



<u>Decision Ref:</u>	2018-0067
<u>Sector:</u>	Insurance
<u>Product / Service:</u>	Household Buildings
<u>Conduct(s) complained of:</u>	Rejection of claim - non-disclosure
<u>Outcome:</u>	Rejected

**LEGALLY BINDING DECISION
OF THE FINANCIAL SERVICES AND PENSIONS OMBUDSMAN**

Background

The Complainant had a house insurance rented property policy for which the Respondent was the underwriter for a property at "75 CG". The Complainant brought a claim under the policy for damage that occurred to the property on the 15 January 2010 which was reported to the Respondent on 18 January 2010. Damage was caused to the property due to the escape of water from a water feed pipe in the attic, due to cold weather.

The Respondent had concerns about the occupancy of the property and required a large amount of information from the Complainant to prove occupancy. It also sought clarification in relation to previous claims made at the risk address and other addresses. The Respondent refused the claim due to failure to prove occupancy of the property at the time of the damage.

The Complaint is that the Respondent unreasonably and unfairly refused to admit the Complainant's claim and that the Respondent ignored documentation provided by the Complainant and the explanations he supplied. The Complainant wants the Respondent to admit the claim.

The Complainant's Case

The Complainant, by letter dated 28 March 2011, states that he occupied both 74CG and 75 CG, at the time of the incident. The Complainant says that he does not reside in Cork city. The Complainant says that the Respondent has continually ignored his correspondence including his letter of 26 August 2015.

The Complainant states that he responded to the request for utility bills by letter dated 28 March 2011. In particular he explained that he cannot provide utility bills for no. 75 for the three months prior to the loss, because there was no fixed telephone line, no gas and the ESB was disconnected in July 2009. He states that he used the electricity supply from no. 74 to supply no. 75. The Complainant states that the Respondent continued to ignore the explanation provided and continued to repeatedly ask for the same information.

The Complainant says that a copy of the previous lease agreement/rent book prior to the Complainant occupying the property was requested by letter 16 March 2011 and that he responded by letter 28 March 2011 in which he explained that he had no lease with the last tenant and that the only record of the tenancy was the rent book which the tenant took with her, when she departed in June 2009. The Complainant says that the Respondent continued to ignore the explanation provided and continued to repeatedly ask for information about the lease.

In relation to the Respondent's request for a letter from previous insurers setting out details of 3 separate claims, the Complainant states:

"you have acknowledged receipt of the letters from [another insurer] in respect of claims that I have made on other properties. I can think of no reason why these are in any way relevant to this claim and can only conclude that this is yet another attempt by you to obstruct the prompt processing of my claim by making yet another unreasonable request for information which is not relevant."

In relation to the Respondent's request for information relating to the repairs that were carried out on the property following the loss, and copies of invoices for this work, the Complainant says that this is a repeat of a request made on 16 March 2011 and he states that the necessary documents were already provided to the Loss Adjustors.

The Respondent's Case

The Respondent contends that the Complainant has not proved occupancy as required under the terms of the policy.

The Respondent relies on the following policy "***Conditions which apply to the whole policy***":

1. *Changes in Your Circumstances:*

You must notify us as soon as possible in writing of any change which may affect this insurance and in particular a change of your occupation or business.

You must also notify us at renewal of the policy if

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...

c) *The Buildings are no longer occupied regularly at night.*

d) *The Buildings are no longer used for private residential purposes.*

5. Unoccupancy:

If any tenanted accommodation forming part of the building is unoccupied for 40 consecutive days or more whilst untenanted You must ensure that:

a) *the gas, electricity and water is turned off at the mains and the water and heating system is drained.*

The Respondent also relies upon the policy terms and conditions at section A which specify "What is covered" and "What is not covered". In that regard, at paragraph 6 which explains what is covered in relation to "**Escape of water from or frost damage to a fixed water drainage or heating installation, washing machine, dishwasher, waterbed or fish tank**" the column which specifies "What is not covered" makes clear that the Respondent will not cover:-

"Loss or damage:

...

b) *caused while the private residence has been unoccupied or unfurnished for 40 consecutive days or more".*

Decision

During the investigation of this complaint by this Office, the Respondent was requested to supply its written response to the complaint and to supply all relevant documents and information. The Respondent responded in writing to the complaint and supplied a number of items in evidence. The Complainant was given the opportunity to see the Respondent's response and the evidence supplied by the Respondent. A full exchange of documentation and evidence took place between the parties.

