

## **The complaint**

Mr T has complained about his let property insurer U K Insurance Limited because it has declined his claim for damage at his property on the grounds it was maliciously caused by the tenants.

## **What happened**

Mr T let his property to a company ("M"). M used the property to home its staff. In November 2022 M stopped paying rent to Mr T. Mr T began eviction proceedings against M.

In September 2023, subsequent to a successful repossession order, Mr T entered the property and found lots of damage. He also noted some white goods had been stolen. He made a claim to UKI. When notifying the claim Mr T said: "they'd left the sink in the bathroom upstairs running and it had a pillowcase in it which blocked the overflow and the plug". Mr T thought the water had been running for possibly two weeks, with the ceiling of the kitchen below having partially collapsed and mould having started to form.

UKI sent a loss adjuster to view the damage. The loss adjuster noted that M had ceased trading and was informed it had not been paying its staff. Having received the loss adjuster's report and reviewed matters further, UKI felt that the residents tenanted the property, under the lease agreement between Mr T and M, had likely caused the damage maliciously. In other words that 'malice' was the proximate cause of the water damage. It noted the policy exclusion for malicious damage caused by "Your employees, tenants or any other persons lawfully in Your premises". Mr T, it said, could have chosen to add cover for damage caused by tenants, but he hadn't done so. It declined the claim on the basis of the loss not being covered by the policy.

Mr T was unhappy with that decision. He said it wasn't clear why or how the pillowcase had come to be in the sink – surely if the residents had wanted to cause damage, they'd have just left the plug in. He thought it was unfair for UKI to just assume malice on the part of the residents – he emphasized any dispute had not been with the residents, but with M which had signed the lease agreement. When UKI wouldn't change its view, Mr T complained to the Financial Ombudsman Service.

Our Investigator thought UKI had made a fair and reasonable decision in the circumstances. So he wasn't persuaded to uphold the complaint.

Mr T said it was possible for the sink tap to have been left running accidentally – accidents like that happen from time to time when people are distracted. He said as the dispute over rent was between him and M, it was unlikely the residents of the property would act maliciously towards him and thereby risk being accused, or found guilty, of criminal damage.

The complaint was referred for an Ombudsman's 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.

I can see that significant damage was caused to Mr T's property. I appreciate that he'd expected that would have been covered by his insurance policy. And I realise that the fact that the claim has been declined will be worrying for Mr T. However, having carefully considered everything, I find I am of the same view as that expressed by our Investigator – UKI has, on this occasion, reached a fair and reasonable decision on the claim.

Mr T's policy with UKI gives him cover for damage caused by certain events, or contingencies. One contingency is malicious persons. So where damage is caused by malicious persons, there is cover on the policy for that damage. However, as with most policies, there are exclusions to that cover. The one exclusion of relevance here, particularly given that Mr T did not choose to add cover to his policy for malicious damage caused by tenants, is detailed in my background above.

So if the damage was caused by malicious persons – but those persons were residing in the property, by agreement of the landlord for example, the exclusion will mean there's no cover. There seems no doubt the damage was caused by the residents of the property, living there by agreement under the lease until they left prior to the deadline on the repossession order. The issue then becomes one of did UKI reach a fair and reasonable decision when it classified the actions of those residents – actions which caused the significant water damage to the property – as having been malicious. If it did then UKI's decline of the claim, given the relevant policy exclusion, will also be fair and reasonable.

When Mr T reported the loss, he recounted what he'd seen when he entered the property. He did not put forward any conclusion about why the residents had left the water running with a pillowcase in the sink. But he did explain how significant damage – unrelated to the water damage – had also been caused, as well as that items had been stolen.

I wouldn't expect Mr T to have known why or how the situation had occurred which had caused the water to overflow. However, UKI, when reviewing its liability under the policy, is entitled to consider what is most likely to have happened. It does not need to show beyond reasonable doubt what occurred – unlike in criminal proceedings which require that high burden of proof. Rather insurers work to a standard known as 'the balance of probabilities'. In other words, generally speaking, an insurer, wanting to rely on a relevant exclusion to cover, will usually only have to show or satisfy that 'what is most likely to have happened' falls foul of that term.

It seems as though Mr T didn't have much to do with the residents, whilst he lived next door he did not know they'd left the property prior to the deadline on the repossession order being reached. So it doesn't seem to be the case that it can reasonably be said that he had a 'good' relationship with them. I note the photos of the property taken by the loss adjuster show that the residents also, at best, treated Mr T's property with total disrespect. I'm mindful that Mr T reported, in addition to the water damage, that kitchen cupboard doors had been "pulled off". I'm also mindful that the residents were happy to cause Mr T a loss by taking the white goods at the property which had belonged to him.

In addition to all of that, there was the history of non-payment by M and repossession proceedings, which I can see UKI has also taken into account. Whilst the repossession proceedings occurred directly between Mr T and M, I don't think it's unreasonable for UKI to think that the residents were likely at least unhappy about the whole situation – whether they blamed Mr T, or M, or both for what was going on. After all it was the residents which were directly affected both by M not making payments and the repossession order sought and secured by Mr T.

With all of that, particularly the good reason for ill feeling, and given the residents didn't seem to need to leave the property in a hurry – they left well in advance of the repossession deadline being reached – it seems unlikely to me that the tap was left running accidentally. Whilst, at the same time, a pillowcase had also been left accidentally in the sink. In the circumstances, I think UKI's position – that the damage was most likely caused maliciously/by malicious persons – is fair and reasonable. Given what I said above, it follows that I find UKI's decline of the claim is fair and reasonable too.

### **My final decision**

I don't uphold this complaint. I don't make any award against U K Insurance Limited.

Under the rules of the Financial Ombudsman Service, I'm required to ask Mr T to accept or reject my decision before 16 December 2024.

Fiona Robinson  
**Ombudsman**