

## **The complaint**

Mr and Mrs A complain about a claim made under their residential property owners insurance with Fairmead Insurance Limited.

## **What happened**

The background to this complaint is well known to Mr and Mrs A and Fairmead. In my decision, I'll focus mainly on giving the reasons for reaching the outcome that I have.

Following an escape of water in April 2023, Mr and Mrs A made a claim against their residential property owners insurance policy with Fairmead and they accepted a claim for repairs. Mr and Mrs A also made a claim for loss of rent as they said the property was uninhabitable whilst works were undertaken. Mr and Mrs A's tenants left the property (3 August 2023) before the end of their tenancy agreement, which had been expected to finish on 2 September 2023. Fairmead reimbursed Mr and Mrs A for the period covering their tenants leaving until the intended end of the tenancy agreement.

Mr and Mrs A made a complaint. They said that their property wasn't habitable again until 28 September 2023 and they ought to be reimbursed for that period too. Fairmead rejected the complaint. As Mr and Mrs A remained unhappy, they referred their complaint to our Service for an independent review. Our Investigator considered the complaint but didn't recommend that it be upheld.

As Mr and Mrs A didn't accept the Investigator's recommendations, the complaint has been referred to me for a final 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.

Our Service is an alternative, informal dispute resolution service. Although I may not address every point raised as part of this complaint - I have considered them. This isn't intended as a discourtesy to either party – it simply reflects the informal nature of our Service.

The key dispute that remains here is whether or not Fairmead need to pay additional loss of rent to Mr and Mrs A for the period up until 28 September 2023. Fairmead have largely relied on two reasons to limit their claim outlay: 1- the property being habitable and 2- Mr and Mrs A not having new tenants lined up to enter the property.

### *Was the property habitable?*

No policy definition for what makes a property habitable has been provided. Therefore, I've applied a fair and reasonable interpretation of its' meaning. A commonly accepted definition is:

*'a place is habitable, if it is good enough for people to live in.'*

Fairmead have referred to what they regard as only 'snagging works' outstanding. Specifically they've said: "...sealant to be re-done, tiles needed buffing and some re-grouting, a towel rail had to be fitted and an extractor fan had to be replaced...." And they therefore considered that the property was habitable.

On the other hand, Mr and Mrs A say that the property wasn't habitable under HMO rules. They've said that as the property previously had five tenants, HMO rules meant that two toilets were required.

For completeness, I've also referred to the HMO information available publicly. Mr and Mrs A are correct that for five tenants, under HMO rules their property would need a minimum of one toilet with a wash basin in a separate room to the main bathroom (with washing facilities) and another toilet.

On balance, I find that although there were outstanding snagging issues – Fairmead's position that the property was habitable is reasonable. I say this because although parts of the bathroom needed work completed, no evidence has been provided that washing or toilet facilities weren't available.

### *Loss of rent*

In their final response, Fairmead stated:

*"Furthermore, you have provided no evidence to support that following the previous tenants vacating the address on 3 August 2023 that you had further tenants lined up. As such, you have not incurred any costs relating to loss of rent after this period."*

I find that Fairmead have fairly applied the policy terms when limiting their pay out for loss of rent. The relevant terms:

#### *"6. Loss of Rent and Alternative Accommodation*

*If the Home is damaged by any cause covered under Section 1 - Buildings and, as a result, cannot be lived in,*

*We will pay for:*

*(a) loss of **rent due to You which You are unable to recover**;;...*

***until the Home is ready to be lived in.**"* [bold added for emphasis by Ombudsman]

As Mr and Mrs A had no legal contract (tenancy agreement) that entitled them to rent from any tenant (after the previous tenants vacated the property) I find that Fairmead have fairly applied the policy terms to limit their loss of rent outlay to the end of the previous tenancy period and the property being habitable again.

Returning to the separate HMO rules, even in a scenario where Mr and Mrs A felt their property couldn't satisfy the bathroom/toilet part of the rules for five tenants, no evidence has been presented to support that Mr and Mrs A had any potential tenants lined up pending the completion of works or that they took any reasonable steps to mitigate their potential losses. For example – by letting to four or less tenants initially.

I've considered what Mr and Mr A have said about it being more difficult to let a property that still had snagging issues, but this doesn't mean it follows that Fairmead should be responsible for compensating them for further loss of rent - as that's not the intention of the

policy here.

### *Summary*

I find that Fairmead have fairly responded to this claim - in line with the terms of the policy.

My decision will disappoint Mr and Mrs A, but it brings to an end our Service's involvement in trying to informally resolve their dispute with Fairmead.

### **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 Mr A and Mrs A to accept or reject my decision before 16 December 2024.

Daniel O'Shea  
**Ombudsman**