

CASE STUDIES

Please note that each matter is dealt with on its own merits and no precedent is created by the findings in these matters. The case studies are intended to provide guidance and insight into the manner in which OSTI deals with complaints.



WEAR AND TEAR IS NOT COVERED COMPASS INSURANCE CO LTD

Ms M submitted a claim to the insurer for water damage to the cupboards, a wall, tiles and an electrical plug.

According to Ms M she discovered, at 05h30, that the unit above hers had suffered a burst pipe which led to her own unit becoming flooded and to the resultant damage. The repairs were only done to the pipe at approximately 11h30 the same morning.

The policy was taken out by the body corporate and provided cover for the various units forming part of the sectional title development as well as the common areas.

The insurer declined liability for the claim on the grounds that the pipe had burst as a result of wear and tear. The policy did not cover damage caused by wear and tear, gradual deterioration and gradually operating causes. The policy also did not provide cover for resultant damage.

The insurer relied on a report by an assessor to decline liability for the burst pipe.

The insurer further declined the claim for the resultant water damage to a wall, tiles and kitchen cupboards on the basis that the policy excluded such damage.

With regards to the cupboard kick plates and tiles, the assessor's finding was that the damage had occurred over a period of time. Various tiles were found to make a hollow sound, to have signs of impact damage and some had completely dislodged. According to the assessor the hollow sound and the dislodged tiles indicated that the tiles had not been installed correctly. One of the tiles even showed that the tile adhesive had been incorrectly applied.

Supporting photographs were provided reflecting the nature and cause of the damage.

Ms M had also provided her own photographs. These photographs showed different shades of colour on some of the tiles, suggesting discolouration as Ms M had argued. Other photographs depicted a flooded floor. According to Ms M, the tiles were exposed to water for such a long period of time that they had absorbed

some of the water and this led to the damage.

In response the insurer argued that exposure to water over approximately seven hours could not have resulted in the damage in question. The insurer had pointed out that when the loss was assessed, a few weeks later, there was no sign of the tiles being discoloured. In any event, it argued, even if the tiles had absorbed water, this would not have resulted in the damage assessed. The nature of the damage found at the time of assessment was clearly not consistent with water damage. Instead it was due to the incorrect application of tile adhesive and incorrect installation of the tiles, according to the insurer. Some of the tiles had also been broken over a period of time and as a result of poor bonding. The nature of the damage also suggested impact as a cause.

It was the insurer's submission that, if the tiles had been properly installed, exposure to water would not have resulted in damage. Tiles are meant to be able to withstand exposure to water. Also, had water been the cause of the damage, the damage would have been consistent throughout the

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floor area, instead of only sections of the area being affected.

In deciding the matter OSTI also considered another quotation which stated that damage had been caused when accessing and repairing the burst pipe.

An additional quotation received by a service provider appointed by the insured stated that *“damage was caused by a burst pipe in the kitchen and flooded the complete unit. Tiles are discolouring where the water was lying and cracking.”* It was not clear whether the above was an observation made by the contractors themselves or was merely what they had been advised of. It was probably not the contractors' own assessment, as the burst pipe was not even in the same unit but the unit above.

In addition, it was noted that these contractors did not explain how and why they reached the conclusion they did.

Accordingly, the report by the assessor was more compelling as it explained why the damage was attributed to causes other than insured perils.

Ms M argued that the delay by the insurer in assessing the damage also contributed to the loss and to the fact that the assessor could not then establish the discolouration of the tiles. We noted in this regard that while the tiles may have been temporarily discoloured as alleged by Ms M, discolouration was not an insured peril and was not necessarily damage. In the same way that a wet tile is not necessarily a damaged tile, Ms M would still have needed to prove that the tiles were in fact water damaged. The only visible damage to the tiles

was not consistent with water damage. Ultimately the evidence submitted by the insurer in support of its stance was the more compelling evidence.

With regard to the damage to the electrical plug, Ms M was given the benefit of the doubt by the insurer. The contractor found, when inspecting the plug, that the damage was not inconsistent with exposure to water. This part of the loss however fell within the applicable excess of R3 000. The cost of repair to the plug was found to be R1 500.

OSTI was therefore unable to assist Ms M and the dispute was resolved in favour of the insurer.

