

Housing

Ombudsman Service

REPORT

COMPLAINT 202220692

The Riverside Group Limited

2 August 2023

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 decision to not replace a window at the resident's property following his reports of this resulting in mould.

Background

2. The resident has been a tenant with the landlord, since December 2018. The resident has three children who live in the property, a three-bedroom house.
3. The resident reported instances of mould on the property's double glazed windows to the landlord on 21 October and 4 November 2022, and that he had been attempting to resolve this since moving in to the property. The landlord's contractor attended the property for each report on 27 October and 7 November 2022, respectively, and each time it applied mould treatment and resealed the windows.
4. Following its contractor visit on 27 October 2022, the resident made a stage 1 formal complaint to the landlord about the mould on the windows on 28 October 2022, reporting having to clean black mould from these that he feared impacted his children's health. He said that, although the contractor indicated the windows did not qualify for replacement, the resident wanted the windows replaced, and felt that resealing the windows was a cheaper option and the landlord did not want to spend money to replace these. However, its stage 1 response of 2 November 2022 did not uphold his complaint, as it stated that its inspection had found that the windows did not need to be replaced.
5. The resident's final stage complaint of 3 November 2022 repeated his concerns about the landlord not replacing the property's windows to address the mould on them, and, in its final response of 4 November 2022, it did not uphold his

complaint again. It said repairs should be carried out to the windows, as they did not need replacing, and that this decision was in accordance with the responsive repairs policy and agreed by the contractor's manager.

6. The resident complained to the Ombudsman in December 2022, as he remained dissatisfied with the landlord's decision. In February 2023, both parties agreed to our mediation process, and a proposal was sent. The resident sought the replacement of all windows in the property except the front window which, he advised, had been previously replaced, as he reported mould growing between the window frames and seals was making his children ill.
7. The landlord proposed that it would further inspect the property's windows on 27 February 2023 and that, if any of the units assessed by its foreman were beyond economic repair, then the landlord would make arrangements to replace that unit. The resident agreed.
8. Following this inspection, the next day the landlord agreed to:
 - a. Replacement front door;
 - b. Kitchen – replacement window;
 - c. Bathroom – trickle vent replacement and resealing;
 - d. Small rear bedroom – new frame to the window required;
 - e. Large rear bedroom – remove double glazing unit, clean the beads, remove the mastic, reassemble and reseal;
 - f. Front bedroom - new frame to the window required.
9. The landlord also explained lead times on manufacturing new windows were anywhere up to 12 weeks.
10. The resident agreed to the kitchen window replacement, but sought clarity on whether the small bedroom and front bedroom windows would be replaced as the landlord had mentioned only new frames. The resident did not accept that a repair for the large rear bedroom window was sufficient, as he considered it needed replacement because mould had been cleaned from this at the time of the landlord's inspection, and the child who slept there had asthma.
11. On 7 March 2023, the landlord contacted the resident to book in repairs for 17 March 2023, which included the large rear bedroom window. On 17 March 2023, the landlord's contractor attended the property and carried out repairs. Each of the 3 panes in the large rear bedroom window had its beads removed, its glass cleaned, and the old mastic cut and replaced with mould resistant mastic. A

positive input ventilation (PIV) unit was also fitted in the property by the landlord on 27 March 2023.

12. In April 2023, the resident confirmed to the Ombudsman that three windows had been replaced, in the property's kitchen, front bedroom, and small rear bedroom. The landlord reported that all repairs had been completed, and its contractor post-inspected the large rear bedroom window on 4 April 2023. Its contractor cleaned the weep holes and advised that nothing was wrong with the frame. Although the resident continued to chase it for an answer as to where the weep holes were located.
13. As a resolution to his complaint, the resident is seeking that the landlord replaces the entire window in the large rear bedroom to address the mould that was coming back on this, which he reported that the landlord had returned to clean in the week of 20 March 2023. He added that the PIV unit that it had installed had made no difference to this or to the condensation on the window while making the property too cold. The resident also said that the landlord's works in March 2023 had damaged some of his personal items that he was still awaiting the insurance claim form that he had requested from it for.

Assessment and findings

Scope of investigation

14. The Ombudsman acknowledges the resident's comments that he has reported mould at the property to the landlord for a number of years. He has advised that the issue has been present since after he moved in around 2019. While this may be the case, this investigation will not seek to consider matters as far back as 4 years.
15. This is because the Ombudsman expects residents to bring issues with which they are dissatisfied to the landlord's attention in good time, and the resident reported and complained to it about the mould in October 2022. This is set out in the Scheme, which explains that the Ombudsman may not investigate a complaint which was not brought to the attention of the landlord, by way of a formal complaint, within a reasonable period, which would normally be within 6 months of the matter arising. As such, this investigation will examine the events which occurred from the resident's report of mould in October 2022 until April 2023, when the completed repairs from mediation were post-inspected.
16. Additionally, the resident raised concerns regarding the health implications of the reported mould in his property for his children, which is very concerning. However, we cannot determine liability for damages, including claims for the impact a situation has had on someone's health. Therefore, while we assess the service the landlord has provided, and whether it treated the resident fairly, the

investigation will not assess any reported impact on someone's health. Any such claim would be for an insurer or a personal injury claim, which the landlord has therefore been recommended to provide the resident with details of below.

