

WATRS

Water Redress Scheme

ADJUDICATOR'S DECISION SUMMARY

Adjudication Reference: WAT/ /1249

Date of Decision: 23 April 2019

Complaint

The customer complains that the company has rejected the customer's representative's request to re-issue bills in the name of his tenant and to remove the default markers on his credit file, based on a letter that the representative states was sent to the company on 17 August 2017. The customer seeks a direction that the bills should be re-issued in his tenant's name and the negative markers removed from his credit file.

Defence

The company says that a meter reading in February 2018 for the relevant property showed usage although the property was believed previously to have been empty. The company denies having received a letter dated 17 August 2018. The company completed a Land Registry search that confirmed the customer to be the property owner. A search of Rent Smart [] showed that the property was not listed as a rental property. The company also investigated the address to which its bills should be sent. It sent seven letters to the customer's address, to which no reply was received. The final communication was a notice of intention to issue a default. The customer's request was made after the default had been notified. The company says that it is not lawful to offer the redress claimed by the customer.

Findings

I find that the letter of 17 August 2017 did not comply with legal requirements for notification and did not inform the company that the property was tenanted. There was no proof of posting or other evidence that the letter was received. The company acted lawfully in claiming payment from the customer and entering a default marking. In the circumstances, an average customer would not reasonably expect the company to waive its claim against the customer. I find that the company has not failed to supply its services to the standard that would reasonably be expected of it.

Outcome

The company does not need to take any further action.

The customer must reply by 22 May 2019 to accept or reject this decision.

This document is private and confidential. It must not be disclosed to any person or organisation not directly involved in the adjudication unless this is necessary in order to enforce the decision.

ADJUDICATOR'S DECISION

Adjudication Reference: WAT/ /1249

Date of Decision: 23 April 2019

Party Details

Customer: []

Representative: []

Company: [].

Case Outline

The customer's complaint is that:

- The customer is the landlord of []. He complains that the company has wrongly caused negative markers to be entered on his credit file.
- The representative confirms that the current tenant is Mr I... K... [name supplied]. Mr K has lived at the property since 11 August 2017 and, as part of their routine procedure, the managing agency will have written to the company to notify it of the tenancy and its starting date.
- The representative explains that letters can be mislaid or lost in the post and the company has previously accepted this on other occasions. The company, however, has rejected the evidence that she has submitted this time. She indicates that the company could follow the same practice in the customer's case as it had previously done.
- The representative has provided the company with a copy of the tenancy agreement and the letter sent. She says that the tenant has also confirmed his tenancy starting date and has stated that he is willing to pay the outstanding water bills.
- The representative complains on behalf of the customer that the company refuses to remove the customer's name from the bills and from his liability for the outstanding charges.
- The customer seeks a direction that the bills should be re-issued in his tenant's name and the negative markers removed from his credit file.

This document is private and confidential. It must not be disclosed to any person or organisation not directly involved in the adjudication unless this is necessary in order to enforce the decision.

The company's response is that:

- The relevant regulations clearly explain that the landlord is responsible for updating them of any changes to the tenancy.
- The account in the name of the customer was set up only after a meter reading was taken in February 2018, which showed usage on the water meter. At that time the listing for the property in the company's records indicated that it was empty, with no occupier. The company says that as water was being used, it completed a Land Registry search that confirmed the property owner's name. A search of Rent Smart [] suggested that the property was not listed as a rental property. The company therefore had no option but to raise its charges against the customer as owner from 31 August 2017 and it investigated the address to which its bills should be sent. A welcome letter for the new account dated 27th April 2018, a bill dated 27th April 2018, a payment reminder dated 30 May 2018 and a Final Notice dated 13 June 2018 were all sent to the customer's address. The bill explained that the company shared information with credit reference agencies. This is authorised by OFWAT.
- The company was informed of the tenancy by the customer in June 2018 and the customer's account was closed on 11 June 2018.
- Further correspondence was sent to the customer as follows: 26th June 2018, a final bill for £180.49; on 10 July 2018, a Final Notice and on 9 August 2018, an Intention to Default Notice, which indicates that the Default would be registered with a credit reference agency. As no contact was received, the Default was registered correctly on 10th September 2018.
- The company explains that it did not receive any contact or information from the representative until the representative contacted the company by letter dated 5 November 2018 and says that it has never received a letter from the representative in August 2017.
- Under the Non Owner Occupier Regulations 2014, introduced in [] in January 2015 and about which the company had taken steps to notify landlords through its website, Rent Smart [] and the Landlords' Association, landlords have a duty to notify water companies of the commencement of a tenancy.
- The company reviewed Mr K's tenancy confirmation, but the outstanding charges remain in the customer's name. Any offer by Mr K to pay the charges for the landlord would be a private agreement between them.

