



Repairing Standard Enforcement Order

Order by the Private Rented Housing Committee

Case Reference Number: PRHP/RP/16/0226

Re : The property at 166 Cairngorm Drive, Aberdeen, AB12 5PL being the subjects registered in the Land Register of Scotland under Title Number KNC7895.

The Parties:-

Mr Trevor Donaldson, residing at 166 Cairngorm Drive, Aberdeen, AB12 5PL (“the Tenant”)

and

Mr Mohammed Mehrabadi and Mrs Lynne Mehrabadi, both residing at 374 Great Western Road, Aberdeen (“the Landlords”)

The Committee:- Mrs Ruth O’Hare, Chairperson and Mr Colin Hepburn, Surveyor Member.

NOTICE TO: Mr Mohammed Mehrabadi and Mrs Lynne Mehrabadi (“the Landlords”)

Whereas in terms of its decision dated 14th September 2016, the Private Rented Housing Committee determined that the landlord had failed to comply with the duty imposed on it by Section 14(1)(b) of the Act, and in particular that the landlord has failed to ensure that the house meets the repairing standard in that:

- (a) the house is not wind and watertight and in all other respects reasonably fit for human habitation;
- (b) the structure and exterior of the house (including drains, gutters and external pipes) are not in a reasonable state of repair and in proper working order;
- (c) the installations in the house for the supply of water, gas and electricity and for sanitation, space heating and heating water are not in a reasonable state of repair and in proper working order;
- (d) any fixtures, fittings and appliances provided by the landlord under the tenancy are not in a reasonable state of repair and in proper working order;
- (e) the house does not have satisfactory provision for detecting fires and for giving warning in the event of fire or suspected fire.

The Private Rented Housing Committee now requires the landlords to carry out such work as is necessary for the purpose of ensuring that the house concerned meets the repairing standard and that any damage caused by the carrying out of the works in terms of the order is made good.

In particular the Private Rented Housing Committee requires the landlords to carry out the following work:

- Instruct a professional window installer to carry out a full inspection of the windows in the kitchen and kitchen extension and carry out any works identified to ensure the property is wind, watertight and in a reasonable state of repair;
- Repair or replace the window blind in the living room;
- Repair the gas fire in the living room to ensure it is in proper working order and approved by a GasSafe registered engineer or alternatively remove the gas fire, seal the flue and make good decoration;
- Repair or replace the pane of glass with the defective vent in the living room window;
- Instruct a qualified plumber to check the pipework and correct fall on the waste pipe to the bath to allow the pipes to properly drain;
- Repair or replace the sealant around the bath;
- Install a proper mechanical ventilation system in the bathroom;
- Repair or replace the defective kitchen fittings and units as necessary;
- Repair or replace the door entry system to ensure it is in proper working order;
- Repair the television aerial to ensure proper signal;
- Install smoke and heat detectors in the property in compliance with current standards;
- Carry out such works as required to clear moss from the roof of the property and all detritus from the gutters pertaining to the property;
- Carry out portable appliance testing on all appliances provided by the landlords to include all those present in the property at the commencement of the tenancy;
- Carry out all works required to make good decoration in the property following the above works.

The Private Rented Housing Committee further requires that the works be carried out within a period of twelve weeks from the date of this order.

A Landlord or a Tenant aggrieved by the decision of the Private Rented Housing Committee may appeal to the Sheriff by summary application within twenty one days of being notified of that decision.

Where such an appeal is made, the effect of the decision and of the Order is suspended until the appeal is abandoned or finally determined, and where the appeal is abandoned or finally determined by confirming the decision, the decision and the Order will be treated as having

effect from the day on which the appeal is abandoned or so determined.

