



Decision Ref: 2021-0377

Sector: Insurance

Product / Service: Rental Property

Conduct(s) complained of: Rejection of claim

Outcome: Rejected

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

The complaint concerns the declinature of a claim under a rental property policy of insurance.

The Complainant's Case

The Complainant states, as follows:

“Damage caused in my property from people who were not lawfully on the premises”.

In a letter to this Office the Complainant also stated that:

“My claim was for malicious damage caused by someone who was unlawfully on the premises. As I stated on previous correspondence with [the Provider] through [the Complainant's Loss Assessor] (loss adjuster) I was never aware of anybody other than [‘TG’] being on my property. His name was on the ESB bill. I have never known the two [nationality redacted] men who were arrested at my property or did not know that they were living there. I was also unaware of what was going on inside the property.

I pay high insurance premiums every year for my business, home, farm and vehicles and do so in belief that if an incident occurred my insurance will kick in to do what I pay them to do.

I trust that this claim will be resolved by yourselves and that there will be no need for me to take it to the next stage.”

In resolution of this complaint, the Complainant states:

“I am seeking payment from the insurance company [the Provider] for damage caused in the property”

The Provider’s Case

The Provider advises that the Complainant’s policy is a home insurance policy (rental policy); first incepted on **28 March 2012** and renewed annually since that date. The Provider says the Complainant’s policy is specifically for rental properties. The Provider advises that it is the underwriter of the Complainant’s policy. It states that the policy was arranged and administered by another entity on behalf of the Provider.

The Provider says the policy is a defined perils policy and in order for cover to be in place, it must be established that a ‘Peril’, named in the policy, has occurred. The Provider says the Complainant’s Loss Assessor maintains that the property was damaged maliciously and, in effect, was claiming under the following peril:

“Section A – Buildings and Contents

*Other than ‘What is not insured’, the **buildings and contents** are insured for the amounts shown in the schedule against loss or damage caused by the events in paragraphs 1 – 11 and paragraph 12 if the cover is shown as included on the schedule.*

What is insured

6. Vandals or Malicious people

What is not insured

Loss or damage caused

** by someone lawfully on the **premises***

** after the **home** is left **unoccupied** for more than 30 consecutive days.*

*While the **home** is **unfurnished**.”*

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The Provider advises that the Complainant did not attend the meetings at the insured property.

In this instance, the Provider says the above peril is not relevant as the Provider was given to understand that alterations were made to the property to facilitate the growing and cultivation of illicit plants. The Provider says these alterations do not consist of or constitute malicious damage. Furthermore, the Provider says, even if it were to accept that the alterations constituted damage caused by malicious persons, the damage would not be insured as the Provider believes this was caused by persons lawfully on the premises.

In relation to knowledge of persons residing in the property, the Provider refers to Condition 1 of the policy:

“You will take all reasonable steps to protect the property and prevent accidents.”

The Provider says a property is deemed unoccupied if not stayed in overnight by the insured, tenant or persons authorised by the insured.

The Provider says it appears from its file that a tenancy agreement was in place in **2014** with a party who no longer resides at the property and instead, the Complainant agreed to subsequent tenants occupying the property based on recommendations from the person the tenancy agreement was with. The Provider says it would class those tenants as sub-tenants, and that they were lawfully on the property. However, the Provider says if there was no one residing on the property authorised by the Complainant specifically, then the property was also unoccupied as per the policy definitions.

In respect of the above tenancy agreement, the Provider says a lease agreement was provided for a tenant, ‘PL’, dated **10 May 2014** which was drawn up by a firm of solicitors.

As part of its investigation, the Provider says it obtained copies of statements made to An Garda Síochána as well as a statement from the investigating Garda. The Provider says it is the position of the Gardaí that the individuals arrested were not known to the Complainant. The Provider says the Complainant advised that rent had been paid into his account under the name ‘K’ and this was not the name of any of the tenants known to the Complainant. The Provider says it has no reason to believe that the people arrested were known to the Complainant.

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The Provider says the Complainant's Loss Assessor did not provide any evidence other than correspondence stating that the Complainant did not know the persons occupying the property at the time of the raid by An Garda Síochána. The Provider says the Loss Assessor advised that the Complainant was receiving lodgements into his account with the reference "[K] home".

