

Before the Arbiter for Financial Services

Case No. 014/2020

IS ('the complainant')

vs

Propgen Insurance Ltd. (C 37777)

('the service provider'/'the insurer')

Hearing of 12 January 2021

The Arbiter,

Having seen the complaint whereby the complainant submits that he is getting harassed by Barbon Insurance Group ('Barbon'), the service provider's administrators because they are trying to recover expenses they paid out in relation to a claim made in 2017 under his HomeLet Landlord's Insurance policy.

The complainant argued that Barbon are trying to recover monies that they are not due, with these being above and beyond the court order with his former tenant, whilst also trying to recover the amount he was awarded after filing a complaint with them. Above all, he claims that they have contacted the tenant without his authorisation, stopped her payments to him and established a standing order with her.

He stated that, despite understanding that the purpose of landlord insurance is that the premium he was paying between June 2010 and March 2017 would fully cover any out of pocket expenses should there ever be issues with tenants, at no stage during his time as a customer, has Barbon highlighted the fact that they will recover losses from the landlord/insurer or following a court possession order attempt to recover the same losses from the tenant without his

authorisation. He argued that, given the monthly premium is paid to the insurer by the landlord, he would like to think that any monies paid out by the insurer are not recoverable.

The complainant insisted that apart from the fact that Barbon contacted him more than two years later to try to recover monies, the figures being quoted in exchanged emails are confusing, do not add up, and are incorrect.

As a result of the above, the complainant is seeking to recover losses due to the result of HomeLet and Barbon's incompetent handling of his claim.

He is seeking damages for the rent arrears set out in a court order for £3,216.67, deducting £600 that he received from the tenant before Barbon asked her to cancel the standing order, thus, amounting to £2,616.67. In addition, he is requesting the money paid in seven years as monthly premium payments which amount to £2,960.16. Therefore, the total amount of compensation being sought amounts to £5,576.83, together with an assurance along with an apology from HomeLet/Barbon/Propgen, that they will no longer pursue him and his former tenant and will close this case without further ado.

Propgen Insurance Limited was declared contumacious by a preliminary decision¹ of the Arbiter given on 11 September 2020. Therefore, its reply cannot be considered by the Arbiter, but, as already stated in the preliminary decision on the default of the service provider, their contumacious state is not an admission of the complaint raised against it.

The Arbiter also declared that he will give the service provider the opportunity to submit its final observations at the end of the proceedings.

Moreover, the complainant has to prove his case against the service provider.

Having considered all the evidence

Considers

¹ A fol. 122

The main issue being submitted in this complaint is that the insurer is trying to recover monies paid to the complainant under the landlord insurance policy following the tenant's default in rent payments, including money awarded to him after filing a separate complaint.

In its final submissions to the Arbiter, the service provider declares that the claim was fully settled and, as an insurance company is normally entitled to, they tried to recover monies paid directly from the tenant to the landlord. However, it resulted that the tenant had already started making payments to the complainant and, eventually, he was requested to return the money received from the tenant as they were due to them.

The Arbiter shall determine and adjudge the complaint by reference to what, in his opinion, is fair, equitable and reasonable in the particular circumstances and substantive merits of the case.²

The complainant testified that:

"In a nutshell, in 2017 I had some issues with a tenant, trying to evict her as she was not paying her tenancy. So, I contacted Homelet, the Landlord's Insurance Company, to start the process. I had difficulty in communicating with them; there was a lot of misinformation, delays, the policy was unclear and unfair and there was not a step-by-step process of pursuing the client."³

Based on what is being alleged by the complainant, the Arbiter does not have any solid evidence that the claim was not originally honoured.

The complainant submitted that:

"When I went to the UK courts, the judgement was in my favour and I was awarded monies for the rent arrears."⁴

The document issued by the County Court at Thanet named *Order for Possession*,⁵ outlines the court order with regards to the possession of the

² Cap. 555 of the Laws of Malta, Art. 19(3)(b)

³ A fol. 95

⁴ Ibid.

⁵ A fol. 35

claimant's property and the payments to be made by the tenant. This document is dated 17 January 2017.

It resulted that following such *order*, payments were made by the insurer to the complainant.

The latter confirmed that:

*"My records show that I only received £2,071.67 in three payments of £733.34 (13 January 2017), £733.34 (16 January 2017) and £604.99 (13 March 2017) from Homelet Barbon Insurance for the rent arrears leaving me out of pocket."*⁶

A statement⁷ showing the sum of £2,071.67 received by the complainant in three instalments has also been submitted.

In its final submissions to the Arbiter, the service provider declared that:

*"An insurance company is then normally entitled to, and our policy wording says, that we can then recover monies directly from the tenant, and we went about doing this. We always have to wait for two or three years for tenants to get back on their feet because they normally start defaulting on their rent when they have been made unemployed or something like that."*⁸

Evidently, this was possible by virtue of subrogation rights following the claim payment to the complainant.

The service provider added that:

*"When we then contacted the tenant, we found that the tenant had already started paying at the rate of £10 a month directly to IS; and the policy wording clearly states that money brought back from a former claimant should be paid back to the Barbon Group which includes Propgen as the claims administrators."*⁹

The service provider, eventually, contacted the complainant requesting the payments received from the tenant (following the settlement of the claim payments) to be returned to them.

⁶ A fol. 7

⁷ A fol. 81

⁸ A fol. 127

⁹ *Ibid.*

The complainant confirmed that eventually he:

*"... received my penalty excess that I paid back plus interest."*¹⁰

This implies that following the payments made in the beginning of 2017, further payments were made.

A further statement¹¹ he submitted shows that in August 2019, he received also the sum of £764.60 in two transactions.

Further proof of the sum received by the complainant is a document issued by Barbon, a copy of which was also submitted by the complainant himself. This document was issued *"... further to your correspondence with the Maltese Arbiter and Propgen Insurance Limited."*¹²

Without going into the merits of the content of such correspondence, this confirms also the sum of £764.60 received by the complainant:

*"We propose to pay you a total sum of £764.60 in full and final settlement of your complaint."*¹³

In the complaint form, the complainant requests the sum of £2,616.67 as damages for the rent arrears set out in the court order (£3,216.67 minus £600 received from the tenant following the court order).

However, he failed to consider the sums already received which amount to £2,836.27 (£2,071.67 received between January and March 2017, and £764.60 received in August 2019).

Moreover, the Arbiter notes that as per letter sent by Barbon to the complainant on 20 August 2019, which has been referred to above, the sum of £764.60 offered was *"... in full and final settlement of your complaint."*¹⁴

As stated above, this sum was in fact received by the complainant.

¹⁰ A fol. 95

¹¹ A fol. 82

¹² A fol. 76

¹³ *Ibid.*

¹⁴ A fol. 76

The complainant has not, at any point in these proceedings, brought forward any evidence showing that he accepted Barbon's proposal of the total sum of £764.60 without prejudice to any further payments he might request.

Considering that the complainant had accepted Barbon's proposal of "**... £764.60 in full and final settlement of your complaint**", the service provider had no further obligation to make any other payment since any obligation that might have existed between the parties had been extinguished by the acceptance of payment.

Moreover, the service provider had every right to recover the amounts paid to the complainant once the complainant was receiving the rent from the tenant. It is a basic principle in insurance law that the insured cannot make a profit out of the claim.

For the above-stated reasons, the complaint cannot be upheld.

Considering the nature of this case, each party is to bear its own costs of these proceedings.

Dr Reno Borg
Arbiter for Financial Services