

Housing

Ombudsman Service

REPORT

8 August 2019

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 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 complainant 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

The complaint is regarding the landlord's handling of leaks from the bath and kitchen taps in the property with respect to:

- Its delays in completing the repairs
- Its decision not to compensate the complainant for damage to parts of the property.

Jurisdiction

What we can and cannot consider is called the Ombudsman's jurisdiction. This is governed by the Housing Ombudsman Scheme. 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, in accordance with paragraph 23(e) of the Housing Ombudsman Scheme (the Scheme), the following aspect of the complaint is outside of the Ombudsman's jurisdiction.

In investigating this case this report has solely assessed events which occurred within a year of the complaint of March 2018. This is because paragraph 23(e) of the Scheme provides that '*the Ombudsman will not investigate complaints which, in the Ombudsman's opinion were not brought to the attention of the member as a formal complaint within a reasonable period which would normally be within 6 months of the matters arising*'. The extra period of 6 months has been discussed due to the direct link to the complaint being investigated.

Any mention of prior events in this report would be for contextual purposes only.

Background and Summary of events

1. The complainant is a secure tenant of the property owned by the landlord.

2. The landlord's records indicate that when the complainant reported a leak from the bath and kitchen taps, on 20 February 2017, it attended on the same day and carried out repairs. It attended again on 22 March 2017 to repair the bath frame but left the panel off to allow the underneath of the bath to dry. The complainant reported a further leak, 9 months later, in December 2017, and the landlord's records indicate that it could not gain access to carry out repairs when it visited on the day. There is no record of the complainant calling the landlord for the repairs until 20 February 2018 when he called regarding leaks from the bath waste unit and the hallway cupboard. The landlord carried out repairs to the bath waste on the day and booked a return visit to complete the work on 7 March 2018, but the complainant cancelled this on 28 February 2018.
3. The landlord's surveyor inspected the property, on 16 March 2018, and agreed that the leaks had caused some damage under the bath. However, he stated that damp, which the complainant had reported, was caused by condensation and ordered an assessment for the installation of a more efficient extractor fan. The surveyor stated that he would further inspect the bath. The records also indicate that the complainant was advised that the repairs to the flooring and skirting boards were his responsibility.
4. In a formal complaint, of 24 March 2018, the complainant stated that the landlord's contractors had replaced the bath in the property a year previously. Since the new bath was installed, he had contacted the landlord several times regarding a leak coming from under the bath. The landlord's contractors visited the property and attempted to solve the issue, but it continued. He stated that an inspector had advised him that damage had been caused to the bathroom cabinet, hallway flooring, skirtings and other parts of the property due to the leak occurring over time. The inspector also stated that the landlord would take responsibility for the damage and the complainant expected compensation for the damage to the property.
5. In its response, of 18 April 2018, the landlord apologised that the complainant had experienced leaks since the bath installation. It clarified that the bath had been installed in 2014 and not a year previously. It stated that on each occasion that a leak had been reported the repairs were carried out. It had completed repairs in March 2017 when a leak was reported but could not carry out repairs in December 2017 as the complainant neither granted access nor called it again for the repairs.
6. The landlord stated that its contractor visited the property on 20 February 2018 and arranged to reassess the bath on 28 March 2018, as it was suspected that there may still be a leak due to the moisture under the bath. The matter regarding the leak was then resolved; however, the landlord's contractors agreed to re-attend on 4 May 2018 to replace the water-damaged bath panels and framework. The landlord disagreed with the complainant's account of the advice provided by the inspector on 13 March 2018. It explained that the complainant was required to claim on his contents insurance regarding damage to his fixtures and fittings, so it would not be able to offer any compensation.

