

## **The complaint**

Mrs M complains that Allied World Assurance Company (Europe) dac has unfairly declined a claim under her residential landlord insurance policy.

Where I refer to Allied, this includes the actions of its agents and claims handlers for which it takes responsibility.

## **What happened**

Mrs M has made a claim under her residential landlord insurance policy for damage and theft to her rental property. She tells us that the tenant gave notice to leave in August 2022, but their belongings and family members didn't leave until November 2022. Once she was able to gain access to the property, she found it in a poor state of repair and some of the furniture and furnishings were missing.

Allied declined the claim. It said the damage to the property wasn't malicious, but rather it was a general lack of maintenance by what appears to have been a neglectful tenant. And there was no cover for theft, as there were no signs of forceable entry, as required by the policy terms.

Mrs M didn't think this was fair, so she raised a complaint. But Allied maintained its decision to reject the claim. It did accept there had been some failings in its customer service and it offered £100 compensation to put things right.

Mrs M didn't accept this outcome and she brought her complaint to our service. Our Investigator said it was fair for Allied to decline the malicious damage claim as much of what Mrs M is claiming for would be considered as wear and tear. But she thought Allied should reconsider the theft claim given that the lock was damaged showing signs of entry by force. She was satisfied the compensation offered for poor service was fair in the circumstances.

As neither party agreed with our Investigator, the complaint was passed to me to decide. And I issued the following provisional decision.

## **My provisional decision**

The terms and conditions of Mrs M's residential landlord insurance policy says it will cover the following:

*"Malicious acts*

*Loss or damage to buildings / contents caused by malicious acts.*

*The most we will pay for malicious acts caused by your tenants or their guests is £2,500 in any one period of insurance less any amount recoverable from any security deposit lodged by the tenant."*

The policy doesn't define what it considers to be malicious acts, so generally speaking I'd consider damage to be malicious if the person who did it intended to cause harm. If the property was damaged accidentally, through neglect or poor maintenance, I wouldn't usually consider this to be malicious.

Mrs M has provided an inspection report and inventory from both the start and end of the tenancy.

Having reviewed this, I can see that there are many items on the list that I wouldn't consider to be malicious damage. For example, walls that have been painted without consent, and parts of the wall that weren't painted because there was furniture in the way isn't malicious damage. The damage to carpets and flooring looks to be from general usage / wear and tear, and so would the rooms requiring redecoration. From the photos, I see no damage to the kitchen or bathroom or the blinds which I'd consider to be malicious.

The tenants – or their family members – also left behind a substantial amount of rubbish which, whilst was likely to be intentional, I can't with any certainty say was done to cause harm. It's most likely as a result of a neglectful tenant, as suggested by Allied.

That said, there is graffiti in some of the bedrooms. And the external key safe appears to have been ripped off the wall. In addition, all the smoke alarms have been pulled out. It's not clear why Allied considers these items not to be malicious. It's clear that whoever did these things, did them intentionally to cause harm so I'm persuaded these should be covered under the policy.

Mrs M also claims for missing furnishings and furniture. I appreciate Allied has considered this claim as theft. And it says there is no cover because there was no forced entry. But I don't think this is fair.

Mrs M would never be covered for theft of her contents by a tenant or their guests under the theft section of cover because no one with a key would need to enter the property by force. And it specifically excludes theft by anyone lawfully on the premises.

But the malicious acts section of cover provides for loss of contents. There is no definition for "loss" so I've thought about whether this cover would extend to the circumstances of Mrs M's claim. And I'm persuaded this would amount to a "malicious loss" because the items were either stolen or disposed of without Mrs M's consent, and I think we have clear intention to cause harm. So I think the theft of these items should be covered under the malicious acts section of the policy, subject to Mrs M providing satisfactory proof of purchase, up to the policy limits.

Finally, Mrs M claims for a sofa which has been scratched and urinated on by a cat. But the policy specifically excludes damage caused by pets and I can't say this damage was intentional. So I agree there's no cover for this.

