

complaint

Mr L has complained that Amtrust Europe Limited has unfairly declined his claim for damage caused to his property by a previous tenant.

background

Mr L owns a property which he lets to tenants. After his last tenant left the managing agent reported the property was in a bad state of repair. Mr L made a claim on his insurance with Amtrust. Its loss adjuster said it couldn't say that any of the damage had been done maliciously. It said a broken sink would fall for cover under accidental damage to sanitary ware but its repair would cost less than the excess amount. It said other damage had resulted from carelessness by the tenant, heavy wear and tear and from a pet dog chewing.

Mr L complained to this service. He said Amtrust hadn't clearly explained why the damage wasn't malicious and he provided several definitions which he felt supported his view that it was. He said the tenant left the house as he did because he'd been asked to leave.

Our adjudicator didn't uphold the complaint. He felt Amtrust's view on the sink was fair and reasonable. He explained what this service believes a fair definition of malicious damage is. He noted the definition from a high court case detailed by Mr L and felt that rather than support Mr L's argument, it mirrored our view that malicious damage has to include an intent on behalf of the person doing the damage to cause loss. Mr L remained unhappy and asked that his complaint was reviewed by an ombudsman

my findings

I have considered all the available evidence and arguments to decide what is fair and reasonable in the circumstances of this complaint.

This service takes a fair and reasonable approach to considering complaints. We see quite a few involving damage that is allegedly malicious in nature. We often take the view that malicious damage has to be done with some intent by the person doing it to cause harm. Having looked at the high court definition provided by Mr L – the judge in that case took that view too.

I know that Mr L views the judge's findings slightly differently but I can't place too much emphasis on the damage in that case that the judge found was malicious. I'm not here to consider that case or compare it to the complaint Mr L raised. So while Mr L views the damage that was done in his property to be similar to that the judge found was malicious in the case before him; I can only comment on my findings about the damage at Mr L's property.

Mr L himself has said that most of the damage was likely done in order to move things around the property and/or create space. He says he gave no authority for things like this to be done although acknowledges there was some agreement for the tenant to make some changes in the property. Other damage was done by a dog chewing woodwork and the tenant's discarded property.

Even if the tenant knew damage would be caused to the property by carelessly taking down shelves, units and the like; that is not what I would consider to be malicious damage. That is more a tenant trying to use the property in the way they want to while knowing they won't

have to pay to put things right. Now, if the property had been inspected and found to be in good order just before the tenant was asked to leave and a short time later damage was found, then I might be minded to find the damage was likely done maliciously. But that's not the case here. From the circumstances and the damage presented, I'm satisfied the tenant just treated the property with general disregard throughout the time he was there and this resulted in the damage that was found when he left. That, in my view, is part and parcel of the risk in being a landlord. Therefore, I find Amtrust's decline of the claim for the damage at Mr L's property to be fair and reasonable.

I've noted the issue of cover for the damaged sink. Insurers often decline claims that fall within the excess amount. This is because the excess is an amount a policyholder always has to pay for a claim. So while the damaged sink is covered, Mr L would always have to pay the first £250 related to that damage. And as the repair cost was less than this Amtrust declined liability for it. I'm satisfied that Amtrust acted fairly and reasonably in this respect.

my final decision

I don't uphold this complaint or make any award against Amtrust Europe Limited. Under the rules of the Financial Ombudsman Service, I am required to ask Mr L to accept or reject my decision before 29 December 2015.

Fiona Robinson
ombudsman