The Provider says it received bank statements showing lodgements with this reference in the months of **October, November and December 2017, and January to June 2018.**

The Provider refers to the following email received from the Loss Assessor on **5 November 2018:**

"As we have previously advised and discussed, the insured was aware of the tenant [PL] and had a lease agreement in place with him dated May 2014 as provided. The insured obtained references etc, which we have provided. When this tenant advised the insured he was leaving, the tenant advised that he had someone to take over the lease, his mother, and the insured as (sic) satisfied with this, but no lease was completed for the new tenant, but monies was paid in as normal. The insured had no issues etc. and was on (sic) the opinion the tenant was the same throughout as monies was being laid (sic) in under [C/K] names etc. as previously advised. [The Complainant] had no reason to think any different. The first time the insured became aware of any problem was when the Gardai contacted him and advised of the strangers that were arrested in the house."

The Provider says the Complainant stated that the people arrested did not have his consent to be on his property, however, following PL vacating the tenancy and recommending a subsequent tenant, allegedly PL's mother and another man, TG, the Complainant did not vet these new tenants. The Provider says the Complainant has offered no evidence to suggest he met with the new tenants or verified their identities in any way. Furthermore, the Provider says the Complainant has offered no evidence to suggest that when he received rent, monthly from an individual, K, and not under the name of any of the known or supposed tenants, that he queried this or followed up in any way to verify the identity of the people in the property or paying the rent. Therefore, the Provider says, its contention is that the Complainant accepted rent from an individual named K despite having not rented the property to any person by that name, his failure to properly vet the tenants, query the rent payments and the continued acceptance of rent from an unknown individual amount to the Complainant's consent with regards to individuals unknown to him occupying the property and paying rent to do so.

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The Provider says the Complainant's statement to Gardaí on **18 August 2018**, states that:

"The transactions on the bank statement state that it was lodged by [K]. The last lodgement was 6/7/2018 by [K] again. The rent was paid every month without fail."

The Provider says this indicates that the payments were ongoing during the cultivation of the illicit plants, considering the date the Gardaí entered the property and arrested two men and seized illicit plants at the property, being **25 July 2018**. Had the Gardaí not entered the property, the Provider says the next month's rent was due on or around **6 August 2018**.

In terms of who had lawful authority to invite persons onto the property, the Provider refers to the following passage from the Complainant's statement to Gardaí on **18 August 2018**:

"I originally rented this house out to a [nationality redacted] man, [P], my loss adjuster [Loss Assessor] has his surname, along with other details in relation to the renting out of this house. When he left he put me in touch with other [nationality redacted] people who rented it out as well. These were all good tenants until 2016 he put me in touch with a [nationality redacted] man, again my loss adjuster has these details. This man gave me a deposit of two months' rent. The rent was €400 per month and this was paid directly into my bank account. [...] The rent was paid by ATM in [Provincial Town]. The transactions on the bank statement state that it was lodged by [K]."

The Provider says that in a statement to [what appears to be a reference to the initials of] its Loss Adjusters, the Complainant confirmed that rent was always paid on time and there was never any issue regarding the payment of rent. At the time of the claim and the statements, the Provider says the Complainant stated that in recent times, the rent had been paid by K. As there was never any interruption to the payment of rent, and the Complainant confirmed this, the Provider says the conclusion can only be drawn that at some point, TG, if he ever was resident at the property, vacated the property to the new occupiers (without the knowledge of the Complainant) and this rent continued to be paid on time.

The Provider says the Complainant accepted rent from an individual named K despite having not rented the property to any person by this name and that the Complainant's failure to properly vet tenants, query rent payments and continued acceptance of rent from an unknown individual amounts to individuals unknown to the Complainant being lawfully on the premises.

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The Provider says the Loss Adjusters who inspected the property noted no signs of force or violence used to gain entry to the property other than damage to the hall door. The Provider says the Loss Adjusters was advised by the Complainant's Loss Assessor that the damage to the hall door was caused when the Gardaí raided the property.

As such, the Provider says there is no evidence that the cultivators of the illicit plants forced their way into the property. The Provider says that the property was 'tenanted' by or paid for, from at least **6 October 2017** until the raid on **25 July 2018**, by the person who lodged money into the Complainant's account in the name of K. The Provider says it was reasonable to conclude that the person lodging the money into the Complainant's account was aware of the illicit activities. The Provider further says it stands to reason that a person would not pay rent on a house they were not residing at.

