

**OFFICE OF THE INSURANCE COMMISSIONER
MARYLAND INSURANCE ADMINISTRATION**

S.G. & L.G.,¹

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Plaintiffs,

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v.

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Case No. 27-1001-22-00088

**ALLSTATE INDEMNITY
COMPANY,**

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Defendant.

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DECISION

S.G. and L.G. (“Plaintiffs”) initiated this proceeding under § 27-1001 of the Insurance Article, Md. Code Ann., Ins. § 27-1001 (2017 Repl. Vol.), alleging that Allstate Indemnity Company (“Defendant”) breached its contractual obligations by denying Plaintiffs’ first-party claim for damages under the terms of a landlords package policy (the “Policy”) in connection with a loss that occurred on or before October 8, 2019, at Plaintiffs’ rental property (the “Dwelling”) located in Baltimore, Maryland (the “Claim”).

For the reasons set forth below, the Maryland Insurance Administration (the “Administration”) concludes that Plaintiffs have failed to demonstrate that Defendant breached any duties owed to Plaintiffs or otherwise failed to act in good faith in connection with Plaintiffs’ Claim.

¹ The Maryland Insurance Administration (MIA) uses initials to protect the plaintiff’s and other individuals’ privacy.

I. STANDARD OF REVIEW

Section 3-1701, Md. Code Ann, Cts. & Jud. Proc. § 3-1701 (2020 Repl. Vol.), authorizes the award of special damages to an insured in a civil coverage or breach of contract action if the insured demonstrates that the insurer failed to act in good faith in denying, in whole or in part, a first-party property insurance or disability insurance claim. However, before the insured may file an action seeking special damages pursuant to § 3-1701, the insured must first submit a complaint to the Administration under § 27-1001. Within ninety (90) days of the receipt of such a complaint, the Administration must render a decision on the complaint that determines:

1. Whether the insurer is required under the applicable policy to cover the underlying claim;
2. The amount the insured was entitled to receive from the insurer;
3. Whether the insurer breached its obligation to cover and pay the claim;
4. Whether an insurer that breached its obligation failed to act in good faith; and
5. If there was a breach and the insurer did not act in good faith, the amount of damages, expenses, litigation costs and interest.

“Good faith” is defined in § 27-1001 as “an informed judgment based on honesty and diligence supported by evidence the insurer knew or should have known at the time the insured made the claim.”

A plaintiff has the burden of proof and must meet this burden by a preponderance of the evidence. *See* Md. Code Ann., State Gov’t § 10-217 (2014 Repl. Vol.); *Md. Bd. Of Physicians v. Elliott*, 170 Md. App. 369, 435, *cert denied*, 396 Md. 12 (2006).

II. PROCEDURAL BACKGROUND

On December 5, 2022, the Administration received Complaint No. 27-1001-22-00088 (the “Complaint”) stating a cause of action in accordance with § 27-1001. In the Complaint,

Plaintiffs alleged that Defendant breached its obligations under the Policy by denying their Claim. Specifically, Plaintiffs argues that “in deciding to deny the [Plaintiffs’] claim as discussed herein despite the clear existence of valid coverage...[Defendant] abrogated its legal obligation to act in good faith and it is hereby specifically alleged that Defendant Allstate failed to act in good faith at all times relevant hereto.” Plaintiffs argues that they have complied with the Policy terms and that Defendant is improperly denying coverage for the loss.

As required by § 27-1001(d)(3), the Administration forwarded the Complaint and accompanying documents to Defendant on December 22, 2022. On January 23, 2023, as required by § 27-1001(d)(4), Defendant provided its response (the “Response”), along with accompanying documents acknowledging that the Plaintiffs had an insurance policy that provided coverage for the dwelling up to a \$195,000 limit subject to a \$1,000 deductible. Plaintiffs did not purchase additional coverage for repairs necessitated by compliance with building codes.

III. FINDINGS

Based on a complete and thorough review of the written materials submitted by the Parties, the Administration finds that Plaintiffs failed to establish by a preponderance of the evidence that they are entitled to coverage for the Claim under the Policy.

