

WATRS

Water Redress Scheme

ADJUDICATOR'S DECISION SUMMARY

Adjudication Reference: WAT/ /0967

Date of Decision: 5 September 2018

Complaint

The customer submits that a leak in the road behind his rental property entered the house, causing the floor in the dining room and kitchen to collapse. He claims reimbursement of the cost of repair, lost rent, and the cost to find a new tenant totalling £2690.00. The customer also claims interest on this amount.

Defence

The company denies that the leak on its water main caused the damage to the customer's property. It was not able to complete a chlorine test on the flood water. A contractor sent to inspect the property before the leak was repaired concluded that the company was not responsible for the water within the customer's property.

Findings

The absence of a chlorine test made it impossible to conclusively determine the cause of the flood water. A full review of the evidence suggested that there was a pre-existing issue that was not caused by the leak. Notwithstanding the absence of a chlorine test, on the balance of probabilities, the customer had not shown a link between the leak and the damage to the flooring.

Outcome

The company does not need to take any further action.

The customer must reply by 3 October 2018 to accept or reject this decision.

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ADJUDICATOR'S DECISION

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Date of Decision: 5 September 2018

Party Details

Customer: []

Company: [].

Case Outline

The customer's complaint is that:

- The customer's rental property was flooded as a result of the company failing to fix a leak outside the back of his property for a period of over two months. The customer has owned the property for 13 years and never had any problem with flood water. The leak resulted in the dining room and kitchen floor collapsing due to water making its way through a pre-existing channel dug in the road from a previous leak. The water travelled through the sandy soil in the area, with the water seeping through and rising under the floor to a level above the joists, reaching the chipboard floor. The floor then collapsed. The chief engineer sent by the company on 5 February 2018 confirmed this. The customer's tenants had to vacate the property due to the collapse.
- The customer claims an apology and compensation totalling £2690.00 to cover repair works, lost rent and an agency fee to find a new tenant. The customer also requests interest.

The company's response is that:

- The company states that it received a report of a leak on Acre Road on 25 December 2017. The mains pipework runs behind the customer's property. The leak was from a hydrant. It could not be repaired straight away due to a number of factors. There was no evidence that any damage was being caused and the leak was relatively small. It was deemed a low priority and repaired on 8 February 2018. The company's field staff observed that water from the leak was running down the road and not towards the customer's property. The company agreed on 24 January

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2018 that the customer should go ahead and replace damaged flooring as he stated that it was an emergency repair. The company would not have expected the customer to put new flooring down on an area that was taking in water from an ongoing leak. The company visited on 5 February 2018, however the customer had laid the new flooring and it was not possible to carry out a chlorine test to confirm if the water was from the mains. The company's restoration contractor visited on 7 February 2018 and the company rejected the customer's claim as a result of their findings. The company has provided the customer with compensation totalling £600.00 for delays in repairing the leak and in recognition of failures in its customer service. It denies that the leak caused any damage to the customer's property.

How is a WATRS decision reached?

In reaching my decision, I have considered two key issues. These are:

1. Whether the company failed to provide its services to the customer to the standard to be reasonably expected by the average person.
2. Whether or not the customer has suffered any financial loss or other disadvantage as a result of a failing by the company.

In order for the customer's claim against the company to succeed, the evidence available to the adjudicator must show on a balance of probabilities that the company has failed to provide its services to the standard one would reasonably expect and that as a result of this failure the customer has suffered some loss or detriment. If no such failure or loss is shown, the company will not be liable.

I have carefully considered all of the evidence provided. If I have not referred to a particular document or matter specifically, this does not mean that I have not considered it in reaching my decision.

How was this decision reached?

1. The customer owns a rental property at 12A Oak Street. This property backs onto Acre Road. The evidence shows that there is a water main that travels along Acre Road to the rear of the customer's property. A leak occurred to a hydrant in Acre Road, located opposite the side wall of the property's rear garden.