In concluding its Complaint Response, the Provider says it sympathises with the Complainant's position regarding this matter. However, the Provider contends that risk of modification to a property against the terms of any lease agreement (if such an agreement is even in place) is a risk inherent in leasing a property to tenants. While the modifications carried out to the Complainant's property were for the purpose of illegal activities, the Provider says it does not follow that these modifications were 'malicious' in intent towards the property itself or the landlord, but rather were an attempt to make the property fit for a different purpose. The Provider says the threshold that must be met for cover is malicious damage caused by people not legally on the property. The Provider says it believes that this has not been met in this case.

The Complaint for Adjudication

The complaint is that the Provider wrongly or unreasonably refused to admit and pay the Complainant's claim under his property insurance policy.

Decision

During the investigation of this complaint by this Office, the Provider was requested to supply its written response to the complaint and to supply all relevant documents and information. The Provider responded in writing to the complaint and supplied a number of items in evidence. The Complainant was given the opportunity to see the Provider's response and the evidence supplied by the Provider. 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.

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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 September 2021, outlining my preliminary determination 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 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.

In the absence of additional submissions from the parties, within the period permitted, I set out below my final determination.

The Complainant's Claim

The Complainant's Loss Assessor telephoned the Provider on **7 August 2018** to notify the Provider of a claim for malicious damage in respect of the insured property. By letter dated **8 August 2018**, the Provider acknowledged notification of a claim under the Complainant's policy and issued a claim form to the Complainant.

The Complainant completed a 'Home Insurance Claim Form' dated **21 August 2018** in respect of a loss which occurred on **24 July 2018**. Describing the damage to the insured property, the Complainant stated, as follows:

"Malicious damage by persons who have been arrested by Garda"

The Provider's Loss Adjusters prepared a Site Inspection Report dated **16 August 2018** and a Preliminary Report dated **9 November 2018**. A number of photographs were contained in, and accompanied, these reports. A number of photographs were also attached to internal Loss Adjuster emails dated **20 August, 6 September** and **20 September 2018**. On reviewing these photographs, it can be seen that quite extensive damage was done to the insured property.

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The Loss Adjusters prepared a Preliminary Report dated **15 November 2018**. On page two of the report, it states, as follows:

“DISCOVERY: *On the 24th July 2018 Gardai raided the risk address and discovered a cannabis grow house. They contacted the policyholder, [the Complainant], and made him aware of same. Two men were arrested at the scene and were later charged with offences connected with the use of the property.*

CAUSE: *The Insured let his house four years ago to an individual tenant. Unbeknownst to the policyholder, the said tenant appears to invited [sic] onto the property or sub-let the property to other individuals who later converted the property into and have used same as a cannabis grow house. These persons, who do not appear to have been known to the Insured, in their efforts to convert the property for use as a grow-house, caused damage to the same.”*

At page three of the report, it states under the heading ‘NATURE AND EXTENT OF DAMAGE’, as follows:

“The perpetrators believed to have been responsible for the conversion of the property and who were arrested at the scene caused deliberate and extensive damage to the property.

These individuals drilled holes in the roof and ran the mains electricity cable to a self made fuse board. They also drilled holes into the chimney to allow for ventilation. The walls were covered in a metal reflective insulation and a number of walls and floors within the home were knocked and drilled through to allow for wires and ventilation.

All rooms within the home were damaged to varying degrees in the process of converting the property to its illicit use as a grow-house. Extensive refurbishment will be necessary consisting of the repair of forced apertures and subsequent redecoration.

The hall door was forced by Gardai in the course of their raid to the property.”

As part of its response to this complaint, the Provider has furnished a copy of a letter from its Loss Adjusters addressed to the Complainant's Loss Assessor dated **3 December 2018**, which advises that the Complainant's loss was not covered under the policy. It is not entirely clear whether this letter was in fact issued. However, in terms of understanding the Loss Adjuster's position on cover, I note that this letter states, as follows:

"From our perspective as Loss Adjusters, we focus on whether the damage caused and repairs being claimed for has been brought about by Damage covered by the Policy concerned, which in this instance is the operation of Damage caused by vandals or malicious people.

Whilst there is over (sic) under the Policy for damage caused by vandals or malicious people, there is an exclusion in place which states;

What is not insured

Loss or damage caused:

- *by someone lawfully on the premises*

We have reviewed all matters at length concerning this incident and claim.

Whilst we acknowledge the culprits were not known to the policyholder, they were invited at some point onto the premises by someone with lawful authority to do so - in this case, the original signing tenant and then so on through the succession of occupants.