This document is private and confidential. It must not be disclosed to any person or organisation not directly involved in the adjudication unless this is necessary in order to enforce the decision.

- The company confirmed that the negative markers had been reported correctly to credit reference agencies and removing these, amounts to falsifying information and would be unlawful.

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.

If the evidence provided by the parties does not prove both of these issues, the company will not be directed to do anything.

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. A copy of a tenancy agreement for one Mr K for [], shows that he agreed to become liable to make payment of the water charges from 11 August 2017 (clause 7.9.2) and to notify the water company that the tenancy had commenced (clause 7.9.3). The agreement permitted the landlord to use the deposit for the discharge of unpaid water bills (clause 6.2.4). I am therefore satisfied that from 11 August 2017, the premises in question were let to Mr K and that, as between himself and the customer, he was liable for the payment of water charges. It does not follow, however, that this tenancy was sufficient to relieve the customer from liability to pay the company for water used in the premises.
2. The company has submitted evidence that the Water Industry Act 1991 (as amended) places a duty on owners of residential properties who do not live in them to provide information to the

This document is private and confidential. It must not be disclosed to any person or organisation not directly involved in the adjudication unless this is necessary in order to enforce the decision.

relevant water company about the occupiers of those properties ('non-owner occupiers'). If the owner does not provide this information, the owner will be jointly and severally liable for water and sewerage charges. The Non Owner Occupier Regulations 2014, which have been in force in [] since 1 January 2015, set out that a landlord must provide the full name of the occupier, his date of birth (where this has been provided to the owner); and the date the occupier began to occupy the premises (where this is after 1 January 2015). The Regulations specify that this must be furnished to the company within 21 days of the start of a tenancy.

3. The customer has not challenged the submissions of the company in this respect and I therefore find that the customer was under a legal obligation to notify the company of the identity of the tenant at the start of the tenancy and that, because this did not occur, the company was entitled in law to treat either the tenant or the customer as the person fully liable to pay. The company says that it has claimed against the customer because it was unaware of the existence or identity of the tenant.
4. The submission of the representative on behalf of the customer is that the company has, in the case of other landlords, waived its legal right to claim payment from a landlord, where the company was told that a communication relating to the identity of the tenant had been sent but had been lost or mislaid. The representative has submitted an example, namely, a letter from the company to a different landlord supporting that this occurred in that case. The representative therefore suggests that the company would reasonably be expected to approach the customer's case in the same way.
5. I am unable to draw a conclusion that the company has a clear policy to discharge the liability of the landlord in circumstances where it is stated that a prior notification had been sent but not received, based only on one letter sent to the representative concerning a different case. There is no evidence that has been submitted to me that the letter sent to the company in the other case was in the same terms as in the customer's case. There is equally no information about the timing of any correspondence or whether the bill was in due course paid prior to the entry of default markers on the landlord's credit file. I am not satisfied that there is evidence that the customer's case is in accordance with the example.
6. Moreover, the company itself says that it does not have a policy to discharge the landlord, but treats each situation on a case by case basis. I find that the customer has not shown that a policy exists and I find that it is likely that the company does treat each case on its own merits.

This document is private and confidential. It must not be disclosed to any person or organisation not directly involved in the adjudication unless this is necessary in order to enforce the decision.

