

complaint

Mr K is unhappy with the way a claim for malicious damage under his landlord insurance policy was handled and settled by Royal & Sun Alliance Insurance Plc (RSA).

background

Mr K let out a property. In January 2019 he made a claim to RSA after his tenant disappeared and he discovered a lot of damage had been caused to the property. RSA said it asked him to send it photos and details of the damage.

Mr K arranged for some repairs to be carried out. He sent RSA invoices for repair works.

RSA didn't accept that all the damage was malicious. Where it accepted that damage was malicious, it didn't think it was clear that all of the damage had been caused in a single event. It thought there'd probably been a series of malicious acts carried out over a period of time. It said the fact some repairs that had been carried out before its agent could inspect the damage meant it couldn't be sure what the extent of the malicious damage was and it would only pay what it would have cost if its own contractor had carried out the repair.

Mr K didn't think that was fair. He complained to RSA. It didn't change its decision about the policy excesses but agreed its service should have been better. It awarded him £100 compensation for this.

Mr K brought his complaint to this service. As well as being unhappy about RSA's service and multiple excesses, he also complained that RSA had unfairly declined parts of his claim. Our investigator didn't think RSA had acted fairly in applying a separate excess for each area of malicious damage that it did accept because he didn't think RSA had fairly shown that the damage happened at different times. He thought RSA should pay for a replacement lock and add interest at 8% on the amount due to Mr K. He thought the amount of compensation RSA had paid for poor service was fair.

As the parties didn't agree, the matter has been passed to me.

my findings

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

In this case it's not disputed that Mr K's tenant caused some malicious damage. What I need to decide first is whether it was reasonable for RSA to apply more than one excess to the claim.

RSA argues that it's entitled to charge multiple excesses as there were various separate incidents of malicious damage. Mr K's policy provides that the excess should be applied to the first part of any *claim*. It doesn't refer to incidents or events. Mr K has made only one claim. Although there are several incidents of malicious damage recorded, I note that according to Mr K the flat was well maintained when he inspected it three months before the damage was discovered and all seemed in order when his handyman visited the following month. So I think it's likely that the malicious damage took place at roughly the same time. So RSA should be applying just one excess in respect of malicious damage.

RSA considered Mr K's claim for the cost of changing the front door lock under the accidental damage section of his policy. It's not clear to me why. Since Mr K's relationship with his tenant had broken down and RSA's accepted there was other malicious damage to the property, it seems to me likely that the tenant's intention in changing or damaging the lock was to make it difficult for Mr K to access the property and so was thereby malicious. It follows I don't think RSA treated Mr K fairly in refusing to cover this loss.

I don't think that the general messy condition of the property amounts to malicious damage. I appreciate that we don't know what was in the tenant's mind before she left. But I think it most likely that this damage is due to misuse or neglect rather than a deliberate act to cause damage.

RSA accepted the need for carpentry repairs to the woodwork in a bedroom and necessary redecoration. It said this would have cost it £58.75 but as this was less than the £100 excess, it didn't think it was liable to pay anything in respect of this. As explained above, I don't think RSA acted fairly in applying separate excesses for each item of malicious damage. So I think it should pay this amount to Mr K plus simple interest at 8% a year.

Included in the electrical works that Mr K claimed for was the cost of a replacement fuse box. RSA said it wouldn't pay for that repair as there was no evidence of the damage. It was up to Mr K in the first instance to show that it was damaged. Since RSA's agent wasn't able to validate this part of the claim I don't think RSA treated Mr K unfairly in refusing to pay for it.

RSA declined to pay for making good damage to paintwork in a bedroom due to a lack of evidence. Mr K has provided photos showing scribbling on the walls. To my mind they look more like damage caused by a child rather than damage caused by the tenant with the intention of causing harm. I'm not persuaded that it would be fair of me to require RSA to pay the cost of redecoration.

Mr K said he had to get new doors on all the units because he wouldn't have been able to match the remaining doors. Again, he decided to use his own contractor because he knew and trusted him. By the time RSA was able to assess the damage, much of the work had already been done. I think this prejudiced its position since RSA's agent might have been able to match the remaining doors. So I don't think RSA acted unreasonably in settling this part of the claim on the basis of what it would have had to pay for two new doors and drawers.

Mr K has provided photos showing how the carpets in the property had been damaged. Unfortunately Mr K's policy didn't cover contents. This service follows the industry convention of treating carpets as contents. So I don't think RSA treated him unfairly in saying that carpets weren't covered by his buildings policy.

RSA has acknowledged its service should have been better and it's offered £100 to compensate Mr K for the trouble and upset caused by that. I can see that it caused Mr K a degree of frustration and unnecessary stress by the way it communicated with him and handled his claim. But having taken all the circumstances into account I think that compensation of £100 is fair and reasonable. I appreciate that this will come as a disappointment to Mr K but I've thought about this service's approach to awards made in similar circumstances and I don't think I can fairly award any more.

my final decision

I uphold this complaint and require Royal & Sun Alliance Insurance Plc to

- consider all the malicious damage as one claim and deduct one excess in respect of it;
- repay all but one of the excesses paid by Mr K with interest* from the date he paid them to the date of settlement;
- pay Mr K £58.75 in respect of the carpentry and redecoration claim with interest* from the date the remainder of the claim was originally settled to the date of the settlement;
- pay the claim for the replacement lock with interest* from the date the remainder of the claim was originally settled to the date of settlement.

Under the rules of the Financial Ombudsman Service, I'm required to ask Mr K to accept or reject my decision before 6 September 2020.

Elizabeth Grant
ombudsman

*Interest is at a rate of 8% simple per year and paid on the amounts specified and from/to the dates stated. If Royal & Sun Alliance Insurance Plc considers that it's required by HM Revenue & Customs to take off income tax from any interest due to Mr K, it should tell him how much it's taken off. It should also give Mr K a certificate showing this if he asks for one, so he can reclaim the tax from HM Revenue & Customs if appropriate.