

The complaint

Miss R complains that Royal & Sun Alliance Insurance Limited (RSA) partially declined a claim she made under her landlord's building insurance policy.

What happened

Miss R has a landlord's building insurance policy underwritten by RSA.

The tenants renting Miss R's property vacated early, leaving unpaid rent. Miss R subsequently discovered, in breach of their tenancy agreement and without permission, her tenants had redecorated the property, and this had been carried out poorly and they had also caused damage. Miss R therefore made a claim to RSA for putting right the poor redecoration.

An inspection was carried out by RSA's agent. They said the claim would be covered under the accidental damage section of Miss R's policy. However, RSA subsequently reversed that overall decision. RSA offered a cash settlement for the damaged conservatory flooring, but they said rectifying the poor redecoration wasn't covered under the policy terms. Therefore, RSA declined the majority of Miss R's claim.

As Miss R was unhappy with RSA's decision, she approached the Financial Ombudsman Service.

One of our investigators looked into things. Initially she said RSA's claim decision wasn't unreasonable as she didn't think the policy provided cover for what had been claimed for. But the investigator said RSA had caused Miss R a loss of expectation and should have relayed the claim decision sooner, so she recommended RSA pay £100 compensation.

RSA agreed but Miss R didn't. Miss R provided a report from a plasterer who confirmed that in the process of the tenants redecorating, accidental damage had been caused to the walls.

The investigator revisited things and her outcome changed slightly. Whilst the investigator remained of the view the redecoration itself wasn't covered, she said the damage caused to the walls in the process of redecorating should be covered under the accidental damage section of Miss R's policy. So, she recommended RSA cover the damage caused to the walls, along with paying the £100 compensation.

RSA didn't agree so the case was passed to me for a final decision.

I was minded to reach a different outcome to our investigator, so I issued a provisional decision to give both parties an opportunity to comment on my initial findings before I reached my final decision.

What I provisionally decided – and why

In my provisional decision, I said:

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

I’ve reached a different outcome to our investigator. So, I’m issuing a provisional decision to give both parties an opportunity to comment on my initial findings before reaching my final decision.

Insurance policies don’t cover every event or all damage that could possibly occur to an insured property. Miss R’s policy, like most insurance policies, covers specific insured events, and within those specific insured events there are also exclusions that apply.

Following the tenants vacating Miss R’s property the following issues were identified:

- *Damage to the conservatory floor due to a spillage*
- *The stairway & landing walls wallpaper had been removed and had been redecorated poorly*
- *Three separate bedroom walls had the lining paper partially taken off and had been redecorated poorly*
- *Paint was applied to bathroom wall tiles*

RSA accepted the damage to the conservatory flooring and cash settled this, so I won’t consider that part of the claim further.

The remaining issues relate to where Miss R’s former tenants redecorated her property poorly, without her permission, and in breach of their tenancy agreement. But the cost of redecorating a property at the end of a tenancy isn’t an insured event in itself.

So, RSA considered Miss R’s claim against two separate insured events under her policy, malicious damage and accidental damage. Looking at Miss R’s policy, these are the only sections that might provide cover for this type of scenario, so I think RSA was right to consider the claim against both of these.

I’ll consider both separately below.

Malicious damage

Malicious damage isn’t defined under Miss R’s policy. But I’d consider the starting point for a malicious damage claim is that the damage needs to have been caused with malicious intent, damaged deliberately, to cause Miss R and/or her property harm.

Here, the tenants carried out redecoration (poorly), but I don’t think the intention of this was to cause Miss R or her property harm.

With this in mind, I don’t think RSA has acted unfairly by declining the claim under the malicious damage section of Miss R’s policy.

Accidental damage

Accidental damage is defined in Miss R’s policy as:

“Accidental damage

Unexpected and unintended damage caused by sudden and external means.”

It's clear that the tenant removing the wallpaper, lining paper and painting the tiles didn't happen accidentally. Instead, they intended do this as part of redecorating the property (without permission), albeit they did this poorly. Whilst I appreciate Miss R feels this looks unsightly and needs redoing ready for the next tenant, this isn't something that would be covered under the accidental damage section of Miss R's policy.

However, Miss R also says that there was damage caused to the walls by the tenant in the process of removing the paper, and she says this should be covered under her policy. In support of this, Miss R provided a report from her own contractor which outlined:

“Current plasterwork at the property is very poor due to the last tenants removing wallpaper which has caused large craters and blemishes on the plaster. The walls are no longer flat so an over skim of the property is required to restore from damage caused.”

So, it does seem that there was damage caused during the process of paper removal. Our investigator said putting this right should be covered under the accidental damage section of Miss R's policy. Whilst I appreciate it'll come as a disappointment to Miss R, I don't agree. I'll explain why.

Whilst Miss R's policy covers accidental damage, it also has the following exclusions under the accidental damage section of the policy:

“You are not insured for loss or damage in the following circumstances:

Caused by:

...

- alterations, repairs, maintenance, restoration, dismantling or renovating;

...

- faulty design or workmanship or using faulty materials

...

- deliberate acts by you or your tenants.”

The wallpaper being removed by the tenant was a deliberate act, and consequential damage was caused during this process. Whilst it could be said that this may not have been foreseen as an inevitable consequence by the tenant when removing the paper, and was therefore caused accidentally, ultimately what this comes down to is damage was caused during poor redecoration works by the tenant.