IN WITNESS WHEREOF these presents printed on this and the preceding page are subscribed by Ruth O'Hare, Chairperson at Aberdeen on 14 September 2016 before this witness underrpted

Signed **R O'Hare**

Ruth O'Hare
Chairperson

Signed **N Ward**

Nicole Ward, Paralegal, c/o Aberdeen City Council, Marischal College, Broad Street,
Aberdeen



**Statement of decision of the Private Rented Housing
Committee under Section 24 (1) of the Housing
(Scotland) Act 2006**

prhp Ref: PRHP/RP/16/0226

Re : Property at 166 Cairngorm Drive, Aberdeen, AB12 5PL ("the Property")

The Parties:-

Mr Trevor Donaldson, residing at 166 Cairngorm Drive, Aberdeen, AB12 5PL ("the Tenant")

and

Mr Mohammed Mehrabadi and Mrs Lynne Mehrabadi, both residing at 374 Great Western Road, Aberdeen ("the Landlords")

The Committee comprised:-

Mrs Ruth O'Hare - Chairperson

Mr Colin Hepburn - Surveyor member

Decision

The Committee unanimously determined that the Landlord had failed to comply with the duties imposed by Section 14 (1)(b) of the Housing (Scotland) Act 2006 ("the Act") The Committee accordingly made a Repairing Standard Enforcement Order ("RSEO") as required by Section 24(2) of the 2006 Act.

Background

1. By application received 23rd June 2016 the Applicant applied to the Private Rented Housing Panel for a determination of whether the Landlords had failed to comply with the duties imposed by Section 14 (1)(b) of the Housing (Scotland) Act 2006 ("the Act").
2. The application stated that the Applicant considered that the Landlords had failed to comply with their duty to ensure that the house meets the repairing standard and in particular that the Landlords had failed to ensure that:-
 - (a) the house is wind and watertight and in all other respects reasonably fit for human habitation;
 - (b) the structure and exterior of the house (including drains, gutters and external pipes) are in a reasonable state of repair and in proper working order;
 - (c) the installations in the house for the supply of water, gas and electricity and for sanitation, space heating and heating water are in a reasonable state of repair and in proper working order;
 - (d) any fixtures, fittings and appliances provided by the landlord under the tenancy are in a reasonable state of repair and in proper working order;

- (e) any furnishings provided by the landlord under the tenancy are capable of being used safely for the purpose for which they are designed; and
 - (f) the house has satisfactory provision for detecting fires and for giving warning in the event of fire or suspected fire.
3. In particular the Tenant submitted the following:- the property was not wind and watertight; there were problems with blocked gutters; the television aerial was disconnected; there were problems with the central heating and water supply; there had been water ingress to a neighbouring property; the kitchen sink was a hazard due to water leaks; the bath had not been correctly plumbed; the door entry system required repair; a light in the kitchen extension required repair; there were problems with the windows and there was damp and mould in the property.
 4. By letter dated 13th July 2016 the President of the Private Rented Housing Panel intimated a decision to refer the application under Section 22 (1) of the Act to a Private Rented Housing Committee.
 5. The Private Rented Housing Committee served Notice of Referral under and in terms of Schedule 2, Paragraph 1 of the Act upon the Landlords, the Tenant and Hamish McKenzie of Shelter Scotland ("the Tenant's Agent").
 6. By email dated 14 August 2016 Mr Mohammed Mehrabadi ("the Landlord") made written representations to the Committee. In summary the Landlord advised that he had attempted to arrange for contractors to attend the property but they had been unable to gain access. He explained that the gas boiler had been checked regularly and the gas heater in the living room was disconnected.
 7. The Private Rented Housing Committee attended the Property on the morning of 24 August 2016. The Tenant and the Tenant's Agent were present and allowed access to the Property. The Landlord was not present nor represented. The Committee proceeded to inspect the property.

