

complaint

Ms M is unhappy that Liberty Mutual Insurance Europe SE won't pay her Landlords Insurance claim for theft from her let property.

background

In October 2018 Ms M reported a claim for theft from her let property to Liberty. The circumstances were that her tenant, who is a vulnerable person with a health condition, at some stage either lost or had his keys stolen from him. He went to live with his parents for a couple of weeks. It was reported to Ms M by the tenant's father that the copper piping for the heating system had been completely stripped out and white goods stolen. This was discovered either when the tenant returned to the house or on an inspection by his father (different circumstances were reported by Ms M and by her loss assessor).

Liberty sent out a loss adjuster to inspect the damage. There was no sign of a forced break-in. And as the tenant had lost his keys it was thought that it was most likely that the entry to the property was by key. Under the theft cover in the policy loss or damage is only covered if caused by violent and forcible entry/exit or deception. Ms M argued that the keys had been stolen by deception, so the claim should be covered.

Liberty declined to pay the claim as it said there was no violent *and* forcible entry. It didn't think there was any evidence to demonstrate that the keys had been stolen by deception.

Ms M referred her complaint to this service. She was unhappy that Liberty hadn't obtained the police report which had found a neighbour's CCTV to show five people entering the property – it was clearly a professional job. She further said that Liberty said she was underinsured which she didn't believe she was.

I issued a provisional decision. In it I said that the exclusion clearly applied and that it was fair for Liberty to apply it.

Liberty accepted my provisional decision.

Ms M didn't accept it, in particular she said:

- The police have footage of a break in which she's provided and advised her it's a genuine break in.
- The tenant has severe epilepsy and the keys could've been lost after he'd left the house and had a fit as he had no recollection of losing them.
- The house was empty and robbed when he'd moved back home to stay with parents after having a severe fit. His dad was checking the house regularly where he had his own key
- They give two keys to their tenants, one for the back and one for the front. So she thinks the dad had the back door key. There's a garden, with a wooden gate/fence around it where to go through the gate you just need to lift the bar.

my findings

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

My provisional findings were as follows:

"The theft or attempted theft cover for buildings and contents under the policy is subject to the following exclusion:

"We will not pay:

for loss or damage unless caused by violent and forcible entry/exit or deception..."

The evidence is that it's likely that the tenant's keys had been stolen or he'd lost them. It's quite possible that this was at a house party. So it's likely that entry was made by key, certainly the inspection of the property didn't show that the property had been broken into. And, as our adjudicator pointed out, while the use of the key can be forcible, it's not violent. And while there may be cases where we may find that it's not fair to apply that exclusion, I don't think regrettably that this is one of those cases.

It's common to find this type of exclusion, particularly in landlord's policies. When the policyholder isn't living at the property there's an increased risk of this sort of offence occurring. The purpose of the exclusion is to limit the liability of the insurer for actions by a defaulting or careless tenant and make the cost of a policy competitive for the policyholder. Whilst I understand that the tenant here was vulnerable I do think that losing house keys, especially if it was after a party, and not reporting it was careless. Since the exclusion is designed to protect the insurer's liability in circumstances such as happened here, I can't find it was unreasonable of the insurer to rely on it.

Ms M and her loss assessor have suggested that the keys were taken by deception. Unfortunately we don't know the exact circumstances in which the keys were taken. Ms M has set out to us the definition of theft in the Theft Act and believes this applies to the keys being taken. But the fact that they might have been stolen doesn't necessarily mean that this was by deception. We don't know the full circumstances but I haven't seen anything in the evidence to show that the tenant was deceived into handing over his keys.

As regards the claim handling I understand that Ms M was upset that Liberty didn't get a copy of the police report before declining the claim. And she says she wasn't told about the decision until February 2019, four months after the claim.

I appreciate that the police report may have been useful but the loss adjuster had already inspected the property and found no evidence of a break in i.e. there was no evident damage to the doors. And given that the tenant had lost his keys I think it was reasonable to suppose the thieves had used them. The report itself didn't set out any evidence that the property was broken into – it sets out the evidence from the neighbour's CCTV that "Five persons were seen to enter via the back door..."

As for the delay Ms M was using a loss assessor and the repudiation of the claim was reported to them in late November 2018 and followed up with a formal letter in late December. I think this was a reasonable timeframe.

Lastly I understand that Ms M was concerned that Liberty told her she was underinsured. She should seek advice on that as while she believes she had correctly valued the rebuild cost of the property she could still be potentially at risk in any future claim.”

I note what Ms M says. I should clarify that when I said the property hadn't been broken into I meant that in the sense that the doors weren't damaged or violently opened. This was likely to be because the thieves had a key. I don't doubt that a genuine burglary took place – just that I don't think the loss was “*caused by violent and forcible entry/exit or deception.*”

I appreciate what Ms M says about the tenant. But it's clear that he left the house having lost the keys. Whilst we can only speculate how and when they were lost, it's clear that they were stolen, and the key used to get into the property. But I still think that the tenant's actions in losing the key and not reporting it to Ms M were careless and that this is the sort of incident where I think it is fair to apply the exclusion in the policy. As I've said there is a much greater risk for an insurer to take on with a tenant rather than an owner occupier.

So regrettably I can't find in Ms M's favour. My provisional findings are now final and form part of this final decision.

my final decision

I don't uphold the complaint.

Under the rules of the Financial Ombudsman Service, I'm required to ask Ms M to accept or reject my decision before 1 June 2020.

Ray Lawley
ombudsman