

The complaint

Mr C has complained that Arch Insurance (UK) Limited declined to meet a claim for malicious damage under his commercial property owner's insurance policy.

What happened

The background to this complaint is well known to the parties, so I won't repeat it in detail here. In summary Mr C claimed under his policy when his son discovered extensive damage to a commercial property he rented out.

Arch didn't meet his claim, as it said Mr C had failed to comply with the policy conditions.

Our investigator didn't recommend that the complaint was upheld, she didn't find that Arch had done anything wrong. Mr C appealed. He said that the important requirements weren't highlighted by Arch.

Mr C is represented by his son, but for ease I will refer to all representations as those of Mr C.

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've summarised the background to this complaint and focused on what I find are the key issues here. Our rules allow me to take this approach. It simply reflects the informal nature of our service as a free alternative to the courts. Having done so, and although I recognise that Mr C will be disappointed by my decision, I agree with the conclusion reached by our investigator. I'll explain why.

The property was leased to new tenants in June 2020. When the tenants stopped paying rent in August 2021 Mr C took action and the tenants were evicted in November 2021. It was then that extensive damage to the property was discovered. The policy terms cover malicious damage – if certain requirements are met:

Malicious damage by tenants and/or illegal cultivation of drugs

Unless otherwise excluded, the Insurers will pay for Damage under Peril F where caused by tenants of the Buildings insured by this Section. The Insurers will also pay the clean-up costs and remedial works from the use of the property for the manufacture, cultivation, harvesting or processing by any other method of drugs classed as controlled substances under the Misuse of Drugs Act (1971). The cover provided by this clause will not apply unless You (or a person appointed by you) comply with all of the following requirements:

- a) Carry out internal and external inspections of the buildings at least every 6 months*
- b) Maintain a log of the inspections and retain that log for at least 24 months*
- c) Obtain satisfactory credit references from a licensed Credit Referencing Agency prior to granting the tenancy*

- d) Record details of Your tenant's bank account and verify those details by receiving rental payments from that account*
- e) Obtain and record a written formal identification of any prospective tenant*
- f) Do not permit any sub-letting of your property.*

If You do not comply with all the above conditions we will not pay claims arising from malicious damage by tenants or illegal cultivation of drugs.

Mr C admits that he didn't adhere to the above conditions. He says this is because he wasn't aware of them.

I've looked carefully at the documents that Arch sent to Mr C's broker during the 2019 and 2020 renewals. These included the policy schedule, the terms and conditions and policy summary. The summary sets out significant or unusual Exclusions or Limitations to cover. In particular it invites the policyholder to see clause 1.29 and 2.12 within the policy wording. Mr C's broker acknowledged the emails and confirmed the cover should go ahead. Therefore, I'm not persuaded that Arch failed in its duty to make Mr C (or his broker on his behalf) aware of the policy terms and exclusions.

Nevertheless Mr C argues that Arch hasn't shown that compliance with those conditions or any of them would have prevented the malicious damage from taking place.

The relevant law here is the Insurance Act 2015. This says the insurer may not rely on 'non-compliance to exclude, limit or discharge its liability' if an insured:

'(3) shows that the non-compliance with the term could not have increased the risk of the loss which actually occurred in the circumstances in which it occurred'.

So strictly it is for Mr C to show that the failure to comply with the conditions set out in the policy didn't increase the risk of the loss which occurred. I don't find he has done so. I say this because that if internal and external inspections had been carried out (and recorded) it's likely that the extensive damage would have been noted and further damage prevented. It may be that the tenants wouldn't have caused the damage if they were aware the property owner made inspections. Of course, it's not clear when the damage was carried out, but as it was so extensive (the quote to reinstate the property being in the region of £300,000) I'm satisfied it was reasonable to assume it happened over a period of time. Mr C hasn't shown this isn't the case. It follows that I'm satisfied it was reasonable for Arch to conclude that the risk of loss was increased by the non-compliance with this term.

I haven't disregarded the submission that this happened during the Covid pandemic, but restrictions were lifted in the Spring of 2021. In any event I don't find Covid restrictions would have prevented video inspections taking place. But Mr C's argument is that he wasn't aware of the conditions, so I don't find Covid was the reason the conditions weren't complied with.

Additionally taking credit references can help avoid taking an undesirable tenant and is common practice in the rental market. It may be that this situation could have been avoided, if satisfactory credit references had been taken prior to granting the tenancy.

It is apparent that Mr C had given the tenant permission to convert the restaurant premises. Nevertheless it is claimed that the damage was malicious. If, however, this wasn't so and the renovation leading to the damage was permitted by Mr C, that is not covered by his insurance policy.

Mr C has also argued that Arch treated him unfairly by conducting an interview when it did. I've watched a recording of the interview. I'm satisfied that Mr C was asked on more than

one occasion whether he was happy to continue. At 45 minutes in he was advised 'we can always stop and reconvene tomorrow'. Mr C did take a comfort break. Additionally Mr C was accompanied by a representative and his son, who answered nearly all of the questions. I don't find that the interview was unfair or that there was any pressure on Mr C to continue against his will.

In all the circumstances I don't find that Arch Insurance (UK) Limited has treated Mr C unfairly, unreasonably or contrary to his policy terms by declining his claim.

I recognise that this has been a very stressful time for Mr C and I'm sorry my decision doesn't bring him more welcome news.

My final decision

For the reasons given above my final decision is that I don't uphold this complaint.

Under the rules of the Financial Ombudsman Service, I'm required to ask Mr C to accept or reject my decision before 29 March 2024.

Lindsey Woloski
Ombudsman