Furthermore, it is our understanding that rent continued to be paid to [the Complainant] and these monies were accepted by him. There has therefore been an offer and acceptance of payment, which is effectively a "contract" in legal terms.

We must advise that we consider that there is an issue with policy liability and that the exclusion applies.

We are of the view that your client's loss falls within this policy exclusion and therefore the claim is being declined."

It appears that there were certain telephone conversations between the Loss Adjusters and the Loss Assessor around the time of this letter, where it appears that the declinature of the Complainant's claim was discussed.

By email dated **3 December 2018**, the Loss Assessor wrote to the Loss Adjusters referencing a conversation from the previous week, as follows:

"We disagree that that [sic] individuals responsible for the malicious damage were legally on the premises.

We have had numerous previous similar claims and all have been accepted by insurers.

Please find very honest and upfront email, directly from the insured, on the matter, and you can clearly see that he certainly was not aware of any wrongdoings at his property and in his mind, he acted normal under the circumstances.

Yes, he made some mistakes by not getting a new lease etc, which he now regrets, but he trusted the first tenant and everything appeared normal after that. Under the somewhat foolhardy. As far as he was aware, [Mr G], was his tenant and rent was paid in [Provincial Town] to his account each month. [Mr G] was not one of the individuals caught by Garda in the house, and thus all the individuals arrested in the house were not know to the insured and thus were illegally on the premises.

As you are most likely aware, these grow houses are run by extremely professional gangs and they set up a tenant normally by deception with false ID, False Passports, false references, PPS numbers etc. A tenant stays in the house for a period and then the "mule(s)" are brought in to cultivate the crops. It is normally the mules that are caught and put in jail, which is what happened here. In all of these cases, insurers accept that the individuals who caused the malicious damage were not lawfully on the premises, and the claims are dealt with.

We believe the claim is therefore not excluded and we await confirmation of acceptance of liability."

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The Loss Assessor attached the following email from the Complainant dated **2 December 2018**:

"[PL] move in with his mother and stayed for a few months. he then moved out and his mother stayed for another few months (approx 12 in total between the 2) [PL] always paid his rent in [Provincial Town] and was never late with payments.

he notified me that his mother was moving out. i asked him did he know any body that would be interested in the property and he said he would ask about. he came back to me a few days later and told me he had a friend [TG] would be interested so we set up a meeting and i met the 2 of them and gave [PL] back his deposit and took a deposit from [TG]. we called the esb and transferred the esb to [TG's] name. [TG] had very little english so [PL] said if there was any problems to call him and he would translate any issues. around one month [PL] called me to see if [TG] could paint the house outside and i agreed. the house was painted and the lawns cuts and the property maintained well outside.

Rent was paid into my account from [Provincial Town] every month ([PL] always paid here) so everything looked fine. the next door neighbour [...] look at livestock for me and also keeps an eye on the house and everything always seemed normal.

I called to the house on approx. 18th june and a nationality redacted] man answered (which i presumed was [TG]), and ask him if everything was ok and he said no english which was normal to me. i tried to ask him could i look inside just for quick look. I didnt want to invade his privacy. I stepped inside the front porch and had a quick glance at the kitchen and living room, it seemed a little untidy but ok apart from that. i was happy enough leaving the property and bid him farewell. On the 25th july i was working locally in the area and called to look at the cattle. i was alarmed to see two garda cars at the house. i approached a man who was detective [name] and i made myself known to him. he told me what had happened to my property and what had been going on inside.

i couldnt believe what had happened and being happening without any body knowing or noticing anything. Nobody could have ever knew this was going on without actually going into the house and checking the bedrooms. all esb bills are in [TG's] name up until the event and i have some of them which were posted to house in his name."

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In an internal email dated **13 December 2018**, the above email from the Loss Assessor on **3 December 2018** was discussed. In particular, the following passages would suggest that a formal declinature was issued or communicated to the Loss Assessor around the time of the Loss Assessor's email:

"I reviewed this case and our declinature, which was agreed with [the Provider] prior to proceeding.

[...]

On this basis, I believe that the declinature stands. I believe that the option open to him is the FSPO."

The Loss Assessor emailed the Loss Adjusters on **20 December 2018** expressing the view that an incorrect decision had been made in declining the Complainant's claim.