On December 17, 2019, Plaintiff S.G. contacted Defendant to report a loss to the Property. At that time, Plaintiff S.G. reported that the tenant C.O. who had previously been occupying the Property vandalized the Property prior to vacating the Property in July, 2019. Plaintiff S.G. reported that he had received a notice from Baltimore City advising that the Property was uninhabitable and that upon further inspection, Plaintiffs learned that the tenant had begun unauthorized renovations on the Property.

On December 18, 2019, Defendant was contacted by Attorney Justin Daniel who advised that he was representing the Plaintiffs in this matter. Defendant received a letter of representation from Attorney Daniel that day.

On December 20, 2019, Defendant contacted Attorney Daniel requesting to schedule an inspection of the Property. On December 23, 2019, Attorney Daniel provided an unassigned copy of the lease and photographs of the interior of the Property. The lease listed the tenant as Baltimore Washington Home Solutions, LLC (“Washington Home”) and stated that the monthly rent would be \$1,100. The lease also included an option for Washington Home to purchase the insured Property. Additionally, the lease required the tenant to maintain the Property and pay for all repairs except for repairs exceeding \$1,000. That same day Defendant spoke to Attorney Daniel regarding the loss. Attorney Daniel stated that Plaintiffs received a notice from Baltimore City regarding garbage in the backyard of the Property. At that time, Plaintiffs hired a property management company to inspect the Property and the company noted building permits were posted in the front windows. An eviction proceeding was initiated but eventually withdrawn once the tenant returned the keys to the Property to Attorney Daniel. Once the keys were returned to Attorney Daniel an inspection was preformed of the interior and it was noted that the Property had been “gutted” with the removal of walls down to the studs, removal of flooring materials, and the removal of appliances and cabinets in the kitchen. Attorney Daniel stated that it was possible the tenant may have thought the residence would become his in the future; however, Attorney Daniel stated that the tenant did not have permission from the Plaintiffs to make any renovations to the Property.

On December 31, 2019, Defendant sent a reservations of rights letter to Attorney Daniel and Plaintiffs. This letter cited to possible exclusions under the Policy. On January 2, 2020, one of Defendant’s outside field adjusters, Bryan Edwards (“Adjuster Edwards”) inspected the

Property with Attorney Daniel and a third party construction company Fitz Construction. Adjuster Edwards noted that the walls had been removed down to the studs, and that all HVAC, electrical, ducts, and plumbing in the home appeared to be brand new. Adjuster Edwards noted no furniture in the house and it appeared that the house had been vacant for some time. Thereafter, the Claim was referred to the Defendant's Special Investigations Unit ("SIU") for further investigation. Adjuster Edwards requested that Fitz Construction prepare an estimate in the event it was determined this was a covered loss.

On January 3, 2020, SIU investigator Gina Maranto ("Investigator Maranto") was assigned to this Claim. On January 7, 2020, Investigator Maranto spoke with Plaintiffs' Allstate insurance producer who advised that Plaintiff S.G. had requested a copy of the Policy over the summer. That same day, Investigator Maranto reviewed the Baltimore City police report filed by Attorney Daniel on behalf of Plaintiffs. According to the police report, Attorney Daniel had reported that the tenant had occupied the Property for ten years and that Attorney Daniel had to go to court to evict the tenant. Once the tenant was evicted, Attorney Daniel advised that "all the walls and the ceiling inside the apartment were torn down." Attorney Daniel also reported kitchen appliances were missing. No suspect was named in the police report.

On January 7, 2020, Investigator Maranto also began to investigate the tenant, C.O. who did business as Washington Home. Investigator Maranto found that C.O. stated online that he was a real estate investor/broker who focused on rehabbing houses for sale. Investigator Maranto also located a real estate listing for the Property from July 2019, shortly after the eviction proceedings.