The Inspection

8. During the inspection the Committee members examined the various areas of complaint raised by the Tenant. The Committee noted upon entering the property that the door entry system did not work. A battery operated smoke detector was visible in the hallway.
9. The Committee inspected the bathroom. The sealant around the bath was worn and missing in parts. There was no extractor fan in the room and mould was noted on the ceiling.
10. The Committee inspected the kitchen. The sink had become dislodged from its original frame which appeared to be a result of water leakage. There was mould around the window and the Committee noted it was difficult to close. The Committee noted a washing machine and cooker within the room as well as the gas boiler which had recently been inspected. The Committee further noted that some of the kitchen cabinet doors appeared to be loose from their hinges. A carbon monoxide detector was present within the kitchen.
11. The kitchen extended out into a utility room which the Committee proceeded to inspect. The Committee noted the extension appeared to have previously been a balcony but had been closed in to create an additional room. There was extensive mould on the ceiling of the extension. The Committee examined the window which tilted open. Its double glazing appeared to be defective. There was a fridge and a fridge freezer in the extension as well as a dishwasher.
12. The Committee inspected the living room. There was a gas fire within the room which had been disconnected and appeared damaged. The Committee noted a vent on the window

which had been sealed with silicone. The blind pertaining to the window was broken. The Committee could see from inside the living room a television aerial hanging externally from above. It appeared to be disconnected.

13. The Committee proceeded outside to the back garden where moss and plant growth were noted in the communal gutters pertaining to the property.
14. During the inspection photographs were taken by the surveyor member and a schedule of photographs is attached to this decision.
15. The inspection was concluded and the Committee members travelled to the venue for the hearing.

The Hearing

16. The hearing took place in the Credo Centre. The Landlord was present. The Tenant and the Tenant's Agent were also present.
17. As a preliminary point the Landlord produced a gas safety certificate which was accepted by the Tenant. The certificate confirmed that the central heating had been inspected and approved by a GasSafe contractor on 16th August 2016. The Landlord also produced an energy performance certificate in respect of the property.
18. Both parties were given the opportunity during the hearing to make submissions to the Committee on the issues arising from the application and inspection.

19. In respect of the bathroom:-

19.1 The Tenant advised that the bathroom had been flooded in March 2015. The landlord had been contacted and had arranged for a plumber to attend the property. The plumber had reconnected the overflow to the pipework however the angle of the pipework was wrong. It was fixed in the wrong direction and water would collect in the pipe. The bath was not used as a result. The Tenant produced a photo on his mobile phone of the pipe in question. The Landlord had the opportunity to view the photo and comment on same. The Tenant further advised that the sealant around the bath required to be fixed. He then spoke to the mould in the bathroom. He advised that it was primarily in the top corner of the ceiling and due to a lack of ventilation in the room. He confirmed that he would keep the bathroom door opened when he used the shower but it did not address the issue.

19.2 The Landlord stated that the tenant had not contacted him regarding the bath. The neighbours downstairs had contacted him. He had sent the plumber out to repair the problem. The Landlord then addressed the Committee on the mould in the room. He explained that the issue could be resolved by the mould being wiped down regularly and having the window kept open.

20. In respect of the living room:-

20.1 The Tenant advised that the gas fire had been disconnected and did not work. It appeared as if it had been damaged by a previous tenant. It had been disconnected since the start of the tenancy. The vent in the window had been covered with a plastic bag which was not windproof. The Tenant had taken steps to try and seal it with silicone however it required to be properly sealed. With regard to the television aerial, the Tenant advised that it had not worked since the start of the tenancy. The aerial was lying on the roof and disconnected from the fitting.

20.2 The Landlord advised the Committee that the gas fire had been disconnected and could not be used. He confirmed that the vent had been installed when the gas fire was operational. The Landlord advised that as far as he was aware the previous tenants had not complained about the television aerial. He had been in touch with someone to repair it. The Landlord produced a text which had been sent to a repairman which was dated 14th August 2016. The Tenant was given sight of the text and the opportunity to comment on same.

