

**Information Guide on Tenant/Third Party Applications under the Repairing Standard**

This guidance has been prepared by the Housing and Property Chamberfor the assistance of tenants, landlords and Third Party Applicants (for the time being the Local Authority) wishing to know more about the Housing and Property Chamber application process. This guidance is not, and is not meant to be, a comprehensive description of all aspects of the changes introduced by the Housing (Scotland) Act 2006, and the subsequent amendments, in relation to repairs in the private rented sector. The First-Tier Tribunal Housing and Property Chamber (Procedure) Regulations 2017 (“the Rules”) give further details on the process.

**Where can I get advice?**

Please note that staff in the Scottish Courts and Tribunals Service cannot give you legal advice on your situation, although they can explain and help you to understand the Tribunal procedure that an application will follow.

If you wish legal advice that is available from a solicitor, and a list of solicitors is available on the Law Society of Scotland website. Legal Advice relating to housing issues may also be available from Shelter, Citizens Advice Scotland,  or a University Law Clinic. Citizen’s Advice Scotland also provide advice relating to benefits, debt and money matters. The websites for these and other organisations are available on our website, and some have been copied below:

[Law Society of Scotland: http://www.lawscot.org.uk/](http://www.lawscot.org.uk/)

[Shelter Scotland: http://scotland.shelter.org.uk/](http://scotland.shelter.org.uk/)

[Citizens Advice Scotland: http://www.cas.org.uk/](http://www.cas.org.uk/)

**What is the repairing standard?**

A house meets the repairing standard if:-

1. (a) it is wind and watertight and in all other respects reasonably fit for human habitation,
2. (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,
4. (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,
5. (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,
6. (e) any furnishings provided by the landlord under the tenancy are capable of being used safely for the purpose for which they are designed,
7. (f) the house has satisfactory provision for detecting fires and for giving warning in the event of fire or suspected fire, and
8. (g) the house has satisfactory provision for giving warning if carbon monoxide is present in a concentration that is hazardous to health.
9. (h) the house meets the tolerable standard.

The repairing standard duty includes a duty to make good any damage caused by carrying out works whilst complying with the duty.

**What is a landlord required to do?**

A landlord in the private rented sector has a duty to ensure that the house they rent out meets the “repairing standard”. If a tenant or third party (for the time being a Local Authority) believes that a rented house does not meet that standard, an application can be made to the **Housing and Property Chamber** for a decision by a tribunal on whether or not the landlord has complied with that duty. The tribunal can then order the landlord to carry out the necessary repairs. Various enforcement powers apply if the landlord then does not do so.

**Is there anything else that a landlord should have regard to?**

Section 13(7) of the 2006 Act refers to further statutory guidance that the Scottish ministers can issue, which the tribunal must have regard to when determining if a property meets the repairing standard. Guidance can be on the following subjects:

(a) the condition of pipes supplying water for human consumption,

(b) electrical safety standards in relation to—

(i) installations for the supply of electricity, and

(ii) electrical fixtures, fittings and appliances,

(c) installation of a fixed heating system,

(d) equipment for detecting fire and for giving warning of fire or suspected fire,

(e) the tolerable standard,

(f) the type of emergency exit locks to be fitted to common doors in tenements,

(g) equipment for detecting, and for giving warning of, carbon monoxide in a concentration that is hazardous to health,

(h) the provision for, and safe access to, a food storage area and a food preparation space.

**What type of tenancy does the repairing standard apply to?**

The Housing (Scotland) Act 2006 (the 2006 Act) sets out the tenancies to which the repairing standard applies. It applies to most tenancies in the private rented sector (including tied houses) but there are some exceptions. Also, an application cannot be submitted to the **Housing and Property Chamber** if there is an occupancy arrangement as opposed to a tenancy as such arrangements are not covered by the standard.

**What types of tenancy are excluded from the Repairing Standard?**

The 2006 Act specifies some types of tenancy that the Repairing Standard duty does not apply. These are listed in Section 12 of the 2006 Act:

(a) a Scottish secure tenancy or a short Scottish secure tenancy, [this is different to a Short Assured Tenancy and is unique to leases where the landlord is a Registered Social Landlord e.g. a Housing Association]

(b) a tenancy of a house retained or purchased by a local authority under section 121 of the 1987 Act for use as housing accommodation,

(c) a tenancy of a house which is—

(i) on land comprised in a lease constituting—

(A) a 1991 Act tenancy (within the meaning of the Agricultural Holdings (Scotland) Act 2003 (asp 11)),

(B) a short limited duration tenancy (within the meaning of that Act),

(C) a limited duration tenancy (within the meaning of that Act), and

(D) a modern limited duration tenancy (within the meaning of that Act), or

(E) a repairing tenancy (within the meaning of that Act),

(ii) occupied by the tenant of the relevant lease,

(d) a tenancy of a house on a croft (within the meaning of the Crofters (Scotland) Act 1993 (c. 44)), or

(e) a tenancy of a house on a holding situated outwith the crofting counties (within the meaning of that Act of 1993) to which any provision of the Small Landholders (Scotland) Acts 1886 to 1931 applies.

