms H has provided some photos of the banister which show the newel post coming away from the handrail. Ms H thinks this was deliberately pulled away, but again there's nothing to indicate this was done deliberately and it could have happened accidentally.

Ms H has also provided photos of a damaged dining room table, with some cigarette burns, water marks and general scrapes. Whilst the tenant clearly didn't take care of table by using coasters or an ashtray, that doesn't mean this damage was done intentionally.

I do sympathise with Ms H, as the property was left in a very poor state. However, this does appear to be due to the tenant's overall lack of care for the property, rather than an intent to cause harm. I therefore find that it was reasonable for Aviva to turn down the claim.

Ms H says the surveyor told her when he visited the property that the claim would be accepted. A consultant for the broker was present at the time and has kindly provided their recollections. They said the surveyor asked them to confirm if the policy included malicious damage cover, and he told them he already had enough evidence of malicious damage (as I understand he'd been provided with the photos). The surveyor apparently then told Ms H that in his experience, Aviva either paid out or not, and that she would not have any issues.

Whilst the surveyor didn't think Ms H would have any issues, ultimately it was up to Aviva whether or not it accepted the claim. The surveyor told Ms H that Aviva either paid out or didn't, which was correct - an insurer will assess a claim and then decide whether the claim is payable. I don't think the surveyor misled Ms H into thinking her claim would definitely be accepted by Aviva.

### **My final decision**

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

Under the rules of the Financial Ombudsman Service, I'm required to ask Ms H to accept or reject my decision before 11 December 2024.

Chantelle Hurn-Ryan  
**Ombudsman**