21. In respect of the kitchen:-

21.1 The Tenant advised that the kitchen sink was rotten and had collapsed. The Landlord had advised him in June 2015 that he would install a new kitchen. The Tenant produced a text from the Landlord dated 8 June 2015 to that effect which was viewed and accepted by the Landlord. The Tenant advised that there had been a leak that had resulted in water ingress to the downstairs neighbour. The unit required to be completely replaced. The leak was caused by a slope in the drainer pertaining to the sink. The sink could not presently be used as a result. The Tenant then spoken to problems with the window in the kitchen. He advised that there was water ingress when it rained. The window was difficult to open and close. The Tenant also explained that some of the doors of the kitchen units had fallen off. He concluded by confirming that the kitchen light had been fixed and the gas boiler had been checked and was now in working order.

21.2 The Landlord stated that there had been no problems with the kitchen when the tenancy commenced. He had arranged for a plumber to attend to the leak to the downstairs neighbour. He had also sent a joiner but the joiner had been unable to gain access. He could not recall whether he had been alerted to some of the particular issues raised by the Tenant. The Landlord did confirm that he had been in the property the Friday prior to the hearing to measure for a new kitchen. The Landlord advised that the repairs required were simple and a joiner could have carried them out.

22. In respect of the kitchen extension:-

22.1 The Tenant addressed the Committee on the mould in the kitchen extension. He advised that double glazed window in the room had failed and was full of condensation. The window was on two pivots and tilted to open. It would rise up quickly and had potential to hit a person in the face. The Tenant advised that the mould had been present when he had taken entry to the property. It had been reported to the Landlord in 2013.

22.2 The Landlord advised that the problems in the extension were typical of properties in the area. He stated that there had been no mould on the wall when the tenancy had commenced. The Tenant had a duty to wipe the mould down.

23. In respect of the smoke detectors:-

23.1 The Tenant advised that the only smoke detectors in the property were battery operated. One was in the hallway and one was in the bedroom. There was no detector in the kitchen.

23.2 The Landlord acknowledged that there were two battery operated smoke detectors in the property. He advised that any issues with the detectors could be easily sorted out by an electrician.

24. In respect of the door entry system:-

- 24.1 The Tenant advised that the door entry system did not work. He had to go downstairs to let visitors in.
- 24.2 The Landlord advised that the Tenant had known when he moved in that the door entry system was not working. It would be a simple issue to sort out.

25. In respect of the gutters:-

- 25.1 The Tenant advised that there were weeds and plants growing in the gutters. Accordingly the water was not being collected and carried away. Rain would build up and come in through the kitchen window.
- 25.2 The Landlord advised that there were no communal maintenance arrangements for the block. He could not clean someone else's guttering.

26. The Committee then asked questions of the appliances in the property. The Landlord advised that he had provided a cooker and a fridge freezer at the commencement of the tenancy. There may have been other appliances left by the previous tenants but they were not his responsibility. The Landlord stated that he had not carried out portable appliance testing in respect of the fridge freezer and cooker as it was not a legal requirement at the time. The Tenant had the opportunity to address the Committee on the issue. He advised that there had been a cooker, microwave, washing machine, dishwasher and fridge freezer at the commencement of the tenancy. The fridge freezer had failed the year before and had been replaced with a fridge with a smaller freezer box. Both parties agreed that no inventory of contents had been undertaken at the commencement of the tenancy.

27. In the course of the hearing, the Landlord produced three letters purporting to be from contractors – Arthur Greig, James Hunter and John Buchan - who had attempted to gain access to the property. The letters did not specify dates upon which access was attempted. The Tenant was given sight of the letters and the opportunity to comment on same. He advised that he had received no contact from John Buchan or Arthur Greig. With regard to James Hunter, he advised that he had been told not to allow Mr Hunter access as he was not a GasSafe registered contractor. The Tenant made reference to his email of June 2013 notifying the Landlord of the issues, which had been lodged with the application. The Landlord advised the Committee that he did not carry out regular inspections of the property. He had been in the property the Friday prior to the hearing. He was unclear as to when he had last been in the property prior to that date but believed it was around June 2015. He advised that he relied on his tradesmen to attend to any issues at the property.