(f) a tenancy of a house which does not exceed 31 days where the purpose of the tenancy is to confer on the tenant the right to occupy the house for a holiday.

**What types of landlord are exempt from the Repairing Standard?**

An application cannot be accepted where the landlord is**:**-

1. a local authority
2. a registered social landlord (such as a Housing Association), or
3. Scottish Water

**Are there any other exclusions/exemptions from the Repairing Standard?**

Yes, there are exemptions if:-

1. the work needing done does not come within the terms of the repairing standard;
2. the tenancy was originally for a period of three years or more, and cannot be terminated during that period, and the tenant is responsible by the terms of the tenancy agreement for carrying out all repairs;
3. the repair work needing done results from damage caused by the tenant;
4. the house has to be rebuilt or reinstated in the event of destruction or damage by fire or by storm, flood or other inevitable accident;
5. the work relates to the repair or maintenance of anything that the tenant is entitled to remove from the house;

the tenant and landlord have obtained the consent of the First-tier Tribunal to the house being let even if it does not meet the repairing standard.

**CASE PROCESS**

**Who can make an application?**

The applicant may be either the tenant (or a representative on their behalf with their consent); or the Local Authority as a third party with or without the consent of the tenant.

**Why can the local authority make an application about private tenancy repair issues?**

The [Housing (Scotland) Act 2014](http://www.legislation.gov.uk/asp/2014/14/part/3/crossheading/enforcement-of-repairing-standard/enacted) amended the Repairing Standard legislation to allow a Third Party (specifically the local authority) to make applications in the same manner as the tenant. The local authority must take the same notification action as a tenant prior to making the application.

**Can the tenant play an active role in a local authority application?**

If a decision is made by the local authority to submit an application, the tenant will be approached by the local authority to enquire if the tenant wishes to be a **participating party** to the proceedings, or an **interested person** in relation to the application.

When the application is received by the Housing and Property Chamber the Chamber will send a copy of all the application paperwork to the tenant. On the application form the local authority will have indicated whether the tenant wishes to be a participating party or an interested person. The tenant will be given the opportunity to contact the Housing and Property Chamber within 14 days of receipt of the application paperwork to amend their position.

If the tenant is unclear as to whether or not to be a participating party, advice can be sought from Shelter, Citizens Advice Scotland, or a solicitor. The Chamber is a judicial body and can give general information but cannot advise an individual on which course to choose.

**What does it mean if the tenant is a ‘participating party’?**

As a participating party the tenant will be able to take an active role and can submit written representations to a tribunal; present evidence at a Hearing; and call witnesses and submit documents.

**What does it mean if the tenant is an ‘interested person’?**

A tenant can choose not to take an active role as a party, in which case the tenant will be treated as an interested person and would then be entitled to receive a copy of tribunal decisions; can observe the hearing but will not be entitled to submit evidence.

**What action must an applicant take prior to making an application?**

In every case, the applicant must notify the landlord that work requires to be doneto ensure that the house meets the repairing standard. This is because the applicant will need to attach to the application a copy of the notification sent to the landlord of the work required, and any subsequent correspondence relating to the notification.

**What could be used as evidence of notification of repairs issues?**

It is best to e-mail or send a letter by recorded delivery post to the landlord or letting agent, and keep a copy of the letter sent (applicants can download a sample letter from the Housing and Property Chamber website or obtain a copy from the Housing and Property Chamber).

The landlord must receive fair notice of the problem – it is **not** enough just to make a general statement such as “the house does not meet the repairing standard”. The notification must set out what work needs to be done. It must reflect each item of work listed in the subsequent application (if there is more than one item).

It is important to carry out this notification requirement as it is only then that an application can be treated as valid and referred to a tribunal for a decision.

At the date when the outcome of the application is decided, the tribunal must be satisfied that the landlord has had a reasonable time since notification to carry out the required works.

**Is there a cost for this service?**

Applying to the Tribunal is free of charge. If an Order is made that requires execution, the party who was granted the Order would incur a cost to engage Sheriff Officers to carry out the execution. The Tribunal does not carry out the execution of any Orders they make.

**Does the Tribunal award expenses at the end of an application?**

The Tribunal has the power to award expenses against a party, but only where that party through unreasonable behaviour in the conduct of the case has put any other party to unnecessary or unreasonable expense. Exercise of this power is not linked to the outcome of the case and is not an automatic award.

Parties should be aware that if they instruct an agent to act on their behalf in a case, the expenses incurred for the duration of the case cannot be recovered from the other party on the basis that they are successful in pursuing or defending the application. Only where the party has incurred unnecessary or unreasonable expense, caused by the unreasonable behaviour of the other party in the conduct of the case, could an application for expenses be submitted.

It is at the tribunal’s discretion whether an award should be made. If they decide to award expenses against the party, the amount of the expenses awarded would be the amount to cover the unnecessary or unreasonable expense incurred by the party in whose favour the order for expenses is made. If an award of expenses is granted by the Tribunal, it will be assessed by the Auditor of the Court of Session.

