

The complaint

Ms A complains that DAS Legal Expenses Insurance Company Limited refused to pay a claim under the tenant default section of her landlord's insurance policy.

What happened

Ms A owns a property which was let to a tenant. The tenant stopped paying rent in December 2023 and in January 2024 she made a claim on her policy. She wanted to obtain possession of the property and recover the rent arrears.

DAS said the claim for possession of the property and to recover the rent from the tenant was potentially covered and referred this to solicitors to assess, but rejected the claim for rent under the tenant default section of the policy.

DAS said there had been rent arrears in March and April 2023, so Ms A should have reported the claim then but hadn't done so and this was a breach of the policy conditions.

Ms A complained. She said she hadn't been aware of the previous missed payments and made the claim as soon as she became aware the tenant was in arrears with the rent. DAS didn't change its decision and said:

- the policy terms required Ms A to notify it of a claim for tenant default where any rent was unpaid for 45 days
- it was important to notify it of any arrears promptly, as this protected its position in terms of recovery, since an old debt can be more difficult to recover.

When Ms A referred the complaint to this Service, our investigator said it was fair for DAS not to cover the tenant default claim, as Ms A had been late making that claim, in breach of the policy terms. He thought it was reasonable to expect Ms A to have been aware of the previous rent arrears. He didn't agree with Ms A that the earlier rent arrears were a separate incident and she could choose which arrears should be considered.

Ms A disagrees and has requested 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.

The relevant industry rules and guidance say insurers must deal with claims promptly and fairly, and not unreasonably reject a claim. They should give consumers the information they need, so they understand how the policy works.

The starting point is the policy terms, as these set out the terms of the agreement entered into between Ms A and DAS.

The policy first started in October 2020 and was renewed each year. The most recent renewal before the claim was in October 2023. Under the tenant default section of the policy, if the tenant is in arrears with their rent, DAS will in some circumstances pay the arrears up to a maximum of 12 months.

As with all insurance, there are policy terms and conditions that apply. In particular, the policy requires Ms A to:

- keep clear and up to date rent records; and
- report any claim as soon as she becomes aware of an incident that could give rise to a claim and - for tenant default claims – within 45 days if any rent is unpaid.

The policy also says the relevant “*date of occurrence*” is the first date that any of the rent due is not paid. And it says if there is more than one event that leads to a claim, the relevant date is the date of the first event.

I think it’s clear from the policy terms that Ms A should have notified DAS of any rent arrears as soon as she became aware of them and in any event within 45 days. The tenant didn’t pay the rent in March or April 2023, so was in arrears from then. Ms A should have notified DAS of these arrears, but she didn’t do this until January 2024, when further arrears had accrued. This was in breach of the requirements set out in the policy terms.

Ms A says an incident is generally defined as ‘*an occurrence of an action or situation that is a separate unit of experience*’. And she says there are two separate incidents of non-payment, separated by seven months of full payment by the tenant. She did not claim for the first one and says nothing in the policy refers to claims for previous incidents.

As I’ve set out above, the policy terms say she has to report any claim as soon as she becomes aware of an incident that could give rise to a claim, and report any rent arrears within 45 days. So the earlier arrears should have been reported.

Ms A says she wasn’t aware of the earlier rent arrears until she checked her bank statement, when DAS asked for a breakdown of rent payments. The policy terms require her to keep accurate records of rent, and it’s reasonable to expect any landlord to do this.

If Ms A had kept a record of the rent, she could have notified DAS in accordance with the policy terms. She didn’t do this and so was in breach of the condition.

This was likely to prejudice DAS’ position because the longer rent arrears are left, the greater the risk of them increasing and of not being able to recover them. If Ms A had taken action following the rent arrears in March and April 2023, that may have prevented the later arrears. By the time she notified DAS, there were four months of rent arrears rather than two.

For these reasons I’m satisfied the decision not to accept the tenant default claim was in line with the policy terms and was fair.

My final decision

My decision is that I don’t uphold the complaint.

Under the rules of the Financial Ombudsman Service, I’m required to ask Ms A to accept or reject my decision before 15 November 2024.

Peter Whiteley
Ombudsman