WATRS

Water Redress Scheme

ADJUDICATOR'S DECISION SUMMARY

Adjudication Reference: WAT/ /1402

Date of Decision: 31 May 2019

Complaint

The customer submits that he is the landlord of a property. Although there is a tenant living at the property, the company opened an account for him effective from 18 September 2017 to 16 September 2018 in the sum of £416.93. He was admitted into hospital for a few months with a serious illness when the tenant moved into the property. His partner tried to contact the company at the time to inform it of the tenant, but she was told that the company could not take any information from her. The company set up the account despite being aware, before the account was set up, that the tenant was responsible for the charges as evidenced from details listed on the tenancy agreement. The customer requests a refund of £416.93 and £200.00 compensation for stress and inconvenience.

Defence

The company submits that on 18 September 2018, it visited the property where it believed it would be visiting the previous tenant. It was only when it attended it became aware of the current tenant, and that they had been living at the property for five years. Its policy is to set up an account for the tenant from the date it becomes aware of their occupancy; so an account was set up for the new tenant from 18 September 2018. It subsequently identified the customer as the owner and created an account for the customer from 18 September 2017 to 16 September 2018. It did this as under the Non Owner Occupier Regulations 2014 ("the Regulations") landlords are required to inform the water companies of details of their tenants. Where this does not happen, the liability for the charges at a property fall to the landlord. The only occasion where it received a call from the customer's partner was on 28 January 2019 and she asked for its postal address, there was no attempt made to provide information to it about the tenant. No offer of settlement was made.

Findings

Under the Regulations, landlords have a responsibility to inform water companies of details of their tenants. Failure to do so results in owners becoming jointly and severally liable for water and sewerage charges. Being jointly and severally liable means that owners and occupiers are jointly liable to pay water and sewerage charges for a property; and that both the owner(s) and the occupier(s) are also legally solely responsible to pay the entire amount of any charge. A water company can therefore recover any outstanding charges from the landlord alone. The evidence submitted to this adjudication

does not show, on a balance of probability, that the customer provided the company with information about his tenant. The company was therefore entitled under the Regulation to recover the outstanding charges from the customer alone. I can appreciate the difficulty of the situation for the customer. However, in view of the above, the company has acted within its statutory powers. The customer's tenant's failure to pay the company's charges is a private matter between the customer and his tenant. (Please note that for the purposes of this decision my remit is to determine the issues between the customer and the company. Any claims against third parties cannot be considered.)

Outcome

The company does not need to take any further action.

The customer must reply by 28 June 2019 to accept or reject this decision.

ADJUDICATOR'S DECISION

Adjudication Reference: WAT/ /1402

Date of Decision: 31 May 2019

Party Details

Customer: [ ]

Company: [ ].

Case Outline

The customer's complaint is that:

- He is the landlord of a property in [ ]. Although there is a tenant living at the property, the company opened an account for him effective from 18 September 2017 to 16 September 2018 in the sum of £416.93.
- He was admitted into hospital for a few months with a serious illness when the tenant moved into the property. His partner tried to contact the company to inform it of the tenant at the time, but she was told that the company could not take any information from her.
- The company set up the account despite being aware, before the account was set up, that the tenant was responsible for the charges between September 2017 and September 2018 as evidenced from details listed on the tenancy agreement.
- The customer requests a refund of £416.93 and £200.00 compensation for stress and inconvenience.

The company's response is that:

- On 18 September 2018, it visited the property where it believed it would be visiting the previous tenant. It was only when it attended it became aware of the current tenant, and that they had been living at the property for five years.
- Its policy is to set an account for the tenant from the date it becomes aware of their occupancy, so an account was set up for the new tenant from 18 September 2018.

