

The complaint

Mr A's complaint is about a claim he made on his Financial & Legal Insurance Company Limited ('F&L') property owners insurance policy, which F&L declined.

Mr A wants F&L to cover a claim against his former tenant for unpaid rent, service charges and the cost of repair charges to his property.

In this decision all references to F&L include their claims handlers.

What happened

Mr A made a claim on his F&L property owners insurance policy for unpaid rent, service charges and the cost of repair charges to his property.

F&L asked Mr A for further information, including correspondence between him and his former tenant. After reviewing this, they concluded his claim wasn't one they could cover under the policy because the insurance only provided cover for undisputed rent and from what the tenant had said, there looked to be a dispute about the amount due to Mr A.

Unhappy, Mr A referred the matter to the Financial Ombudsman Service. He said that although the former tenant was saying that Mr A had agreed to a reduction in rent, he didn't agree to this and so the rent wasn't disputed.

Our investigator considered Mr A's complaint and concluded it shouldn't be upheld. She said that the evidence she'd seen supported F&L's position that the tenant was disputing the rent due, so they were entitled to decline the claim in reliance of their policy terms. Mr A doesn't agree so the matter has been passed to me to determine.

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.

Having done so, I won't be upholding Mr A's complaint. This is why.

The starting point is the policy terms. They say:

"14. Rent Recovery

We will pay the Costs and Expenses in relation to the pursuit of Legal Proceedings for undisputed and unpaid rent, which is due under the terms of the lease between You and the Tenant."

I've reviewed the correspondence between the parties and thought carefully about what Mr A has said. Whilst I agree that there's no evidence in writing that he agreed to a reduction in the rent payable by his former tenant, his former tenant is disputing this. In an email sent to Mr A in January 2023, to Mr A, the former tenant says:

"I just want to clarify a few points"

I asked you in April if you could reduce the rent on (property address) you refused this, and I decide that it no longer made sense financially to continue to trade from the shop.

I therefore emailed you in May giving you 3 months notice of my intention to stop trading from (property address)

After you came into the shop to meet me, you asked me if I would stay in the shop after the end of the notice period so that it would be easier for you to find a new tenant.

As a gesture of goodwill I agreed to do this for a limited period at a reduced rent of £300 per month, as stated in my email to you on 23rd September."

Mr A responded to this email setting out that at no point did he agree to any reductions. Whilst this is consistent with the submissions he's made, I don't think this means the rent is undisputed. The tenant has said that Mr A agreed to a reduced rent for a limited period. Whether this is true or not is immaterial. That's because the claim amounts to disputed unpaid rent. As a result, I don't think F&L did anything wrong by turning down Mr A's claim. So, I won't be asking them to do anything more.

Mr A has said that F&L should also pay his claims against the former tenant for service charges and the cost of repair charges to his property. I haven't seen anything from F&L setting out that they've considered these two claims separately to the unpaid rent claim. So, if Mr A wants them considered, he should put this to F&L directly. From what I've seen the policy covers:

"16. Property Damage

We will pay the Costs and Expenses in relation to the pursuit of Legal Proceedings in respect of damage resulting from the Tenant failing to return the Insured Property in the condition specified in the lease.

Provided that:

(a) The amount in dispute is more than the deposit paid by the Tenant at the commencement of the tenancy agreement or one month's rent, whichever is the greater.

(b) An inventory of the Insured Property has been obtained and agreed by both parties prior to the commencement of the tenancy.

We will not pay for any claim relating to or resulting from depreciation and wear and tear."

So, it's possible that the claim for property damage could be covered, depending on the nature of it and subject to the policy terms. If Mr A puts his claim for this together with the claim for service charges to F&L, then they will be able to consider it further and provide him with an answer on his claims.

My final decision

For the reasons set out above, I don't uphold Mr A's complaint against Financial & Legal Insurance Company Limited

Under the rules of the Financial Ombudsman Service, I'm required to ask Mr A to accept or reject my decision before 9 February 2024.

Lale Hussein-Venn
Ombudsman