

# Housing

Ombudsman Service

## REPORT

*15 May 2019*

## **Our approach**

*What we can and cannot consider is called the Ombudsman's jurisdiction and is governed by the Housing Ombudsman Scheme. The Ombudsman must determine whether a complaint comes within their jurisdiction. The Ombudsman seeks to resolve disputes wherever possible but cannot investigate complaints that fall outside of this.*

*In deciding whether a complaint falls within their jurisdiction, the Ombudsman will carefully consider all the evidence provided by the parties and the circumstances of the case.*

## **The complaint**

The complainant has complained about how the landlord dealt with repairs to the extractor fan in his bathroom.

## **Determination (jurisdictional decision)**

When a complaint is brought to the Ombudsman, we must consider all the circumstances of the case as there are sometimes reasons why a complaint will not be investigated.

After carefully considering all the evidence, I have determined that the complaint, as set out above, is not within the Ombudsman's jurisdiction.

## **Summary of events**

The complainant made a complaint to the landlord about the delay in carrying out repairs to the extractor fan in the bathroom. The complaint was responded to at Stage One and Two by the landlord, before the complainant requested that the matter be reviewed at Stage Three of the complaint procedure on 2 January 2019 as the repairs remained outstanding.

The landlord provided a response on 28 January 2019. It explained that the extractor fan in the adjacent block of flats had now been repaired which serviced the complainant's property, and appointments had subsequently been arranged to test the fan. The response stated that access was not provided to test the fan by the complainant. The complainant disputes that the appointments were made in advance and that he did not facilitate access.

As the complainant was dissatisfied with the landlord's final response he referred the matter to this Service to consider formally and we wrote to the parties on 2 April 2019 confirming that the complaint would now await investigation by us.

The landlord wrote to this Service on 4 April 2019 and provided a copy of a legal disrepair counter claim filed by a law centre in relation to possession proceedings dated 8 March 2019.

## Reasons

The Housing Ombudsman Scheme sets out the types of complaints which the Ombudsman can consider.

Paragraph 23 (h) of the Housing Ombudsman Scheme states that:

*'The Ombudsman will not consider complaints, which, concern matters that are, or have been, the subject of legal proceedings and where a complainant has or had the opportunity to raise the subject matter of the complaint as part of those proceedings.'*

The complainant has instructed a law centre to file a counter claim for disrepair in relation to possession proceedings. The claim is for damages for:

- The extractor fan not being in repair since the start of the tenancy
- The damp and mould that has been caused in the bathroom due to the extractor fan not working.

Having considered the counter claim the law centre submitted on the complainant's behalf it is clear that it concerns the same set of facts as the complaint to the Ombudsman. It covers the series of events that gave rise to the complaint to the landlord and the complainant's dissatisfaction with its actions and responses. The claim is asking the Court to make findings on the repairs and award damages to offset alleged rent arrears.

For the Court to decide the counter claim it will need to consider the landlord's obligations and actions with regard to the same repairs that the complainant has brought to the Ombudsman as a complaint. The Ombudsman cannot consider a complaint that is subject to legal proceedings and will stop the investigation of any complaint if the parties begin litigation on the same matter.

As the issues that the complainant has raised are now the subject of legal proceedings and the Court will be able to consider the repairs that form part of the claim, the Ombudsman cannot consider the complaint further.