# WATRS

## Water Redress Scheme

## ADJUDICATOR'S DECISION SUMMARY

### Adjudication Reference: WAT/ /1288

### Date of Decision: 12 April 2019

**Complaint**

The customer is a tenant of a shop at 2 Oak Road. There is a flat above the shop. Both the flat and the shop were on a shared supply. The customer is unhappy that he has been invoiced by the company for both the shop and flat. He contends that the account should be in the landlord's name rather than his. He would like (1) the company to review the charges accrued (prior to the supply being split) and to apportion them between the shop and the flat according to the average consumption; (2) the charges apportioned to the flat to be made the responsibility of the landlord; and (3) £2,500.00 to be awarded as compensation for the distress and inconvenience that he has suffered as a result of this matter.

**Defence**

The company's position is that it is appropriate for the customer to be billed and then any resolution needs to be found between the customer and the landlord. The company considers (1) this to be a third party issue and so will not become involved; (2) that it has acted fairly and consistently, in line with its policy; and (3) its previous bills remain payable, therefore.

No offer of settlement has been made.

**Findings**

The company's policy in such cases is that (1) it will send bills to the customer and will not become involved in issues of apportionment; and (2) where the landlord is to take responsibility for the account, it is for the customer to make the required approach and to procure the landlord to write to the company. As it has acted consistently and in line with its policy, the company was not at fault in this case and did not provide its services below the standard that would be reasonably expected.

**Outcome**

The company does not need to take any further action.

The customer must reply by 14 May 2019 to accept or reject this decision.

# ADJUDICATOR'S DECISION

## Adjudication Reference: WAT/ /1288

## Date of Decision: 12 April 2019

### Party Details

**Customer: [ ]**

**Customer's representative:** [ ]

**Company**: [ ].

### Case Outline

**The customer's complaint is that:**

- The subject property ("the Premises") is split into:
  - 2 Oak Road ("the Shop"); and
  - 2a Oak Road ("the Flat").
- The customer is the tenant of the Shop.
- The customer considers that the landlord, [ ] ("the Landlord"), should be responsible for the company's bills as he owns both the Shop and the Flat.
- After moving into the Shop, the customer contacted all the utility companies to advise them that he was the new tenant.
- He had been receiving random bills at the Shop address, in different names, for large amounts of arrears.
- It transpires that the water meter for the Premises is located in the street in front of the Shop and provides a combined reading for the Flat and for the Shop together.
- The Flat is completely separate to the Shop and it has its own access at the rear of the property. The customer has no access or rights over the Flat, is not the tenant and has never been in occupation of it. All rights that he has in respect of the Premises are set out in his tenancy agreement.
- The customer's water usage consists of a tap and a toilet. He initially estimated his consumption to be no more than £5.00 per month.

- After the customer notified the company of his occupation, the account/meter was put into the name of the customer's business ("[High View]").
- The customer was subsequently billed for the entire usage for both the Shop and the Flat, which was initially £1844.69.
- The Flat was empty for a period, which covered two quarterly bills. The company measured the water usage at the property over this period, which - it is fair to say - must have been for the Shop usage.
    - The period from December 2017 to March 2018 increased by £18.87.
    - The period from March 2018 to June 2018 increased by £14.88.
- Based on the company's figures, the customer paid £157.25 (being 25 months @ £6.29 per month, which was the Shop's usage until the 1 July 2018.)
- The customer has since made a further payment of £44.03 calculated at £6.29 per month up to 1 February 2019.
- Despite the Landlord paying for the water supply to be split in June 2018, the company has refused to provide the customer with a bill for the Shop on its own.
- The customer assumes that - as the Flat now has its own meter - the tenants (of the Flat) are also being billed for their usage directly.
- As the bill is combined, the customer has asked if the Flat is being charged at a commercial rate but this query has been ignored.
- The customer suspects that:
    - the water bill for the Premises has never been paid; and
    - therefore, the company is attempting to take advantage of him.
- The company has agreed in writing that the account should be in the Landlord's name but they are refusing to contact the Landlord directly. This is despite the company apparently being in communication with the Landlord, in the past, with regards to arrears.
- The Landlord has been unwell for the last three years and is refusing to settle any arrears left by former tenants.
- The company has:
    - threatened to ruin the customer's credit and his business reputation; and
    - attempted to force the customer into a monthly direct debit to clear the arrears (despite admitting that he does not owe the total amount outstanding).
- The customer would like:

