

Housing

Ombudsman Service

REPORT

COMPLAINT 202122100

Broxtowe Borough Council

20 June 2022

Our approach

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.

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

1. The complaint is about the landlord's response to the resident's reports about damp and mould in the property.

Background

2. The resident, a secure tenant of the landlord, reported concerns about damp and condensation in the property to the landlord. A visit to the property on 28 October 2020 confirmed that this was being caused by 'an excessive amount of moisture in the atmosphere which is causing condensation'. During this visit, a drill test was completed on the lounge wall, which came back with a reading of 0.01%. This indicated that there was no water ingress in this area. The landlord provided information on how the resident could tackle the condensation issue within the property.
3. On 6 November 2020, a contractor attended the property for an unrelated issue, and noticed signs of damp on a different wall. An order was raised to undertake remedial plastering. These works did not take place until 30 March 2021 however. The landlord offered no explanation for the delay, but it should be noted that there were two government imposed lockdowns during this period. When the work was undertaken a leak was found that came from the bath waste, which was repaired immediately. The landlord also agreed that some skirting boards in the lounge and the bath panel would be replaced. These works were completed on 17 May 2021.
4. The resident wanted compensation due to the damage to his property which consisted of damage to the plaster on the damp wall, and skirting boards. The resident was advised to make an insurance claim on these issues. The resident was under the impression that he would be given compensation if he took this

route, however, the insurance claim was denied and the resident then submitted a formal complaint to the landlord. It was stated in the landlord's stage one response (8 November 2021) that the resident had requested £2,500 compensation for stress, anxiety and labour inflicted upon him. The landlord did not offer compensation as the claim had not identified any landlord liability on the case, but it did offer £40 in decoration vouchers to allow the resident to decorate the area that had been re-plastered. The landlord's final response (29 December 2021) reiterated its stance from the stage one response and offered no further remedy to the resident.

Assessment and findings

Policies & Procedures

5. The landlord's Repairs Policy states that the landlord is responsible for plastering, and also responsible for kitchens and bathrooms.
6. Page 14 of the landlord's Repairs Handbook outlines steps that the resident can take to avoid condensation within the property. One highlighted method is to 'ensure good ventilation'.
7. Page 19 of the Repairs Handbook states that 'leaking from water or heating pipe, tank or cistern' is to be fixed within one working day.
8. The landlord's Complaint Policy states that a stage one response is to be issued within ten working days.
9. The landlord's Complaint Policy states that a stage two response is to be issued within twenty working days.

Scope of investigation

10. The resident's complaints have not been provided to this investigation. Therefore, it is difficult to tell how quickly the landlord responded to the resident, and if all aspects of the resident's complaint were addressed. This investigation has proceeded on the evidence available, though this has led to a lack of clarity on some key issues. For example, it is difficult to conclude to what extent there was damage to the resident's property. Additionally, this Service is unable to discern exactly what point the resident raised the point about the health issue that he said manifested as a result of the damp. As there is no mention of it in the complaint responses by the landlord, it is unclear if this issue was raised during or after the internal complaints procedure that had been completed.
11. In regard to the resident's claim that the landlord's failure to resolve the damp at the property within a reasonable time impacted his health, the Ombudsman cannot draw conclusions on the causation of, or liability for, impacts on health

and wellbeing. This would be more usually dealt with as a personal injury claim through the courts. The courts can call on medical experts and make legally binding judgements. Nonetheless, consideration has been given to the general distress and inconvenience which the situation may have caused the resident. This is in accordance with paragraph 39(i) of the Housing Ombudsman Scheme which says the Ombudsman will not investigate complaints which concern matters where the Ombudsman considers it 'quicker, fairer, more reasonable or more effective to seek a remedy through the courts, a designated person, other tribunal or procedure'.

The landlord's response to the resident's reports about damp and mould in the property

12. The landlord visited the resident on 28 October 2020 regarding concerns of damp in the property. The landlord took reasonable actions to identify whether damp was present, and to see whether it was a case of water ingress or potentially atmospheric conditions. The landlord determined that following a drill test that indicated there was no external water ingress, the damp was due to 'an excessive amount of moisture in the atmosphere which [was] causing condensation'. The landlord said that it had provided a leaflet for the resident with information on how to prevent damp issues and that it 'implemented the necessary measures' to assist the resident with the problems he was encountering.
13. Although it is encouraging that the landlord conducted a drill test and attempted to find the source of the issue, it has highlighted concerns about the landlord's record keeping as there is no evidence available to show when the resident first reported the issue. Additionally, the landlord has not provided any other actions or interactions with the resident that may have taken place around this time. This would be expected as it is important for this Service to understand the severity of the issues that the resident was experiencing. It is also important for this Service to know when the resident reported the issue so that it can be assessed whether the landlord had responded to it within a reasonable timeframe. Additionally, although the landlord explained that it had 'implemented the necessary measures', it did not explain what these were.
14. As well as there being no evidence of any records of correspondence with the resident, the landlord also failed to evidence any contractor notes, logs or reports from the visits made to the property. This suggests that the landlord has not looked into the issue sufficiently which could potentially translate to a lack of urgency or responsibility to the resident. It is therefore recommended that the landlord conduct a review of its record keeping processes, ensuring that there is a clear audit trail for complaints, which provides details of specifically when contact was made, what was said and what the agreed next steps and expectations were.

