

## The complaint

Mrs C and Mr P are complaining that Accelerant Insurance Europe SA/NV ('Accelerant') have declined a claim they made on their commercial property insurance policy.

## What happened

Mrs C and Mr P own a property which they bought in 2015 from a council. In June 2019 they entered into a tenancy contract with a third party company – who I shall refer to as F – to rent the property. Under the terms of the contract, F would pay Mrs C and Mr P rental income on a monthly basis. However, Mrs C and Mr P have said that F stopped paying rent from around May 2021. They said they tried to get in contact with F, but were unable to do so. So they instructed solicitors to start legal proceedings to regain possession of the property. And in August 2022 the court granted an order of possession. However, before this, Mrs C and Mr P said they were advised by the Police that the property was being used by the inhabitants to grow cannabis.

Once Mrs C and Mr P accessed the property, they discovered that the property had suffered a significant amount of damage. So they contacted Accelerant to make a claim on their commercial property insurance policy. However, Accelerant declined the claim as it said the policy didn't cover malicious damage where the inhabitants were in the property lawfully. And it said the inhabitants had a tenancy agreement with F.

Mrs C and Mr P said the inhabitants weren't there lawfully for the following reasons:

- The inhabitants didn't have a tenancy agreement with them, so they hadn't authorised the inhabitants to be in the property.
- They became aware of the presence of the inhabitants and started legal proceedings to evict them from the property shortly after that.
- The terms of the tenancy agreement with F stipulates that ***"You must not do the following – 8. Transfer, sublet or give up the property, or any part of it."*** So they said F didn't have the right to sublet the property to another party.

Accelerant still didn't think the claim was covered as they said the inhabitants had a tenancy agreement and that *"a tenancy that is protected by the Rent Act 1977, Housing Act 1985, Housing Act 1988 and Housing Act 1996 continues with the same security of tenure after the date a possession order takes effect, regardless of whether the possession order is outright, suspended or postponed.[2] The tenancy will end only when the tenant is evicted or the tenant leaves of their own after the possession order is made. The tenant does not become a trespasser and rent is payable until the tenancy ends."* So they maintained that the inhabitants were lawfully in the property. Mrs C and Mr P didn't agree, so they referred their complaint to this Service.

Our investigator didn't uphold this complaint as he thought it was fair for Accelerant to say that the inhabitants were lawfully in the property. Mrs C and Mr P didn't agree and said that, if F had allowed people to stay in the property, then F had breached their tenancy agreement. They said F had no right or permission to allow other people to reside in the property. So they maintained the inhabitants were in the property unlawfully.

As Mrs C and Mr P didn't agree with the investigator, the complaint's been passed to me to decide.

### **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.

I've decided to not uphold this complaint and I'll now explain why.

I naturally sympathise with the situation Mrs C and Mr P have found themselves. They've suffered a loss that they expected their insurance policy to cover. But no insurance policy covers every loss that may arise. Their insurance policy covers malicious damage, which is essentially what Mrs C and Mr P are claiming for, but the terms further set out:

#### ***“Excluded from Cover***

*a) Loss or damage caused by you, or any person lawfully in the housing unit.”*

So the issue for me to decide is whether it was fair for Accelerant to say the inhabitants who caused the damage were lawfully in the property or not.

Mrs C and Mr P set out that the inhabitants didn't have a tenancy agreement with them and that the terms of their tenancy agreement with F set out that F wasn't allowed to sublet the property. But I also have to take into consideration that the agreement also says:

*“We will let the property to you and only:*

*[F], any 3<sup>rd</sup> party tenants or company authorised by the director.”*

I also think it's clear from F's full name that they were an agency instructed to source tenants for Mrs C and Mr P. So I think they should have reasonably been aware that F would be looking for tenants on their behalf. And the terms of the policy set out that Mrs C and Mr P have agreed to let to 3<sup>rd</sup> party tenants which is what the inhabitants were. I note they've referenced the fact that the terms don't allow for the property to be sublet. But I think a reasonable interpretation of this is that the 3<sup>rd</sup> party tenants are not entitled to sublet the property.

Mrs C and Mr P have said that F explained to them that it would only rent to its employees. But this doesn't change the terms of the tenancy agreement and any concerns they may have in this regard would be a private matter between them and F.

Ultimately, I'm satisfied that the terms of the tenancy agreement entitled F to enter into separate tenancy contracts with a third party, which it did with the inhabitants in question.

But, even if this wasn't the case and that F weren't entitled to let the property to anyone other than an employee of F, it doesn't mean that the inhabitants were unlawfully in the property. I understand the inhabitants had a tenancy agreement and had a contractual right to be in the property. Essentially Mrs C and Mr P are asserting that F has breached the terms of its tenancy agreement. But would be considered a breach of contract by F and it doesn't follow that the inhabitants were breaking the law by being in the property.

It seems to me that any concerns Mrs C and Mr P have are a civil dispute between them and F. But I can't reasonably say it was unfair for Accelerant to say that the inhabitants were not being unlawful by being in the property. So, it follows that I don't think it was unreasonable

for Accelerant to say the claim wasn't covered under the terms of the policy.

If Mrs C and Mr P have any concerns about the actions of F, they'll need to raise that with F directly.

### **My final decision**

For the reasons I've set out above, 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 Mrs C and Mr P to accept or reject my decision before 28 December 2023.

Guy Mitchell

**Ombudsman**