17. A number of works also resulted from the mediation, as detailed above. The resident advises his outstanding concern is that the large rear bedroom window was not replaced, despite him having gone through the landlord's complaints procedure and the mediation proposed by the Ombudsman. As such, this report will focus on the landlord's decision to not replace the large rear bedroom window following his reports of this resulting in mould.

The landlord's decision to not replace a window following reports of mould

18. The landlord has obligations under the tenancy agreement and its responsive repairs policy. The latter states that:

- a. It will keep in repair the structure and exterior of its tenants' properties, including external window frame, catches, and glass.
- b. It will communicate effectively with residents at all times in relation to the delivery of its responsive repairs service, and enable residents to communicate effectively with it.
- c. It will ensure residents are aware of their repair responsibilities, and the landlord's repair responsibilities.
- d. It will deliver an effective repairs service, which responds to the needs of residents, and which has the objective of completing repairs at the first visit.
- e. It categorises repairs as either emergency, urgent or routine repairs:
 - i. emergency repairs are to be attended within 12 hours;
 - ii. urgent repairs within 5 days; and
 - iii. routine repairs within 28 days.

19. Further, the responsive repairs policy sets out that the resident should clean any mould caused by condensation, and it advises that, if a resident has attempted to clean the area and mould continues to come back, it should be reported to the landlord, so it can arrange for inspection and assessment of the underlying cause.

20. The landlord's damp and mould policy states that, on receiving reports of mould, the landlord should respond, arrange an inspection, and investigate to determine the causes of damp and condensation. It should carry out remedial repairs within a reasonable timescale, based on dealing with the cause of the damp, not just the symptoms and, wherever possible, fixing first time.

21. Further, the damp and mould policy states the landlord will inform the resident of the findings of its investigation following a visit, ensure competent contractors will be employed to carry out works, and undertake reasonable improvement works required to assist in the management and control of condensation dampness. It will also make good internal surfaces following any repair works, ensuring that surfaces are prepared to a condition for the resident to decorate. The policy goes on to state that it will follow up within 6 months of any damp and mould repair work.
22. The potential detriment of damp and mould to a resident's health and wellbeing has been highlighted in the Ombudsman's October 2021 spotlight report entitled 'Damp and mould: It's not lifestyle', and that the longer it is left untreated, the more damaging it can be to a person's health. Under the Housing Health and Safety Rating System, damp and mould is classified as a hazard.
23. The Government also states that, under the Social Housing (Regulation) Act 2023, it will introduce 'Awaab's Law', which will require landlords to investigate and fix damp and mould in its properties within strict time limits. While the law is not yet in place, it highlights the expectations of landlords and demonstrates the significance and weight that should be given to reports of mould.
24. Following the resident's reports of mould, the landlord sought to offer assistance and made arrangements for its contractor to inspect the property. After the first report of mould on 21 October 2022, an inspection and remedial works to treat the mould and reseal the windows were carried out within six calendar days on 27 October 2022. After the second report of mould on 4 November 2022, an inspection and remedial works were carried out within three calendar days on 7 November 2022.
25. These response timeframes were reasonable, given that the first attendance and remedial works were well within the landlord's responsive repairs policy's 28-calendar-day timescale for routine repairs, and the resident's first window mould report did not refer to any concerns for his children's health. The fact that the second report followed his stage 1 complaint expressing his fears for this impacting their health also meant that it was appropriate that its second attendance and works were within the policy's 5-calendar-day urgent repair timescale.
26. In response to the mediation proposal sent by the Ombudsman on 15 February 2023, the landlord replied 2 calendar days later on 17 February 2023, and it again arranged an inspection well within its responsive repairs policy's routine repair timeframe for 27 February 2023. These were also satisfactory timescales, and demonstrated good practice in line with its damp and mould policy, which required it to inspect and diagnose the cause of the mould. Although the inspection did not take place within the policy's urgent repair timeframe, it was

understandable that the landlord treated this as a new report, given that this took place over 3 months after the resident's previous report in November 2022.