By letter dated **26 February 2019**, the Loss Adjusters wrote to the Loss Assessor declining the claim, in relevant part, as follows:

"We have reviewed all matters at length concerning this incident and claim: We note that [the Complainant] rented the house to a tenant some 4 years ago to the original tenant, [Mr L], and that subsequent to this, other parties, whom [Mr L] referred to [the Complainant] had taken occupation of the house and that rent had been paid in the sum of €400 per month. The said rent has been lodged into the Insured's account under the name of [K] for the last while. The original lease was in the name of [Mr L], and was for a defined period, but [the Complainant] does not appear to have met with or drawn up a separate letting agreement for the property with the subsequent tenants over this period. Rather, it appears that [the Complainant] was satisfied with the referral by [Mr L] and his endorsement of the tenant subsequent to him.

The foregoing are the facts of the matter, as they have been relayed to us in various communications, and we understand that there is no dispute concerning same. At this point, we wish to address the issue of policy liability.

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Operation of an Insured Peril

The subject policy is written on a specified perils basis. As you well understand, the policy operates or triggers upon the occurrence of one of these perils. In this particular instance, the tenants who were resident at the premises made significant alterations to the property in order to accommodate the cultivation of, albeit, illicit or proscribed plants. The alterations and modifications to the property involved the removal of parts of the Building and making apertures to accommodate the running through of pipe-work.

Having examined the cover provided by the policy, and specifically the perils insured thereby, we can find none that relate to the modification of property for any purpose. On this basis, we cannot agree that any peril has operated to cause the subject damage.

Operation of an Exclusion

We note your argument that Peril 6, 'Vandals or malicious people' has operated. Setting aside what we have already indicated above that we do not believe that an insured peril is operating, we consider that even if you were to satisfactorily argue that a peril has operated, that nevertheless an exclusion will apply.

We can reasonably say, or agree, that while [the Complainant] was acquainted with and 'vetted' the original tenant, the occupancy of the premises passed through a number of individuals over the intervening four years, with whom [the Complainant], the Insured, did not make any lease agreement, or 'vet' in any way. While we accept the fact that [the Complainant] did not know the last incumbents in the property, nor was he in any way aware of the activity being carried on there, we would argue that these people were nonetheless lawfully on the premises. [The Complainant] might say that the recent tenants were not there with his 'consent'. This argument does not have credibility, in our view; [the Complainant] has stated that he did not know who was occupying his house but nevertheless accepted payment of rent from them over a period of time. Therefore, they were lawfully in the premises, notwithstanding that the believed subsequent activity carried on there is contrary to criminal law.

In addition, while they were not known to the policyholder, the subsequent tenants were invited at some point onto the premises by someone with lawful authority to do so – in this case, the original signing tenant and then so on through the succession of occupants.

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Again, while it may be argued that the Insured knew that the 'original' occupant had vacated, and that he was not on familiar terms with those who followed thereafter, nor indeed did he obtain any lease agreement from them, these subsequent people were parties invited by other parties onto the premises who were lawfully entitled to do so.

In light of the above, we would draw your attention to the exclusion under Peril "6. Vandals or malicious people":

"Loss or damage caused:

- by someone lawfully on the premises"*

We are of the view that your client's loss falls within this policy exclusion and we have taken instructions to this effect from [the Provider]. For the grounds outlined above, liability for your client's loss is not accepted under the policy and we regret to advise that both we and Insurers are filing our papers in the matter."

Solicitors acting on the Complainant's behalf wrote to the Provider's Loss Adjusters by letter dated **29 March 2019** requesting a copy of the policy document, which was provided on **2 April 2019**.

It appears that the Complainant wrote the following undated letter to the Provider around **14 June 2019**:

"My claim was for malicious damage caused by someone who was unlawfully on the premises. As I stated on previous correspondence with [the Provider] through [the Complainant's Loss Assessor] (loss adjuster) I was never aware of anybody other than [TG] being on my property. His name was on the ESB bill. I have never known the two [nationality redacted] men who were arrested at my property or did not know that they were living there. I was also unaware of what was going on inside the property.

I pay high insurance premiums every year for my business, home, farm and vehicles and do so in belief that if an incident occurred my insurance will kick in to do what I pay them to do.

If this claim is not resolved by yourself, I intend to take it to the Financial Service Ombudsman Bureau, Central Bank of Ireland, Insurance Ireland and if needs be taking legal action."