**Can the tribunal award compensation to parties?**

No, the tribunal have no powers to award compensation to any party in a repairing standard application.

**Is there a specific form the application must take?**

There is an application form which is available from our website or by contacting our office. The application form guides applicants through the information required. It is important to provide all the information asked for in the application form as this information is required to form a valid application.

In addition to completing all sections of the application form, in order for the application to be valid it must contain the following:

1. A copy of the **lease, or tenancy agreement,** if available. Otherwise as much information about the tenancy as possible so that we can ensure that the tenancy comes within our jurisdiction.
2. A copy of the notification to the landlord of the work required, and any subsequent correspondence relating to the notification

It is important that the repairs included in the application match those notified to the landlord, as if an applicant adds works in the application which have not been notified to the landlord, or even exclude works from the application which the applicant has notified to the landlord, then this will lead to administrative delay because the Chamber will clarify with the applicant what repairs are to be included in the application. An applicant may be asked to send further notification to the landlord if evidence of the landlord’s receipt of the notification is unclear.

**What happens when an application is received?**

Once an application is received, it will be assessed to check that the form is correctly completed and that the required attachments are present. If something is missing the Chamber President, or another member of the First-tier Tribunal under the delegated powers of the Chamber President, will request this from the applicant through the administration and the application will not be accepted until all the required information and attachments are provided.

If the required information is not provided, the application will not be accepted by the Chamber President or the member with delegated powers, and the case will be closed. The applicant will be advised of this by the administration, and informed that they may submit a fresh application when they have all the required information and documents.

Where the further information requested is sent within the timescale, the application is deemed to have been made on the date the last of the required information is received.

Complete applications will be passed to the Chamber President or the member with delegated powers, who will consider the application.

**Can the President reject an application?**

The Chamber President or another member of the First-tier Tribunal, under the delegated powers of the Chamber President, must decide whether the application can be referred to a tribunal or whether it should be rejected. They must reject the application if:

* they consider that the application is frivolous or vexatious;
* the dispute to which the application relates has been resolved;
* they have good reason to believe that it would not be appropriate to accept the application;
* they consider that the application is being made for a purpose other than a purpose specified in the application; or
* the applicant has previously made an identical or substantially similar application and in the opinion of the Chamber President or another member of the First-tier Tribunal, under the delegated powers of the Chamber President, there has been no significant change in any material considerations since the identical or substantially similar application was determined

A decision to reject an application is appealable, unless the application type is one that is excluded from appeal, either by primary legislation or within the Tribunal Rules.

**Can a dispute be resolved informally through the Housing and Property Chamber?**

There is no in-house mediation service offered by the Chamber. However, in cases identified by the Chamber President as suitable for mediation, the First-tier Tribunal must:

(a) bring to the attention of the parties the availability of mediation at any point in the proceedings as an alternative procedure for the resolution of the dispute;

(b) provide information explaining what mediation involves; and

(c) if the parties consent to mediation, adjourn or postpone the hearing in accordance with rule 28 to enable the parties to access mediation.

In such cases, parties may be invited to consider mediation as a way of resolving the dispute.

It will be for the parties to access mediation and the responsibility on the Tribunal is to bring to the attention of parties the availability of mediation in suitable cases and provide information explaining the mediation process. The section below on “Finding a Mediator” will be helpful if a party wishes to try mediation. The Tribunal cannot offer validation or recommendation of any particular mediator nor refer parties to a mediator.

**What is Mediation?**

Mediation is a flexible process that can be used to settle disputes in a whole range of situations. Mediation involves an independent third party, the mediator, who helps people to agree a solution when there is a disagreement. The mediator helps parties work out what their issues and options are, then use those options to work out an agreement.

With the help of the mediator, the parties with the dispute decide whether they can resolve the issues and what the solution should be. The mediator does not take sides or make judgements. The mediator will ensure that both parties get a chance to state their case, hear the other side, work through the issues that are important to them and make an agreement. Parties in mediation are in control of the solution.

Mediation is a confidential process where the terms of discussion are not disclosed to any party outside the mediation hearing. If parties are unable to reach agreement, they can still follow formal procedures such as grievances and complaints or go to a tribunal or court, if appropriate. The details of what went on in the mediation will not usually be disclosed or used at a tribunal or a court hearing.

**If you are willing to engage in mediation, then you need to approach a mediator as soon as possible.** Please see the section below entitled “Finding a Mediator”. Some mediation services are free and Scottish Mediation will be able to provide information.

**The mediation proceeds at the same time as the application proceeds through the Tribunal process. This means that by trying mediation, the parties do not delay the progress of the Tribunal case.**

If consent to mediation is obtained from both parties and mediation is to take place, you will **still need to respond to requests for information or requests for written submissions sent to you by the Tribunal.** **You may have been given a date by the Tribunal for a hearing or case management discussion and the case will still proceed on this date, unless you are notified by the Tribunal of a postponement or that the application has been withdrawn or dismissed.**

It is likely that mediation will be able to take place quickly after there is an agreement to mediate and will take place before the date fixed for the hearing or case management discussion.

