WATRS

Water Redress Scheme

ADJUDICATOR'S DECISION SUMMARY

Adjudication Reference: WAT/ /0978

Date of Decision: 3 December 2018

Complaint

The customer complains that, despite the fact that she notified the company of the occupation of her property by a tenant in 2010, the company has nonetheless issued a bill against her in respect of the period from 2015 to 2018 and has declined to adjust this to charge the tenant, even thought the tenant also requested this. The tenant has now died and the customer seeks cancellation of the bill against her.

Defence

The company says that it received no notification of the presence of a tenant in 2010 although, through its own enquiries, it discovered that the property was tenanted. It states that it required a declaration of the occupation by a tenant under the Water Industry (Undertakers Wholly or Mainly in Wales) (Information about Non-owner Occupiers) Regulations 2014 and none was made. It is its policy not to make retrospective adjustments to the account, therefore the customer remains liable for the period of the bill from 2015 to 2018.

Findings

The adjudicator's findings are as follows. It is probable that the customer tried to notify the company in 2010 but this was not received. It was for the customer to ensure that the company had this information. The Guidance to the Water Industry (Undertakers Wholly or Mainly in Wales) (Information about Non-owner Occupiers) Regulations 2014 indicated that a customer would be jointly and severally liable with the occupier for the charges. It said that a customer would not be "pursued" for failure to comply with the Regulations unless this was wilful. In failing also to bill the occupier, the company failed to take account of the Guidance and deprived the customer of the chance of having no liability for the bill. This was a failure to supply its services to the standard that would reasonably be expected. The chance was assessed at 50%. The customer's bill should be reduced by 50%.

Outcome

The company needs to take the following further action: cancel the customer's bill dated 8 February 2018 and issue a new bill to the customer in the sum of £690.84.

The customer must reply by 4 January 2019 to accept or reject this decision.

ADJUDICATOR'S DECISION

Adjudication Reference: WAT/ /0978

Date of Decision: 3 December 2018

Party Details

Customer:[ ]

Agent: [ ]

Company: [ ].

Case Outline

The customer's complaint is that:

- In 2010, both the tenant at the time and the customer notified the company that the property at 2, Green Road, [ ] was occupied by a new tenant and the account should be transferred into that name. The customer sent a letter and the tenant telephoned the company.
- The company sent no bills to the customer until 8 February 2018, when it issued a bill for £1,381.67 in respect of the period 1 February 2015 to 24 January 2018.
- The company now denies having received a letter from the customer in 2010 and states that the relevant tenant was not registered.
- That tenant then requested that the account be placed in his name so that this could be discharged under a payment plan. The company refused to permit this, citing the Non-Occupier Regulations.
- The tenant has now died.
- The customer, through her agent, claims cancellation of the outstanding bill.

The company's response is that:

- It has no record of receiving information about a tenant in 2010 and has therefore deemed the customer to be liable for the charges billed in relation to the flat she owns, namely Flat A, 4 Green Rd, [ ], [ ].

- The Water Industry (Undertakers Wholly or Mainly in Wales) (Information about Non-owner Occupiers) Regulations 2014 came into effect from 1st January 2015. These set out the information which an owner is required to provide in respect an occupier of his or her property.
- The customer's property was registered as unoccupied on the company's billing system; however, the company identified that someone was living there when it carried out a routine visit to check on unoccupied properties. The visit confirmed that the property was being occupied by a tenant who refused to give his details at that time. The company therefore carried out a Land Registry check. This confirmed that the customer owned the property. The company also checked the property with Rent Smart Wales (an organisation that processes landlord registrations and grant licences to landlords and agents that need to comply with the Housing (Wales) Act 2014). This confirmed the property to be a rental property.
- As the customer had failed to notify the company about her tenant, the company set up an account in January 2018 and issued a bill in her name covering the period 1 February 2015 to 31 March 2018 (the end of the charging year for non-metered properties; the property did not have a water meter at the time the bill was produced).
- Following this, the company received a letter from the agent dated 24 January 2018 advising that the customer was not responsible for the charges. The company was also provided with the tenant's name, (Mr S T), and confirmation that he had lived in the property since 11 October 2010. This was the first time this information had been provided.
- The customer's account was subsequently closed from the date of the letter and a new account was opened in the tenant's name. The company replied to the agent by letter dated 7 February 2018 to confirm this and it explained that, due to the Regulations, the customer was still liable for the charges from 1 February 2015.
- The agent sent another letter dated 9 March 2018 that enclosed a letter signed by the tenant asking for the bill to be transferred into his name. As the customer is legally liable for the charges, any agreement to pay the charges between the customer and the tenant is a private matter to which the company is not bound.
- One of the reasons the Regulations were introduced was to support the "Tackling Poverty Action Plan 2012", which aims to reduce the number of people who get into debt with their water supplier, especially those who are already struggling financially and may be vulnerable. They also support the company's aim to make water charges affordable through various supporting tariffs. Due to these reasons the company took the stance that it would not backdate billing for any tenants and, for just over two and half years, it did not backdate the accounts of owners either. Instead, the company invested a lot of time and effort attending landlord events

across Wales, as well as working with organisations such as The Residential Landlords Association and Rent Smart Wales, to let people know about the Regulations.