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The Provider issued a formal response to the Complainant's letter on **27 June 2019**. Beginning on page 2, this letter stated that:

"In order for a valid claim to be covered under a policy an insured peril must occur as outlined in the policy. In your case, the tenants who were resident at the premises made significant alterations to the property in order to accommodate the cultivation, albeit, illicit or proscribed plants. The alterations to the property involved the removal of parts of the building and making modifications to accommodate the running of pipe-work and electrical cabling.

Having examined the cover provided by the policy, and specifically the perils insured, I can confirm that there is no insured peril that relates to the modification of the property for any purpose. On this basis, we cannot agree that an insured peril has occurred which would give rise to a valid claim. Whilst your initial tenant was 'vetted' by you, we understand that the occupancy of the premises passed through a number of individuals over the intervening years, with whom you did not make any lease agreement, or vet in any way.

While we accept the fact that you did not know the two men arrested at the property, nor were you in any way involved or aware of the activity being carried on there, we believe these people were nonetheless lawfully on the premises. We refer to your mail to [the Loss Assessor] on the 2/12/18, where you advised

"[sic] I called to the house on approx 18th June and a [nationality redacted] man answered (which I presume was [TG])"

You may argue that these men were on the premises without consent, however as you did not know who was occupying the house but nevertheless accepted payment of rent from them over a period of time we are of the opinion that they were lawfully in the premises. Notwithstanding that the subsequent activity carried on in the property is contrary to criminal law it is our belief that while they were not known to you, the subsequent tenants were invited at some point onto the premises by someone with lawful authority to do so. As per the letter dated 26th February 2019, we would draw your attention to the exclusion:

"6. Vandals or malicious people:

Loss or damage caused:

- by someone lawfully on the premises"*

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We appreciate the upset that this situation has caused you, however we remain unable to settle your claim as there is no insured peril under your policy to cover the circumstances of this claim. Rent continued to be paid to you by the new tenants and this rent was accepted by you therefore there has been an offer and acceptance of payment which is effectively a contract in legal terms.”

It appears the Complainant wrote to the Provider again by way of an undated letter around **11 September 2019** in essentially identical terms to his letter from **June 2019**. The Provider responded to this letter on **23 September 2019** maintaining the position adopted in its earlier correspondence.

The Insurance Policy

The Complainant holds a rental property policy of insurance which is underwritten by the Provider. The Complainant’s policy schedule identifies the insured property and the period of insurance as covering the period **28 March 2018** to **27 March 2019**. The cover provided under the policy is outlined in the policy schedule, as follows:

“Insurance is provided for the following:

Section A – Buildings and Contents

Insured

Buildings

Contents

Insured”

Excluding Accidental Damage

Excluding Accidental Damage

Sums

€150,000

Not

In the Complainant’s policy document, under the heading ‘The Contract of Insurance’, it states, as follows:

*“We will insure **you** under those sections and for the items shown in the schedule as operative during any period of insurance for which we have accepted your premium provided all the terms and conditions of the Policy are kept.”*

On the second page of the policy document, the cover under Section A is set out, as follows:

“Section A – Buildings and Contents

[...]

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*Other than 'What is not insured', the **buildings** and **contents** are insured for the amounts shown in the schedule against loss or damage caused by the events in paragraphs 1 -11 and paragraph 12 if the cover shown as included on the schedule."*

Beneath this, the policy document contains a table with rows numbered 1 to 20, with each row setting out a particular insured peril or circumstance. The table (and each row) contains two columns which identify 'WHAT IS INSURED' and 'WHAT IS NOT INSURED'.

The perils insured under rows 1 to 11 are, as follows:

1. Fire, smoke, lightening, explosion or earthquake
2. Storm or flood
3. Subsidence or ground heave
4. Stealing or attempted stealing
5. Riot, civil, labour or political disturbance
6. Vandals or malicious people
7. Escape of water
8. Escape of oil
9. Collision by aircraft, vehicles or animals
10. Falling trees or branches
11. Falling aerials, aerial fittings or masts

The peril at row 12 relates to accidental damage. However, as per the Complainant's policy schedule, cover for accidental damage is not operative on the Complainant's policy.

