

complaint

Mr and Mrs B are unhappy with Liverpool Victoria Insurance Company Limited's ("LV") decision not to consider their property owners insurance policy claim for damage to their rental property.

background

Mr and Mrs B rented their property out to a tenant who, unknown to them, converted the house into a cannabis farm.

Mr B initially told LV's loss adjuster that the tenant was one of three that he'd interviewed after they'd been proposed by a local estate agent. He's since said that the tenant he accepted was known to him anyway as a local acquaintance.

Mr and Mrs B didn't carry out any written reference checks on the tenant. LV has refused to consider their claim on the basis of non-compliance with a condition precedent for liability under the malicious damage section of the policy. This means that it was a condition of the policy that written references be obtained and verified before malicious damage by a tenant could be claimed under that policy extension.

Our adjudicator didn't think that LV had shown that the loss suffered was sufficiently connected to the failure to obtain references. He thought that the complaint should be upheld and the claim paid. LV didn't agree and asked for an ombudsman's review.

In advance of this decision, I sent a provisional decision to the parties in which I reached the following findings:

"my provisional findings

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

Having looked at the evidence as a whole, I do think that the failure to obtain and verify written references meant that LV could reasonably refuse to consider the malicious damage aspects of the claim under that section of the policy. The condition precedent for liability under that section wasn't satisfied. That said, I do think that LV still needs to consider Mr and Mrs B's claim under the flood, escape of water and fire sections of the policy. I'll explain why.

I agree with our adjudicator that Mr and Mrs B should be treated as consumers, despite this being a commercial policy. I don't think they're sophisticated in insurance matters. In order for LV to defeat their claim under the malicious damage (by a tenant) section of the policy, it has to show that the breach of condition was related to that part of the loss. I think it's shown that.

It's common when renting a property to obtain a reference from a previous landlord (if available) and to do a credit check. This can help avoid taking on an undesirable tenant. I appreciate that the tenant misled Mr B by telling him there was no point in doing a credit check, as all he'd find was that he had a poor credit history. But that check may have turned up other matters that would have influenced Mr and Mrs B in deciding whether or not to rent

their property to him. Similarly, a previous landlord's reference, or inability to provide one, might have been cause for concern.

Mr B has told us that he knew the tenant, having often met him in the pub, and had also known his fiancé for a few years. The tenant came recommended by his friend. That interview and his personal connections are a type of referencing. This may mean that Mr and Mrs B wouldn't have done anything different had they obtained written references. But I don't think it was unreasonable for LV to have required references before it was prepared to accept liability under that section of the policy.

The above said, I think it's important to consider the terms of the policy as a whole. The requirement for references is only a condition that applies to the cover for malicious damage by a tenant. Here it looks as though the damage also included a fire, escapes of water and possibly a flood. The policy has standard covers for these things. Escapes of water from 'tank apparatus or pipe' are covered. As the claim hasn't been fully investigated, I don't think LV has yet considered whether any of the damage was covered by those sections of the policy.

I couldn't see any general exclusions in the policy, or exclusions specific to those covers, that would defeat a claim for any relevant damage that was itself caused by an escape of water, a flood or a fire.

The policy has a general exclusion for illegal, deliberate and criminal acts. But that only applies to such things done by the insured person, their family and employees: not tenants.

The policy also has a non-invalidating clause. This specifically provides that the insurance won't be invalidated as a result of any unauthorised alterations to the house made by the tenant which Mr and Mrs B didn't know about. This may include any pipework that, unbeknown to Mr and Mrs B, the tenant put in to irrigate the plants. If that, or any other water installation went on to leak all over the property, I think this should be considered under the escape of water and flood sections of the policy. Similarly, if any alterations led to a fire which went on to damage the property, those too should be considered under the fire section.

Mr and Mrs B were duped into renting their home to the tenant. They thought they knew him and had trusted what he'd told them. I therefore don't think that Mr and Mrs B have breached any general duty to take reasonable care as LV has alleged. The lack of written references is enough to trigger the condition precedent for malicious damage liability. But it's not sufficient for LV to avoid liability under the policy as a whole.

LV has also said that it might have considered voiding the policy as Mr and Mrs B didn't declare the animal breeding that the tenant said he'd be doing at the house. Clearly that statement by the tenant was a lie and no animal breeding was ever intended. I don't think it would be either fair or reasonable for LV to rely on any non-disclosure of this, as it wasn't something that would ever have taken place. It can't have prejudiced LV as it wasn't true. LV also didn't raise it when rejecting Mr and Mrs B's claim in the first place and I don't think that it'd be fair for it to rely on it now.

Mr and Mrs B have said that they requested copies of the policy on three occasions but didn't receive it. LV says it has no record of any requests. The policy was taken out through a broker and I can't be sure who it was that they asked. It would also have been the broker's

responsibility to advise Mr and Mrs B about any specific requirements of the policy and I haven't seen anything that would suggest I should find LV responsible for this.

Overall, I consider it would be fair and reasonable for LV to consider any fire and water damage under the fire, flood and escape of water sections of the policy. I also note that Mr and Mrs B would like their claim for loss of rent to be considered. LV hasn't yet had an opportunity to look into that and so this is also something that I'd expect it to look at under the relevant terms of the policy should any damage be covered by the above perils."

Mr and Mrs B's representative responded to say that there may have been further deterioration to the property whilst this complaint had been running. He also said that there has been a further loss of rent over this period and that this will extend through any future remedial works. LV responded to say that they were prepared to re-consider the claim as I'd provisionally indicated.

my findings

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

I appreciate that the property may well have deteriorated further. If that's as a result of the damage initially claimed for, this is something that LV will need to assess when looking again at the claim under the other sections of the policy. Any loss of rent claim also still needs to be considered by LV. I can't at this stage make any assessment or direction in that regard until LV has first had a chance to look at the claim again.

In light of the parties' responses, I don't think that my provisional findings need to change.

my final decision

It's my final decision to uphold this complaint. I require that Liverpool Victoria Insurance Company Limited consider Mr and Mrs B's claim under the remaining sections of the policy as outlined above.

Under the rules of the Financial Ombudsman Service, I'm required to ask Mr and Mrs B to accept or reject my decision before 13 November 2015.

James Kennard
ombudsman