Where mediation is due to take place and you feel this requires the deadline to supply information or written representations to the Tribunal to be extended, or requires the hearing or case management discussion to be postponed, you should contact the Tribunal in writing to make this request as soon as you become aware of this.

If the dispute is resolved at mediation, then the applicant should contact the Tribunal in writing to request that the application be withdrawn.

If mediation is successful and results in an agreement which has a timescale for compliance, and the applicant wishes to await compliance with the agreement before withdrawing the application, the applicant should contact the Tribunal in writing to:

1. confirm the position in relation to when the mediation agreement is due to be complied with, and
2. request a postponement of proceedings until after this timescale has expired.

**Finding a Mediator?**

The Tribunal cannot offer validation or recommendation of any particular mediation service or refer parties to a mediator.

Scottish Mediation acts as the professional body for mediators in Scotland and maintains the Scottish Mediation Register of mediators. Parties who want to use mediation to resolve their case can find a relevant mediator by accessing this Register on the Scottish Mediation web site <https://www.scottishmediation.org.uk/find-a-mediator/> and by selecting Housing and Property in the ‘Types of Mediation’ Box on the lower right hand side of the page.

**What happens if the case is referred to a tribunal?**

If the President refers the application to a tribunal, all parties will be sent a **Notice of Referral, Inspection and Hearing** confirming the referral, notifying all parties of the date for the inspection and subsequent Hearing, and asking for any written representations to be submitted. Remember that you must reply to the tribunal by the date given on the Notice. If you need more time, you must contact the tribunal to ask for this, giving a brief explanation as to why you need more time. If you want to change or add to your written representations you can do so by writing to the tribunal at any time up to 5 working days before the hearing. After that, you can still amend your written representations but only with the consent of the tribunal.

**Can I amend my application or written representations before the hearing?**

The Tribunal Rules do allow for amendment of applications and written representations in certain circumstances. Any party can amend their written representations up to 7 working days prior to the date fixed for a hearing or case management discussion (**Rule 13** refers).

Where the effect of any amendment to the written representations would be to introduce a new issue, the amendment can only be made with the consent of the Tribunal (**Rule 14** refers). If the amendment is accepted, the other party will be given an opportunity to make written representations within 14 days of intimation of the amendment.

Amendments can also be made where no new issues have been raised. **Rule 14A** allows the applicant to amend the application including the amount claimed by intimating the amendment to the tribunal and any other party at least 14 days prior to a case management discussion or hearing. The Tribunal will then decide whether to consent to the amendment, and under what conditions consent will be given.

**Can the Tribunal hear multiple applications at the same time?**

Yes, the Tribunal has the power to direct that two or more applications should be heard together. The Rules state:

“**12.**—(1) The First-tier Tribunal may direct two or more applications to be heard together where they are under consideration by the First-tier Tribunal at the same time and relate to the same—

(a) property;

(b) required work;

(c) property factor;

(d) letting agent; or

(e) landlord.

(2) The First-tier Tribunal may require the parties to take any steps necessary to enable two or more applications to be heard together.”

**Who will the members of the tribunal be?**

Under [The First-tier Tribunal for Scotland Housing and Property Chamber and Upper Tribunal for Scotland (Composition) Regulations 2016](http://www.legislation.gov.uk/ssi/2016/340/made) a tribunal may be composed of:

            a legal member;

            a legal member and one ordinary member; or

            a legal member and two ordinary members

The legal member will always be the chairing member of the tribunal. All legal members appointed to the Chamber are qualified as solicitors or advocates. Ordinary members are either qualified as chartered surveyors, or have other experience of or practical involvement in housing and land related issues.

An exception to the above composition is in applications by a landlord for assistance in exercising a right under section 181(4) of the Housing (Scotland) Act 2006(1). These applications may be decided by the First-tier Tribunal consisting of an ordinary member sitting alone.

**What action can the tribunal take before a hearing takes place?**

The tribunal has the power to make inquiries, and can require the parties to attend a hearing or produce documents or information. If a party is served with a Direction from the tribunal requiring attendance or further information then they must complywith that, otherwise they may be guilty of a criminal offence and could be fined. It is also an offence to knowingly give false information to the tribunal.

The tribunal may also hold a case management discussion to determine how an application should proceed, and this can be held in a hearing venue, or over telephone/video conference.

**What is a Direction?**

Directions either orally or in writing are a method by which tribunals regulate the conduct or progress of the proceedings in a case before them. The provisions in Rule 16 set out some circumstances in which a tribunal may wish to issue a Direction. Tribunals may issue directions to instruct parties on such matters as:

documents that need to be given to the other side and lodged (filed with the Tribunal) prior to the Hearing; and

witnesses and documents the parties should bring to the hearing.

Please refer to The First-tier Tribunal for Scotland Housing and Property Chamber (Procedure) Regulations 2017 in full for further information. If Directions are issued they may require one party to do something but the Direction must be intimated on all parties.

