

The complaint

Ms C is complaining on behalf of P – a limited company – that AmTrust Specialty Limited has declined a claim P made on its commercial property insurance policy.

What happened

In August 2023 P looked to claim through its commercial property insurance policy for malicious damage a tenant had caused to a property it owned – in particular to the carpets and bathroom. However, AmTrust declined the claim as it said P hadn't disclosed that it had given a notice of eviction to the tenant. And it said, had P done so, it would have removed malicious damage cover when the policy renewed on 30 June 2023. So it said there was no cover for the malicious damage. It acknowledged some of the damage may be down to an insured event – such as accidental damage. But it said it considered the other damage P claimed for was down to wear and tear.

Ms C didn't agree with AmTrust's decision. She acknowledged she hadn't disclosed the notice of eviction, but she said notice had been served in May 2023 and she believed most of the damage was caused before the policy renewed in June 2023. So she didn't think it was fair for AmTrust to decline the claim.

Our Investigator didn't uphold this complaint. She didn't think it was unfair for AmTrust to have removed malicious damage cover with effect from 30 June 2023. And she thought it was most likely any damage the tenant caused maliciously was caused after the malicious damage cover was removed. She also noted that the carpets had been in a poor condition before the notice was given. So she thought it was likely they need replacing even without the malicious damage.

The Investigator noted the policy covered accidental damage. But she noted AmTrust had said the cost of repairing this damage was less than the policy excess. And she didn't think that was unreasonable. Finally she considered P was claiming for water damage arising from the bath, but she thought this was down to a lack of sealant from the bath. And she said this wasn't covered under the terms of the policy.

Ms C didn't agree with the Investigator and, in summary, said the following:

- She didn't agree that all the damage had happened after 30 June 2023. She highlighted six weeks passed between issuing the notice of eviction and the policy renewing. She acknowledged it took a long time after the renewal to gain access to the property, but she thought it was unlikely that the tenant had been in the property that whole time – especially given the state the property was in.
- She said she hadn't intended to withhold information from AmTrust. But she said she was going through a very difficult time personally.
- She recognised it took some time for her to report the loss to AmTrust. But she said she didn't realise P could claim for the damage through the insurance policy until she spoke with P's broker.
- P had been insured with AmTrust for around 10 years. So she said she'd hoped for better treatment given they were long term customers.

As Ms C didn't agree with the Investigator's opinion, the complaint's 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.

I've decided to not uphold this complaint and I'll now explain why.

P has claimed for various different insured events. I shall address each point separately.

Malicious damage

AmTrust said P failed to disclose that it had served notice on the tenant before the policy renewed. And it said it wouldn't have provided malicious damage cover had P done so. So it said there was no cover for malicious damage. Ms C has said she was going through a difficult time personally and didn't deliberately withhold this information from AmTrust.

The relevant law in this case is the Insurance Act 2015 ('the Act'). This required the policy applicant to make a fair presentation of the risk to the insurer so that it had enough information to assess the level of risk it was willing to provide and on what terms.

And if the applicant fails to do this, the insurer has certain remedies provided the failure is – what the Insurance Act describes – as a qualifying breach. For it to be a qualifying breach the insurer has to show it would have offered the policy on different terms or not at all if the consumer hadn't made the breach.

AmTrust set out the information it needed to carry out a risk assessment in the statement of fact it issued before the policy renewed. And it was P's responsibility to ensure the information AmTrust was given was accurate. AmTrust asked P "*Are the current tenants in rent arrears and/or subject to eviction proceedings*". P should have told AmTrust that the current tenant was in rent arrears and it had issued eviction proceedings, but it didn't do so. So I don't think P made a fair presentation of the risk when the policy renewed.

AmTrust has said it would have removed malicious damage cover had P made a fair presentation of the risk. And I'm satisfied that's likely. So I think P's failure would be considered a qualifying breach under the Act.