The listing read in part:

Shell available in Patterson Park! The Rehab has been started but owner does not have time to finish. Permits are expired. Listing agent is licensed contractor and had walked the project: electrical, plumbing and HVAC

rough-ins are 95%. Permits should be renewed and work verified but overall looks goods. Will need: insulation, back door, kitchen/bath cabinetry, flooring, drywall, paint, trim, appliances.
* * * *

Investigator Maranto also emailed Attorney Daniel and Plaintiffs requesting documentation including any repair estimates, any contractor's contact information, eviction order, pre-loss photographs, a copy of the signed lease, and any other documentation they wanted Defendant to consider. Another letter was sent to Plaintiffs including a sworn proof of loss form, an authorization form, and a non-waiver form. Also that day Fink Construction submitted its completed estimate for the repairs to the Property. The replacement cost value was determined to be \$50,162.01, minus non-recoverable depreciation and the deductible would afford Plaintiffs a payment of \$43,904.47 if it was determined that coverage would apply to the loss.

On January 9, 2020, Attorney Daniel emailed Investigator Maranto that Plaintiffs did not have a written repair estimate, but that he would contact the listing agent, Jesse Bloomberg, who also does rehab work on properties to see if an estimate could be written. Attorney Daniel also stated that Plaintiffs could not locate a signed copy of the lease and he included a copy of an incomplete list of damages which included some pre-loss photographs of the Property. Also on that day Investigator Maranto attempted to reach C.O. by telephone and on January 13, 2020, Investigator Maranto sent a letter to C.O. requesting that he contact her to discuss the Claim.

On January 21, 2020, Investigator Maranto sent an email to Attorney Daniel advising that she wanted to take a recorded statement from Plaintiff S.G. and requested copies of the pre-loss photographs in their original format.

On January 27, 2020, Investigator Maranto attempted to reach C.O. again by telephone. On January 28, 2020, Plaintiff S.G. emailed pre-loss photographs in their original format and he

exchanged emails with Investigator Maranto to schedule a time for his recorded statement. The recorded statement was scheduled for and took place on February 4, 2020. The following information was provided during the recorded statement:

- Plaintiffs purchased the Property in 2005 and lived there until approximately 2010.
- Plaintiffs currently reside in Wilmette, Illinois.
- Plaintiffs spent approximately five years renovating the Property for approximately \$35,000 to \$40,000 with the renovations being completed in 2010. The renovations included refinishing the original hardwood flooring, installing new appliances in the kitchen, updating the countertops in the kitchen, installing metal ceiling in the dining room, and replacing the carpeting on the second floor among other things.
- C.O. approached Plaintiffs a few years after they left the Property and stated that he was interested in a long term “lease and management.”
- Plaintiff S.G. confirmed that the unsigned lease provided to Defendant was the document he and C.O. had signed, but stated that he has been unable to locate the signed copy.
- Plaintiff S.G. stated that he was not sure who was going to live in the house and stated that there was no provision in the lease to prevent C.O. from subletting the Property.
- Plaintiff S.G. stated that C.O. was to pay the mortgage directly each month to the mortgage company including principle, taxes, and insurance. Plaintiff S.G. stated that on occasion he received notifications from the mortgage company that C.O. was late on the payments.
- Plaintiff S.G. also stated that the lease included an option for C.O. to purchase the Property at a future date.
- Plaintiff S.G. stated that in February 2019 he received a notice from the City of Baltimore that the Property was not safe for human habitation due to the condition. At that time Plaintiff S.G. called a local property management company and asked them to take photographs of the front and rear of the house. The property management company took photographs and it appeared that the house had been vandalized as it was boarded up and not in a livable condition. Plaintiff S.G. spoke to C.O. regarding the Property and the condition and C.O. stated that he was “fulfilling a desire to renovate the property” but had not been able to complete the renovations. Plaintiff S.G. stated that he did not give C.O. permission to renovate the Property.
- Plaintiffs hired Attorney Daniel to begin eviction proceedings and on March 4, 2019, a notice to vacate was issued by Attorney Daniel to C.O. The eviction proceedings were initiated on May 20, 2019, and the District Court set a trial date for July 9, 2019. On the morning of the trial, C.O. came to Attorney Daniel’s office and turned over the keys to the Property making the eviction proceedings moot.
- Attorney Daniel went to the Property on July 9, 2019, to secure the Property and have the locks changed. The Property was in the same condition that Defendant’s adjuster saw it in on January 2, 2020 as Attorney Daniel stated he did not make any changes to the Property between that time.
- Attorney Daniel advised Plaintiff S.G. to obtain a copy of his insurance policy with Defendant, which Attorney Daniel alleged took several months and that after Attorney Daniel reviewed the Policy, he advised Plaintiffs he believed there was coverage and Attorney Daniel recommended that Plaintiffs file a claim with Defendant.