**Do I have to comply with the Direction?**

The Scottish Tribunals (Offences in Relation to Proceedings) Regulations 2016 provide that it is an offence to fail to comply with a Direction. If the tribunal considers that such an offence has taken place during the proceedings, they will refer the matter to the police for investigation.

**What is a case management discussion?**

A case management discussion is a discussion between the Tribunal and the parties about aspects of the case that may require to be dealt with in order to efficiently resolve the dispute. Case management discussions will normally take place at hearing venues, and parties will be required to attend. If this is not possible, contact with the Tribunal to explain this should be made in advance and at as early a stage as possible..

At the case management discussion, the Tribunal may wish to:

identify the issues to be resolved;

identify what facts are agreed between the parties;

raise with parties any issues it requires to be addressed;

discuss what witnesses, documents and other evidence will be required; and

discuss whether or not a hearing is required;

As well as the above matters, the Tribunal may do anything at a case management discussion which it may do at a hearing, including making a decision on the application which may involve making an eviction order or payment order. It is important therefore that you attend the case management discussion if one is arranged. If you do not attend the case management discussion, this will not stop a decision or order being made by the Tribunal if the Tribunal consider that it has sufficient information before it to do so and the procedure has been fair.

**What happens at the inspection?**

The Tribunal will generally carry out **an inspection** at the property to look at the problem complained of prior to the Hearing. The Tribunal will only be looking at the issue(s) raised and will not carry out a comprehensive inspection of the property. However, in some cases another relevant issue may come to light in the course of that inspection. The Tribunal has the power to make inquiries about matters other than those to which the application relates if they consider it appropriate to do so. An applicant may be asked to submit a second application to deal with this new matter. If that situation arises, the Tribunal will issue directions making clear to all parties what needs to be done.

**Do I have to attend the case management discussion or the hearing?**

Think carefully before you decide not to attend a case management discussion or hearing. Remember that if you choose not to attend, you will not be able to respond to any of the points the other parties make on the day and the Tribunal will not have the chance to ask you any questions. If you do not attend, then the Tribunal can decide to proceed and make a decision in your absence if the Tribunal consider that it has sufficient information before it to do so and the procedure has been fair.

All subsequent questions which refer to a hearing apply equally to a case management discussion.

**Does the Housing and Property Chamber take account of specific requirements a party has for enabling them to attend at and participate in a case management discussion or Hearing?**

We will do our best to ensure that any hearing venues we use are accessible to all parties.

When you are first contacted by the Tribunal, there will be an accompanying form which asks you to let us know of any requirements the hearing venue should have to enable you to attend at and participate in the proceedings. If you wish confirmation of this or if there are other requirements which you have not told us about, then please let us know as soon as possible. If a party or a witness needs an interpreter for the hearing, we can arrange this if we are told about this in advance.

**When will the Hearing be held?**

Hearings are held on weekdays within normal working hours. You should always receive at least 14 days’ notice of the date for a hearing - unless all parties consent to a shorter period, or there are urgent or exceptional circumstances. In most cases, you will be given at least 28 days’ notice, since the Tribunal will notify parties of a hearing date and request any written submissions at the same time.

**Tribunal hearings are held in public – what does this mean?**

It is a requirement of the Rules that tribunal hearings are held in public. This means that details of the hearing are published on the Tribunal website in advance, and members of the public can attend to view proceedings.

If you have a special reason for wishing the hearing to be held in private then you must write to the Tribunal in advance explaining what the reason is and asking them to hold the hearing in private. The Tribunal will then decide whether or not to agree to your request, but will only agree to hold the hearing in private if they decide it is necessary in the interests of justice to do so.

We will tell you in advance about the hearing time and the hearing venue. We will do our best to make sure the hearing starts on time. This time may be changed to suit individual circumstances.

It’s important you arrive on time. Please let us know if you or your witnesses are delayed. If you decide not to attend, then please let us know. You and the people you are bringing should arrive 10 minutes before the hearing is due to start.

**What happens at the Hearing?**

The Tribunal will decide what procedure is to be followed at the hearing, and the chairing member must take reasonable steps to:

introduce to the parties the members of the First-tier Tribunal conducting the hearing;

explain the purpose of the hearing; and

ensure that the parties to the hearing understand and can participate in the proceedings.

At the hearing you will be able to tell the Tribunal your view on the issues and you can also bring witnesses if you wish but you will have to arrange this and notify the tribunal in in advance. You will be able to ask the other party questions and also question any witnesses he or she has brought to the hearing. The Tribunal have the right to record Hearings and you will be notified at the outset of the Hearing if it is to be recorded. The Chairperson and member(s) will keep a note of the evidence submitted at the Hearing. The Tribunal will want to establish from the evidence:

What they think the relevant facts are,

What conclusions should be drawn from these facts, and

what should be the outcome of the application.

