

The complaint

Mr A is unhappy HCC International Insurance Company Plc trading as Tokio Marine HCC (Tokio) declined a claim made under his let property building insurance.

Where I've referred to Tokio, this also includes any actions or communication by agents acting on their behalf.

What happened

Mr A owns a property which he let out to tenants. He has a building insurance policy for the property underwritten by Tokio.

Following the tenant vacating the property, Mr A discovered a significant amount of damage caused by the tenant who was growing cannabis. Mr A made a claim to Tokio for the costs he incurred in repairing the damage.

Tokio asked for information from Mr A in support of his claim, but based on what he provided, they said this wasn't sufficient for them to be able to validate the claim. Tokio also said Mr A had prejudiced their position as he had already stripped out the property and started repairs before making the claim, so they weren't able to inspect the damage. As a result, Tokio declined Mr A's claim.

As Mr A was unhappy with Tokio's decision, he approached this service.

One of our investigators looked into things and initially she didn't uphold the complaint. She said there was insufficient evidence provided by Mr A in support of the damage being claimed for.

Mr A provided additional information in response to the investigator's assessment, she revisited things and upheld the complaint in part. The investigator remained of the view that there was insufficient evidence to validate the majority of the claim, but she said there was sufficient evidence to show the tenant had at least damaged the wiring. So, she said Tokio should deal with the rewiring part of the claim and pay the costs Mr A incurred in repairing this.

Mr A didn't agree and Tokio didn't respond to the investigator's recommendation. As an agreement couldn't be reached the complaint was passed to me to decide.

I reached 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 I reach my final decision.

Tokio declined the claim on the basis they said Mr A had prejudiced their position by stripping out his property and starting repairs before making the claim, which meant they couldn't inspect the damage. And Tokio said they were unable to validate the claim based on the information Mr A had provided.

Our investigator ultimately thought there was enough to show the tenant had caused damage to the electrics so she recommended that Tokio should deal with this part of the claim. But she didn't think there was enough information provided for Tokio to be able validate the rest of the damage being claimed for.

However, I don't think the decision to decline the claim overall was unreasonable, but there are some additional reasons for this. And I also don't agree that Tokio need to deal with the electric costs that our investigator recommended either. I'll explain why.

Firstly, I agree with Tokio that Mr A has prejudiced their position by stripping out the property and carrying out works before making a claim. This means Tokio has been unable to inspect or validate the damage being claimed for. Whilst images have been provided, not all the information Tokio needs, or requested, has been submitted in order for them to consider things further. For example, Mr A has provided invoices for works, but they aren't broken down in terms of costs or actual works completed. And there are endorsements on the policy, including that a visit is made every 180 days, with records kept. But Mr A also hasn't provided information to support his compliance with the full policy endorsements.

However, even if I was satisfied the images and invoices supported the claim being made, and evidence was provided which supported compliance with the endorsements, I still wouldn't think the overall claim decision reached was unreasonable. I'll explain why.

Mr A's building insurance policy with Tokio covers specific insured events, known as insured perils. Mr A has made a claim for malicious damage caused by the tenant. He says the tenant has caused significant damage maliciously when cultivating cannabis.

Having looked at the policy terms, the only insured peril in which this type of damage could be claimed against would be malicious acts:

“What Is Covered:

9. Riot, violent disorder, strike, labour disturbance, civil commotion or malicious acts.”

However, against this insured event, there is also the following exclusion:

“What is not covered:

(b) Loss or damage caused by paying guests, tenants or you”

So even if Mr A was able to provide further evidence to support the damage caused by the tenant and repairs required, and compliance with the endorsement, this wouldn't be covered in any event.

In addition to the specific exclusion for malicious acts by a tenant, there is also the following general exclusion which applies to all parts of the policy:

“6. Deliberate Acts

Any loss or damage deliberately caused by or arising from a criminal act caused by; you or your family, or by any other person lawfully in your home.”

With this in mind, as the type of damage being claimed is excluded under the policy in any event, I'm not minded to conclude Tokio has reached an unreasonable decision overall to decline Mr A's claim. Therefore, unless anything changes as a result of the responses to my provisional decision, I don't intend on upholding Mr A's complaint or requiring Tokio to do anything further.”

Therefore, I wasn't minded to uphold the complaint.

The responses to my provisional decision

Tokio responded and said they agreed with the provisional decision.

Mr A didn't respond to the provisional decision by the deadline.

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 decision I reached. Having done so, and as neither party has provided anything which would lead me to depart from my provisional decision, my final decision remains the same as my provisional decision, and for the same reasons.

My final decision

It's my final decision that I don't uphold this complaint.

Under the rules of the Financial Ombudsman Service, I'm required to ask Mr A to accept or reject my decision before 30 January 2024.

Callum Milne
Ombudsman