Findings in fact

28. Having considered all the evidence the Committee found the following facts to be established:-

- The tenancy is an assured tenancy between the Landlord and the Tenant which commenced on 12th April 2013.
- The Property consists of a flatted dwellinghouse on the first floor of a three storey block. It consists of a bathroom, kitchen with extension, living room, hallway and two bedrooms.
- The Property is not wind and watertight.
- The bath is not in a reasonable state of repair.
- The bathroom does not have adequate ventilation.
- The kitchen sink and kitchen units are not in a reasonable state of repair.
- The kitchen window and kitchen extension window are not in a reasonable state of repair.

- The gas fire in the living room is not in proper working order.
- The vent in the living room window requires repair.
- The window blind in the living room is not in proper working order.
- The television aerial pertaining to the property is not in proper working order.
- The door entry system is not in proper working order.
- The property does not have satisfactory provisions for detecting fire.
- The gutters pertaining to the property are not in a reasonable state of repair.
- It cannot be confirmed that the electrical appliances provided by the Landlord are in a reasonable state of repair and proper working order.

Reasons for the decision

29. The Committee determined the application having regard to the terms of the application, the findings of their inspection, and the submissions and documents from the Tenant and the Landlord's Agent.
30. The Committee was satisfied having regard to all of the available evidence that there was sufficient information and material upon which to reach a fair determination of the application.
31. The Committee was satisfied having had regard to the gas safety certificate produced by the Landlord that the central heating system was in a reasonable state of repair and in proper working order. The Committee also noted that the light fitting in the kitchen had been fixed and a carbon monoxide detector had been installed in the kitchen.
32. The Committee noted however that there was not the required provision for detecting or giving warning of fires which constituted a breach of the repairing standard. Whilst there were two battery operated smoke detectors in the property the Committee was conscious that this fell short of what was required.
33. In the bathroom there was a lack of adequate ventilation which had resulted in mould growth. The Committee did not accept that this could be remedied by simply keeping the window open and considered that a proper extraction system would be necessary. It was also clear to the Committee from its inspection of the bathroom that the sealant around the bath required repair. The Committee accepted the Tenant's submissions that the pipework pertaining to the bath was incorrectly installed and therefore required to be remedied. The Committee was therefore satisfied that the bath and the pipework were not in a reasonable state of repair which constituted a breach of the repairing standard.
34. There did not appear to be any dispute between the parties regarding the kitchen units and the kitchen sink; all were in agreement that these items required repair and were not in proper working order. The Committee noted that the Landlord had given a commitment to same in a text message back in June 2015 however no works had been carried out. With regard to the windows in the kitchen and the kitchen extension, the Committee was satisfied from its inspection that neither was in proper working order and accordingly constituted a breach of the repairing standard. Similarly the extensive mould in the kitchen extension was evidence that the room was not wind and watertight and therefore constituted a breach of the repairing standard.
35. The Committee accepted that the gas fire in the living room had been disconnected and was not capable of use. However the Committee was conscious that the Landlord had a duty in terms of the repairing standard to ensure any fixtures, fittings or appliances in the property were in a reasonable state of repair. It would therefore be necessary for the Landlord to decide whether to remove the gas fire and block the flue or alternatively carry out the necessary repairs to the fire to ensure it could be used safely. Presently the vent in the window was unnecessary and would require to be removed and the pane repaired if the gas fire was no longer in operation. With regard to the window blind, it was clear from the Committee's inspection that it was not capable of use and therefore not in a reasonable state of repair.