**Can I attend personally or do I have to be represented?**

You can conduct your case yourself or you can have your representative conduct the case for you. Do not be put off attending a hearing – the procedure is fairly informal and the chairperson will ensure that you know what is happening. There are rules that govern representatives and supporters of parties at proceedings. The rule regarding representation is Rule 10:

***10*** *(1) A party may be represented in any proceedings by a representative whose details must be notified to the First-tier Tribunal prior to any hearing.*

*(2) A party may disclose any document or communicate any information about the proceedings to that party’s lay representative or legal representative without contravening any prohibition or restriction on disclosure of the document or information.*

*(3) Where a document or information is disclosed under paragraph (2), the representative is subject to any prohibition or restriction on disclosure in the same way that the party is.*

*(4) A practice direction, an order, or anything permitted or required to be done by a party under these Rules, may be done by a lay representative, except the signing of an affidavit or precognition.*

*(5) The First-tier Tribunal may order that a lay representative is not to represent a party if—*

*(a) it is of the opinion that the lay representative is an unsuitable person to act as a lay representative (whether generally or in the proceedings concerned); or*

*(b) it is satisfied that to do so would be in the interests of the efficient administration of justice.*

*(6) Where a representative begins to act for a party after the application is made, the representative must immediately notify the First-tier Tribunal and any other party of that fact.*

*(7) Where a representative ceases to act for a party, the representative or the party must immediately notify the First-tier Tribunal and any other party of that fact, and give details of any new representative (if known).*

The rule regarding supporters is Rule 11:

***11.****(1) A party who is an individual may be accompanied by another individual to act as a supporter.*

*(2) A supporter may assist the party by—*

*(a) providing moral support;*

*(b) helping to manage tribunal documents and other papers;*

*(c) taking notes of the proceedings;*

*(d) quietly advising on—*

*(i) points of law and procedure;*

*(ii) issues which the party might wish to raise with the First-tier Tribunal.*

*(3) A party may show any document or communicate any information about the proceedings to that party’s supporter without contravening any prohibition or restriction on disclosure of the document or information.*

*(4) Where a document or information is disclosed under paragraph (3), the supporter is subject to any prohibition or restriction on disclosure in the same way that the party is.*

*(5) A supporter may not represent the party.*

*(6) The First-tier Tribunal may order that a person is not to act as a supporter of a party if—*

*(a)it is of the opinion that the supporter is an unsuitable person to act as a supporter (whether generally or in the proceedings concerned); or*

*(b)it is satisfied that to do so would be in the interests of the efficient administration of justice.*

**Can I bring written evidence which has not been sent before to the Tribunal?**

This is covered by Rules 21 and 22:

***21.****(1) The First-tier Tribunal may require any person—*

*(a)to attend a hearing of the First-tier Tribunal at such time and place as the First-tier Tribunal may specify for the purposes of giving evidence; and*

*(b)to give the First-tier Tribunal, by such day as it may specify, such documents or information as it may reasonably require.*

*(2) Paragraph (1) does not authorise the First-tier Tribunal to require any person to answer any question or to disclose anything which the person would be entitled to refuse to answer or disclose on grounds of confidentiality in civil proceedings in a court in Scotland.*

*(3) Where the First-tier Tribunal has set time limits for the lodging and serving of written evidence under rule 22(1), it must not consider any written evidence which is not lodged or served in accordance with those time limits unless satisfied that there is good reason to do so.*

*(4) Where a party seeks to rely upon a copy of a document as evidence, the First-tier Tribunal may require the original document to be produced.*

***22.****(1) Except as otherwise provided in these Rules, or as otherwise specified by the First-tier Tribunal, a party must send to the First-tier Tribunal no later than 7 days prior to any hearing notified under rule 24(1)—*

*(a)a list of any documents and copies of the documents that the party wishes to rely upon; and*

*(b)a list of any witnesses that the party wishes to call to give evidence.*

*(2) Before allowing a document to be lodged late, the First-tier Tribunal must be satisfied that the party has a reasonable excuse.*

If there are documents that a party wishes the tribunal to consider at the hearing (other than the documents which comprise the application and/or any written representations submitted), they **must be sent in advance**. When submitting productions a party must send to the Chamber a list of documents, together with copies of the documents that they wish to rely on, no later than 7 days before the hearing. If a party wishes to rely on a document which has not been sent to the Chamber at least 7 days before the hearing, the tribunal may decide that this cannot be considered as part of the evidence in the case, or the hearing may need to be adjourned until a later date. The tribunal may allow the document to be included with the evidence only if it is satisfied that there is good reason to do so, and considers this to be fair in the circumstances.

**What documentation constitutes a production as opposed to written representations?**

Productions comprise paperwork which did not form part of the application and written representations/ answers received following the issue of the notice of referral. The application is circulated to the parties at the time of notice of referral and the written representations/ answers are received by the Chamber within a designated timescale after the notice of referral is issued, and the Housing and Property Chamber administration will ensure that copies of paperwork submitted at this stage are crossed over and both parties see the others’ written representations/ answers.

Productions can be documents, photographs, statements forming the evidence, skeleton arguments on issues parties wish to advance in some detail at the hearing, etc

#### Can parties bring witnesses to the Hearing?

#### If you wish to bring a witness/ witnesses with you on the day of the hearing to give evidence on your behalf, you must send to the Chamber no later than 7 days before the hearing a list of these witnesses. If you do not send a list of witnesses at least 7 days before the hearing, the tribunal may decide that evidence from this witness/ these witnesses cannot be heard, or the hearing may need to be adjourned until a later date.