7. The landlord's records indicate that it visited the property on 4 May 2018 to repair the bath frame and panel. On 17 May 2018 the complainant requested for the escalation of the complaint as he stated that the damage to his property was down to bad workmanship which the landlord had admitted to and the repair work had not been completed. In an accompanying letter, he stated that he had been in hospital and had not received a call card regarding attendance by the contractors. He was not happy with the work by the contractor on the day that it attended to fix the bath frame as he stated that more damage had been caused. The contractor had also not attended for another appointment on 10 May 2018. He received a call on the day from the operative who stated that he would not attend, though he was in the vicinity, as he had no equipment. Furthermore, his contents insurance did not cover the damaged items or bad workmanship.
8. The landlord reattended on 4 June 2018 and undertook further works to the bath frame and panel whilst agreeing that the works carried out previously had been unsatisfactory. On 18 June 2018, the landlord stated that it would respond to the stage 2 complaint once it had received additional information from its investigation team and apologised for the delay.
9. In its stage 2 response, of 22 June 2018, the landlord clarified that in March 2018 its maintenance surveyor observed high levels of condensation in the bathroom which may have led to an accumulation of mould, so the complainant was provided advice on managing condensation and a more powerful extractor fan had now been fitted. The maintenance surveyor also observed a residual leak from the waste fitting under the bath and requested for the landlord's contractor to complete the necessary repairs to the waste unit. He also instructed that the damaged bath panel should be replaced, and the bath frame repaired to resolve the damage caused by damp.
10. The landlord addressed the complainant's report that, although the bath panel was replaced, no work was undertaken on the bath frame and the bath was left unsecured, and the landlord's contractor caused additional damage to the tiles. It stated that it had requested for its contractor to visit the property again and make repairs to the bath frame and review the damage described by the complainant. It agreed that it had not met its requisite standards in dealing with the repairs.
11. The landlord stated that its surveyor did not agree that the damage to the skirting board was caused by damp and advised the complainant to refer the issue to his contents insurer. It attached an extract from the Tenants' Handbook, which indicated areas of the property for which the complainant was responsible. The landlord stated that the floor covering was not installed by it and was therefore, the complainant's responsibility and, in the terms of his tenancy agreement, it was not recognised as a fixture or fitting. The complainant was also responsible for damage to his skirting boards and bath panels although, on this occasion, the landlord's contractor had replaced the bath panel.
12. Following a call by the complainant regarding the quality of the bath panel and tiles, which he stated had been damaged by the contractor, the landlord agreed to inspect the property again and undertake any further works on 16 July 2018. During the visit of 16 July 2018, the complainant continued to report

dissatisfaction with the works including stating that his wall paper had been damaged by contractors. The operative visiting on the day informed the landlord that the complainant was making it difficult for him to undertake the repairs.

13. Further visits were undertaken on 3 and 9 August 2018, and a final inspection was carried out on 22 August 2018 by the surveyor who confirmed that all necessary repairs were completed. On 31 August 2018 the complainant requested that the landlord pays the cost of repairing the damage to the property including the skirting board and his flooring as these were not covered by his contents insurance.
14. On 7 September 2018, the landlord acknowledged that the service the complainant had received had not been satisfactory as it took several visits before the source of the leak was identified and for repairs to be completed. It had found during an inspection of the property that there were very high levels of moisture in the walls. In the landlord's opinion the leaks from the bath were not the cause of the issue. Following some repairs and the monitoring of the level of moisture, a further inspection found that the readings had reduced to a satisfactory level.
15. The landlord stated that it also found that the underlay and concrete underneath the flooring were wet and again did not agree that this was caused by leaks from the bath. It had found that there was an issue of condensation in the bathroom which had been resolved by the more powerful extractor fan. It was the surveyor's conclusion that the damage in the property was more likely to have resulted from wear and tear and not the action of the contractors. It also concluded that damage to the skirting board was more likely caused by the installation of the laminate flooring in the property. The landlord stated that it had identified and completed repairs required to the bath frame and panel.
16. The landlord advised that the tenant's handbook indicated that the complainant was responsible for both the flooring and skirting boards. Whilst acknowledging that the complainant had experienced inconvenience due to its delays in identifying the source of the leaks and completing the repairs it advised that it had undertaken all works for which it was responsible.
17. On 17 September 2018 the complainant stated that he had various voice recordings where the maintenance surveyor confirmed that the damage was caused by the leak and the wall paper was damaged by the landlord's contractor. He stated that the contractor's staff member also confirmed this. He wanted the landlord to consider compensating him for the damage that had been caused and also the inconvenience.
18. On 25 September 2018 the landlord stated that in its previous response it instructed the service area to ask the contractor to return to the property, review the alleged damage and undertake any identified repairs. It invited the complainant to confirm if this was still outstanding. The landlord further stated that whilst it offered goodwill payments in circumstances of serious disruption or distress, it did not agree that it was warranted in this case. On 10 January 2019 the complainant informed the landlord that no one had been to his property