36. Externally the Committee also accepted that the television aerial pertaining to the property had become disconnected and was incapable of use. This was clear from a visual inspection. With regard to the blocked gutters, the Committee was conscious that these were communal however the Landlord had a duty regardless to ensure they were in a reasonable state of repair. The Committee did not consider that a general lack of communal maintenance in the block negated the Landlord's duties in this regard and therefore considered the blocked gutters to be a breach of the repairing standard.
37. The Committee was disappointed to note that there was no inventory of the subjects despite reference to same in the terms of the tenancy agreement. There was therefore nothing to evidence the condition and contents of the property at the commencement of the tenancy other than the verbal statements of both the Landlord and the Tenant which were at odds in part. The Committee did however accept that the Tenant had notified the Landlord of the issues of disrepair in a letter dated 21 June 2013. His narration of the circumstances had not changed and reflected the Committee's findings during the inspection. The Committee therefore found his account of events to be credible and concluded that the issues of disrepair had persisted for at least three years since the aforesaid notification to the Landlord.
38. The Committee was also concerned to note that the Landlord had not carried out portable appliance testing on the various items in the kitchen. The Committee was conscious that the Landlord was responsible for any appliances provided at the start of the tenancy, regardless of whether these had been left by the previous tenants. The Landlord appeared unclear as to exactly what appliances had been in the property when the tenancy had commenced. In the absence of an inventory of contents, the Committee accepted the Tenant's position that there had been a microwave, washing machine, dishwasher, cooker and fridge freezer and therefore that the Landlord was responsible for ensuring the said appliances were in a reasonable state of repair and in proper working order. In the absence of portable appliance testing the Committee took the view that he had failed in his duty and was in breach of the repairing standard.
39. The Committee did not accept the Landlord's position that the Tenant had evaded contact and repeatedly refused access to the Landlord's contractors. The Committee noted the reference to the Landlord's contractor having attended the property in June 2015 to attend to the leak from the bath and that there was no dispute between the parties on that particular matter. The Tenant had fully cooperated on that occasion. The Tenant had also exhibited a message from the Landlord in June 2015 advising that the kitchen would be repaired once a joiner was available. However no action appeared to have been taken to carry out the works. The Landlord appeared vague regarding the history of his own attendance at the property and the letters he produced in support of his position lacked specification. On occasion during the Landlord's submissions it appeared to the Committee that any attempts at contact with the Tenant had taken place only shortly prior to the hearing. The Committee therefore accepted that there had been no failure on the part of the Tenant.
40. The Committee had concerns regarding the Landlord's apparent lack of regard for regular inspections, noting that he had not been inside the property for over a year prior to his visit in August 2016. The Committee was aware that the landlord had ultimate responsibility for ensuring that the property met the Repairing Standard and considered that he had failed in his duty in this regard by virtue of the numerous issues of disrepair noted during the inspection and as set out in the findings of fact.
41. The Act states that where a Committee decide that a landlord has failed to comply with their duty to ensure a property meets the Repairing Standard, the Committee "must by order require the landlord to carry out such work".
42. The Committee considered how long would be required to carry out the necessary works and determined that twelve weeks would be sufficient.

Decision

43. The Committee accordingly determined that the Landlord had failed to comply with his duty under section 14(1)(b) of the Act.
44. The Committee proceeded to make a Repairing Standard Enforcement Order as required in terms of section 24(2) of the Act and the decision of the Committee was unanimous.

Right of Appeal

45. A landlord or tenant aggrieved by the decision of the Private Rented Housing committee may appeal to the Sheriff by summary application within 21 days of being notified of that decision. The appropriate respondent in such appeal proceedings is the other party to the proceedings and not the panel or the committee which made the decision.

Effect of section 63

46. Where such an appeal is made, the effect of the decision and of the order is suspended until the appeal is abandoned or finally determined, and where the appeal is abandoned or finally determined by confirming the decision, the decision and the order will be treated as having effect from the day on which the appeal is abandoned or so determined.

