

complaint

Mr H is unhappy that Amtrust Europe Limited won't pay most of his claim for malicious damage by tenants under his residential property owner policy.

background

Mr H had let his property to tenants in March 2016. The tenants requested permission to undertake upgrades to the property including replacement of the kitchen floor and re-decoration works. Mr H says the male tenant extorted and blackmailed him over paying for repairs. This included reporting him to the local authority, as a result of which an improvement notice was served on him, relating to the heating. Mr H says the tenants deliberately sabotaged any attempt at doing repairs. Mr H attempted to gain access to the property to obtain a gas safety certificate. The tenant refused access and from January 2018 eviction proceedings were started, but unfortunately took until October 2018 to be concluded. Mr H became concerned that the tenant was deliberately damaging the property and reported a claim to Amtrust in April 2018.

After Mr H managed to gain repossession of the property, he found that substantial damage had been caused to it. All the doors were damaged, the floors had been ripped up, holes had been cut in the ceilings and items had been damaged or stolen.

Amtrust sent out a loss adjuster to review the claim. It initially declined the claim on the basis that the damage wasn't malicious but done in furtherance of or preparation for unauthorised alterations. It pointed out that there was no cover for Landlord's contents so it couldn't pay out for items that were stolen. Damage caused by pets was excluded under the policy.

After reviewing the matter, Amtrust said it would pay what it considered to be malicious damage to the glass in the doors as. It paid Mr H £500 for this, net of the policy excess of £150. It initially said it wouldn't pay for the damage to the gas fire and fire surround as they were contents but later said this was part of unauthorised alterations. It maintained its view concerning the other items that they weren't maliciously damaged. It said it needed further information to reconsider the theft of copper pipes from the heating system and the removal of the shower and bathroom sink.

Mr H took the tenants to Court and got a judgement against them for £10,000. I understand that the tenants didn't attend Court. Mr H has provided a copy of the schedule of losses, which he valued at over £15,000 which included rent arrears, monies paid to the tenant for work not carried out and all the matters claimed for to Amtrust.

I issued a provisional decision. In it I said that I thought some of the items had suffered from malicious damage and that Amtrust should pay for those.

Amtrust accepted my provisional decision.

Mr H accepted part of my provisional decision, but argued that *all* the damage was malicious and part of a larger fraud and blackmail scheme perpetrated by the tenant.

my findings

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

These were my provisional findings:

“court proceedings

Mr H says that the fact that he has a judgment means that the court found the damage to be malicious. Mr H has a judgment for £10,000. It doesn't say specifically what it is for except that it is assessed damages. Mr H has sent us a copy of the schedule of damages presented to the court. It covers all the damage to the property including money he paid to the tenant for repairs the tenant didn't carry out, rent arrears and contents. The court wouldn't have decided the narrow issue of whether the damage was covered under the policy. Particularly as there was no hearing because the tenant didn't attend. I don't think the judgment affected that issue one way or the other.

I've considered whether Mr H has had a judgement which could cover the damage being claimed for under the policy. He says his claim was worth in excess of £15,000 although he limited it to £10,000 (presumably to save Court fees). Bearing in mind that the maximum pay out for tenants' malicious acts under the policy is £5,000, I think it can fairly be said that he didn't recover for any of the damage which Amtrust may be liable for as a result of this decision.

cover

Under the policy, there is cover under the “Buildings” section for “Malicious acts or vandalism.” This excludes any damage “In excess of £5,000 caused by any person lawfully allowed in Your Building.”

The policy doesn't cover contents, so all items deemed to be contents whether stolen or damaged, aren't covered.

There is cover for theft under the Buildings section of the policy i.e. if any parts of the building e.g. fixtures and fittings are stolen. But crucially under the theft cover the policy excludes “Damage caused by any person lawfully allowed in the Building” Damage includes loss.” And a tenant is a person lawfully allowed in the Building. So essentially theft of any kind by the tenant isn't covered.