27. The Ombudsman recognises the resident's comments that he frequently cleans the large rear bedroom window and that, when the contractor visited on 27 February 2023, there was little mould present. The contractor can only comment on what was seen at the time of inspection and, while it was not unreasonable for the landlord to rely on its contractor's inspection, the Ombudsman can appreciate the resident's frustration about this. This would have been an understandable reaction on his part, if what the contractor saw after the mould had been cleaned may not have been an accurate reflection of the matter.
28. Following this inspection, the landlord arranged to undertake works and repairs as proposed on 28 February 2023. It should be noted that the landlord's initial responses were that only repairs and resealing would be needed. However, upon inspection following the Ombudsman's mediation, it agreed to replace the kitchen window and install new frames for the small rear and front bedroom windows on 17 March 2023. It is unclear what had changed since the first two inspections in October and November 2022, but it is noted that the third inspection was carried out in February 2023, a few months later and following winter weather. The inspector's decision with regard to the large rear bedroom window remained unchanged. It should also be noted that the landlord's records show that the same inspector carried out the inspections in both 2022 and 2023.
29. The landlord was entitled to rely on the expertise of the specialists it employs to accurately diagnose an issue and their decisions on how best to remedy the issue, in the absence of any other expert evidence to the contrary. The landlord has consistently advised the resident following its inspections of the large rear bedroom window that this could be repaired and that it would not replace this. The resident then reported to the Ombudsman that the contractor who attended in March 2023 said it was condensation on the window, and the resident reported that this was unaffected by the PIV unit fitted by the landlord on 27 March 2023.
30. The resident said that, while work and repairs were being carried out in the property in March 2023, damage was caused to some personal items of property. He asked the landlord for an insurance claim form, but has said he is yet to receive one.
31. The landlord responded to the concerns raised by the resident in a timely fashion. It carried out its inspection and remedial works, including the repair works to the rear bedroom window on 17 March 2023, 19 calendar days after the inspection of 27 February 2023, which was within an acceptable timeframe which complied with its responsive repairs policy's timescale for routine repairs, as well as its damp and mould policy. This was appropriate given that there was no evidence at that stage that the repair was urgent, with both parties reporting that there was

no mould at the time of the inspection. Further, the landlord undertook inspections and repairs in accordance with its promises during the mediation, and kept the Ombudsman regularly updated throughout.

32. In April 2023, the landlord advised all repairs were completed and that its contractor who had attended on 4 April 2023 to inspect the completed works had cleared the bottom weep hole in the large rear bedroom window and stated that no further repairs were required, as there was nothing wrong with the window frame. This was good practice by the landlord to post-inspect the repairs, and this was also done in 18 calendar days, which was again within its responsive repairs policy's routine repair timeframe.
33. In his complaint to the Ombudsman, the resident reported that his child has asthma and sleeps in the large rear bedroom where, he reported, mould was growing around the window frame edges before he cleaned this. It is noted that the landlord's repairs improved the function of the property's windows, which can now properly open and close allowing ventilation. As emphasised in our spotlight report, ventilation together with sufficient heating and appropriate mould treatments where necessary, is essential for the prevention of mould in properties.
34. Additionally, the landlord arranged to fit a PIV unit in the property on 27 March 2023. The Ombudsman considers this was a reasonable approach by the landlord to minimise condensation that could potentially cause mould. Its responsive repairs policy requests a resident to ensure that ventilation units provided are switched on in order to reduce the possibility of condensation and mould occurring. However, the Ombudsman notes that the resident subsequently requested the landlord to remove the PIV unit because the resident felt it was ineffective and made the property unduly cold.
35. The landlord acted in accordance with its policies in that it promptly arranged for inspections of and works to the windows and for mould following reports of mould. There were minimal delays in its contractor attending the property, and it has demonstrated that it made sufficient efforts to put things right, given the distress and inconvenience being caused to the resident by the mould.
36. While the resident did not get the outcome desired, which was a new window for the large rear bedroom, the landlord was entitled to rely on its contractor's inspection and decision that the appropriate approach to dealing with the mould on the window was by repair. Further, its communication with the resident was satisfactory and it also explained to the resident that it would reconsider its decision if in the future the window became beyond economic repair.
37. Overall the landlord acted swiftly and reasonably to put things right, and there is no evidence to suggest the resident was treated unfavourably. The decision to

not replace the large rear bedroom window was acceptable at the time and in the circumstances that it was made. The Ombudsman nevertheless recognises the resident's comments that the mould recurred after the repair works were completed in March 2023, and so recommendations have been made below to address this, his reports of damages, and as his query as to where the weep holes in the window were.

Determination

38. In accordance with paragraph 52 of the Scheme, there was no maladministration of the landlord's decision to not replace a window following reports of mould.

Recommendations

39. It is recommended that the landlord should, within 4 weeks of the date of this report:

- a. Respond to the resident's question about where the weep holes are located in the window of the large rear bedroom.
- b. Review the status of the resident's damages claim to its insurance team, and update him on this or provide him with details to enable him to make such a claim, if it is not already in progress.
- c. Follow up the repair work carried out on 17 March 2023, within the 6 months of that date required by its damp and mould policy, by inspecting the works to determine any factors not previously identified as contributing to the damp and mould in the property. If it deems the large rear bedroom window to have become beyond economic repair, the landlord should seriously consider its replacement.
- d. Consider instructing an independent external damp specialist to inspect the property, if mould is still present following inspection and is not addressed by remedial work.
- e. Take reasonable steps in partnership with the resident to ensure adequate heating and ventilation of the property, in order to prevent the growth of mould, particularly considering the resident had requested that the PIV unit be removed.