

The complaint

Mr T complains that Topaz Finance Limited trading as Rosolite Mortgages paid ground rent and associated legal and administrative charges on his mortgage. Mr T said he was in dispute with the landlord's lawyers about the legal charges, so this shouldn't have been paid.

What happened

Mr T said he'd contacted Rosolite on 1 August 2024, as he wanted to make sure it wasn't going to pay a demand for ground rent that he understood it had been sent. Mr T said he wanted to sort this out himself, because he disputed the amount he'd been asked to pay. And Rosolite assured him it would not make the payment.

Mr T said he then paid the outstanding ground rent, but not the additional legal fees and charges that the lawyers wanted to add to his debt. Mr T then discovered Rosolite had paid the money that he'd instructed it not to pay – which included both ground rent and extra charges. Mr T said not only had he told Rosolite not to pay, there was also no reason to pay. He was actively engaged in resolving this, so there was no risk to the property.

Mr T complained, but Rosolite just said it hadn't done anything wrong in making the payment. It offered £50 to make up for what it had done. Mr T said that the payment made by Rosolite had caused financial hardship, and worsened his existing mental health issues. Mr T said this greatly complicated his legal dispute with the landlord's agent, and its lawyers.

Mr T said he wanted Rosolite to reimburse the money it had paid, plus compensation for the distress this had caused. He wanted Rosolite to apologise, and to make sure this didn't happen to anyone else.

Rosolite said it shouldn't have told Mr T that this payment wouldn't be made, it accepted that was a mistake. But it didn't think it had made a mistake, in actually making this payment. Rosolite said it would like to pay Mr T £50 to make up for the incorrect information, and asked him to sign to waive any future rights against it, if he wanted to accept that amount.

Our investigator didn't think this complaint should be upheld. He said Rosolite should only pay in limited circumstances. It is, however, able to pay ground rent only, without Mr T's agreement and without having received a judgment, if ground rent has been outstanding for more than three years, or the ground rent debt exceeds £350.

However, here the amount that was requested wasn't just ground rent. So our investigator didn't think Rosolite should have paid this. But he said that didn't necessarily mean Rosolite had to refund the money to Mr T's mortgage. He said if Rosolite hadn't paid, then it was likely this matter would have gone to court. And in those circumstances, Mr T may well have ended up paying the amount requested anyway, or perhaps even more, with further legal fees added. So our investigator said Rosolite didn't have to pay Mr T back the money it had paid the lawyers, unless Mr T could show a tribunal had decided this money wasn't owed.

Our investigator recommended Rosolite pay Mr T £200, to make up for the upset it caused. Rosolite said it would pay that, but Mr T didn't agree. He said he'd asked Rosolite not to pay.

It didn't need to pay the legal charges, and this had made his mental health much worse. He still wanted Rosolite to take the whole payment off his mortgage. He didn't think it was fair to make him take legal action against his landlord and its lawyers.

Mr T wanted this complaint to be considered by an ombudsman, so it was passed to me for a final decision. And I then reached my provisional decision on this case.

My provisional decision

I issued a provisional decision on this complaint and explained why I did propose to uphold it. This is what I said then:

When Mr T first spoke to Rosolite on 1 August, he was clearly very angry about the additional legal fees he was being asked to pay, on top of the outstanding ground rent. Mr T said the matter had only been handed to lawyers very recently, so he felt the fees requested couldn't be justified by the very modest amount of work done to date by those lawyers.

Mr T also said the lawyers had done this before, added very large legal fees, asked Rosolite to make payment, and it had paid. So he'd ended up with significant additional amounts added to his mortgage – around double the amounts he owed in ground rent. Mr T was determined to avoid this happening again.

Rosolite said it wouldn't make the payment. Unfortunately, on the same day, 1 August, Rosolite made the requested payment in full.

Our investigator was clear that Rosolite could have paid ground rent alone, but should not have paid any additional fees or charges, without either Mr T's agreement (which it did not have) or an imminent threat to its security (which had not been shown). For the avoidance of any doubt, I think that too. Rosolite shouldn't have paid all this money. It's also worth noting here that I think it has added to Mr T's distress in this case, that Rosolite has continued to insist throughout that it did nothing wrong in making this payment.

But our investigator then said Rosolite didn't have to remove either the ground rent or the extra charges from Mr T's mortgage, because he felt Mr T would probably have had to pay the full amount requested including the fees, or perhaps even more than that, if things had gone to court. This is where I have reached a different conclusion.

I can hear on the calls Mr T had with Rosolite, that he had received legal advice, and he had a plan for avoiding the payment of all the fees requested. Mr T said he'd been blocked from paying the ground rent alone, when the matter was handed to the landlord's lawyers. I understand that preventing payment through a landlord's payment portal is not an unusual approach by landlords where ground rent or service charges are outstanding, and is done to avoid someone paying the core debt, which could then undermine any legal action taken to recover the administrative or legal costs of recovery which a landlord starts to incur when they pass a file over for legal action.

Mr T said if this did go to court, then he would be able to ask the judge to look closely at the legal charges, and he expected those would then be reduced. But before things got to that stage, Mr T had another option. He still had his old payment details, from before this landlord put a payment portal in place. So he simply paid his overdue ground rent by bank transfer. Payment for the core debt, in Mr T's case, was received by the landlord on 2 August 2024, paid by Mr T himself.