- As well as identifying the tenant, it attempted to identify the property owner / landlord. It completed searches, which included Rent Smart [ ], Landlord Tap and Land Registry, and identified the customer as the landlord of the property. Using this information, it created an account for the customer from 18 September 2017 to 17 September 2018.
- It did this because of the customer's liability for charges under the Non Owner Occupier Regulations 2014 ("the Regulations").
- The Regulations were introduced and implemented by the Welsh Government in January 2015. The Regulations place a responsibility on all landlords to inform the water companies providing services in Wales, of details of their tenants and any changes in tenancy as, and when they occur. Where this does not happen, the liability for the charges at a property fall to the landlord.
- It wrote to the customer on 18 September 2018 to advise that an account had been opened and a bill would follow. It explained why it did this and also signposted the customer to the Welsh Government website for more information about the Regulations.
- On 16 November 2018, the customer called about the outstanding bill and stated that he was not responsible for letting it know who would pay the bill at the property.
- As it did not receive any payment after sending the bill or the Final Notice, an Intention to file a Default letter was sent on 31 December 2018, and a Default was registered on 30 January 2019. The customer paid the bill in full on 13 February 2019.
- It would like to take the opportunity to also explain that, whilst it reserves the right to backdate charges for six years, under the statute of limitations, in practice it only backdates charges to one year.
- The WATRS application refers to a telephone call with the customer's partner. According to its records, the only occasion where it received a call from her was on 28 January 2019. It has listened to the call in question, and it was able to provide the information requested, as it did not consider it to be sensitive. The customer asked for a postal address to send a letter to the company. There was no attempt made to provide information to it about the tenant. It is important to mention that information at this stage would have made no difference to the account. The account was set up accurately, and in line with its company procedures and its Scheme of Charges.
- It is sorry to hear that the customer has been in poor health, and understand that he may be disappointed with its response. It is an unfortunate situation, but the customer has failed in his duty as a landlord to comply with the Regulations.

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 must remind the parties that adjudication is an evidence-based process.

2. 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.

3. It is almost inevitable in such adjudications that conflicts of evidence arise, and the mere fact that the adjudicator finds in favour of one party on a particular issue does not mean that the other is telling an untruth. The adjudicator's role is to balance the evidence that is presented.

Liability for charges

4. The company has submitted in evidence guidance from the Welsh government that supports its submissions that under the Regulations, landlords have a responsibility to inform water companies providing services in Wales of details of their tenants.

5. The guidance explains that this is on the basis that Section 144C of the Water Industry Act 1991 (as amended by section 45 of the Flood and Water Management Act 2010) places a duty on owners of residential properties who do not live in them to provide information to the relevant water company about the occupiers of those properties. Failure to do so results in owners becoming jointly and severally liable for water and sewerage charges.

6. Being jointly and severally liable means that owners and occupiers are jointly liable to pay water and sewerage charges for a property, and both the owner(s) and the occupier(s) are also legally solely responsible to pay the entire amount of any charge. A water company can therefore recover any outstanding charges from the landlord alone.

7. The customer submits that his partner tried to contact the company to inform it of the tenant at the time, but she was told that the company could not take any information from her.

8. There is no evidence to show that the customer or his partner made any further attempts to contact the company.

9. In addition, the company refutes the customer's submissions stating that the only time it received a call from the customer's partner was on 28 January 2019; well after the matter had arisen, and that during the call, the customer's partner asked for its postal address and made no attempt to provide any information about the tenant.

10. I am particularly mindful of the company's submission that when the customer made contact on 16 November 2018 after it had issued the bill, the customer stated that he was not responsible for letting it know who would pay the bill at the property. I am also mindful that the customer has not submitted Comments on the Defence refuting the company's submissions and/or providing clarification about his statement on 16 November 2018.

11. Having carefully considered the matter, the evidence submitted to this adjudication does not show, on a balance of probability, that the customer provided the company with information about his tenant. Accordingly, I note the customer's submissions that the company set up the account under his name despite being aware, before the account was set up, that the tenant was responsible for the charges for 18 September 2017 to 17 September 2018. However, the company was entitled under the Regulation to recover the outstanding charges from the customer alone.

12. I can appreciate the difficulty of the situation for the customer. However, in view of the above, I accept the company's submission that it has acted within its statutory powers. The customer's tenant's failure to pay the company's charges is a private matter between the customer and his tenant. (Please note that for the purposes of this decision my remit is to determine the issues between the customer and the company. Any claims against third parties cannot be considered.) The customer has not shown that the company failed to provide its services to the standard to be reasonably expected in this regard.

13. Consequently, in view of above, the customer's claim does not 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 28 June 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.

U Obi LLB (Hons) MCIArb
Adjudicator