

complaint

Mr C is unhappy that The Society of Lloyd's have declined his claim for damage caused to his property by his tenants.

background

Mr C served notice on his tenants to vacate the property as the neighbours had complained that they were too noisy. After the tenants moved out, Mr C discovered that the property was damaged and therefore made a claim under his home insurance policy.

Following a visit from the loss adjusters, Mr C's claim was declined because the loss adjuster stated that the damage was not malicious but was caused by maintenance issues and wear and tear. Mr C was not happy with this and the claim was then looked at again. Following a further review, Lloyd's concluded that the removal of kitchen cabinets could be classed as malicious damage and therefore a settlement of £200 for two cabinets was put forward. However, Mr C remained unhappy with this.

our initial conclusions

Our adjudicator felt the complaint should be upheld. She could not see evidence that Lloyd's had considered each individual aspect of damage that had occurred. She concluded that the Society of Lloyd's should reconsider the claim fully under both the accidental damage and the malicious damage sections of the policy. She also felt interest should be added to any subsequent claim settlement. Initially, as Mr C had not provided evidence to support his loss of rent claim, she was not minded to ask it to consider loss of rent any further.

Mr C did not agree with this as he said he had tenants lined up to move into the property once the old tenants had moved out. In light of this information, the adjudicator agreed that Lloyd's should also consider Mr C's loss of rent claim (subject to further evidence from Mr C).

The Society of Lloyd's responded explaining that it was unable to agree with the adjudicator without first seeing further evidence from Mr C's builder. It also concluded that it was unlikely that the damage covered by the insurance policy would be sufficient to render the property unmarketable and therefore loss of rent would not be payable.

my findings

I have considered all the available evidence and arguments to decide what is fair and reasonable in the circumstances of this complaint.

Our adjudicator pointed out that it did not appear that Lloyd's had considered all the damage in line with the cover given within the policy wording. Lloyd's had considered malicious damage but not accidental damage.

Further, the property has not only been repaired but it has also been sold. This does make matters tricky as it does appear that the original report from the loss adjuster lacked detail and Mr C has provided some evidence that conflicts with the points made in the adjuster's report.

bathroom

The damage here was highlighted by photographs and mentioned in the adjuster's report *"Plasterwork around the door is dislodged and a gap is visible."* The report also said that the *"shower unit had been moved."* Therefore, it does not appear that most of the damage was malicious and Lloyd's has not acted unreasonably in turning down this part of the claim.

walls

There are different points made about the walls throughout the property. There are holes, uneven walls, and missing wallpaper. Based upon the types of damage it does not appear that Lloyd's has acted unreasonably in turning down this part of the claim.

hallway flooring

This item was highlighted by our adjudicator and accepted by Lloyd's that it should be paid for – subject to evidence of the cost. This is reasonable.

kitchen boiler

The evidence provided by Mr C's builder is persuasive.

"The boiler needed a new gas exchange system, when I inspected the boiler it was already opened from the seal which indicate someone has opened it. The water was leaking and the boiler pipe on the gas exchange was dripping water. Further inspection I am sure that the tenant either did it himself or asked someone to look at the boiler as some washer were changed and installed incorrectly which damaged the gas exchange unit."

The report from the loss adjuster stated that the actual repair was carried out by British Gas. On balance it appears that the boiler was tampered with by the tenant and subject to receipt evidence Lloyd's should pay the repair costs for the boiler, regardless of who eventually carried out the work.

cooker

No mention is made of the cooker in the adjuster's report. However, Mr C's builder did go into detail.

"The gas cooker was damaged from the pipes which supply gas to the cooker, hence the reason it was leaking gas the cooker had several damaged hobs." The builder also referred to the damaged kitchen units which needed replacing, and Mr C provided photographs of damaged kitchen units. Fitting costs would also need to be paid. I accept that Lloyd's has paid £200 for the missing units already and this amount can be removed from any final payment in relation to the kitchen units. The extractor fan was found *"taken off and thrown outside"*. These do seem to be issues that should reasonably be considered as part of a malicious damage claim. None of these points were fully addressed by the loss adjuster's report. In view of the damage I have seen from the photographs it does not seem reasonable to suggest the damage was not malicious. Based upon evidence of the costs Lloyd's need to consider these items in line with the policy terms and conditions.

bedrooms

I cannot see from the photographs that the damage here appears to be malicious as it mainly looks like cracked walls. It does resemble wear and tear. On this basis it does not appear that Lloyd's has acted unreasonably.

Contents and other damage

I can see from the photographs that many things do appear very dirty and soiled including the two three seater settees. However, the photographs do not suggest this damage to be malicious, therefore I cannot find that Lloyd's has acted unreasonably on this point.

There is other general damage around the property but based upon the photographs and the loss adjuster's report it is very difficult to differentiate between what is malicious and what could look like a lack of care and deterioration. One thing that is clear is that the damage is extensive and Mr C does have some evidence to suggest that it did occur in the late stages of the tenant occupancy. There is ceiling damage, box work over pipes in the bathroom, the wiring to the kitchen plumbing all of which is difficult to define one way or the other. On balance I think a further payment of £250 would be a reasonable settlement to conclude matters.

excess

A further problem is that it does not follow that all the damage took place at one time. This does allow Lloyd's to potentially charge more than one excess. As the areas that Lloyd's should pay for are in relation to the hallway flooring and the kitchen damage I state that charging one excess for each of these two areas would be reasonable.

rent

Based upon the photographs I have seen it is difficult to say that the property would have been marketable or habitable without work. Therefore, Lloyd's should consider Mr C's claim for loss of rent if Mr C can provide evidence of a suitable tenant being available and ready to move in when he arranged to remove the previous tenants.

my final decision

I uphold this complaint.

I require The Society of Lloyd's to consider in line with the policy terms and conditions and subject to evidence from Mr C pay for:

- the hallway flooring;
- the kitchen boiler repairs;
- the kitchen cooker;
- the replacement kitchen units and fitting, minus the amount already paid for these;
- £250 for other damage;

- loss of rent;
- to any cash award simple interest at 8% per annum should be added from the date of claim to the date of settlement.

I make no other award against The Society of Lloyd's.

John Quinlan
ombudsman