**Can parties bring children to the Hearing?**

Please be advised that children under the age of 14 are not permitted to accompany any individual or be present in the hearing room during Tribunal proceedings. Children under 14 may be permitted to wait in designated waiting areas of the venue but **only in circumstances where the party can provide adequate supervision in the form of another adult**.

SCTS staff and those of third party companies working for SCTS on the day of the hearing are not permitted to provide childcare and are not responsible for the supervision of children attending the venue. It is the tribunal’s discretion to take any actions they deem appropriate should a party (or witness) bring a child to a tribunal hearing and that party (or witness) cannot provide adequate supervision for that child in the form of another supervising adult. This may include the tribunal continuing to hear and determine the case in the absence of a party or a witness.

**What happens if someone is disruptive at the Hearing?**

Everyone attending the hearing is expected to behave in a polite and appropriate manner. The Tribunal has the power to exclude any person from the hearing if that person is being disruptive – this includes any party, representative, or supporter.

**When do I receive the Tribunal’s decision?**

The Tribunal will not usually give a **decision** on the day for repairing standard cases. It will be sent out to you soon after the hearing along with a statement of reasons for the decision. We aim to have the decision issued to the parties within 21 days after the date of the decision. However sometimes this may take longer if the Tribunal require more time to consider the issues.

**What decisions can the Tribunal make after the inspection and Hearing?**

If the Tribunal find the landlord has **complied** with the duty they will issue a decision confirming this to all parties and the case will be closed.

If the landlord has failed to comply with the duty, but lacks the necessary rights (of access or otherwise) to carry out the works, the Tribunal will serve notice of the **Failure to Comply (lack of rights)** on the Local Authority and the case will be closed. This is provided the landlord has taken reasonable steps for the purposes of acquiring those rights.

A landlord is treated as lacking necessary nights in relation to any work intended to be carried out to parts owned in common with other owners, where a majority of the owners has not consented to the intended work.

If the Tribunal decide that a landlord has failed to comply with the duty and has the necessary rights to carry out the work, then the Tribunal must make a “**repairing standard enforcement order**” (RSEO) requiring the landlord to carry out the work.

**What happens if the Tribunal make an RSEO?**

The Tribunal must specify the period within which the work must be carried out, but the landlord must be given at least 21 days. The RSEO may specify what particular steps the Tribunal require the landlord to take, or the Tribunal may leave it up to the landlord to decide how to carry out the repairs.

**What affect does the RSEO have, over and above requiring works to be completed?**

It is a criminal offence not to comply with an RSEO. It is also a criminal offence to re-let the property to someone else while the RSEO remains in force (unless the Tribunal gives permission).

The RSEO is registered against the Title for the house and will remain on the Title until it is revoked, which is usually when the works are certified as complete by the Tribunal. The RSEO still applies to the house if a landlord sells it before the works are carried out and the order is revoked. Therefore, having an RSEO on the Title may affect the marketability of a house as it cannot be sold as a buy-to-let property and the duty on the owner to complete the works in the RSEO still exists after a sale. It may affect the ability of a purchaser to obtain a loan over the affected property.

**What happens after the RSEO timescale has expired?**

After the period specified in the RSEO has expired, the Tribunal (or sometimes the surveyor member only) will carry out a further inspection of the house. There may be another hearing fixed but it is more common for there to be no second hearing and for a copy of the re-inspection report to be sent to the parties who will be asked to complete a questionnaire on their views on a number of issues. Following consideration of the inspection findings and the further comments received, the Tribunal will decide whether the landlord has failed to comply with the RSEO.

**What decisions can the Tribunal make on compliance with the RSEO?**

If the Tribunal decide the landlord has complied with the RSEO they will issue a **Certificate of Completion** and will take steps to remove the burden of the RSEO on the Title deeds.

If the Tribunal decide the landlord has not complied with the RSEO and there is no reasonable excuse for the refusal, the Tribunal can **serve notice of the failure on the local authority** and decide whether to make a **Rent Relief Order (RRO).** This is an order which reduces any rent payable under the tenancy by whatever amount the Tribunal decide, up to a maximum of 90%. It does not affect the terms of the tenancy in any other way.

An RRO comes into effect 28 days after the last date on which the decision to make the order may be appealed, and cannot be backdated. If works are completed after an RRO is made or the Tribunal decide that rent relief is no longer appropriate, then the RRO will be revoked. Once revoked the tenant will not be asked to repay the reduction in rent due to the RRO. The tenant will only have to resume paying full rent 28 days after the last date on which the decision to revoke the RRO may be appealed.

A failure to comply decision will result in a referral of the case for prosecution as it is an offence to fail to comply with the RSEO without reasonable excuse. This can result in a fine.

