

The complaint

Ms C complains that Financial & Legal Insurance Company Ltd (“F&L”) has unfairly declined a claim under her landlords rent and legal protection insurance policy.

Where I refer to F&L, this includes the actions of its agents and claims handlers for which it takes responsibility.

What happened

The detailed background to this complaint is well known to both parties, so I’ll only summarise the key events here.

- Ms C holds a landlords rent and legal protection insurance policy, underwritten by F&L.
- In mid-June 2024, Ms C discovered that her tenants were sub-letting her property on Airbnb. Shortly after, the tenants stopped paying the rent. So Ms C made a claim under her policy for repossession of the property and rent arrears.
- F&L declined the claim for rent arrears as it said there was no cover where the property had been sub-let.
- Ms C didn’t think this was fair as she didn’t know the property was being sub-let. She raised a complaint and when F&L didn’t respond, she brought it to our Service.
- Our Investigator upheld the complaint on the basis that there is no policy exclusion for sub-letting. He recommended that F&L reconsider the claim under the remaining policy terms and pay 8% interest on any subsequent claim payment.
- Ms C accepted this outcome, but F&L didn’t agree. It said the tenants had breached the tenancy agreement in a number of ways, which means this is a contract dispute which the policy doesn’t cover.

As F&L didn’t agree with our Investigator, the complaint has 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.

Having done so, I’ve reached the same outcome as our Investigator, and for broadly the same reasons. Before I explain why, I wish to acknowledge the parties’ submissions in respect of this complaint. Whilst I’ve read them all, I won’t comment in detail on every single point that has been made. Instead, I’ll focus on the key points that are relevant to the outcome I’ve reached. That’s in line with our remit, which is to resolve complaints promptly and with minimal formality.

When making a claim under an insurance policy, the onus is on the policyholder to prove they have a valid claim. If they do, the insurer should pay the claim unless it can prove that a policy condition or exclusion applies. The relevant regulations say an insurer should not unreasonably reject a claim.

The terms and conditions of Ms C's policy says it will cover the following:

"Where the insurer has accepted your claim under insured incident 1 Repossession, the insurer will pay:

- a) Unpaid rent which is due to you under the terms of a tenancy agreement whilst you are trying to obtain vacant possession of your insured property;*
- b) 50% of the monthly rent that would have been due to you for a maximum of three months or until your insured property is ready to be re-let, whichever happens sooner, if you are not able to re-let your insured property immediately once vacant possession has been obtained due to damage or neglect caused by the former tenant."*

The policy provides the following definition of "tenancy agreement":

"A written legally binding agreement, containing an enforceable termination clause, between you and the tenant to occupy your insured property:

- a) which is under an assured shorthold tenancy, a short assured tenancy or an assured tenancy as defined by the Housing Act 1988 (updated and amended by the Housing Act 1996) or the Housing (Scotland) Act 1988 or a private residential tenancy (as defined in the Private Housing (Tenancies) (Scotland) Act 2016); or*
- b) which is let under the Private Tenancies (Northern Ireland) Order 2006; or*
- c) which is let to a limited company or business partnership for residential use by their employees; or*
- d) where you permanently live at your insured property.*

For the avoidance of doubt, this does not cover an agreement between the tenant and another party to sublet the insured property."

F&L hasn't confirmed which specific policy term it seeks to rely on when declining Ms C's claim. And looking through the policy, I haven't been able to identify any exclusion or condition related to sub-letting. In fact, the only mention of sub-letting in the policy is within the definition of tenancy agreement quoted above.

As there is no policy exclusion or condition relevant to the circumstances of Ms C's claim, I see no justifiable reason to decline cover. I understand that a claim for repossession has been accepted and there were rent arrears, as such a valid claim exists and should be paid.

I appreciate the definition of a tenancy agreement excludes any agreement between the tenant and another party to sublet the property. If F&L intended that to mean there's no cover where the property is sub-let, it could have said so, but that isn't what the term says. It says this doesn't cover agreements between the tenant and another party.

This claim relates to the tenancy agreement Ms C has in place with her tenant and the unpaid rent due under this agreement. Ms C isn't looking to pursue a claim arising from the agreement between her tenant and the parties they've been sub-letting the property to – or any unpaid rent under that agreement.

F&L say that as the tenant has breached the tenancy agreement by sub-letting the property and in several other ways, this is a contract dispute. Whilst there is cover for contract disputes, there isn't if the dispute arises from the tenancy agreement. F&L says that any cover under the rent protection section does not apply once the tenancy is fundamentally undermined. But again, I can't see anything within the policy terms which says this. There is no exclusion or condition which says the rent protection cover can no longer be used if there is a contract dispute or if the tenants have breached the agreement.

If F&L don't have the appetite to cover unpaid rent where a tenant has breached the tenancy agreement, then it only need say this in the policy terms. But it doesn't. And ultimately, all claims under the rent protection section will arise from a breach of the tenancy agreement, as not paying the rent due is a breach in itself.

Based on the information available, I'm not satisfied that F&L has declined this claim fairly and reasonably. As such, I'm directing it to pay the claim plus interest.

My final decision

For the reasons I've explained, I uphold this complaint and direct Financial & Legal Insurance Company Ltd to pay Ms C's claim for unpaid rent, minus any policy excess and up to the policy limits, plus 8% simple interest per annum from the date Ms C made her claim until the date the claim is paid.

Under the rules of the Financial Ombudsman Service, I'm required to ask Ms C to accept or reject my decision before 7 October 2025.

Sheryl Sibley
Ombudsman