

Housing

Ombudsman Service

REPORT

COMPLAINT 202001661

Broxtowe Borough Council

28 August 2020

Our approach

1. *The Housing Ombudsman's approach to investigating and determining complaints is to decide what is fair in all the circumstances of the case. This is set out in the Housing Act 1996 and the Housing Ombudsman Scheme (the Scheme). The Ombudsman considers the evidence and looks to see if there has been any 'maladministration', for example whether the landlord has failed to keep to the law, followed proper procedure, followed good practice or behaved in a reasonable and competent manner.*
2. *Both the resident and the landlord have submitted information to the Ombudsman and this has been carefully considered. Their accounts of what has happened are summarised below. This report is not an exhaustive description of all the events that have occurred in relation to this case, but an outline of the key issues as a background to the investigation's findings.*

The complaint

3. The complaint is about the landlord's complaints handling and amount of compensation offered, given length of time the landlord took to carry out works to rectify the damp in the property.

Background and Summary of events

Background and policies

4. The resident became a secure tenant, of the landlord, at the property, on 3 November 2013.
5. The landlord has a two-stage complaint process; the landlord aims to provide a stage one "*initial complaint*" response within 15 working days and where a complainant is dissatisfied with the outcome at stage one and requests escalation of their complaint, will provide a response at stage two "*formal investigation*", within 20 working days.
6. The landlord's complaint policy sets out the ways in which it will seek to resolve complaints, which includes issuing an apology, explaining what went wrong and make assurances as to changes made as a result of the complaint, to help prevent a reoccurrence. Compensation may also be offered where mistakes made by the landlord, have resulted in additional expense or financial loss to the complainant.
7. The landlord's "*Repair's Handbook*" sets out the landlord's repair responsibilities, however, besides repairs which fall under the '*Right to Repair Scheme*', does not set out expected timeframes for repair.

Summary of events

8. On an unknown date in April 2019, the resident said she telephoned the landlord about an ongoing issue with potential damp/water ingress at the property and that the landlord advised the resident that it would be coming out to put a camera in the wall to seek to identify the problem. The resident has provided photographs to this investigation, which show mould and what appears to be an indication of damp, in the walls of the property (the damp has been accepted by the landlord).

9. On an unknown date in July 2019, the resident said that the landlord attended and installed a camera in the wall and found that there was no insulation. Having not heard of any further steps, the resident said she telephoned the landlord for an update and was advised that there was no record of the landlord having attended the property or this work having taken place.
10. At a later date in July 2019, the resident has said that the landlord attended the property again and advised that the wall had not been completely drilled through and so it would be doing this on this occasion and having drilled through the whole wall, it was confirmed that there was no insulation and that it was just rubble in the cavity. The resident says that she telephoned the landlord later in July 2019, asking for an update and was again advised that there was no record of the landlord having attended and carried out this work.
11. On an unknown date in August 2019, the resident has said that she telephoned the landlord to report an issue with her kitchen sink and toilet and explained that the issue was that when the washing machine drains, water comes into the kitchen sink and can overflow, leaking into the bathroom, causing damp. The resident said that she was advised that an operative would attend on 23 August 2019 and that on that date, she waited in but no operative arrived.
12. On a date in October 2019, the resident said she telephoned the landlord, in a state of distress, advising that there were mould mites in the property and that it advised that it would attend to inspect on 15 October 2019 but no operative arrived.
13. The resident made a complaint to the landlord on an unknown date shortly thereafter. Her complaint was about the standard of service she had received from the landlord, which she referred to as “*unacceptable*”, in regards to “*mould and plumbing*”, which she said had initially come to her attention “*six years ago*”, although she only referred to the last six months of issues, as described above. The resident explained that the beds in the property and most of the carpets and furniture were “*covered in mould*”, rendering the bedrooms uninhabitable and so her and her children were sleeping in the living room. The resident explained that the issue had affected her breathing and had contributed to her worsening mental health. She added that when she viewed the property, she noticed there were mops in the bedrooms and the floor was wet, which she asked about and was told that it was just that the property had been vacant for a while but that she now realises that it was because there was an issue with damp. As an outcome to her complaint, the resident wanted all of the required works completed.
14. On 13 December 2019 the landlord issued its stage one complaint response. The landlord upheld the complaint, acknowledging that it “*failed to provide an appropriate level of service*”. It stated that its investigations had found that there had been work carried out in relation to the matter, which included damp inspections, investigatory work and exchanging the extractor fan to one with a humidistat, although this did not rectify the issue. The landlord also noted that in 2018 it had acknowledged that there may be an issue with the insulation but that there had been delays in establishing whether this was definitely the case and ordering works to address this.
15. The landlord explained that works would be commencing on the block to insulate the walls and that this would happen in two phases; the first to clear the cavities, after which they will need to dry for four weeks and then the cavities will be refilled. The landlord said that this action should rectify the issues that the resident had been experiencing.