Rows 13 and 14 provide cover for fire brigade charges and loss of rent respectively. In terms of the perils at rows 15 to 19 (inclusive), the policy document states that cover under these headings is operative once '**BUILDINGS**' are shown as insured on the policy schedule. In this respect, it can be seen from the Complainant's policy schedule that cover is provided in respect of buildings. Accordingly, the perils insured under rows 15 to 19 are, as follows:

15. Breakage of glass and sanitary ware (accidental damage)
16. Service pipes and cables (accidental damage)
17. Blockage of sewers and pipes
18. Liability to the public as owner of the premises
19. Trace and Access

In respect of the final two perils at rows 20 and 21, the policy document states that cover under these headings is operative once '**CONTENTS**' are shown as insured on the policy schedule. In this respect, it can be seen from the Complainant's policy schedule that cover is not provided in respect of contents.

Analysis

The Complainant held a policy of insurance with the Provider in respect of a rental property. In **July 2018**, the insured property was raided by An Garda Síochána and it was discovered that the property was being used to facilitate the growth of illicit drugs, that is, as a grow house. In order to facilitate this activity, it can be seen, in particular from the Loss Adjusters' Preliminary Report dated **15 November 2018** and the many photographs provided in evidence, that quite extensive modifications/alterations were carried out to the interior of the insured property causing significant damage and which required extensive restoration works.

The Complainant later made a claim under his insurance policy in respect of this damage. In essence, the Complainant was seeking to claim under Peril 6, 'Vandals or malicious people', on the basis that the damage to the insured property was malicious and caused by a person or persons not lawfully on the property. As can be seen, the claim was declined by the Provider in its letter of **26 February 2019** on the basis that none of the specified perils set out in the policy document provided cover "*that relate to the modification of property for any purpose.*" The Provider also relied on one of the exclusions applying to Peril 6, in that the loss or damage was caused by someone lawfully on the property.

Although the Complainant had a policy of insurance in place in respect of the insured property, it does not follow (as suggested by the Complainant in his letter of **7 November 2019**) that because the property was insured, any claim made under the policy will be covered. In order to trigger cover under the policy, the circumstances of a claim must come within the terms of the cover provided by the policy. Having considered the Complainant's policy document, it can be seen that cover is provided in respect of a number of specific and defined perils or circumstances. The policy further identifies, in respect of each peril, what is not covered. Accordingly, to successfully invoke cover under the policy, the circumstances of the Complainant's claim must come within the cover provided by one of the specified perils and must not be excluded by any of the circumstances coming under the heading 'WHAT IS NOT INSURED'.

Having considered each of these individual perils, I also note that cover is not provided in respect of damage caused by any modifications/alterations carried out to the insured property, whether or not with the Complainant's consent and irrespective of the purpose of the modifications/alterations.

In respect of Peril 6, the policy documents states, as follows:

*"Other than 'What is not insured', the **buildings and contents** are insured [...] against loss or damage caused by [...]"*

WHAT IS INSURED

[...]

6. Vandals or malicious people.

WHAT IS NOT INSURED

Loss or damage caused:

- by someone lawfully on the **premises**,*
- after the **home** is left **unoccupied** for more than 30 consecutive days*
- while the **home** is **unfurnished**."*

Peril 6 identifies what is insured by this particular peril and goes not to state what is not insured by this peril. In terms of what is insured, Peril 6 provides cover for loss or damage caused by vandals or malicious people. When considering the loss or damage being claimed for by the Complainant, I am of the view that such loss or damage must be considered not only in the context of Peril 6 but in the context of the cover provided by the policy as a whole.

However, I note that the policy document does not define the terms 'vandals' or 'malicious people'. When interpreting the meaning of the terms 'vandals' or 'malicious people', it is my opinion that they must be given their plain, ordinary meaning. Further to this, these terms should be considered in the context of one another and not in isolation.

The term vandals encompasses people who deliberately or ignorantly vandalise, deface, damage or destroy property belonging to another. The term malicious persons encompasses people who intend to harm or cause harm to property and that this would necessarily entail some form of malice, directed towards the insured property or the Complainant.

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Therefore, it would appear that Peril 6 provides cover for loss or damage caused by persons whose intention is to simply harm or damage the insured property or the Complainant, essentially for no other reason than to cause harm or damage.

The evidence is that modifications/alterations were carried out to the insured property to facilitate the growth of illicit drugs. Although the insured property was undoubtedly damaged by these modifications/alterations, I do not accept this necessarily means the loss or damage was caused by vandals or malicious persons. While the damage may have been caused by criminals or persons engaged in criminal activity, I do not consider that such people (or associated conduct) automatically, or by that fact alone, come within the policy meaning of 'vandals or malicious persons'. It is my opinion that the modifications/alterations to the insured property were in furtherance of a criminal enterprise and for the specific purpose of the growth of illicit drugs; there is no evidence to suggest that these modifications/alterations were, for any other reason, directed towards or intended to harm, damage or vandalise the insured property or done with any form of malicious intent towards the insured property or the Complainant.