R O'Hare

Signet

Date 14 September 2016

Ruth O'Hare
Chairperson

SCHEDULE OF PHOTOGRAPHS IN RESPECT OF STATEMENT OF
DECISION BY THE PRIVATE RENTED HOUSING COMMITTEE
DATED 14 SEPTEMBER 2016 PRHPREF - PRHP/RP/16/02



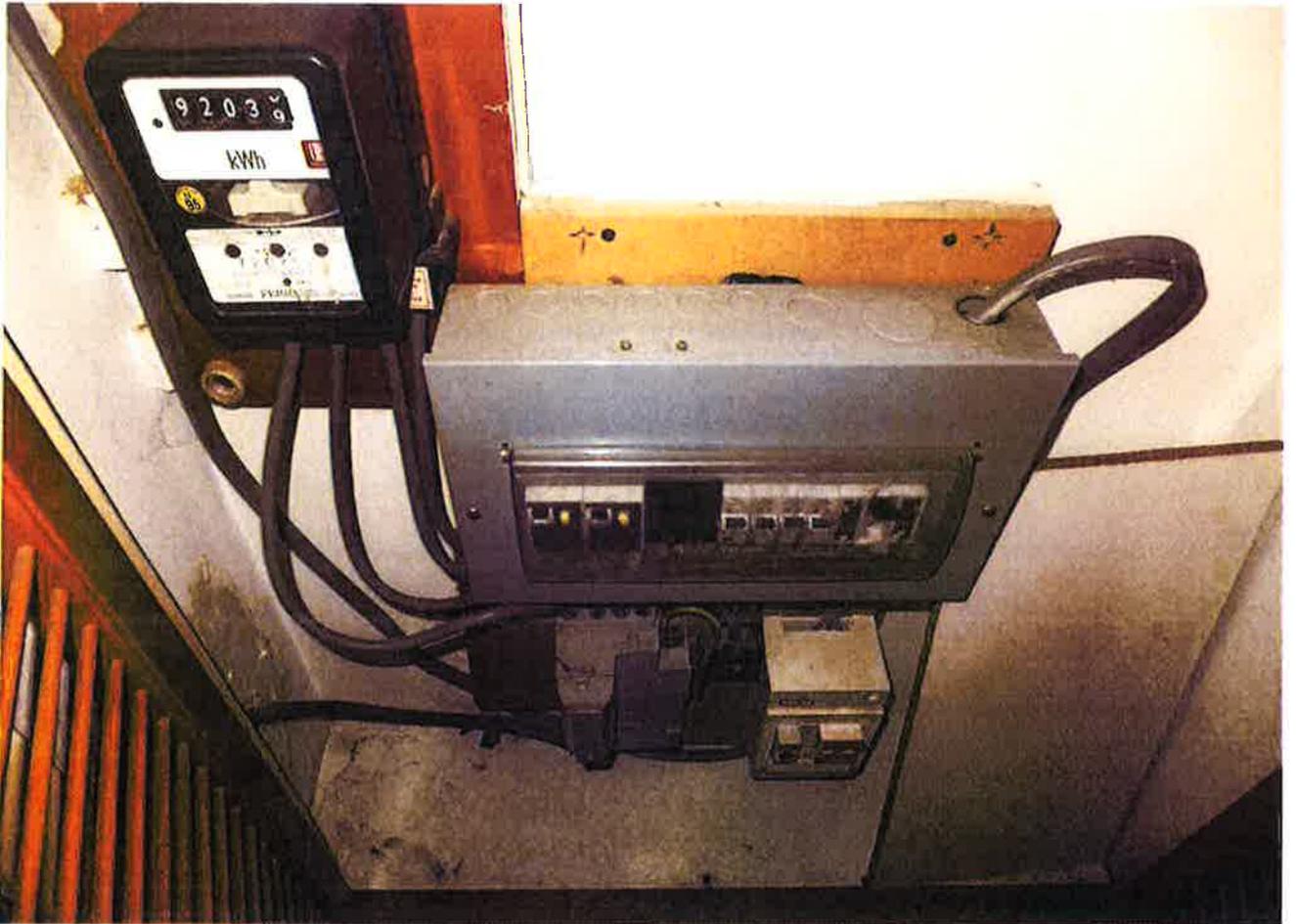