**FURTHER INFORMATION**

**Can I appeal against a decision if it is not in my favour?**

Yes, you can apply to the Chamber for permission to appeal within 30 days of the date the decision is issued. An appeal is on a point of law only. The references below refer to Sections of the [Housing (Scotland) Act 2006](http://www.legislation.gov.uk/asp/2006/1/contents) and have been included for information.

A landlord or a tenant aggrieved by a decision of the First-tier Tribunal—

(a) under section 24(1) (determination by the First-tier Tribunal),

(b) to vary or revoke a repairing standard enforcement order (see section 25),

(c) that a landlord has failed to comply with a repairing standard enforcement order (see section 26(1)),

(d) to make or not to make a rent relief order (see section 26(2)(b)),

(e) to revoke a rent relief order (see section 27(4)), or

(f) to grant, or to refuse to grant, a certificate under section 60 in relation to any work required by a repairing standard enforcement order,

may seek permission to appeal on a point of law only from the First-tier Tribunal within 30 days of being sent that decision.

A third party applicant aggrieved by a decision of the First-tier Tribunal which—

(a) is mentioned in subsection (4)(a) to (f),

(b) was made following an application by the applicant under section 22(1A),

may seek permission to appeal on a point of law only from the First-tier Tribunal within 30 days of being sent that decision

may appeal to the sheriff within 21 days of being notified of that decision.

A tenant or a third party applicant may seek permission to appeal on a point of law only from the First-tier Tribunal against a decision by the Chamber President under section 23(1) within 30 days of being sent that decision.

**Are Repairing standard decisions publically available?**

Yes, they can be accessed from the Housing and Property Chamber website.

**Does Landlord Registration Services know of these decisions?**

Yes, copies of repairing standard decisions are intimated to the local authority for the area in which the house is situated.

**If the tribunal decides that the Landlord has failed to comply with the RSEO, can the Local Authority for the area in which the house is situated carry out the works?**

Yes, but the decision as to whether or not they will carry out works in these circumstances rests with the local authority (Section 36 of the 2006 Act). If a local authority does decide to carry out the works in the RSEO, then they must give the landlord and tenant 21 days’ notice of their decision unless the repairs are urgent. There are powers for the local authority to recharge the landlord for the expenses associated with the works and, if the landlord does not pay, then a local authority can register a repayment charge against the Title deed for the house to secure payment of the expenses.

**What happens if the tenancy is terminated by the landlord or tenant before the application is determined, or if the applicant withdraws the application?**

Applications by a tenant are deemed withdrawn when the tenancy is lawfully terminated. Applications by the local authority however are not treated as withdrawn if the tenancy is terminated and would continue as normal unless the local authority requests the application be withdrawn. Depending on what stage the application has reached when a withdrawal request is received, it would be for the President or the Tribunal to decide whether to accept the withdrawal and abandon the application, or proceed to determine the application. If the application continues and the Tribunal decides that the house does not meet the repairing standard, then an RSEO will be made and enforced in the usual way. Whilst an RSEO is in force, the house cannot be re-let to someone else without the Tribunal’s permission; otherwise a criminal offence is committed by the landlord.

An application cannot be withdrawn after the application has been determined and an RSEO has been issued.

**Can the tribunal make a decision that a landlord has to complete common repairs?**

Yes. If the tribunal decide that:

the landlord has the necessary rights to complete the repair;

the landlord is bound to pay a share of the common repairs; and

the tenant’s use of the house is adversely affected by the repair issue

then they are entitled to make an RSEO that requires the landlord to carry out common repairs.

A landlord is treated as lacking necessary nights in relation to any work intended to be carried out to parts owned in common with other owners, where a majority of the owners has not consented to the intended work.

**SUBMISSION OF EVIDENCE**

**In what format can I send written information?**

You can send information by post, email or fax. Typed submissions are preferable, though handwritten evidence is also acceptable. Any handwritten submissions should be clearly legible, and this may mean it should be written in block letters to aid the Tribunal Members and other parties in understanding your submissions. If we receive a submission that is difficult to read, we may ask if you are able to supply the information in another way, so that your submissions can be considered in full.

**Can I submit photographs about the repair issues?**

Photographs can be submitted; however they are not a requirement and would normally not be considered in making a determination of whether a landlord has complied with his duties under the Repairing Standard. The quality of copies of photographs submitted deteriorates as they go through the scanning/printing process to be issued to parties so their use is limited in this respect.

The Tribunal must make their decision based on the evidence they find when they inspect the property on the day of the Hearing. The Tribunal may take their own reference photographs at the inspection and include them in their determination.

**I have documents to attach to an email, is there a size limit for emails sent to the Tribunal?**

We are only able to receive attachments that total 20MB in size. If your documentation is larger than this, then if possible separate the document to be attached over multiple emails. If your file is too large you may have to consider sending the documentation by other means.

For system security reasons we cannot open zipped files sent to us, or follow links to online document storage sites.

**Can I send video or audio evidence?**

Case management discussions and hearings are being conducted by teleconference for the time being. Audio and video evidence can be accepted, a request can be made to the tribunal who will send instructions.

For evidence contained within video recordings, parties should produce still photographs which can be circulated in advance to the tribunal members and other party