

## **The complaint**

T is a limited company. It complains Aviva Insurance Limited unfairly declined a malicious damage claim under a property owners insurance policy. T is represented by its sole director, Mr T.

## **What happened**

The details of this complaint are known to the parties, so I won't repeat them again. Instead, I will focus on the reasons for my 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.

Many points have been made in relation to this matter – I've not addressed each one individually. Instead, I've focused on what I think the key points are. I mean no discourtesy to either party by this; it simply reflects the informal nature of this Service.

T owns a property it rents to tenants. The property was insured with Aviva. Mr T raised a malicious damage claim in September 2024. He said, in brief, a Section 21 notice was served to tenants in June 2024, tenants didn't tell him when they left, they left windows open and changed the locks. When Mr T gained entry, he found extensive damage throughout. He says this damage was caused deliberately by tenants following the Section 21 notice.

Aviva asked Mr T to provide a crime reference number. Mr T didn't have this, nor would the police assist him with the same, so Aviva told him it couldn't consider the claim further, as the policy required a policyholder to provide a crime reference number following a malicious damage incident. Aviva, however, did ultimately agree to consider the claim further.

Aviva instructed an agent to assess the damage. This took place on 16 September 2024. I find this was a fair and reasonable approach for it to take due to the nature of the claim, and damage, which wasn't isolated to one area. Damage included water damage, dents and scuffs, ceiling, wall and flooring damage, and a missing socket, amongst other things.

The report was shared with Aviva to assist it with validating this claim. I've reviewed this report, which I find was detailed, thorough and supported by photos of the areas of damage. I further find this report was completed by someone suitably qualified to assess and report on property damage, in the absence of any evidence to the contrary.

Following a review of this report, Aviva declined the claim on 15 October 2024. It concluded, in brief, damage was consistent with that of gradual wear and tear resulting from the way in which tenants were using and living in the property, rather than a one-off insured event. I am satisfied Aviva's claim decision was a fair and reasonable one, and not contrary to the evidence. I say this for the following key reasons:

- The policy doesn't define malicious damage, so I've applied what I think is the ordinary meaning/definition of the term. I think malicious damage is damage to property caused by someone intending to cause harm.
- The onus is on T to demonstrate the loss or damage it's claiming for was the result of a one-off insured event. I don't find tenants being issued with a Section 21 notice, changing locks, or leaving windows open (which could have been done for several reasons – including a tenants' lack of care, or airing out the property on their departure, given Mr T noted a foul smell) is compelling evidence to support it's more likely than not the subsequent damage was caused deliberately and intentionally by tenants to cause T harm.
- I've reviewed photos of the damage taken by Aviva's agent, and photos and videos provided by Mr T to our Service, which I find are broadly consistent with one another. I am persuaded the same supports Aviva's conclusion this damage is consistent with damage caused by negligent tenants who failed to take reasonable care of the property in the way in which a landlord would expect.
- The damage isn't isolated to one area; the evidence shows this largely consists of scuff marks, dents, damaged paintwork and surfaces, and water marks, at different heights, and in different areas of the property. It is my view this suggests multiple isolated incidents occurred over time due to the way in which tenants were using and living in the property, with a lack of care, rather than a one-off insured event, such as malicious damage, or any other insured event noted in the policy.
- Mr T has said the property was new and therefore the gradual wear and tear exclusion Aviva applied is unfair. Property will naturally wear over time. This process will be expedited depending on the manner in which the property is being used and cared for. In this case, it seems more likely than not damage happened over time through neglect.

In conclusion, I find Aviva's decision to decline this claim was fair, reasonable and not contrary to the evidence. I'm therefore not going to require Aviva to accept T's claim for malicious damage. T has also claimed for loss of rent, but because of my findings above, it follows I don't find the loss of rent section of the policy should respond to this claim either.

I accept my decision will disappoint Mr T. But for me to require Aviva to take action, I must be satisfied it treated T unfairly. And for the reasons mentioned above, I don't think it did. It follows my decision ends what we – in attempting to informally resolve T's dispute with Aviva – can do for it.

### **My final decision**

I don't uphold this complaint.

Under the rules of the Financial Ombudsman Service, I'm required to ask T to accept or reject my decision before 10 September 2025.

Liam Hickey  
**Ombudsman**