regarding the damage caused by the contractor to the wall and he wanted the landlord to arrange for this to happen.

Assessment and Findings

19. The Ombudsman must consider whether the steps the landlord has taken have been reasonable and in line with its obligations. When the landlord receives a report of a fault or disrepair, its first responsibility is to assess the problem. The complainant's tenancy agreement states in the paragraphs below as follows:

Section 1

6. You have the right to have certain small urgent repairs which might affect your health, safety or security, done quickly and easily.

Section 2

23. You are responsible for floor coverings – other than installed by us; skirting boards and bath panels; All fittings which have been fixed and supplied by you or by your visitors, lodgers or sub-tenants. Any repairs which are necessary due to any wilful or negligent act or omission of you or of your visitors, lodgers or sub-tenants.

37. You are responsible for insuring the contents of your home (your furniture and belongings). We are not responsible for loss of or damage to your possessions.

You are advised to take out full contents and tenant's liability insurance for your home.

Section 3

4. We will arrange to repair the structure and exterior of your home and the building of which your home may form part. This includes: Internal walls, floors (excluding floor coverings), ceilings, doors, door frames, door hinges and skirting boards.

5. We will arrange repair and keep in proper working order any installations within your home for heating, water heating and sanitation; and for the supply of water, gas and electricity. This includes: basins, sinks, baths, toilets, flushing systems and waste pipes.

20. From the foregoing, it is the landlord's responsibility to undertake urgent repairs where there could be a likelihood of some risk to the complainant if these are not completed within time. The landlord has not provided this Service with its repairs timescales, thus, this report will assess its actions in dealing with the repairs reports according to good practice and what is reasonable. Section 2(23) of the tenancy agreement indicates that the complainant is responsible for repairs to the flooring, skirting boards and bath panels in the property. However, this Service notes that Section 3(4) also states that the landlord is responsible for repairs to skirting boards.
21. Section 2(37) of the tenancy agreement provides that the complainant is required to insure his furniture and belongings. As Section 3(4) specifically excludes the floor coverings from the landlord's responsibilities, it means that the complainant should have considered including this in his contents insurance. Generally, it

would be for the complainant to claim for damaged items which are not within the landlord's responsibility on his contents insurance, and any dispute regarding liability could then be resolved via the insurance claim. Whilst he may have chosen not to have an insurance policy in place, this does not convey an obligation on the landlord to make up for the absence of such cover.

