

The complaint

Mr C complains in his capacity as Director of limited company “D” that Chaucer Insurance Company Designated Activity Company (“Chaucer”) declined a claim he made for loss of rent, following an escape of water at a property he rents out.

What happened

Mr C’s commercial property suffered a major leak from a burst water main in the garden. This caused significant damp in the property, which subsequently became unsafe for the tenants who had a small child, to live in.

Mr C says the managing agents advised him to release the tenants from their contractual obligations as damp was covered under the Housing Health and Safety Rating system and the tenant would be able to pursue the landlord due to a breach of safety regulations.

In light of this, the tenants vacated the property and the home was empty from 1 November 2022. The leak was repaired and drying and reinstatement works were carried out by the insurer and its appointed contractors. Mr C says that at no point did the insurer or its contractors advise him that the property was habitable. He says it can’t have been safe to live in due to the high damp readings and the damage which meant the kitchen had to be removed.

Mr C claimed loss of rent from 1 November 2022 when the property became empty, until 2 May 2023 when the property was confirmed to be dry and habitable again after the kitchen had been reinstated. But Chaucer declined the claim for loss of rent, saying the property had remained habitable as there were bathing and cooking facilities. It said that if Mr C disputed this, he’d need to produce a report from a third-party contractor in order to refer the matter to underwriters. It said Mr C had only provided a letter from his managing agent and this wasn’t sufficient.

Unhappy with Chaucer’s response, Mr C referred the complaint to this service. Our Investigator considered it and thought it should be upheld, recommending Chaucer pay the loss of rent claim.

Chaucer didn’t agree with our Investigator’s assessment – saying its contractors deemed the property habitable and said it was still rented in February 2023. It’s also said the contractors confirmed there was a working kitchen, running water and unaffected electrics and that the delays in the claim were due to the quality of repairs carried out by the policyholder.

Because Chaucer didn’t accept our Investigator’s recommendations, the complaint has now 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.

Having done so, I'm upholding this complaint. I'll explain why.

D's Let Property Insurance Policy says it covers:

"The loss of Rental Income if the Property insured under the Buildings section is damaged during the Period of Insurance and as a result a Tenant is not able to occupy the Property".

But there's no definition in the policy terms which explains what "not able to occupy" means – and so I've taken it to mean what any reasonable person would interpret it to mean bearing in mind the ordinary day to day dictionary definitions of the terms used and the spirit of the insurance policy. And I consider that the tenants in this case were not able to occupy the property due to the significant levels of damp, which I consider made the property uninhabitable. There's no requirement under the policy that in order for a loss of rent claim to succeed, the property must be without bathing and cooking facilities.

As Chaucer has disputed the habitability of the property, I'll explain further. Chaucer has said the property was habitable due to the presence of bathing and cooking facilities, which it suggests weren't affected by the leak, but I've seen evidence that there was damp and mould at the property and that the estate agents wouldn't market the property in that condition, and with the ongoing works. So I think it's fair for the loss of rent claim to be covered in the circumstances.

Chaucer says the policyholder didn't meet the requirement of the insurance term which stipulates that if they have *"not made all efforts to complete the repairs and re-letting of the Property as soon as possible after the damage caused by an insured event"* then they won't be covered. Chaucer suggests it was the fault of the policyholder who delayed the claim by asking Chaucer to handle the repairs and then saying they'd do it themselves if the loss of rent wasn't going to be covered.

But Chaucer hasn't been able to explain why it holds the policyholder responsible for delays. The leak was at a neighbouring property so I don't consider the policyholder was at fault as there were limitations to what it could do given the location of the leak itself. And Chaucer has been provided with enough information to show that the tenants couldn't occupy the property for several months, and have also been given the tenancy agreement. So I consider its refusal to deal with the loss of rent claim to be unfair and unreasonable in the specific circumstances of this complaint.

Putting things right

Chaucer Insurance Company Designated Activity Company must now settle D's loss of rent claim in line with the terms and conditions of the policy.

My final decision

My final decision is that I uphold this complaint and I direct Chaucer Insurance Company Designated Activity Company to put things right as I've set out above.

Under the rules of the Financial Ombudsman Service, I'm required to ask D to accept or reject my decision before 28 October 2024.

Ifrah Malik
Ombudsman