

Housing

Ombudsman Service

REPORT

COMPLAINT 202114420

East Devon District Council

7 March 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:
 - a) The landlord's handling of the replacement of the resident's kitchen prior to her occupation of the property;
 - b) The landlord's complaints handling.

Background

2. The resident occupies the property, a 2-bedroom bungalow, under a secure tenancy agreement with the landlord, which began on 17 May 2021.
3. The resident ended a previous tenancy agreement with the landlord on 28 February 2021, in anticipation of moving into her new property on 1 March 2021. The landlord agreed to carry out works to replace the kitchen at the new property, which were completed on 12 May 2021. The resident's tenancy then began on 17 May 2021.
4. The resident's daughter made a formal complaint to the landlord on 10 May 2021. She complained that works to the kitchen were ongoing, that her mother had no move in date, that the landlord's communication had been poor, and that '*no new contract has been signed*'. The resident requested reimbursement of storage and moving costs, transport costs to collect post, and compensation for the delay.
5. The landlord's stage 1 response stated that the property was ready to move into on 1 March 2021, noting that the resident had elected to delay the start of her tenancy so that the kitchen could be replaced, although it was deemed usable and suitable for everyday needs following the voids process. The landlord stated

it had completed the works as a '*gesture of goodwill*' and denied that there was any delay, noting that an asbestos survey had been required and that the resident had requested alterations to the design to accommodate her range cooker. It found that no compensation was due as the property had been habitable at the original tenancy start date and works had only been completed, and the tenancy delayed, at the resident's request.

6. The resident's daughter escalated the complaint, stressing that the landlord had agreed that the kitchen was '*unfit for use*' during the property inspection, and her mother had been led to believe replacement '*would take a few weeks to organise and complete*'. She highlighted that the redesign was not just to accommodate her mother's cooker but also to re-site a washing machine to comply with health and safety regulations. She described the original kitchen as '*old*' and '*unhygienic*' and suggested it did not meet the landlord's guidelines. She also queried whether required health and safety checks had been completed during the voids process.
7. The landlord maintained its position at stage 2, stating that it was not liable for costs incurred by the resident or willing to provide compensation. The landlord explained that legionella and asbestos tests were required due to the proposed kitchen works and that this took time to complete. It denied that there was an unreasonable delay in completing the works.

Assessment and findings

8. The landlord's Housing Void Management Policy states that a void inspection will be completed following the end of a tenancy and that the landlord will aim to identify and complete any necessary repairs to enable the property to be re-let as soon as possible. The Policy states that '*all works undertaken in the property will be completed to the Void Standard (Appendix A)*', a copy of which has not been provided to this investigation. The Policy also states that the property will be checked against the planned works programme '*to make the most cost effective use of resources*'.

Kitchen Replacement

9. The parties dispute the reason for the kitchen replacement works and the condition of the property. The resident states that immediate works were necessary prior to occupation, as the kitchen was not fit for purpose. The landlord, in its final complaint response, acknowledges that the kitchen was due for replacement, and that it was listed on its improvement programme, but maintains that the property was habitable.
10. The resident has confirmed that she was unable to remain in her previous property any longer due to risks associated with her ongoing occupation of that

property. It is clear that the landlord had worked with the resident to identify a new property suitable for her needs; it is less clear the point at which the kitchen issues became apparent at the proposed new property.

11. This Service requested information about the works completed during the void period and the condition of the property prior to re-letting. The landlord has provided no evidence to support its claim that the kitchen was '*usable*' and '*suitable for everyday needs*' on 1 March 2021, only photographs of the completed kitchen works from 12 May 2021. Further, in an email reported to have been sent to the resident on 12 March 2021, the landlord stated '*we are aware that there are issues with the kitchen that is currently installed at this property and this is not fit for purpose, as there is very little room*', contradicting the position in its complaint responses.
12. In some circumstances, it may be appropriate for a landlord to delay replacement of a kitchen that does not meet current standards until it is completing similar works to other properties, as this can help to make the best use of its resources. However, the landlord's failure to provide evidence, in the form of its Void Inspection Report or Void Standard, means that the Ombudsman is unable to assess whether the landlord's position that the property was habitable was reasonable. However, the landlord's contact with the resident of 12 March 2021 was available to this investigation and, based upon this, it is reasonable to conclude that the property did not meet a satisfactory condition at the point that it was initially offered to the resident.
13. Irrespective of the issue about whether the kitchen was usable at the point that the property was initially offered to the resident, it is not disputed that the landlord ultimately decided that the kitchen needed replacement prior to the formal tenancy start date and then took steps to enact this. As such, at the point that the tenancy actually commenced, in May 2021, the kitchen had been replaced and the property met a satisfactory letting standard.
14. However, as the resident had given up her previous tenancy, she was required to spend the intervening period living with her daughter whilst she awaited the property becoming available, during which she incurred storage costs, as well as a need to pay for removals twice. The resident puts this delay onto the landlord and believes it should be required to reimburse her these costs, however there is no evidence of the landlord having agreed to cover such costs whilst the kitchen works progressed.
15. Very little information has been provided to this investigation to evidence the discussions that took place between 1 March 2021 and 17 May 2021, including what was agreed between the parties. The resident has stated that she signed a tenancy agreement with a start date of 1 March 2021, a copy of which has not been provided to this investigation. It is, however, clear that the parties agreed to