15. Had the landlord provided evidence of exactly what the 'necessary measures' were and how it would prevent the issue in the future, it would have provided clarity and reassurance for the resident and therefore assisted in the landlord/tenant relationship. It would have also helped this Service to understand whether the landlord was taking a sufficiently proactive stance towards the issue. This Service's Spotlight on Damp and Mould (2021 – available on the Ombudsman's website) encourages landlords to move from being reactive about reported damp and mould issues to a more proactive approach. By focussing on reports and complaints about damp/mould/condensation in a proactive manner, landlords are more able to achieve customer focussed resolutions and to identify other properties within its portfolio that might also be experiencing similar issues.
16. On 6 November 2020, a contractor visited the property whilst attending an unrelated issue. It is noted in the landlord's stage one response (8 November 2021) that the contractor noticed damp on a different wall to the one that had previously been tested. The landlord raised an order to undertake remedial plastering works, but these works did not commence until 30 March 2021. The order to undertake plastering works was in line with its Repairs Policy as it confirms that the landlord is responsible for plastering. The delay in completing the works was, however, excessive.
17. The COVID restrictions that were put into place between November 2020 and March 2021 no doubt had a detrimental effect on the landlord's ability to carry out work to properties. However, the potential hazards that can stem from untreated damp in a property ought to have resulted in the landlord seeking to undertake these works, in a property where damp had been reported and in which its operative had noted signs of damp, with a greater urgency than it demonstrated here. The landlord has a responsibility under the Housing Health and Safety Rating System, introduced by The Housing Act 2004, to assess hazards and risks within its rented properties. Damp and mould growth are a potential hazard and therefore the landlord is required to consider whether any damp and mould problems in its properties amount to a hazard and require urgent remedy.
18. The landlord's decision not to take action on the identified damp issue for several months therefore presents as unreasonable, particularly as there is no evidence that it had maintained communication with the resident during this time, in order to keep the resident informed of what the landlord intended to do. Additionally, if the delay was a result of the COVID restrictions, the landlord would be expected to notify the resident that delays were expected, and to issue a timeframe for when the resident could expect the work to be done. This would help to manage the resident's expectations and improve trust between the two parties.
19. On 30 March 2021, whilst re-plastering the damp wall, a 'small leak' was detected from the bath waste. The landlord confirmed that this was repaired immediately. The immediate repair of the leak was in line with its Repairs Handbook, as page

19 states that 'leaking from water or heating pipe, tank or cistern' is to be fixed within one working day. However, this was effectively first reported in November 2020, when the landlord appointed operative noticed the damp at the property. Although the landlord did not know this was a waste-water issue at that time, it was aware that there was a problem. The point that it became responsible for this issue was therefore the earlier point in time, rather than the day it completed the works, as stated in its complaints correspondence.

20. Although the leak was fixed as soon as it was found, it should be noted that the leak had been ongoing for over four months by this stage. In the landlord's final response (29 December 2021) it made the point that 'As there were no reports of a leak or further damp within the property the [landlord was] unable to attend to the repair until the works to repair the plaster identified the leak'. Whilst this is understandable, it should be noted that had the landlord acted more proactively in attending to the damp wall initially, the leak would have been identified sooner and further damage to the wall and skirting boards might have been prevented. The landlord's failure to remedy the issue within a reasonable timeframe, and its overall response to the reports of damp and mould when its failures in record keeping and communication with the resident are considered, amount to maladministration by the landlord.

21. This Service's Remedies Guidance states that awards of £250 to £700 may be awarded to the resident 'for cases where the Ombudsman has found considerable service failure or maladministration, but there may be not permanent impact on the [resident]'. This Service's calculation of compensation to be paid to the resident by the landlord will take into account the impacts that COVID had on the landlord's abilities to make pairs, but also must be representative of the multiple failures.

Determination

22. In accordance with paragraph 54 of the Housing Ombudsman Scheme, there was maladministration by the landlord in its response to the resident's reports about damp and mould in the property.

Orders and recommendations

Orders

23. The landlord is ordered to pay the resident £300 compensation to reflect any distress/inconvenience experienced as a result of the failures identified.

24. The landlord to evidence compliance with this order to this Service within 28 days of this report.

Recommendations

25. The landlord to ensure that contemporaneous and robust records are retained on all repair cases, with copies available for any Ombudsman investigations that might take place in future.