16. In December 2019, an inspection of the property took place, regarding the issues with damp.
17. On 20 January 2020, the works commenced to extract the filling and debris of the wall cavities, preparing them for the next stage of four weeks' drying out.
18. On 4 February 2020, Citizen's Advice contacted the landlord on behalf of the resident (who had requested the matter be escalated to stage two of the landlord's complaint procedure) and provided a list of items which had been damaged by the damp. The list dated back to 2014 and amounted to £410. Citizen's Advice advised that the resident had stated that this was an incomplete list.
19. On 2 March 2020, works commenced to re-fill the cavities.
20. On 2 April 2020, the landlord provided its response to the complaint, having reviewed it under stage two of its complaints process. The landlord upheld the complaint, recognising that there had been delay "*between 2018 and 2019*", in booking in work to rectify the damp issues, delays in informing the resident when works would be carried out and that the length of time taken to rectify the issue had resulted in "*considerable damage*" to the resident's belongings. The landlord offered £600 compensation "*as a gesture of goodwill*" in recognition of this.

Assessment and Findings

21. The landlord was required to carry out the repairs/works it was notified of, within a reasonable period of time, in accordance with the terms of the tenancy agreement and in law. The law does not specify what a reasonable amount of time is; this depends on the individual circumstances of the case.
22. In this case, although there are no records of reports having been made, the landlord has accepted that it was aware of a problem with the insulation at the property in 2018, although it is not known at what point in 2018 it became aware. Nonetheless, it has accepted that there was delay "*between 2018 and 2019*" in scheduling the works to take place. Once the works were scheduled, they commenced the following month and were completed a month after that, due to the necessity of the drying out process, which was a reasonable period of time for planned works to have been completed.
23. The length of time the resident waited for the works to be scheduled, however, was inappropriate, which the landlord acknowledged in its complaints response, in upholding the complaint. It was inappropriate because the resident waited at least a year from the landlord being aware of the problem, to the works being scheduled, which is an excessive amount of time in respect of any type of repair. The inappropriateness of the length of time is exacerbated in this case by the nature of the problem, namely, extensive damp, which the resident and her children were living with and the health and practical implications of this, as well as the damage it caused to the resident's possessions over time.
24. The resident stated that she chased the landlord up in April 2019, after which she waited until July 2019 for the landlord to attend and then chased the landlord up again twice thereafter, having not heard anything further and was twice told that there was no record of the issue. The resident also refers to two missed appointments that she waited in for; one in August 2019 and the other in October 2019. In the absence of comment or evidence to the contrary from the landlord, either in its complaints response, or to this investigation, the Ombudsman accepts that this also occurred and demonstrates further inappropriate

handling of reports, on the part of the landlord, taking too long to respond, failing to communicate effectively and missing scheduled appointments.