- Attorney Daniel did not contact the police until October 8, 2019, when it became apparent that C.O. was not going to help “make things right” with the Property.
- Attorney Daniel stated that it did not appear that anyone was living at the Property when he gained entry to the house in July 2019. Attorney Daniel stated that he had a different last known address for C.O. and that he would use the other address whenever he needed to speak with C.O.
- Plaintiff S.G. did not perform any background check on C.O.
- Plaintiff S.G. did not remember if C.O. stated that he was renting the space for a residential or business purpose.
- Plaintiffs had listed the Property for sale for a period of time before C.O. rented it.
- After the issues with the Property were discovered, Plaintiffs spoke to another real estate agent who specializes in selling non-renovated properties about the possibility of selling the Property. Plaintiff S.G. could not remember if he ever signed a contract with this agent.
- Plaintiff S.G. stated that the house was uninhabitable at that time.
- Attorney Daniel stated that he had performed an on-line search with Baltimore City and had learned about various permits that C.O. had pulled to perform work.
- Plaintiff S.G. stated that C.O. never contacted him to tell him there were issues with the Property, such as appliances failing or the heat not working.

Also on February 4, 2020, Investigator Maranto emailed Plaintiff S.G. and Attorney Daniel requesting that Plaintiffs sign a sworn proof of loss in front of a notary and return it to her. Investigator Maranto also requested C.O.’s email address, copies of letters that had been sent to C.O., and copies of the violation notices issued by Baltimore City. Attorney Daniel responded that day providing C.O.’s email address, copies of the violation notices, and a copy of the notice to vacate issued to C.O. on March 4, 2019.

On February 6, 2020, Investigator Maranto contacted the Baltimore City Permits office and located several permits issued for the Property from 2017 to 2018. Investigator Maranto submitted a written request to obtain copies of the permits. Investigator Maranto also contacted Mr. Bloomberg, and requested a copy of the signed listing agreement.

On February 14, 2020, Investigator Maranto received a copy of the listing agreement signed by Plaintiffs on July 17, 2019, this agreement stated that the Property would be sold as-is and all building materials on site would be included in the sale. The listing price was \$110,000.00.

On February 24, 2020, Investigator Maranto contacted the current mortgage company, New Rez, LLC (“New Rez”) to obtain the loan details, but was unable to reach anyone. Investigator Maranto sent a follow up letter to New Rez that day.

On February 26, 2020, Investigator Maranto went to the Baltimore City Permits office to obtain copies of the permits for this Property for dates between 2017 and 2018. Investigator Maranto noted that a total of seven permits were pulled and that C.O. paid all of the fees himself to obtain the permits.

On February 28, 2020, Investigator Maranto provided Attorney Daniel a claim update and also contacted Mr. Bloomberg seeking any prior listings for the Property.

On March 2, 2020, Investigator Maranto located a prior 2013 listing of the Property and contacted the real estate broker who had previously listed the Property in 2013 to review a copy of the listing. Investigator Maranto also emailed Attorney Daniel to obtain the executed sworn proof of loss, authorization, and non-waiver agreement and asked whether Plaintiffs ever paid C.O. for the repairs or renovations that were being done on the house. Attorney Daniel responded that he did not believe any payments were made by Plaintiffs to C.O. for the renovations since he claimed that the Plaintiffs were unaware of the renovations being performed.

