

complaint

Mr M complains that U K Insurance Limited (UKI) unfairly declined a claim and voided his landlord's insurance policy.

background

Mr M took out a commercial landlord's insurance policy with UKI on 5 November 2018, to provide cover for a house he rents out.

He says that on 2 December 2018 the police called him. They said there was suspicious activity at the house and asked his permission to force entry. It turned out that the tenants had been growing cannabis and that extensive damage had been done to the property.

Mr M notified UKI of his claim the following day.

Following an investigation UKI declined the claim and avoided the policy. It said it did this because it believed Mr M had recklessly provided information to it which was untrue or misleading. It said Mr M had told it the tenant was employed but that he had not been able to provide any documentary evidence to support this.

Mr M thought that was unfair. He said that, as far as he was aware, he'd done everything he needed to do under the terms of the policy. In summary he said:

- the tenant had told him he was a professional joiner in full time employment, and that he was moving to the area for his work;
- the tenant appeared to be a family man, his wife and young son were present and had asked questions about local schools and doctors;
- he'd obtained proof of identification and wasn't aware he needed to obtain proof of employment;
- the fact that the tenant paid six-months rent in advance reassured him that he was a "solid" tenant.

One of our investigators looked at the complaint and agreed with Mr M.

He looked at the questions which Mr M had been asked about the tenant when he took out the policy and could see that he had answered "yes" to a statement that the tenant was employed.

But the investigator didn't think Mr M had acted recklessly or that he'd given deliberately misleading information. This was because Mr M had interviewed the tenant personally, was satisfied by what the tenant had told him, and wasn't aware that UKI required him to obtain proof of employment.

Our investigator explained this to UKI in a letter dated 10 May 2020. He asked UKI to put things right by reinstating the insurance policy as if it hadn't been voided and looking into the claim under the policy terms and conditions.

UKI strongly disagreed. It referred to Mr M's legal obligations as a landlord, specifically the right to rent requirements. And it suggested that it had other concerns about the claim.

Another investigator considered what UKI had said. In an email of 16 September 2020 he reminded UKI that Mr M had obtained proof of identity as required under the right to rent requirements, and he pointed out that there was no legal requirement to obtain proof of employment. He said that if UKI had concerns that the correct checks under the right to rent requirements hadn't been completed it should let us know what those concerns were. He also said that if UKI had other concerns it should let us have evidence so that we could consider them.

In response UKI said that it had avoided the policy because Mr M hadn't obtained proof of employment from his tenant, not because he hadn't complied with the right to rent requirements. It said the policy application made clear that the tenant must be employed and that it was not unreasonable to expect a landlord to check the facts.

As the matter couldn't be resolved it has now been passed to me for a decision.

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'm upholding this complaint for largely the same reasons as our investigators.

Mr M applied for the policy on line. He confirmed, during the application process, that his tenant was employed. He says he thought this was the true, based on what the tenant had told him and how the tenant had presented himself. Mr M says the tenant offered to pay six-months rent in advance and that he saw that as further evidence that the tenant was "sound".

When UKI considered Mr M's insurance claim it asked him for documentary proof that his tenant was employed and, when he couldn't provide this, it avoided the policy, effectively treating it as if it never existed. It says it did this because Mr M had breached the terms of the policy when he told it the tenant was employed. It said this wasn't a "fair presentation of the risk".

This is a commercial policy and so the relevant law is The Insurance Act 2015. This places a duty on customers to make a fair presentation of the risk to the insurer when taking out a policy. If a customer fails to do that, deliberately or recklessly, then the insurer can avoid the policy. This is also set out in the general terms of the policy.

As I understand it the tenants disappeared during the police raid and haven't been traced. It seems reasonable to assume that the tenant wasn't, in fact, employed.

But what I have to consider is whether it was fair for UKI to conclude that Mr M had deliberately or recklessly misled it when he took out the policy.

UKI says it was unreasonable for Mr M to rely on the tenant's word without getting documentary proof, such as employment references or payslips. It thinks that the tenant offering to pay six-months rent in advance was suspicious and should have put Mr M on alert that something might not be right.

I understand UKI's point. With hindsight it might have been prudent for Mr M to make further enquiries. But Mr M wasn't an experienced landlord. This was his only rental property and it

had previously been let to family friends. I can understand that Mr M may have thought he'd taken reasonable steps to satisfy himself that the tenant was suitable and that he'd been reassured by the way the tenant came across as a family man, interested in the local amenities. I can also understand that Mr M might have thought the offer to pay rent in advance was a positive sign that the tenant was "sound" and wouldn't default on the rent. I don't think it would necessarily have put him on alert, particularly as he says it was done as part of a negotiation for a slightly reduced rent.

Mr M has said that he wasn't aware that he needed to obtain proof of employment and UKI hasn't provided us with anything to show that it made this clear to Mr M during the application process. And whilst I acknowledge that there is information for landlords on UKI's website, including information on tenant referencing, it's not clear that this was drawn to Mr M's attention during the application process, or that the suggested checks were a requirement of the policy.

Mr M says he thought he'd done everything he needed to do as a responsible landlord and that he believed the information he gave to UKI to be true.

In the circumstances I don't think it would be fair to say that Mr M deliberately or recklessly supplied misleading information about the tenant's employment status when he applied for the policy.

It follows that I don't think UKI can fairly avoid the policy for the reason it has given.

my final decision

I'm upholding this complaint and directing UKI Insurance Limited to reinstate the policy as if it hadn't been voided and to look into Mr M's claim under the policy terms and conditions.

Under the rules of the Financial Ombudsman Service, I'm required to ask Mr M to accept or reject my decision on or before 9 March 2021.

Sue Wrigley
ombudsman