25. The resident stated that as resolution to her complaint, she wanted the required works carried out and this has been done. The landlord did not use the opportunity of the complaints process, however, to apologise for what the resident had experienced and the failings it identified, as it would have been reasonable for it to do, given its findings. Compensation is not the only way to resolve a complaint and often it is more important that works are completed – as in this case – as well as a genuine apology for what went wrong and an explanation of why this was the case and measures taken to help prevent a reoccurrence. The landlord did not do these things, or address other aspects of the complaint, such as the missed appointments, the chasing the resident had done and the lack of communication and the lack of information it had on its system when she called, thereby failing to demonstrate that it had fully heard and understood the complaint and appreciated the impact the situation had had on the resident. Its stage two response was also inappropriately delayed, being provided a number of months after its stage one letter, which is not in accordance with its complaints policy.
26. Turning to compensation, it should be noted that the resident's request for reimbursement dated back to 2014, four years preceding the issue complained of. The landlord was not required to reimburse the costs for damaged items six years after the event. There is a reasonable expectation on landlords to investigate matters which are brought to its attention as a formal complaint within six months of the issue occurring, which is also set out in paragraph 23(e) of the Scheme. In addition, the resident's reference to the landlord being aware of damp when she moved into the property in 2013 also cannot be considered for the same reason.
27. Regarding the £600 compensation the landlord did ultimately offer in its stage two complaint response, the landlord stated that this was a "*gesture of goodwill*", in recognition of the delay and damage caused to the resident's possessions. It is not known whether the resident provided the landlord with a complete list of damaged possessions or whether this was requested by the landlord. The lack of breakdown of the compensation offered, however, was unhelpful, leaving it unclear whether it had reimbursed the £410 worth of damaged belongings the resident had advised and the remaining £190 was for the delay, or whether other factors had been considered and compensated for, such as distress and inconvenience and time and trouble. It is best practice to breakdown and explain compensation awards, so that consideration of the different factors involved can be clearly shown and the landlord did not do this in this case.
28. The Ombudsman's published '*Remedies Guidance*', which includes guidance on compensation amounts offered, recognizes compensation awards of £250-£700 as reflective of "*considerable service failure or maladministration, but there may be no permanent impact on the complainant*" with examples of this including where a resident has had to repeatedly chase a landlord, failure over a considerable period of time and serious failures which have been recognised and resolved by the landlord. The Ombudsman is also able to consider aggravating factors, which in this case, include the fact that there were children in the property and the resident's physical and mental health.
29. In conclusion, the landlord accepted that there was considerable delay and damage to possessions and having done this, took steps to carry out the works in a reasonable period of time, as it was required to do, as well as offer a compensation amount in recognition of its findings. In its complaint handling, however, besides the delayed response at stage two, the landlord did not acknowledge and address the entirety of the complaint, apologise for

the failings it identified, explain what went wrong and why, or any learning it had taken as a result, nor did the landlord explain the breakdown of the compensation offered; inactions that have not been conducive to repair of the landlord-tenant relationship or satisfied the resident that her complaint was taken seriously and assessed appropriately in terms of the compensation amount offered.

Determination

30. In accordance with paragraph 42 of the Scheme there was service failure by the landlord in respect of the complaint.

Reasons

31. There was service failure, insofar as the landlord did not fully address all aspects of the complaint raised or apologise for the delays and damage to possessions that it recognized. Nor did it explain what went wrong and why and lessons learned from the complaint, or indicate how it had assessed the level of compensation awarded. Its stage two response was also delayed.

Orders

32. The landlord to apologise for the delays in scheduling the works to take place.

33. The landlord to pay the resident £700 compensation, comprised of the following:

- i. £400 for the delays in scheduling the works;
- ii. £150 for its communication failures and for the lack of information on its system, regarding the issue;
- iii. £50 for the two missed appointments;
- iv. £50 for the resident's time and trouble, and;
- v. £50 for distress and inconvenience caused.

Note: The £700 awarded is not in addition to the £600 already offered/paid, but encompasses this, therefore, if the £600 has already been paid to the resident, this leaves £100 compensation outstanding.

34. The landlord to create an action plan, having first investigated what went wrong and why and identified lessons learned from this; specific attention should be paid to records management and communication.

35. The landlord to confirm compliance with the above orders by **25 September 2020**.

Recommendation

36. The landlord to consider reimbursing the cost of the items damaged as a result of the delay or referring the matter to its insurers to be dealt with as a claim for losses.

Note: The landlord may require receipts for some/all items identified by the resident and may refuse to reimburse costs which it deems unreasonable, or for which it does not accept responsibility for.