- the company to review the charges accrued (prior to the supply being split) and to apportion them between the Shop and the Flat according to the average consumption, which is now known following the supply split; and
- for the charges apportioned to the Flat to be made the responsibility of the Landlord (or of the tenants of the Flat); and
- £2,500.00 to be awarded to him as compensation for the distress and inconvenience that he has suffered as a result of this matter.

**The company's response is that:**

- The customer has stated on numerous occasions that the account should not be in his name but in the name of the Landlord, [ ].
- The company has located a letter that the Landlord sent to RST Water, dated 15 September 2016, which confirms that the account for both the Shop and the Flat should be in the name of the tenant.
- The Landlord called the company on 23 November 2017 and advised that the account should not be in his name as there was a business at the premises. Following that call, a desktop study was performed and this confirmed that High View was located at the address.
- A letter was sent on 24 November 2017 to the Landlord to confirm that his name had been removed from the account. A letter was also sent to High View to confirm that an account had been opened in High View's name.
- The customer called the company on 8 December 2017 and advised that he was receiving invoices and he thought that he was paying for the water in the Flat (and so wanted to check exactly what he was paying for).
- Following that call, a letter was sent out on 11 December 2017 outlining the actions that needed to be taken by the Landlord to remedy the situation.
- A further call was received from the Landlord on 2 February 2018 advising that the bill should be under the Landlord's name. The company replied that the matter was a dispute between the customer and the Landlord and that the company is unable to become involved in third party disputes.
- Following this call, the customer sent an email to initiate the complaints process. The company called the customer on 8 March 2018 and discussed the ongoing issue of the shared supply, again advising that the matter was a private dispute between the customer and the Landlord. The customer advised that the pipework had been amended and that he was now liaising with RST Water Domestic to arrange the separation of the supply. The details of this call were

confirmed in an email sent out, again outlining the company's stance on the matter. Due to this response being sent outside of the company's agreed service level timescale, a £20.00 credit was applied to the customer's account.

- On 2 July 2018, the company was advised that the supply had been separated the week before by the Landlord - so that both the Shop and Flat now had their separate meters.
- The customer has sent in a copy of his tenancy agreement but this does not confirm that the Landlord is responsible for the Water.
- The company sent a further response, on 30 August 2018, reiterating that the shared supply issue was a private matter between the tenants and the Landlord. However, that response was not sent within 10 days and was late. A further credit of £20.00 was applied to the customer's account to reflect this.
- Whilst the customer has not used all the water that has gone through the meter, the water meter is in front of the Shop. This means that all the water enters the premises via the Shop meaning that the Shop will be responsible for the water that goes through the meter.
- As the company sees it, this is a third party dispute between the customer, the tenants of the Flat and the Landlord. The account balance is £2025.81 is due and payable.
- The company is sorry that the customer is unhappy with the outcome of his previous complaints but the company maintains that it has acted fairly and consistently, in line with its policy.

## 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. I have reviewed in particular:

    a. the covering letter, dated 25 February 2019, submitted alongside the customer's WATRS application form;

    b. the detailed comments ("Comments") filed by the customer in reply to the company's defence;

    c. the documents annexed to the company's defence, together with the copy of the customer's commercial lease agreement dated 1 June 2016;

2. The dispute in this case centres on the charges that accrued during the period when there was a shared supply ("Shared Supply") to the Premises, i.e. before the supply was 'split'. As I note from his Comments, the customer says that:

    " … *Despite the supply being split I am still receiving bills for [the Flat's] arrears even though the new tenants are paying RST Water directly* …"

3. It seems to me that the letter annexed to the company's defence marked 'Evidence 2' is important. This letter, dated 11 December 2017, was addressed to High View ("the December 2017 Letter").

