

## **complaint**

Miss W has complained about Amtrust Europe Limited's handling of her building warranty claim made to it in respect of a flat she owns but rents out.

## **background**

Damp was found in the en-suite bathroom, the developer didn't resolve it. Miss W contacted Amtrust and it did a report which found there was a defect that the developer had to fix. The developer didn't so Amtrust took on resolving the defect as required by its policy.

Amtrust took on responsibility for sorting the defect in November 2014 but it was April 2015 before contractors went to the property. Miss W said tenants were lost in January because of the unresolved damp in the bathroom. A new tenancy started in April on the understanding that repairs were soon to be done. However, when contractors visited at the end of April they stripped the bathroom out and then stopped work as they found a leak coming from the flat upstairs. Negotiations began with the neighbour to fix this leak and in June the tenant started withholding half of the monthly rent as the bathroom, attached bedroom and balcony (where building materials were being stored) were out of use. The leak was meant to be fixed but when Amtrust's contractors visited in September they found water was still coming from upstairs. In January 2016 the neighbour confirmed the leak had been fixed.

Our adjudicator felt that Amtrust could have handled this better and quicker. The fact it hadn't had caused Miss W distress and inconvenience. So she said it should pay Miss W £900 compensation. But she didn't think that any loss of rent as a result of Amtrust's delays had been shown.

Amtrust said that it didn't feel any compensation was warranted as this had been a complicated claim. It also pointed out that lost rent wasn't covered by the policy.

## **my findings**

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

### *compensation*

I think Amtrust could have handled this better. There were times when Miss W wasn't updated and it took it from November 2014 to the end of April 2015 for Amtrust to start stripping out the bathroom. Miss W lives abroad with a significant time difference so I accept that it was particularly inconvenient for her to have to chase things. While £900 is more than I might often award to a landlord, as a landlord's inconvenience is often relatively limited, I'm satisfied it's fair and reasonable in the circumstances here.

### *lost rent*

Lost rent isn't covered by Amtrust's policy. It does cover costs for the policyholder's alternative accommodation but that isn't the same as lost rent which is what Miss W has asked for reimbursement of here. But, if Amtrust's unreasonable delays caused rent to be lost, then it would still be liable for reimbursing this, regardless of the policy cover offered.

I've seen no proof as to why the tenants moved out in January 2015 or that if repairs had been done they'd have stayed. But Amtrust only took on responsibility for resolving the defect in November 2014. So I don't think it could reasonably have been expected to progress that much with repairs by the point the tenants moved out. And even if it had made some progress, the problems with the leak from upstairs would likely still have delayed matters and I'll come back to this in a bit.

The next tenants, who began paying half rent in June 2015, moved in in April, before the bathroom was stripped out. I accept that they started to pay half rent because by June they were paying for a 2-bedroom flat with en-suite and balcony facilities but had no use of one of the bedrooms, the en-suite or the balcony. But the problems at this point and moving forwards seem to have resulted from getting the leak from upstairs fixed. Amtrust couldn't force the neighbour to fix the leak and it couldn't be expected to repair Miss W's flat while damage was still occurring.

So I've thought about what would likely have happened if Amtrust had progressed with repairs in January 2015. As I've said above, I've seen nothing to make me think this would have prevented the tenants moving out in January. So the strip out would have progressed on an empty property and the delays due to the upstairs leak would still have occurred. Miss W would then have been faced with having to try and rent the property in that state (which would arguably have been worse than it actually was when the tenancy was secured in April 2015). I don't think a tenancy would have been achieved.

So I don't think that, even if Amtrust had handled this claim properly, Miss W would have benefitted from a full rental income being received in 2015. This means I can't conclude that its delay caused her to suffer the loss of rent she would otherwise have benefitted from. I'm not going to make Amtrust pay anything in this respect.

### **my final decision**

I uphold this complaint in part. I require Amtrust Europe Limited to pay Miss W £900 compensation for the distress and inconvenience it caused her.

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

Fiona Robinson  
**ombudsman**