

SPSO decision report

Case: 201102518, The City of Edinburgh Council
Sector: local government
Subject: repairs and maintenance of housing stock (incl dampness and infestations)
Outcome: some upheld, action taken by body to remedy, no recommendations

Summary

Mr C complained that the council had charged for a repair they carried out as 'emergency work' under the Tenements (Scotland) Act 2004 (the Act) to repair the lock at the main entrance door to the tenement building where he lived. The information the council provided showed that they decided that the work should be dealt with as an emergency after it was reported that residents could not get in or out of the building. The council also considered that although part of the lock had been removed to allow access to the building, it was still necessary to take immediate action to carry out the repair in the interests of residents' safety, because of concerns that had been expressed about the unsecured stairwell.

However, the repair took five days to be carried out and Mr C was unhappy that the council treated the work as an emergency rather than allowing the co-owners to arrange for quotes and have the work carried out more cheaply. Mr C was also unhappy that the council took an unreasonable length of time to provide him with a breakdown of the repair work and associated cost. Under the Act, any owner has the power to instruct or carry out emergency work to a property. All the owners are liable for the cost of the work under the terms of the Tenement Management Scheme. This scheme sets out procedures that flat owners need to follow when making decisions about matters, including maintenance and repairs. 'Emergency work' means work which, before a scheme decision can be obtained, requires to be carried out to scheme property to prevent damage to any part of the tenement, or in the interests of health or safety. The Act does not specify the timescale in which emergency work should be carried out by but guidance issued by the then Scottish Executive said that an emergency will arise only where the work is so urgently necessary that it cannot wait the few hours required for consultation with other owners for a scheme decision to be taken.

We found that the time taken to complete the work was not in keeping with what the council said about giving co-owners the opportunity to organise the work themselves if the repair was going to take more than 24 hours to complete. We were, however, satisfied that the council have since undertaken a review of how they determine whether a repair should be treated as an emergency, in light of the repair work taking five days to complete in this case. However, we did not consider that it was unreasonable of the council, as co-owner, to have decided to treat the work as an emergency, as residents could not get access to and from the building. The council also had a duty of care in ensuring that they act in the best interests of their tenants.