As outlined, the accidental damage section of Miss R's policy excludes damage caused by alterations, renovating and faulty workmanship. And the damage here was caused as a result of poor workmanship whilst redecorating. Therefore, I don't think RSA has acted unfairly by declining the claim under the accidental damage section of Miss R's policy as even if it could be said that the consequential wall damage was accidental, the manner in which it occurred means it is excluded in any event.

I do appreciate the position Miss R has been left in through no fault of her own, and that her former tenant redecorated poorly, without permission and in breach of their

tenancy agreement, but I can't reasonably ask RSA to cover the cost of putting this right when it isn't something covered under her insurance policy.

Therefore, unless anything changes as a result of the responses to my provisional decision, I won't be directing RSA to do anything further in relation to the claim itself.

Loss of expectation and service received

Miss R was initially told her claim would be covered but this decision was then overturned. As I say, I don't think the ultimate claim decision reached by RSA was unreasonable. However, it's clear this resulted in a loss of expectation for Miss R when the decision was changed.

I can also see that it did take some time for Miss R to be told of the change in claim decision. The information provided indicates RSA (or their agents) tried to contact Miss R to relay the change in claim decision but weren't able to reach her, but Miss R disputes this or that voicemails were left and provided copies of her phone records.

Our investigator recommended RSA pay Miss R £100 compensation for the loss of expectation and communication issues, and RSA agreed. I think this is reasonable in the circumstances. Therefore, unless anything changes as a result of the responses to my provisional decision, this is what I'll be directing RSA to pay Miss R."

So, I was minded to uphold the complaint in part and to direct RSA to pay Miss R £100 compensation.

The responses to my provisional decision

RSA responded and said they had nothing to add.

Miss R responded, she said she had provided evidence of phone bills showing that RSA hadn't tried to contact her, but she said she wasn't disagreeing with the £100 compensation in relation to this. However, she didn't agree with the provisional decision regarding the claim for damage.

Miss R maintains that the claim should be covered as accidental damage, and this is on the basis of the dictionary definition of alterations, repairs, maintenance, restoration, dismantling and renovating, which was one of the exclusions in the policy that I'd referred to. Miss R also said RSA had increased her premiums by 300%.

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.

And I've thought carefully about the provisional conclusions I reached and the responses to my provisional decision. Having done so, whilst I appreciate it'll come as a disappointment to Miss R, my final decision remains the same as my provisional decision and for the same reason.

In my provisional decision, I explained the redecoration itself clearly didn't happen accidentally, as the tenant intended to do it. And whilst Miss R feels the redecoration is unsightly and needs redoing for new tenants, this isn't something that her policy provides cover for.

However, I did recognise that damage was caused to the walls, potentially accidentally, by the tenant in the process of redecoration and paper removal, and Miss R's contractor also confirmed this. However, I explained the accidental damage section of Miss R's policy also contained several exclusions.

In her response to my provisional decision, Miss R has solely focussed on one of the exclusions I referred to:

"You are not insured for loss or damage in the following circumstances:

Caused by:

...

- alterations, repairs, maintenance, restoration, dismantling or renovating;

And Miss R has looked at each of these words under the dictionary definition to explain why she doesn't think these are circumstances which apply. I won't repeat that in full here, but I agree with Miss R that the tenant wasn't carrying out repairs, maintenance, restoration, dismantling or renovating. I agree with Miss R on these points as the tenant chose to redecorate, rather than it being required for any of those reasons.

However, I don't agree with Miss R's view of *alterations*, based on her interpretation of the dictionary definition and policy cover. She said:

"Alterations

a change, usually a slight change, in the appearance, character, or structure of something

Fact: The damage incurred was extensive and not a slight change"

Therefore, Miss R's view is that the damage was extensive and not a slight change so it can't be considered an *alteration*.

However, as per the policy wording, the policy excludes damage caused by alterations. So, in my view, the alteration (which fits in with the definition Miss R obtained) was the redecoration and paper removal itself. And in the process of alteration (poor redecoration and paper removal) damage was caused. And damage caused by alterations is excluded under the accidental damage section of the policy. So, I think this would apply.

In any event, Miss R has solely focussed on this exclusion in isolation. But the accidental damage section, as outlined in my provisional decision, also has the following exclusion:

“You are not insured for loss or damage in the following circumstances:

Caused by:

...

- faulty design or workmanship or using faulty materials”

So even if I agreed with Miss R’s view on the exclusion for damage caused by *alterations*, it was poor workmanship during redecoration and paper removal that ultimately caused the damage, and damage caused by faulty workmanship is excluded in any event.

As I outlined in my provisional decision, I recognise the position Miss R has been left in by her tenants redecorating poorly, and without her permission, but I can’t reasonably ask RSA to cover the cost of putting this right when I’m not satisfied it is something covered under her insurance policy for the reasons outlined.

Miss R says her phone records evidence that RSA is lying about contacting her. I had seen copies of the phone records before issuing my provisional decision, but as I also said, RSA’s notes indicated they had attempted to contact her. But in any event, I’m satisfied £100 compensation for loss of expectation and any communication issues is reasonable.

I also recognise Miss R has said her premium has increased by 300%. However, if Miss R is unhappy with this, she’d need to raise this with RSA as a new separate complaint in the first instance.

My final decision

It’s my final decision that I uphold this complaint in part and direct Royal & Sun Alliance Insurance Limited to:

- Pay Miss R £100 compensation

Under the rules of the Financial Ombudsman Service, I’m required to ask Miss R to accept or reject my decision before 1 August 2024.

Callum Milne
Ombudsman