We know that Mr T's payment was successful, because it, plus the payment from Rosolite, resulted in an overpayment which the landlord's lawyers have offered to return to Mr T. However, they are not offering to refund any of the legal charges which Mr T wanted either to avoid, or challenge before a court. Those remain paid, and incurring interest as applied to Mr T's mortgage.

I think there's a good chance that if Rosolite hadn't paid both Mr T's ground rent, and the legal charges on top, that Mr T would not have been pursued for the debt plus charges, because he had paid the underlying debt. And of course, even if he had been pursued for just the outstanding legal charges, Mr T would still have had the opportunity to ask the court to look at the amount requested. Overall, I think it's more likely than not that if Rosolite had not made any payment on 1 August, Mr T would still have ended up having to pay the overdue ground rent, but with either a significant reduction in the legal charges, or no additional charges at all.

I do however have to bear in mind that Mr T did have a significant amount of outstanding ground rent, which hadn't been paid for some time. I also have to bear in mind that he didn't respond to Rosolite's earlier correspondence about his ground rent debt. And finally, that I cannot completely rule out that Mr T would have ended up paying all the fees that Rosolite covered.

So, in all the circumstances of this case, I don't think Rosolite should pay compensation in this case. Instead, what I think it should do is put Mr T back in the position he would likely have been in, if Rosolite hadn't paid the legal charges as well as the ground rent. I think Rosolite should rework Mr T's mortgage, as if it had paid only the requested sum of £990 in ground rent on 1 August 2024, not the additional administrative and legal charges of £792 which were also requested.

I think that would provide a fair and reasonable outcome to this complaint.

I invited the parties to make any final points, if they wanted, before issuing my final 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.

Mr T accepted my provisional decision, but Rosolite did not. It replied at length to object.

Rosolite has, in essence, set out in more detail, and with additional supporting evidence, the argument it made when this case was first passed to our service. It said Mr T was obliged to pay the ground rent. That his lease included provisions allowing the landlord to add legal costs when the ground rent payment is overdue. And although Rosolite set out that it's non-payment of ground rent which triggers a landlord's right to forfeiture, Rosolite insisted that failing to pay the full amount, including the legal fees, would have put its security at risk.

Rosolite said Mr T was in breach of the mortgage conditions, so it was entitled to pay the requested sums. It said it had written to Mr T, asking him to respond within 10 working days, and he hadn't done so. That was when it made the payment. And Rosolite also said that if the landlord's lawyers had needed to litigate to recover the outstanding rent, they said costs would increase.

Finally, Rosolite insisted that the inclusion of the phrase *"The payment is made without prejudice to any rights or claims our customer may have under the terms of the lease."*

meant that Mr T's claim for the legal fees was not affected by the payment and could continue against the landlord.

The issue here isn't that Rosolite made a payment to cover Mr T's outstanding ground rent. From the outset, our service has said Rosolite was entitled to pay that money. The issue is that Rosolite also paid legal fees, which remained disputed.

Rosolite also made this payment on the same day that it heard Mr T's plan to pay his ground rent and avoid the additional fees, and the same day it had promised Mr T it would not make this payment.

Our investigator thought Mr T would have ended up paying those fees anyway, or perhaps more, if the case went to court. That would appear to be Rosolite's continued position here.

My provisional decision did not criticise the payment of ground rent. In reply, Rosolite suggested that the lease would have been forfeit if it hadn't made the whole payment. And it further argued that if it hadn't paid the administrative and legal charges of £792, it thought Mr T would have ended up paying that, or more, anyway.

But my provisional decision said I could see Mr T had a plan to avoid paying the full amount of those fees. I thought that plan had a better than evens chance of success.

I know Rosolite considers Mr T could still sue to recover this money. But that leaves him in a very different position than if the landlord's lawyers had to decide whether or not to try to recover these costs. So it wouldn't be fair to say that Mr T's position hasn't been adversely affected by what Rosolite did.

In recognition of all Rosolite has said about Mr T's previous problems with payment of ground rent, and in particular his unfortunate tardiness in responding to its letter about this payment, I continue to think it's not appropriate to award compensation in this case.

I also think that Rosolite was entitled to pay ground rent. It doesn't have to remove that part of the debt from Mr T's mortgage now.

And finally, whilst this is a finely balanced decision, after considerable consideration I remain of the view that the payment of additional legal and administrative fees was not, in the very particular circumstances of this case, a fair and reasonable step for Rosolite to take. So I still think Rosolite must remove that additional amount from Mr T's mortgage.

For the above reasons, I haven't changed my mind. I'll now make the decision I originally proposed.

My final decision

My final decision is that Topaz Finance Limited trading as Rosolite Mortgages must rework Mr T's mortgage, as if it had paid only the requested sum of £990 in ground rent on 1 August 2024, not the additional administrative and legal charges of £792 which were also requested.

Under the rules of the Financial Ombudsman Service, I'm required to ask Mr T to accept or reject my decision before 7 July 2025.

Esther Absalom-Gough
Ombudsman