delay the start of the tenancy pending completion of the kitchen works and a new tenancy agreement, starting 17 May 2021 was signed on 12 May 2021. The resident was not therefore liable for rent between 1 March 2021 and 17 May 2021.

16. The Ombudsman is concerned at the lack of evidence provided to support the landlord's position, which suggests deficiencies in its record keeping processes. There is no contemporaneous evidence that the works were agreed as a '*gesture of goodwill*', or records of any internal discussions about the resident's request to replace the kitchen. Similarly, there is no evidence to support the resident's suggestion that she only accepted the property on the condition that the kitchen was replaced, or that she was told that this would take '*a few weeks*'. There is also no evidence that the parties discussed reimbursement for any costs incurred by the resident following postponement of the start of the tenancy.
17. The Ombudsman expects landlords to keep detailed and accurate records of interactions with prospective or current tenants, including copies of agreements, notes of telephone calls and copies of emails and written correspondence. The landlord's failure to evidence that it has done so amounts to a service failure in this instance.
18. Regardless of the reason for the kitchen's replacement, once the landlord had agreed, works should have been completed within a reasonable timeframe. Correspondence from 15 March 2021 shows that the landlord was in contact with the resident to discuss her requirements. The Ombudsman does not have the technical expertise to assess how long such works would ordinarily take, however, a period of 10 weeks does not seem unreasonable, taking into account the discussions around layout and the health and safety checks that the landlord was required to complete, including the removal of asbestos. The Ombudsman is therefore satisfied that there is no evidence of an unreasonable delay in completing the works, although the landlord could have better managed the resident's expectations about the anticipated tenancy start date.
19. As no evidence has been identified that works were completed in an unreasonable timeframe, an award of compensation for unreasonable delay would not be appropriate. The Ombudsman does, however, make an Order that the landlord review its record keeping processes, in light of the service failure identified. A payment of compensation is also considered appropriate here to reflect the impact of the service failure on the resident. The landlord's overall response was unclear, with its lack of records to support its decision making a clear contributing factor to this confusion.
20. There is no evidence that the property was initially offered in a suitable condition and the landlord's correspondence of 12 March 2021, plus its ultimate decision to replace the kitchen, suggests that its stage two viewpoint that the property was

habitable at this earlier point cannot be relied upon. As such, whilst there is no evidence that the landlord agreed to cover any additional costs whilst the resident awaited the property to become available, it is the Ombudsman's view that an amount of compensation to reflect the inconvenience she experienced during this time and, in part, the additional costs she incurred would provide a reasonable remedy to her.

Complaints Handling

21. The landlord has failed to demonstrate that it conducted an adequate investigation into the resident's complaint. No evidence has been provided to the Ombudsman of the landlord's internal complaint investigation, including the documents it reviewed and notes of any discussions with staff members involved. The stage 2 response refers to the comments of the Repairs Manager, evidence of which has not been provided to the Ombudsman's investigation. There is also no evidence that the landlord discussed the resident's concerns with the member of staff present at the viewing, who she alleges agreed that the kitchen was unusable.
22. The landlord failed to provide a detailed account of the history of the complaint, instead providing general commentary on the events and the agreements made between the parties, without reference to dates of discussions or correspondence. In addition, the landlord's complaint investigation did not identify the record keeping failures identified here, including the information detailed above that contradicted its overall position as outlined in its final response.
23. The Ombudsman considers that there was service failure in the landlord's complaints handling. It is unclear what evidence the landlord's complaint responses were based on, or how it conducted its investigations, and so the Ombudsman cannot conclude that its position was reasonable.

Determination

24. In accordance with paragraph 54 of the Scheme, there was maladministration in the landlord's handling of the kitchen replacement.
25. In accordance with paragraph 54 of the Scheme, there was service failure in the landlord's complaints handling.

Orders

26. Within 28 days of the date of this report the landlord is ordered to:
 - a. Pay the resident £500 compensation in recognition of the failures identified, £400 in relation to the kitchen replacement issues and £100 in relation to the complaints handling issues.

- b. Review its record keeping policies and procedures to ensure that detailed and accurate records are maintained of its interactions with residents and internal discussions, including copies of agreements, notes of telephone calls and copies of emails and written correspondence.
- c. Review its complaints handling process to ensure that it is able to evidence all information accessed in the course of its complaints investigation and relied on in its responses.