4. The December 2017 Letter, I note, contained some specific pointers about managing the Shared Supply.

    "… ***What happens now?***

    *If you have not already got an agreement in place, below are some suggestions for you to manage the shared connection*

    *Private arrangement*

    *A private arrangement may be made between you and the occupier(s) of the other property (properties) to divide the metered bills appropriately. We will send bills as before*

*and we will not become involved in dividing any charges between the parties involved.*

*You can buy a sub meter from a plumber's merchant, and get your own plumber to install it. This will show you how much water the other property (properties) are using, and help you to divide the bill accurately. Please remember this meter is your property and we will not be read or maintained by us.*

*Landlord to take responsibility*

*You may approach your landlord to take responsibility for the account. They can then divide the charges between their tenants. We will need your landlord to write to us accepting responsibility for the charges …*"

5. The December 2017 Letter appears to me to be clear on the policy that the company adopts in such situations ("Policy"). Specifically, the Policy indicates that:

    a. Where a private arrangement is to be reached, the company " … *will send bills as before and … will not become involved* …"; and

    b. where the Landlord is to take responsibility for the account, it is for the customer (as opposed to the company) to make the required approach and the customer is advised that it " *… will need your landlord to write to us* …"

6. The Policy was then effectively re-stated, I note, in an email sent to the customer on 2 May 2018:

    "… *Hello [ ]*

    *… Thanks for getting back in touch with us regarding your [Shared Supply] … The meter for [the Premises] is for your account and located in [the Shop], I appreciate that you've not used all of the water recorded but we'd class this as a third party dispute … We'll not be able to offer any refund for your past charges, we deem the bills correct as the water used did pass through your meter. You'd need to speak to [the Landlord] and/or the other properties supplied regarding reimbursement, as this would need to come from them. As [the Flat] is currently empty there will be no usage recorded and therefore won't be affecting your bills. We will support you as much as possible in gaining a separate supply once your pipework has been amended* …"

7. I do follow the concerns that the customer raises on this issue. In his Comments, for example,

he makes some very understandable points about the practical implications of the Policy. He argues, I note, that:

> "… *the account should be in the name of [the Landlord] as he is the only one who can enter into an agreement with the individual tenants …*
>
> *… As owner of the property he is able to enforce those agreements. It would be impossible for me to contact the resident of another property that I don't have access to, and insist they enter into a contract with me to pay their share of the water bill. They just wouldn't do it …*
>
> *… I have never been advised that [the Landlord] had been in contact with [the company] in fact they have categorically refused to contact him …*
>
> *… I am quite surprised to learn that [the Landlord] contacted [the company] by phone on 22 November 2017 so they could quite easily have dealt with him directly in this matter. I am certain that [the Landlord] would never have expected one tenant to be responsible for paying the bills of another* …"

8. Whilst I quite appreciate the customer's frustrations in all this, it seems to me that he is ultimately looking:

    a. to the company *to depart* from its Policy in this specific case; and/or

    b. to challenge the reasonableness of the Policy generally.

9. However, in my assessment, there are sound reasons why - in principle - the company would want to adopt the Policy that it has. It would plainly be undesirable for the company to be drawn into disputes between landlords and tenants about the apportionment of its charges.

10. I am not persuaded that there are sufficient grounds that would warrant the company 'breaking' its Policy in this case. I am also mindful that, under the Rules, the WATRS Scheme cannot be used to adjudicate disputes relating to the underlying fairness of a commercial practice or policy that a company seeks to apply.

11. Based on my review of the available evidence, I am satisfied (and find) that the company has adhered to its Policy in this instance. Having acted consistently and in line with its Policy, I consider that it is difficult to reach a conclusion that the company has been at fault or has not provided its services to the standard that would be expected. I have no doubt that the customer

finds himself in a stressful situation - as he describes - but, in the final analysis, I consider that the company is justified in categorising this matter as a 'third party dispute'.

12. In light of the above, the customer's claim cannot 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 14 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.

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**Nik Carle,** LLB (Hons), Solicitor, DipArb, FCIArb

**Adjudicator**