7. In relation to the customer's case, the representative has submitted a copy of a letter addressed to [] Water, [] dated 17 August 2017. This letter, which was signed by the representative, stated:

Re: []

As the managing agent we would like to inform you that Mr I.. K. [name supplied] will be taking responsibility for the water bills from 11 August 2017. The full property address is:

Yours Faithfully,

...

8. It is notable that this letter does not state that the property in question was residential and nor does it say that Mr K had become an occupier or tenant. No description follows the words "the full property address". This makes the letter appear incomplete. The letter does not state that the water bills should be raised in Mr K's name. While I take into account that the representative made clear that it was a managing agent and the company may have been aware that the premises were domestic in nature, I find that it does not follow from the information given that the property had become occupied: the letter of 17 August 2017 was equally consistent with information about a private arrangement to discharge the owner's liability so that payments received from Mr K should be attributed to the owner's account or with a change of ownership. Taking into account these factors, I am not persuaded that, even if the letter had been sent to and received by the company, it was sufficiently informative to meet the requirements of the Non Owner Occupier Regulations 2014. It is also notable that the representative has not included any information to show that this letter was posted.
9. Furthermore, the customer has not challenged the company's assertion that seven communications were sent by the company to his home address, making clear that the company considered that the customer was liable for the water bills. The company states that it was told that the customer was away for long periods and had not made an arrangement for his post to be forwarded. Whether this was the case or not, and while I note that the customer might reasonably have expected that the water charges would be being paid by the tenant and therefore might not have expected important correspondence from the company, the customer has not explained why he was unable to respond to any of the company's letters to his home address.

This document is private and confidential. It must not be disclosed to any person or organisation not directly involved in the adjudication unless this is necessary in order to enforce the decision.

10. I find that at the time that the company was called upon to exercise its discretion to waive its claim against the customer, the default markers were already entered in respect of a legitimate debt. I take into account that, in the correspondence from the company to the customer and to the Consumer Council for Water (CCWater), the company has stated that it heard from the representative in August 2018. If this were to be correct, according to the company, the default markers had not then been entered. In its defence to this WATRS claim, the company says that it first heard from the customer in November 2018, however. I note that the representative's letter is dated 5 November 2018. Having regard to the terms of this letter, I conclude that it does make reference to any previous discussions with the company, save that it acknowledges that the company has sought payment against the customer and has damaged his credit rating and it asks for an investigation. I find that there is no document or internal record (apart from the company's correspondence after 5 November 2018) that is consistent with the customer having communicated with the company before the default markers were entered in September 2018 nor is there any evidence that the company had already started to investigate the representative's request prior to that date. On balance, I find that the references in the correspondence with CCWater to August 2018 are likely to be an error and that, as stated in the defence, the first contact was in the representative's letter of 5 November 2018.

11. While I have sympathy for the position of the customer, especially as he says that the negative markers are affecting his livelihood, the question that needs to be addressed is whether the company, in not changing its stance in respect of the bills already raised against the customer and the defaults already entered on his credit file, has failed to supply its services to the standard that would reasonably be expected. I find that an average customer would expect the company (1) to have acted in accordance with the legal obligations placed upon both the company and customers in raising the bills in the first place; (2) to have given notice to the customer of its claim for the payment of the bills; (3) to have had regard in a reasonable way to the timing and content of correspondence seeking to persuade the company that the tenant and not a landlord should be liable to pay the bills. I find that the company has considered items (1) to (3) in the customer's case and there is no evidence that this debt has been discharged either by the customer or by the tenant. Particularly in the light of the unanswered correspondence to the customer's home address over a period of three months, I find that the customer has not proved that the company has failed to meet the standards of service that would reasonably be expected of it.

12. It follows that I find that the customer is not able to succeed in his claim for redress.

This document is private and confidential. It must not be disclosed to any person or organisation not directly involved in the adjudication unless this is necessary in order to enforce the decision.

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 22 May 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.
-



Claire Andrews, Barrister, FCI Arb

Adjudicator

This document is private and confidential. It must not be disclosed to any person or organisation not directly involved in the adjudication unless this is necessary in order to enforce the decision.