I note Ms P says she didn't do this deliberately. I don't think this is in dispute. So I don't think it was a reckless or deliberate breach. The Act says in these circumstances, where AmTrust would have entered into the contract, but on different terms, the contract is to be treated as if it had been entered into on those different terms if AmTrust requires it to. As I said I'm satisfied AmTrust would have removed malicious damage cover had P made a fair presentation of the risk. So, under the Act, AmTrust was entitled to treat the contract as if malicious damage cover wasn't included at renewal.

So it follows that the contract that started on 30 June 2023 did not provide cover for malicious damage. This means that AmTrust is not liable for any malicious damage that occurred after 30 June 2023. I think P has accepted that.

Ms C believes the malicious damage would have largely occurred before this date. But I don't think I can say it was unfair for AmTrust to say it's most likely the damage happened after renewal. Ms C has said the tenant was still in the property in July 2023 and she didn't gain access until mid-August 2023. So the tenant was still living in the property for at least

five weeks after renewal. By Ms C's own admission, the extent of the damage would have largely rendered the property uninhabitable. So I don't think it was unreasonable for AmTrust to conclude the damage likely happened towards the end of the tenant's tenancy – i.e. post renewal. It follows, therefore, that I can't say it was unreasonable for AmTrust to not cover any damage the tenant deliberately caused.

Bathroom damage

As I said above, I don't believe AmTrust is liable for any damage the tenant caused deliberately – including damage done to the bathroom. However Ms C believes the damage should be covered as either accidental damage and/or escape of water.

I think I should first set out that the terms of the policy don't consider all separate incidents as one claim. It's for P to show the damage arises from an insured event. But each event would constitute a new claim – including subject to a new excess of £100 each time. P has claimed for various damage. I shall address them separately.

- P has claimed for damage to an ensuite hand-basin and also to the bath. But I think it's likely these would have occurred in separate acts – i.e. I'm not persuaded the tenant could have accidentally damaged the bath and the basin in the same act. The total cost in rectify both of these was £140. So I don't think it's unreasonable AmTrust to say the individual repair cost was likely to be less than the £100 excess.
- P has said the shower tray needed replacing and resetting. But I haven't seen enough to show this arose as a result of an insured event. It seems to be most likely that it needed replacing due to wear and tear. I recognise the property seems to have worn by more than one might usually expect. But the policy covers damage arising from a single one-off event – i.e. doesn't cover damage that arises over time. And I think it's most likely the damage to the shower tray has occurred over time.
- P has set out water escaped from the bathroom causing damage to the walls and the ceiling. However AmTrust has said this is a result of a lack of grout/sealant. I think the photographs support the grout/sealant has worn away in several areas around the bathroom. The terms of the policy specifically excludes damage *“caused by the failure of, or lack of, appropriate grout and/or sealant”*. I'm persuaded it's *most* likely the damage to the walls and ceiling is as a result of this. And I haven't seen anything to show a different cause. So it follows that I can't say it was unreasonable for AmTrust to say this damage wasn't covered.
- P has also claimed for damage to an ensuite wall from water coming out of the boiler. The policy doesn't cover damage to the indoor pipes, but it does cover damage arising from water escaping from them. But this is subject to an excess of £250. AmTrust has said it believes the cost of painting the walls is likely to be less than £250. I'm conscious Ms C has described the leak as minor. And I don't think she's given anything to show this wasn't accurate. So I can't reasonably require AmTrust to pay this.

I naturally sympathise with the situation that's arisen. I recognise P has suffered financially due to the actions of a third party which was out of its control. But no insurance policy covers each and every eventuality. And, for the reasons I've set out above, I can't say AmTrust has acted unfairly in the handling of this claim.

My final decision

For the reasons I've set out above, it's my final decision that I don't uphold this complaint.

Under the rules of the Financial Ombudsman Service, I'm required to ask P to accept or reject my decision before 3 June 2025.

Guy Mitchell

Ombudsman