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2. I find that, under the Water Industry Act 1991, at Section 209, the company will be liable for any loss or damage caused as a result of an escape of water from its pipework, “however caused”. I am therefore satisfied that it is not necessary for the customer to demonstrate any negligence on the part of the company. However, it remains necessary that any damage has been caused by the leak and not by any other factor.
3. I note that, in this case, when the company visited the customer’s property, it was not possible to access the area below the dining room floor as this had been re-laid. As a result, the company was not able to complete a chlorine test on the flood water. I accept that this would have provided a definitive answer as to whether the water was from the mains or from some other source. I find that, as this test was not completed, I must determine whether the company is responsible for the flood water, on the balance of probabilities, from the evidence provided to me, and without the assistance of any clear and definitive test.
4. The customer submits that his property was flooded as a result of the leak, with the water travelling through a channel that had previously been cut in the road, seeping through the soil and collecting in the space below the floor, eventually rising above the joists and into the chipboard floor. He states that this view was supported by the company’s chief engineer who visited the property on 5 February 2018.
5. The company has provided its notes from the meeting on 5 February 2018 with []. Mr []’s notes state that he was shown pictures of the damage, but that he was not able to access below the floor to see if water was present. He was therefore not able to confirm that the water was caused by the leak on Acre Road. Notwithstanding this, I accept that the engineer may have verbally accepted the possibility of the flooding being caused by the leak in the manner described by the customer.
6. The company sent its contractor, the [] Group, to the customer’s property on 7 February 2018 in order to complete an inspection and determine whether the damage claimed for was caused by the leak to Acre Road.
7. In reviewing the [] Group’s inspection report, I note that they were also provided with the customer’s photographs to view. The report notes that the “joints are dry and as the chipboard sits on top of the joists I would of thought these would have been wet to affect the chipboard”. The report continues to note that the leak was still present but that there were no signs of the

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water reaching the customer's property. A drain outside the customer's back door was found to be clear. The report notes that the customer had replaced the chipboard flooring with a moisture resistant board, "normally only used in damp environment".

8. The report also states that some properties are known to have standing water in a void and that the levels are dependent on rainfall. It advises that it would be possible for a floor to have rotted over a period of time as it is chipboard in a damp environment.
9. In reviewing the photographs provided by the parties, I find that there is evidence in Acre Road of a previous excavation between the hydrant and the pavement to the rear of the customer's property. However, the photographs also show that the water sitting on the road surface is not flowing towards the customer's property: there is a clear dry area between the hydrant and the edge of the road nearest the customer's property in the photographs taken by the [] Group.
10. The customer's photographs are the only evidence demonstrating water within his property. They show murky water below the joists that support the flooring. The water level at the time of the photographs lies approximately two bricks below the bottom of the joist. It also does not appear that the joists have suffered water damage.
11. I am mindful that a leak will release a fairly regular amount of water, tending to become worse if it is not repaired, rather than reduce in flow. I accept the submission of the company that, had the leak been constantly entering the property, the water would have required pumping out and the area drying before a new floor could be laid, especially in view of the customer's submission that the water level exceeded the level of the joists. Where the leak was the cause of the flooding, the pumping would have to have continued until such time as the leak was repaired in order to avoid further damage being caused to a replacement floor.
12. My decision must be made on the balance of probabilities after reviewing all of the evidence available to me. Whilst I accept that the customer's flooring did break down whilst a leak was ongoing near his property, I am not persuaded that the customer has established that the leak was the cause of this damage. I find it more likely than not that the water level within the customer's property has fluctuated, having risen above the level of the floor joists but reducing to around two bricks below the bottom of the joists by the time the customer had the flooring replaced. I accept that the water level was not increasing in the absence of pumping as the customer re-laid the flooring before the leak was repaired. I acknowledge that it is possible that

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the leak may have added additional water to the soil around the customer's property, exacerbating a pre-existing problem of water in the void below the floor (as suggested by the [] Group), however I am unable to find this to be the case where no definitive chlorine test has been carried out.

13. For these reasons, I am unable to find that the leak to the company's water assets was the cause of the damage to the customer's floor. I am also unable to find that the leak contributed to any pre-existing issue such that the company may be found partly responsible. In view of this, I find that the customer has not established that the company is liable for the damage to the flooring, and that he is therefore not entitled to reimbursement of his costs in replacing the floor, lost rent or the cost to find a replacement tenant, nor any interest on these sums. I also find no basis for the customer to be entitled to an apology in respect of the leak.
14. For the avoidance of doubt, the company has provided the customer with compensation for the customer service received by him. I am satisfied that this sum has been agreed between the parties and that it forms no part of the customer's claim. It is therefore not necessary for me to review any aspect of the customer service provided. The customer's claim is therefore unable to succeed.

Outcome

The company does not need to take any further action.

What happens next?

- This adjudication decision is final and cannot be appealed or amended.
- The customer must reply by 3 October 2018 to accept or reject this decision.
- When you tell WATRS that you accept or reject the decision, the company will be notified of this. The case will then be closed.
- If you do not tell WATRS that you accept or reject the decision, this will be taken to be a rejection of the decision.

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A handwritten signature in black ink, consisting of a stylized, cursive 'A' followed by a long horizontal line that ends in a small flourish.

Alison Dablin, LLM, MSc, MCI Arb

Adjudicator

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