- The company has sent the bills addressed to the customer at [ ], which was the registered home address when the Land Registry check was completed.
- The company has been informed that the tenant has recently passed away. Whilst it expresses sympathy for this and appreciates this may complicate matters for the customer, its position remains the same. The company therefore denies liability.

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. The issues in this case centre on whether the customer communicated to the company in 2010 that her property was occupied by a tenant and, even if she did not, whether the company should, retrospectively, have recognised his occupation and billed the tenant rather than the customer.

Had the customer communicated that her property was occupied by a tenant?

2. It is notable that in this case, the agent describes the relevant address in the application form as 2, Green Road and the company describes this as Flat 2, 4 Green Rd, which is also the address that the agent has given to the Consumer Council for Water (CCWater). Having regard to the information in the CCWater file, I find that the correct address in issue in this case is Flat 2, 4 Green Road.

3. The customer states, through its agent, that she had notified the company of the identity of the tenant in 2010 and that the tenant had contacted the company by telephone. In relation to the telephone call said to have been made, I find that the evidence for this is limited. No person with direct knowledge of the telephone call has submitted any confirmatory details in this adjudication, although I note that the tenant sent a letter in 2018 stating that he was willing to assume liability for the account. No dates are given for the call and there is no information about who was spoken to or what, precisely, was said. I find that there remains some doubt about whether this telephone call, if made, was sufficient to alert the company to the occupation of the property by the tenant.

4. As for the letter said to have been sent in 2010, the correspondence submitted in this case, as well as the information supplied by CCWater, suggests that this was sent, not by the customer directly, but by the agent. In his communication with CCWater noted on 28 June 2016, the agent stated that he had in 2018 sent the company an archived copy of the letter sent in 2010. This letter has not been submitted as part of the papers supplied to the adjudicator and it does not appear, either, that a copy was given to CCWater. I find, nonetheless that it is likely that the company received a copy of a letter in 2018 and that, if it had been received in 2010, the contents would have notified them of the identity of the tenant for the following reasons:
    a. The application form states that an archived and dated copy of the letter was sent to the company and the company has not denied this.
    b. If the company had not received a copy of the letter, it would reasonably have been expected that this would have been requested. I have seen no correspondence requesting this.
    c. If the company had received the copy letter and it did not identify the tenant or was in any other way anomalous, I would have expected the company to have stated this.

   I therefore find that it is likely that an archived copy of the letter was sent to the company in 2018 and the company has not commented on this. In the light of the fact that such a copy letter is in existence and the agent states that he sent it to the company in 2010, I further find that it is

likely that this was sent to the company in 2010, but it does not follow from the fact that it was sent that it was received.

5. The company states that it received no such letter or telephone call in 2010 and the information on its records at the relevant time was that the property was unoccupied, although the company became aware at some point that there was a resident and it had made inquiries, though the person of whom inquiry was made declined to give his/her details. The company has not put forward an internal record relating to this attempt at identification of the resident, so there is no information as to what was asked, of whom it was asked and when this occurred. In these circumstances, I am not willing to place weight on the fact that no information was given by the person asked. Nonetheless, on the basis of the company's evidence, I find that the company did not receive the letter in 2010.

6. It is also common ground that on the coming into force of the Water Industry (Undertakers Wholly or Mainly in Wales) (Information about Non-owner Occupiers) Regulations 2014, no subsequent notification was given – and it may well be that neither the customer nor the tenant was aware of those Regulations. The company says that it supplied information on its website and through landlord's forums but may not have notified all landlords directly because of lack of information about their identity. In respect of this property, it states in its correspondence to the customer that a letter to which no reply was received, was sent to the property on 7 March 2017 addressed to "the new or future tenant", but I find that it is unlikely that the tenant thought that this was addressed to him as he had been resident since 2010 and he may not have realised that important information was contained.

7. It follows from my findings above that I find that the company was not put on notice that the tenant occupied the property in 2010. This would explain why the company does not appear to have raised any bills during this period: I infer from the company's subsequent investigations that it was unaware of the identity of the customer and the agent says that no bills were received. The tenant may have been aware that no bills were being raised, but it does not follow that the customer was aware of this until 2018.

Would an average customer reasonably have expected a water company to have recognised the tenant's occupation retrospectively?

8. The company refers to section 144C of the Water Industry Act 1991 (as amended by section 45 of the Flood and Water Management Act 2010), which places a duty on owners of residential properties to provide information to the relevant water company about tenants of those properties ('non-owner occupiers'). Failure to do so results in the owner becoming jointly and severally liable for water and sewerage charges. The Water Industry (Undertakers Wholly or Mainly in Wales) (Information about Non-owner Occupiers) Regulations 2014 sets out how that information should be provided.