EXTERNAL VIEW

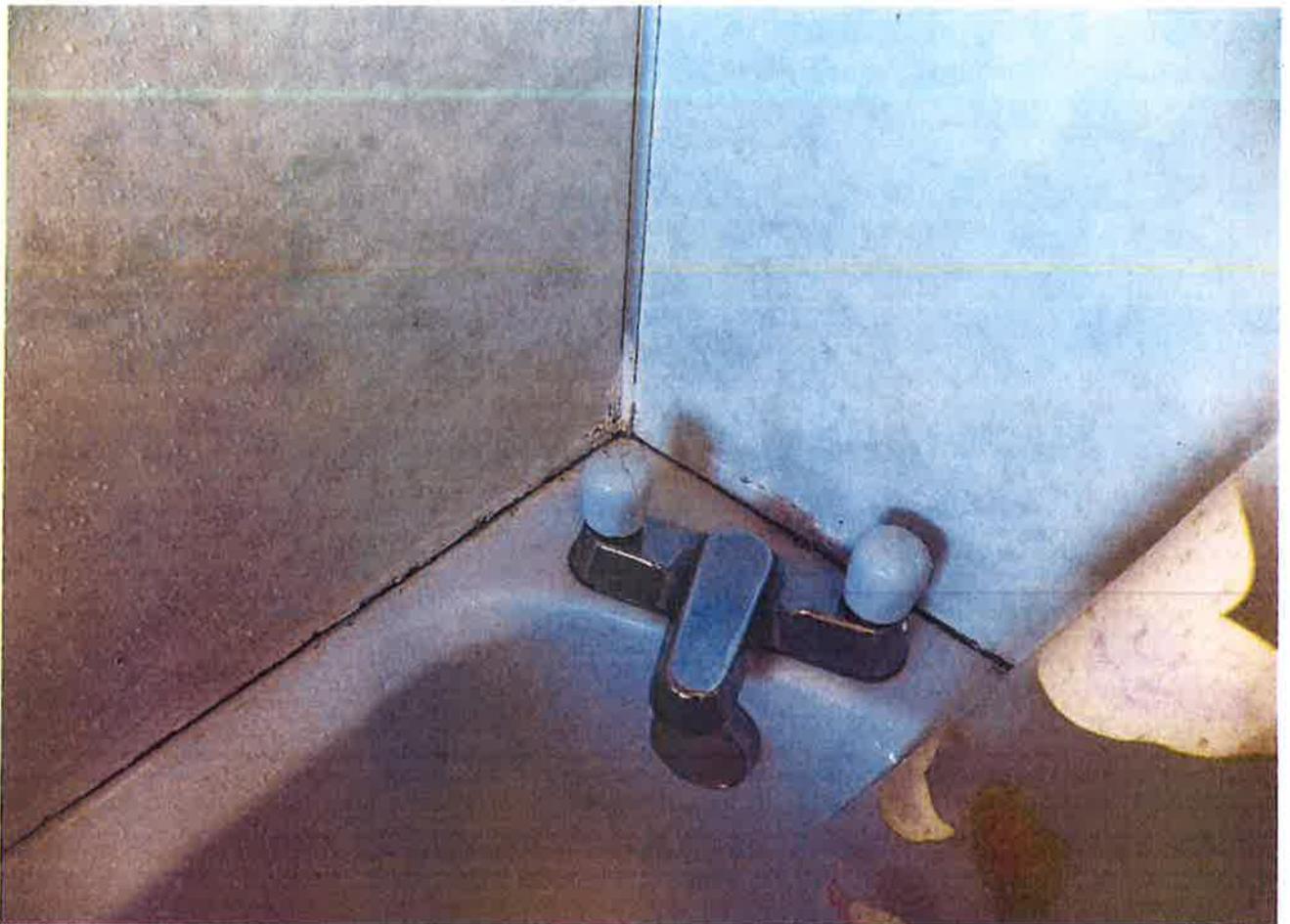




EXTERNAL VIEW







BATHROOM



BATHROOM



KITCHEN



KITCHEN



KITCHEN





KITCHEN EXTENSION



KITCHEN EXTENSION



KITCHEN EXTENSION



BOILER



LIVING ROOM