The policy also has an exclusion for:

“Any Damage caused by domestic pets or by insects or vermin.”

malicious acts

For something to be malicious we consider it has to be shown that the person acted out of spite, rather than out of any other motive, even if in breach of the tenancy agreement. Thus damage caused by neglect or by attempts at alteration of the property isn't covered. The situation here is complicated by the fact that the tenants asked for and received money from Mr H to carry out some refurbishment to the property. And some refurbishment had been done, particularly some plastering to a ceiling. I think that applies to the following items which Amtrust had deemed to be unauthorised alterations or preparation for them:

- *Pebble dash/holes in external wall*
- *Ventilation hole*
- *Removed fittings*

- *Removed ceiling parts*
- *Floors ripped up*
- *Bannister removed*
- *Smoke alarms removed*

I know Mr H has a different opinion, which I've considered, but, having done so, and based on the documents and photos, this is my view.

The following items are in my view contents so again not covered:

- *Stolen cooker and washing machine*
- *Curtains missing*
- *Carpets damaged*

Turning to look at some of the other issues:

garage doors

The garage was broken into and items were taken. Amtrust recorded Mr H's comment that the "garage had been smashed open and things stolen. Tenant jimmed open the garage doors, ruining the doors and hinges and locks in the process." The items stolen clearly weren't covered (because they're contents and stolen by the tenant). Amtrust has also said that as the doors were damaged as part of the theft, they're not covered either. But I think that while this could be seen to be part of the theft, I think it could be classed as malicious damage too. That's because the damage was done as part of a criminal act. So there's also cover for this damage under the malicious acts section of the policy. I think Amtrust should pay for this damage.

gas fire and surround

I can see clearly that this was damaged. And as the surround has a hole in it likely caused by being stamped on or hit with a hammer, I can see that this could be malicious. But looking at the photos this isn't a fixture – the fire surround is free standing and the fire connected to the gas pipe. I think this was part of the contents, so not covered.

living room door

Mr H said this looked like it had been chopped by a machete. Amtrust said the damage was likely domestic pet damage. Mr H has said the tenants had dogs in breach of the tenancy agreement and said they had caused damage to the woodwork and skirting boards. The damage to the door looks to me to be caused by excessive scratching by dogs so is unfortunately not covered.

bedroom door

Amtrust has paid for the damage to the glass. Mr G said the wood of the door had been kicked or punched and there is a hole in the door consistent with this. I think Amtrust should pay for this damage.

bathroom sink/shower fitting missing/ shower tray damaged

The bathroom sink was removed from its fittings. It was also smashed across the corner. The shower fitting was removed and is missing. The shower tray was drilled through in the corner. Amtrust said further information was needed but deemed this to be part of the unauthorised alterations.

I think as the bathroom sink was smashed across the corner, this was malicious. The removal of the shower wouldn't be covered as it is theft (and, as set out above, there's no cover for damage to the building by the tenant in respect of theft). I can't think that drilling through the shower tray would be part of any alterations so I think it reasonable to class this as malicious. So Amtrust should pay for the damaged sink and shower tray.

copper pipes

These would clearly have a value and as they were removed completely this is in my view theft. But again that's not covered because of the exclusion I've referred to. I haven't seen from the photos and description provided that any damage to the building was caused by this, but if Mr H wants to provide evidence that it was, I'll reconsider this.

overall

I think Amtrust should pay for the damage as set out above. It should add interest but as Mr H wasn't able to gain access to the property until October 2018, this should run from that date."

I note Mr H continues to argue that all the items were maliciously damaged. He says he didn't authorise any of the work said to be preparation for unauthorised alterations. He says they were part of a scheme by the tenant to get him prosecuted by the local authority in respect of an improvement notice.

I note what Mr H says but I've set out my view in my provisional findings and he hasn't shown me anything that persuades me otherwise. I would reiterate that even though the "alterations" weren't approved by him it doesn't mean they equate to malicious damage.

My provisional findings are now final and form part of this final decision.

my final decision

I uphold the complaint in part and require Amtrust Europe Limited to:

- settle the claim for the damage to the following items, in line with the remaining terms and conditions of the policy:
 - garage doors
 - bedroom door (in respect of the hole in it)
 - bathroom sink
 - shower tray
- If it pays a cash settlement to Mr H it should add simple interest* at the rate of 8% from the date Mr H gained access to the property until the date it pays.
- *Amtrust Europe Limited is required by HM Revenue and Customs to deduct tax from any interest paid. Should Mr H request it, Amtrust Europe Limited should provide him with a certificate showing how much tax has been taken off so that, if appropriate, he can reclaim it.

Under the rules of the Financial Ombudsman Service, I'm required to ask Mr H to accept or reject my decision before 3 May 2020.

Ray Lawley
ombudsman