Overall, whilst not all damage claimed for is covered, there are clear instances of loss and damage caused maliciously which I'm persuaded Allied should've covered under the policy. So I intend to direct it to cover these parts of the claim plus 8% simple interest per annum. I'm also inclined to award £100 compensation for its failure to accept the claim initially which would've no doubt caused Mrs M some distress and inconvenience.

I'm aware Allied has raised concerns that the inspection reports have been carried out by a company that Mrs M was formally a director of. It says there is a conflict of interest here. But I don't agree. The reports include photographs of the property and even if these were taken by Mrs M directly I'd still consider it to be persuasive evidence of the property's condition before and after the tenancy.

In regard to the customer service issues raised, I'm satisfied the offer of £100 compensation made by Allied is fair in the circumstances and I don't intend to award anything more in this respect.

### **Responses to my provisional decision**

Mrs M has responded to my provisional decision. I won't set out her response in full, although I've considered everything she's said. I'll list what I consider to be the key points only below:

- The rental property is on a small island and requires shipment via ferry for materials/goods. She hasn't claimed for the full extent that this matter has cost her.
- She wasn't present when the inventory and photographs were taken as she doesn't live on the island.
- She's not claiming for the painting of walls, damage to carpets/flooring, or the damage to the kitchen and bathrooms.
- She accepts my decision that the sofa and blinds aren't covered.
- There was clearly a theft as there was forced entry (proven by the damaged door frame and lock) and it was reported to the police.

Allied didn't respond.

## What I've decided – and why

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

### *Malicious damage*

As neither party had any further submissions for my consideration in respect to the malicious damage claim, I see no reason to deviate from the outcome explained in my provisional decision.

For clarity, I'm directing Allied to pay for costs arising from the graffiti in the bedrooms, the damaged lock and wall where it's been ripped off, and the fire alarms and any associated damage to them being ripped out. I don't consider any other damage claimed for to be malicious.

### *Theft*

Mrs M has asked me to reconsider her claim for the missing items under the theft section of cover. I've considered what she's said but I don't think the circumstances of her claim would meet the policy requirements for theft. And I don't intend to direct Allied to reconsider her claim under the theft section only for it to decline cover for another reason.

I say this because the policy cover is defined as:

*"Theft  
loss or damage to buildings / contents caused by theft or attempted theft, following forcible and violent entry to and/or exit from the property.*

*We will not cover you for loss or damage caused:*

- *by people lawfully on the premises; or*
- *while the property is unoccupied."*

As I explained in my provisional decision, I don't think Mrs M would ever be covered for theft of her contents if the thief was a tenant or their guests because no one with a key would need to enter the property by force. And it specifically excludes theft by anyone lawfully on the premises.

If Mrs M is alleging that the thief did gain entry by force without a key, then this would imply the property was unoccupied. Either way, it's likely her claim would be excluded.

However, I think the circumstances of the theft meet the policy requirements under the malicious acts section of cover.

This is because the malicious acts section covers the loss of contents caused by malicious acts. And I'm persuaded a tenant stealing or disposing of furnishings and furniture without Mrs M's consent is an intentional act to cause harm.

For this reason, I'm asking Allied to pay for the items which have been stolen.

So, as long as Mrs M can provide Allied with proof of purchase for the missing items, it should pay for them up to the policy limits which, for malicious acts is £2,500. I appreciate Mrs M's claim comes to slightly more than that, so I'm aware her claim won't be paid in full. But this is the only section of her policy which will cover her claim at all.

## **My final decision**

For the reasons I've explained, I uphold this complaint and direct Allied World Assurance Company (Europe) dac to:

- Pay Mrs M's claim in respect to the items I consider to be malicious acts of loss and damage as detailed above minus any policy excess and up to the policy limits. This is subject to Mrs M providing satisfactory proof of purchase for all missing items and invoices for the repairs.
- Pay 8% simple interest on the claim settlement from the date Mrs M made her claim to the date it is paid.
- Pay £200 compensation.

Under the rules of the Financial Ombudsman Service, I'm required to ask Mrs M to accept or reject my decision before 8 July 2024.

Sheryl Sibley  
**Ombudsman**