

WATRS

Water Redress Scheme

ADJUDICATOR'S DECISION SUMMARY

Adjudication Reference: WAT/ /1061

Date of Decision: 18 December 2018

Complaint

The customer states that the company carried out a boundary box replacement at his rental property despite having agreed to postpone the work until after he found a new tenant. The customer believes that the replacement work deterred potential tenants and he therefore sought compensation of £1400.00 from the company as lost rental income. The company offered the customer £225.00 in full and final settlement of the issue. The customer states that he accepted this settlement payment but is again seeking the £1400.00 as compensation. The customer states that he now only accepts the company's payment of £225.00 as an apology payment (not for lost rental income). The customer is therefore seeking a payment of £1400.00 from the company for lost rental income.

Defence

The company accepts that there was a breakdown in its communications with the customer that resulted in it carrying out a boundary box replacement at the customer's rental property despite having been asked to postpone this until a new tenant was found. The customer claimed £1400.00 for lost rental income and the company refused this claim. However, in recognition of the entire issue, the company explains that it offered the customer compensation of £225.80 as full and final settlement of the matter. The customer accepted this payment. In addition, the company also provided the customer with a further goodwill payment of £100.00. The company states that there is no evidence that the customer has actually lost £1400.00 in rental income as a direct result of the company's boundary box replacement work. The company does not accept that it is liable to provide the redress claimed by the customer.

Findings

Whilst I am satisfied that a failure to provide the company's services to the standard to be reasonably expected has been established, I find that the company has already taken appropriate and proportional remedial action in response to this failure. Consequently, I must conclude that the customer's claim for further redress is unable to succeed.

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Outcome

The company does not need to take any further action.

The customer must reply by 21 January 2019 to accept or reject this decision.

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The company's response is that:

- The company accepts that there was a breakdown in its communications with the customer that resulted in it carrying out works on the boundary box of the customer's rental property despite having been asked to postpone this until a new tenant was found.
- The customer complained to the company and claimed that the work was unsightly. Therefore, there was a delay in advertising the property for rental and the customer claimed £1400.00 for lost rental income.
- The company did not accept that it should be liable to provide the customer with £1400.00 for lost rental income as a result of it carrying out a boundary box replacement on a section of the property's drive.
- Whilst the company appreciates the customer's view that the work was unsightly, it did not render the property uninhabitable. It submits that the customer could have simply advised potential tenants that the boundary box replacement work was only temporary and would be completed soon.
- Nonetheless, in recognition of this particular issue, the company explains that it offered the customer a payment of £225.80 in full and final settlement of the matter. The customer accepted this.
- In addition, the company provided the customer with a further goodwill payment totalling £100.00 (two payments of £50.00).
- The company states that there is no evidence that the customer has actually lost £1400.00 in rental income as a direct result of the company's boundary box replacement work.
- The company states that it has acted reasonably in light of the circumstances and it does not accept any liability for the customer's claim for redress.

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.

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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 states that he should be entitled to compensation in the sum of £1400.00 for lost rental income as a result of the company carrying out boundary box replacement works at his rental property (despite having previously agreed to postpone these works). The company accepts that there was a breakdown in its communications with the customer that resulted in it carrying out works on the boundary box despite having been asked to postpone this until a new tenant was found. However, the company states that it has already taken appropriate remedial action in relation to this issue and there is no actual evidence that the customer lost £1400.00 in rental income as a direct result of the boundary box replacement work. Therefore, it does not accept the customer's claim for redress. The customer is now seeking compensation in the sum of £1400.00 (with interest) from the company for lost rental income.
2. I remind the parties that adjudication is an evidence-based process and in order for any remedy to be awarded, the evidence must show that the company failed to provide its services to the standard that would reasonably be expected of it and, as a result of this failure, the customer suffered some financial loss or disadvantage.
3. I note that there is a minor discrepancy in the parties' respective submissions with regards to the exact sum offered by the company in full and final settlement of the customer's complaint. The customer states that the sum was £225.00 whilst the company states that it was £225.80. Following a close review of all the documents provided by the parties, I find that the correct sum is £225.80. I will proceed accordingly.
4. It does not appear to be in dispute that there was a breakdown in the company's communications with the customer that resulted in it carrying out works on his boundary box despite having agreed to postpone this until a new tenant was found for his rental property.

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Accordingly, I am satisfied that the company failed to provide its services to the standard to be reasonably expected by the average person in this instance.

5. It is also not in dispute that, in recognition of this issue, the company offered the customer £225.80 as full and final settlement of the customer's complaint and the customer accepted this offer. Accordingly, it is evident that the customer has already accepted a full and final settlement payment from the company for his complaint. Whilst I acknowledge that the customer has now asserted in his application that he only accepted the company's full and final settlement under duress; based on the evidence provided, I am not objectively satisfied that the company placed the customer under any duress to accept its full and final settlement offer. In particular, for the avoidance of any doubt, I do not find that the company's act of placing a time limit on its full and final settlement offer amounted to undue pressure on the customer.
6. I note the customer states in his application that he now only accepts the company's full and final settlement payment as an apology payment. He is therefore reasserting his claim for £1400.00 in compensation for the issue. However, bearing in mind the fact that there was a clear offer and acceptance that crystallised a final settlement agreement between the parties, I am not satisfied that the customer is entitled to now unilaterally and retrospectively change the terms of that final settlement agreement after having already accepted it.
7. Consequently, under the circumstances, I do not find that the company's refusal to provide the customer with further compensation of £1400.00 for a claim that has already been settled between the parties amounts to a failure to provide its services to the standard to be reasonably expected by the average person.
8. Furthermore, and in any event, based on the evidence available to me at the time of adjudication, I am not objectively satisfied that the customer lost £1400.00 in rental income as a direct and natural result of the company's boundary box replacement works. In particular, I find no evidence that shows any potential tenant expressly refused to move into the property as a direct result of the company's boundary box replacement works. In fact, I find no evidence that would enable me to conclude that the customer's property would have been rented out but for the company's boundary box replacement work. It is not disputed that the company's works did not render the house uninhabitable and I find that it would have been reasonable for the

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customer to mitigate any inconvenience caused as a result of this issue by explaining to potential tenants that the work was only temporary. Similarly, I find that it would have been reasonable for the customer to arrange to advertise the property using photographs of the vast majority of the property (unaffected by the works) and simply leaving out any pictures specifically taken of the company's boundary box works. Under the circumstances, I must conclude that the customer's claim for £1400.00 in lost rental income as a result of the company's boundary box replacement work is too remote. Therefore, in addition to the reasons already stated above, I do not find that the company's refusal to provide the customer with further compensation of £1400.00 amounts to a failure to provide its services to the standard to be reasonably expected by the average person.

9. Under the circumstances, having regard for all the remedial actions taken by the company in response to the established failure on its part (such as appropriately investigating the issue and providing the customer with fair and reasonable compensation given the nature and extent of its failure), I am only able to conclude that the company's actions were fair and reasonable.
10. Therefore, following careful review of all the submissions provided, whilst I am satisfied that a failure to provide the company's services to a standard to be reasonably expected has been established, I find that the company has already taken appropriate and proportional remedial action in response to the established failure. Consequently, in the absence of any unresolved failures on the part of the company, I do not uphold the customer's claim for further redress.

Outcome

The company does not need to take any further action.

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What happens next?

- This adjudication decision is final and cannot be appealed or amended.
- The customer must reply by 21 January 2019 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.



E. Higashi LLB (Hons), PGDip (LPC), MCI Arb.

Adjudicator

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