In arriving at my Legally Binding Decision I have carefully considered the evidence and submissions put forward by the parties to the complaint.

Having reviewed and considered the submissions made by the parties to this complaint, I am satisfied that the submissions and evidence furnished did not disclose a conflict of fact such as would require the holding of an Oral Hearing to resolve any such conflict. I am also satisfied that the submissions and evidence furnished were sufficient to enable a Legally Binding Decision to be made in this complaint without the necessity for holding an Oral Hearing.

A Preliminary Decision was issued to the parties on 30 May 2018, outlining the preliminary determination of this office in relation to the complaint. The parties were advised on that date, that certain limited submissions could then be made within a period of 15 working days, and in the absence of such submissions from either or both of the parties, within that

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period, a Legally Binding Decision would be issued to the parties, on the same terms as the Preliminary Decision, in order to conclude the matter.

Following the consideration of additional submissions from the Complainant, to which the Respondent elected not to respond, the final determination of this office is set out below.

The Complainant states that since June 2009 he has lived in 74 CG and also in the adjoining house no. 75 CG.

I understand the Complainant's frustration at being repeatedly asked to provide documentation and explanations to the Respondent however the Respondent was entitled to request information to prove that the terms of the policy have been complied with.

I consider it important that the insurance schedule, for cover from 2/09/2009 to 1/9/2010 states that the Complainant's address is in Cork city and not at the insured location and further that the insurance policy was taken out as "buy to let insurance". In September 2009 the Complainant renewed this insurance policy stating that his address was in Cork city and that this was a rented property. The Complainant now states that the tenant had left some months earlier in the Summer of 2009 and that he himself resided in this property and the adjoining property from July 2009. The Complainant had a duty to tell the Respondent of this change of circumstances at the time of renewal and not to renew the property as "buy to let", if he was living himself at the address.

I take the view that there is little or no evidence that the Complainant was living at the insured address between July 2009 and January 2010 when the incident occurred. The Complainant has referred to the voting register, and to a letter he sent to the loss adjuster in April 2010, which sought to explain the absence of ESB bills for the property at "no. 75" and to explain a difficulty in tracing "a name on the accounts to this particular address".

I note from the evidence that, firstly, the electricity to the property was cut off. Secondly, the photos of the property show a property that is not inhabited, with a bundle of post at the door, no food on the shelves, damage to the walls and furniture and no clothes in the wardrobes. The Complainant contends that he was using the electricity from the adjoining house, number 74 for the insured property, however he has not made available any details to establish that this was in fact the case.

I consider that the Respondent was entitled to take the view that the Complainant failed to prove that he occupied the property or that the property was occupied by a tenant, at the time of the incident giving rise to this claim.

The terms of the policy state as follows:

5. Unoccupancy:

If any tenanted accommodation forming part of the building is unoccupied for 40 consecutive days or more whilst untenanted you must ensure that:

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a) the gas, electricity and water is turned off at the mains and the water and heating system is drained.

What is not covered:

“Loss or damage:

...

b) caused while the private residence has been unoccupied or unfurnished for 40 consecutive days or more”.

In the circumstances, I take the view that it was not unreasonable for the Respondent to form the opinion that the property was unoccupied for 40 consecutive days prior to the loss and that the water system was not drained, in breach of the policy terms.

Accordingly, I am of the opinion that there is no reasonable basis upon which it would be appropriate to uphold this complaint.

Conclusion

My Decision pursuant to **Section 60(1)** of the **Financial Services and Pensions Ombudsman Act 2017**, is that this complaint is rejected.

The above Decision is legally binding on the parties, subject only to an appeal to the High Court not later than 35 days after the date of notification of this Decision.

**MARYROSE MCGOVERN
DIRECTOR OF INVESTIGATION, ADJUDICATION
AND LEGAL SERVICES**

5 July 2018

Pursuant to Section 62 of the Financial Services and Pensions Ombudsman Act 2017, the Financial Services and Pensions Ombudsman will publish legally binding decisions in relation to complaints concerning financial service providers in such a manner that—

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(a) ensures that—

(i) a complainant shall not be identified by name, address or otherwise,

(ii) a provider shall not be identified by name or address,

and

(b) ensures compliance with the Data Protection Regulation and the Data Protection Act 2018.