On March 3, 2020, Investigator Maranto finalized her investigation and returned the file to Adjuster Edwards to make a coverage determination. On March 4, 2020, Adjuster Edwards issued a denial letter to Plaintiffs and Attorney Daniel. The denial letter cited the exclusion for acts committed by a tenant and stated in part:

Allstate has concluded it’s (*sic*) investigation regarding coverage for this claim. We have determined that the condition of the home and the circumstances surrounding it’s (*sic*) present condition does not qualify as vandalism. We further conclude that the condition of the property did not result from an act of a tenant found under Losses We Do Not Cover Under Coverages A and B sub-section

A, item 19 a) through i). For this reason, regrettably, this claim has been denied in it's (*sic*) entirety.

19. Any act of a tenant, or guests of a tenant, unless the act results in sudden and accident direct physical loss caused by:

- a) Fire;
- b) Explosion;
- c) Vehicles;
- d) Smoke. However, we do not cover loss caused by smoke from the manufacturing of controlled substances, agricultural smudging or industrial operations;
- e) Increase or decrease of artificially generated electrical current to electrical appliances, fixtures and wiring;
- f) Bulging, burning, cracking or rupture of a steam or hot water heating system, an air conditioning system, an automatic fire protection system or an appliance for heating water;
- g) Water or steam that escapes, due to accidental discharge or overflow, from a plumbing, heating or air conditioning system, an automatic fire protection system, or a household appliance; or
- h) Freezing or a plumbing, heating or air conditioning system or a household appliance [;]
- i) Vandalism

On March 8, 2020, Attorney Daniel provided Investigator Maranto the executed sworn proof of loss, authorization, and non-wavier agreement. Plaintiff S.G. also advised that he did not pay C.O. for any of the renovation work. On March 9, 2020, Investigator Maranto advised Plaintiff S.G. that she had completed her investigation and returned the file to Adjuster Edwards.

On March 28, 2020, Defendant received a letter from Attorney Daniel disputing Defendant's denial of the claim. The letter argued that C.O.'s actions were vandalism as defined under the terms of the Policy and therefore coverage should be provided for the loss. On March 30, 2020, Adjuster Edwards acknowledged receipt of Attorney Daniel's letter and stated that Defendant would review same.

On April 28, 2020, Defendant sent correspondence to Attorney Daniel advising that Defendant was upholding its denial.

On December 5, 2022, Plaintiffs filed the subject Section 27-1001 Complaint.

IV. DISCUSSION

Here Attorney Daniel went to inspect the Property on July 9, 2019, and noted the condition at that time. Attorney Daniel did not file a police report until October 8, 2019, approximately three months after Attorney Daniel first saw the condition of the Property. Additionally, the Plaintiffs did not file a claim with Defendant until more than two months later, on December 17, 2019. The Plaintiffs argue that the Property was “vandalized” by C.O. and that under the Policy coverage is afforded to property that is vandalized. In this instance, the Policy states as follows:

GENERAL

Definitions Used in This Policy

* * *

12. Vandalism – means willful or malicious conduct resulting in damage or destruction of property. **Vandalism** does not include theft of property.

* * *

Losses We Do Not Cover Under Coverages A and B:

A. **We do not cover loss to the property described in Coverage A- Dwelling Protection or Coverage B – Other Structures Protection** consisting of or caused by:

* * *

19. Any act of a **tenant**, or guests of a **tenant**, unless the act results in sudden and accidental direct physical loss caused by:

- a) Fire;
- b) Explosion;
- c) Vehicles;
- d) Smoke. However, **we** do not cover loss caused by smoke from the manufacturing of controlled substances, agricultural smudging or industrial operations;
- e) Increase or decrease of artificially generated electrical current to electrical appliances, fixtures and wiring;
- f) Bulging, burning, cracking or rupture of a steam or hot water heating system, an air conditioning system, an automatic fire protection system or an appliance for heating water;
- g) Water or steam that escapes, due to accidental discharge or overflow, from a plumbing, heating or air conditioning system, or a household appliance; or
- h) Freezing of a plumbing, heating or air conditioning system or a household appliance
- i) Vandalism [.]

