

complaint

Mr and Mrs H are unhappy that Zurich Insurance PLC has declined to pay a claim for malicious damage under their buildings and contents insurance for Landlords policy.

background

In October 2014 Mr and Mrs H had to evict a tenant and her family from their let property. When he inspected the property Mr H found that considerable damage had been caused. It was thought that it had been done by the tenant. A report was made to the police who interviewed the tenant, who explained how some of the damage happened. But in the end the police decided that there wasn't enough evidence to prosecute. Zurich wouldn't pay the claim as it said the damage was all caused by the tenant, and is excluded from the malicious damage cover. Mr H said that only some of the damage was caused by the tenant. He thought that most of the damage was caused after the tenant left.

Our adjudicator initially thought that Zurich should cover the damage not identified as being caused by the tenant. But he agreed with Zurich that if the damage was done after the tenant left, the property was unoccupied and excluded from cover.

I issued a provisional decision. I agreed that some damage wasn't caused by the tenant. But I thought it unfair for Zurich to rely on an exclusion it hadn't brought up before. Zurich disagreed, in particular saying that Mr H had been inconsistent with his accounts of the damage.

my findings

I've considered all the available evidence and arguments to decide what's fair and reasonable in the circumstances of this complaint.

Under the "*malicious damage and vandalism*" part of the policy any damage caused by "*persons lawfully on the premises*" is excluded. As both parties dispute each other's evidence I think it reasonable to look at the independent evidence.

The police interviewed the tenant who said that the shower was broken during normal use. She also said the fire was removed as it was condemned and the shed belonged to her. The report then said that the external render was damaged by an unknown person. There was considerable other damage detailed in the report. But the police didn't mention putting this damage to the tenant so I don't know what conclusions they came to about this.

Secondly there is an email from the enforcement officer from the local council. He says that on the day he attended to evict the family the property had been left insecure. He also mentioned reports of youths outside the property and climbing through the windows both before and after the tenant left. I don't see any reason to doubt this evidence. On balance I think that the damage not admitted by the tenant was done by "*unknown persons*" after the tenant left. So I think that Zurich hasn't shown that the exclusion for damage by tenants applies.

In response to our adjudicator's initial view, Zurich raised the argument that the property was unoccupied. This is a particular exclusion in the policy. Our approach to this is that it's unfair for an insurer to raise an argument with us if it didn't do so at any time whilst it was handling the claim. Also according to the policy schedule Mr H has "30 days unoccupancy cover".

This means that cover will not be restricted to fire, smoke, lightning, explosions and earthquake until 30 days after the property is vacated. The malicious damage cover doesn't apply whilst the property is empty or unoccupied. But I'm unclear about whether that applies during the 30 day period. I think on balance, as Zurich didn't raise it before and as it is unclear it's unfair to apply it here.

compensation

The property has clearly been vandalised quite badly. Mr and Mrs H face paying a large amount of money to get it back in order. The fact of their claim being turned down will have caused them a fair degree of inconvenience and upset. But the circumstances did need investigating and I note that it took about a month for Zurich to reach a decision. I am going to make an award of compensation, of £250. Mr H has put forward details of lost rent and council tax. Zurich will have to decide on what it pays for those when it settles the claim.

overall

I think Zurich should settle the claim, less those parts the tenant admitted responsibility for. If it makes a cash payment it should add interest as Mr and Mrs H have been without payment for some time.

my final decision

I uphold the complaint and direct Zurich Insurance PLC to:

- settle Mr and Mrs H's claim less the cost of the damage the tenant admitted responsibility for, subject to the remaining terms and conditions of the policy
- if it pays any cash settlement Zurich must also pay interest* on this amount at the simple rate of 8% per year from the date Mr and Mrs H made their claim to the date it makes the payment.
- pay compensation of £250 to Mr and Mrs H for the upset and inconvenience caused to them.

Under the rules of the Financial Ombudsman Service, I'm required to ask Mr and Mrs H to accept or reject my decision before 11 April 2016.

Ray Lawley
ombudsman

*HM Revenue and Customs requires Zurich Insurance PLC to take off tax from this interest. Zurich must give a certificate showing how much tax it's taken off it if Mr and Mrs H ask for one.