9. The company makes reference to the Guidance on those Regulations, of which, the company explains, it invested considerable efforts to make customers aware. The Guidance includes the following (emphasis added):

> *2.3 The information in 2.1 above must be provided by 21 January 2015 or within 21 days of there being changes to the occupancy of the property. Where the information has already been provided to the water company, prior to 1 January 2015 then there is no requirement to update this information, until such time as the occupiers change.*
>
> *2.4 If the owner does not comply with this duty they will become* ***jointly and severally*** *liable with the occupier for water and sewerage charges for the period that they have failed to comply.* ***That means that the water company can sue an occupier, owner or both in relation to any outstanding charges; however, water companies should only pursue owners where they have wilfully failed to provide the information.***

10. The company has declined to treat the tenant as liable for the backdated bill, despite, I find:
    - Being provided with an archived copy of the letter from the agent in 2010;
    - Receiving an attachment to a letter dated 9 March 2018 from the agent. The attachment was a letter from the tenant stating that he was liable for the bill. The company has acknowledged receipt of this attachment, although neither party has supplied a copy to me.

    It is notable that the company has not paid attention to this correspondence or commented on it in any detail in its submissions. I conclude from this that the company did not consider these items to be relevant or persuasive. I find, however, in the light of the Guidance referred to above, that this was contrary to its stated policy in two ways:

- If a communication failure had occurred, for whatever reason, in 2010 but the customer had believed the identity of the tenant to have been known to the company, she would have felt under no obligation to send further information to the company in 2015. This is apparent from paragraph 2.3 of the Guidance.
- If there was a genuine attempt at communication by the customer or her agent or tenant in 2010, it could not have been said that the customer had "willfully" failed to provide the information in accordance with paragraph 2.4 of the Guidance.

Having regard to these considerations, therefore, I find that the company did not in 2018, correctly consider the impact of its Guidance in the customer's case. Had it done so, it would have been apparent that it had made a public statement that it would not "pursue" the customer for payment. I find that the company's refusal to consider back-dating the account into the name of the tenant or raising a bill against the tenant in addition to that against the customer, was a failure to follow that policy.

11. I find that an average consumer would expect the company to follow its published policies, including those which indicate that latitude will be given to customers that have not acted willfully. As I have found that the company did not follow that policy, I further find that it has failed to supply its services to the standard that would reasonably be expected of it.

12. In these circumstances, I find that the customer is entitled to redress. She claims cancellation of the outstanding bill. I have considered this with some care. I have concluded, however, that cancellation of the entire bill would not be fair and reasonable. The obligation placed on the customer by section 144C of the Water Industry Act 1991 was to arrange for the undertaker to be given information about the occupiers. I find that this obligation extended, not only to sending such information but also to ensuring that it is received. In 2010, although I have found that the information was probably sent on behalf of the customer, it was not received and the customer carried out no follow-up activity to ensure that the company was receiving payment from the proper person. In these circumstances, I do not find that it is consistent with her legal obligations to waive her liability in its entirety. On the other hand, I take into account that in the light of the history of this case, including the willingness of the tenant expressed before his death to pay the outstanding sums and the customer's assertion that he was a man of sufficient mean as to meet this liability, I find that if the company had applied its policy correctly, there was a chance that the customer would not have to meet any payment to the company. I assess that chance at 50%.

13. In the circumstances and in the absence of any supporting paperwork, it is improbable that she will be able to claim payment of the company's bill or any contribution to it from the tenant's estate. I find, therefore, that by reason of the company's refusal to acknowledge any liability on the part of the tenant for the bill relating to 1 February 2015 to 24 January 2018, the customer has lost the chance of requiring the tenant to make the full payment. As I have assessed the chance that he would make that payment at 50%, I find that it is fair and reasonable that the company shall reduce the bill to the customer by 50%; that is, I find that the charges for the period 1 February 2015 to 24 January 2018 should be reduced to £690.84.

Outcome

The company needs to take the following further action: cancel the customer's bill dated 8 February 2018 and issue a new bill to the customer in the sum of £690.84.

What happens next?

- This adjudication decision is final and cannot be appealed or amended.
- The customer must reply by 4 January 2019 to accept or reject this decision.
- If you choose to accept this decision, the company will have to do what I have directed within 20 working days of the date on which WATRS notifies the company that you have accepted my decision. If the company does not do what I have directed within this time limit, you should let WATRS know.
- If you choose to reject this decision, WATRS will close the case and the company will not have to do what I have directed.
- If you do not tell WATRS that you accept or reject the decision, this will be taken to be a rejection of the decision. WATRS will therefore close the case and the company will not have to do what I have directed.

Claire Andrews, Barrister, FCI Arb

Adjudicator