Here acts of tenants are generally excluded from coverage. An exception to that exclusion exists under the Policy language if the damage was caused by vandalism as defined in the Policy. The burden rests on the Plaintiffs to demonstrate that the exception to the exclusion would be applicable to this case and here I find that Plaintiffs have failed to meet that burden.

The facts surrounding this loss support a finding that C.O. had been working on renovating the Property and that for some reason decided to stop the work on the Property. Here C.O. had pulled permits using his own money and the Property looked as if C.O. did not actually reside there but rather was doing work to rehabilitate the dwelling. Additionally, a search of C.O. online revealed that he was a real estate broker who focusing on rehabbing properties to sell. C.O.'s lease agreement allowed him to purchase the Property from the Plaintiffs and it appears that he was responsible for the payments on the Property, as he paid the mortgage company directly according to the Plaintiffs. Here C.O. likely believed that at some point in the future he would be the owner of the Property and it appeared that he was making the renovations to possibly sell the Property at a later date.

Further supporting a finding that C.O. was actually renovating the Property for a future sale is the fact that the Plaintiffs did not name C.O. as a suspect when they filed the police report and have failed to bring any sort of civil action against him. Plaintiffs also did not report the damage to the Property for several months after C.O. left the premises and instead attempted to list the Property for sale. The sale listing stated as follows in pertinent part:

Shell available in Patterson Park! The Rehab has been started
but *owner does not have time to finish.*

* * *

(Emphasis added).

From my review of the evidence, there is no basis to believe that C.O. vandalized the Property as defined by the Policy. Rather it appears that C.O. was doing rehabilitation work to the Property with the intent that either he or Plaintiffs would sell the Property in the future.

Additionally, Plaintiffs have the burden of proof in this instance to prove that Defendant improperly handled their Claim and that Defendant failed to act in good faith. Here, I find that Defendant properly denied coverage for this loss. Furthermore, Plaintiffs did not prove the extent of their loss even assuming *arguendo* that coverage should have been afforded. While Plaintiffs did provide a listing of estimated costs, the estimate is incomplete and does not include photographs of every item alleged to be damaged to substantiate the damages.

Based on these findings, Plaintiffs have failed to meet their burden to prove that Defendant breached any obligation owed to them under the Policy or that they are entitled to any payment under the Policy.

V. CONCLUSIONS OF LAW

In accordance with § 27-1001, the Administration concludes:

1. Plaintiffs established by a preponderance of the evidence that Defendant issued to Plaintiffs a property coverage policy.
2. Plaintiffs did not establish by a preponderance of the evidence that Defendant failed to provide the coverage required under the Policy.
3. Plaintiffs did not establish by a preponderance of the evidence that they are entitled to additional damages as a result of the Claim.
4. Plaintiffs did not establish by a preponderance of the evidence that Defendant breached its obligation under the Policy to cover and pay the Claim.
5. Since a breach is a necessary element of a failure to act in good faith, Plaintiffs did not establish a failure by Defendant to act in good faith.
6. Since Plaintiffs did not establish a breach or failure by Defendant to act in good faith, there is no basis for the Administration to address special damages.

VI. DECISION

Based on the foregoing findings and conclusions, it is the Administration's Decision on this 16th day of February, 2023, that Defendant did not violate Md. Code Ann., Ins. § 27-1001 (2017 Repl.Vol.).

This Decision shall take effect as a Final Decision if no administrative hearing is requested or appeal is taken in accordance with § 27-1001(f) and (g).

KATHLEEN A. BIRRANE
Insurance Commissioner

/S/ Lisa Larson
LISA LARSON
Director of Hearings

APPEAL RIGHTS

If a party receives an adverse decision, the party shall have thirty (30) days after the date of service (the date the decision is mailed) of the Administration's decision to request a hearing, which will be referred to the Office of Administrative Hearings for a final decision, or to appeal the decision to the circuit court under Title 10, Subtitle 2 of the State Government Article of the Annotated Code of Maryland. MD. CODE ANN., INS. ART., §27-1001(f) and (g) (2017 Repl. Vol.).