22. The landlord's surveyor visited the property and assessed the issues that were reported on each occasion. The two repairs requests of 2017 were attended to by the landlord in a timely manner and there was a considerable lapse of time between the incidents. Though the complainant disputes that the landlord left a card after its visit of December 2017, there is no evidence that he contacted the landlord to query why it did not attend to resolve the repairs. The further leak reported in February 2018 was not completely resolved as the landlord found that there were further leaks in June 2018, the bath frame and panel repairs were also not completed until August 2018.
23. The landlord does not agree that the leak was the cause of all of the damage found in the property. It also disputes the complainant's assertions that the surveyor and contractor agreed that the leak had caused the damage to the skirting boards and other parts of the property. Firstly, the landlord's records do not support the complainant's assertions as it indicates that the surveyor found that the damp was due to condensation. The complainant has also not provided any evidence in support of his assertions. In the absence of evidence, this Service is unable to determine the cause of the damp in the property.
24. The landlord acknowledged that the leak caused damage underneath the bath but denies that it caused damage to the skirting boards or any other part of the property. It states that the some of the damage was caused by several issues including condensation, wear and tear, constant wet mopping and the installation of the laminate flooring. It also denies that the leak was due to bad workmanship and states that the pop-up waste unit would have been installed by a previous tenant as it was not its standard installation.
25. This Service notes that the bath panel was the tenant's responsibility to repair but the provisions of the tenancy agreement have created ambiguities with respect to the skirting boards. The Ombudsman opines that landlord should not have inputted responsibility for repairs to the boards on the complainant as the tenancy agreement also provides that the landlord is responsible for the repairs. It is not within the jurisdiction of the Ombudsman to interpret tenancy agreements. Thus, this Service cannot determine which of the parties is responsible for repairs to the skirting boards due to the contradictory provision.
26. We consider that it is not unreasonable for the landlord to rely on the conclusions of its appropriately qualified staff and contractors. Thus, this Service cannot conclude that the landlord was incorrect in its assessment of the causes of the aspects of damage which it has not inputted to the leak. This Service has no basis for deciding that the contractors caused damage to the wall paper, tiles or any other part of the property without any evidence in corroboration of the complainant's version of events. Even though the tenant has stated that he has voicemail

evidence, this evidence was not provided to the Ombudsman nor was it provided to the landlord.

27. The tenancy agreement states in paragraph 2(24) that the complainant is responsible for repairs to damage to fixtures and fittings caused by him but there is no evidence that the leak was caused by him. The landlord is responsible for sanitary installations, thus, the repairs to the leak was its responsibility. However, the landlord also undertook the repair of the bath panel which the complainant should have done, as stated within his tenancy agreement. As this was his responsibility to deal with, the landlord is not required to make reparation for the inadequate panel repairs of May 2018 for which another visit had to be arranged. However, this Service finds that the landlord should have considered compensating him for the length of time for which the leak was not resolved between February and June 2018, four months later.

28. The Ombudsman accepts that the complainant has been significantly inconvenienced by the leak and the damage this may have caused. It is a reasonable expectation that a non-urgent repair should be completed within 20 working days, and four months is significantly longer than would ordinarily be acceptable. The landlord should, therefore, have compensated him for its failure to resolve the leak for a period of four months. However, as stated above, he should claim through his personal content's insurance for the aspects of the damage which are within his responsibility to resolve.

Determination (decision)

29. In accordance with Paragraph 42 of the Scheme:

- There was service failure in the landlord's delays to completing the repairs to the leak.
- There was no maladministration in the landlord's decision not to compensate the complainant for damage to parts of the property.

Reasons

30. The landlord was always timely in attending to the leaks, however, there was a delay of four months to the completion of the repairs in 2018. There is no evidence to support the complainant's assertions about the cause of the leaks; the extent of damage caused by the leaks and the damage which he states were caused by the contractors. The complainant is required, by his tenancy agreement, to make a claim on his home contents insurance with respect to damage to the flooring and bath panel. There is no requirement for the landlord to deal with these issues or compensate him for them on the basis that the complainant's insurance do not cover the issues.

Orders

31. I make the following orders:

- The landlord should pay the complainant £100 in compensation, within four weeks from the date of this report, for the delays in completing the repairs to the leak.
- The landlord should clarify for the complainant (and any other residents who may be similarly affected) the ambiguity regarding responsibility for the skirting boards, in accordance with good practice and the requirements of Section 11 of the Landlord and Tenant Act 1985. It may also wish to seek legal advice on this issue.

Recommendations

32. The landlord should consider ensuring that the timescales for repairs are easily available to tenants.