Peril 6 contains a number of exclusions. In the context of this complaint, Peril 6 states that loss or damage caused by someone lawfully on the insured property is not insured. The Complainant's position is that the damage to the insured property was caused by person(s) who were not lawfully on the insured property. The Complainant's evidence is that he was not aware of who was on the insured property or the activity taking place on the insured property.

In terms of persons being lawfully on the insured property, I do not accept that simply because the Complainant was unaware of who was on the property, or the activity taking place, that anyone other than who the Complainant believed the tenant to be (which in this instance appears to have been TG) means that those people who were actually on the insured property were not lawfully on the property. It is my opinion that the Complainant's consent, permission or knowledge was not required in order for a person to be lawfully on the insured property.

The evidence is that at the time of the raid in **July 2018**, TG was the tenant in respect of the insured property. As a tenant of the insured property, it is my opinion that TG was lawfully on the property and that he was entitled to invite people onto the property; and by virtue of such an invitation or TG's permission or consent, any such person was lawfully on the insured property.

It is also important to note that the conduct of any person while on the insured property does not necessarily mean they were not there lawfully. Although the certain illegal activity had taken place on the insured property and the modifications/alterations were for the purpose of this illegal activity, I do not accept that any persons who were on the insured property or engaged in this activity were not there lawfully.

In terms of the modifications/alterations to the insured property, I note that the identity of the person or persons who carried out the modifications/alterations has not been established nor has it been established whether any such person or persons was/were lawfully or unlawfully on the property and no evidence has been tendered in this regard. However, I note that on the day of the raid, two men (neither of whom were TG) were found on the property and arrested. In an email from a member of An Garda Síochána to the Loss Adjusters on **19 October 2018**, the Loss Adjusters were advised that the two men entered guilty pleas to charges of possession of drugs for sale and supply, and cultivation of cannabis plants. However, it is not clear whether these men carried out the modifications/alterations to the insured property.

In the circumstances of the Complainant's claim, it is possible that the modifications/alterations could have been carried out, in whole or in part, by TG or anyone on the insured property with TG's consent or permission. Further to this, given the nature and extent of the modifications/alterations, it is unlikely that they could have been carried out without TG's permission or consent, which would mean those carrying out the modifications/alterations, if not TG, were lawfully on the insured property.

In respect of the payment of rent, I note from the bank statements provided, that someone by the name beginning with 'K' made monthly lodgements of €400.00 to the Complainant's account from around **October 2017**. The reference used by this person for these lodgements was either the name beginning in K or K followed by the word 'HOME' or 'RENT'. There does not appear to be any lodgements made by TG in respect of the payment of rent. In a submission dated **4 January 2021**, the Complainant says that:

"[I] never thought anything of the rent being paid in by a different name other than the man I rented it to. I presumed he had little English and just got one of his friends to pay it in."

In circumstances where rent was paid by someone other than TG, I am of the view that this would suggest someone other than, or in addition to, TG may have also been involved with, on, occupying or sub-letting the insured property.

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However, I note the Complainant does not appear to have queried or followed-up with TG as to the source of the rental payment or whether someone other than TG was occupying the property. This would also suggest that the Complainant did not necessarily have an issue with someone other than, or in addition to, TG being involved with, on, occupying or possibly sub-letting the insured property.

The evidence does not support the position that whoever caused the damage to the insured property was not there lawfully.

Accordingly, having considered the perils contained in the Complainant's policy document, I accept that the circumstances of the claim are not covered by the Complainant's policy. In the context of Peril 6, I do not accept that the loss or damage to the insured property was caused by 'vandals or malicious persons' within the meaning of the policy. Further to this, there is insufficient evidence to show that the loss or damage was caused by someone who was unlawfully on the insured property. Therefore, while I understand the very difficult situation the Complainant has found himself in from the actions of those occupying the property, I accept that the Provider was entitled to decline the Complainant's claim.

Therefore, I do not 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.



**GER DEERING
FINANCIAL SERVICES AND PENSIONS OMBUDSMAN**

26 October 2021

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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—

(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.