

Housing and Property Chamber

First-tier Tribunal for Scotland



First-tier Tribunal for Scotland (Housing and Property Chamber)

STATEMENT OF DECISION: Housing (Scotland) Act 2006 Section 24(1)

Chamber Ref: FTS/HPC/RP/24/3608

**Property at G/L 77 Hilltown, Dundee, DD3 7AD
("the Property")**

The Parties:-

Mr Robin Carstairs, G/L 77 Hilltown, Dundee, DD3 7AD ("the Tenant")

**Trustees of the Roman Catholic Church Diocese of Dunkeld, St Mary's RC Church, 30
Lawside Road, Dundee, DD3 6SB
("the Landlord")**

Tribunal Members:

Gillian Buchanan (Chair) and David Godfrey (Ordinary Member)

Background

1. By application comprising various documents received between 7 August and 21 August 2024 the Tenant applied to the tribunal for a determination of whether the Landlord 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 Tenant considered that the Landlord had failed to comply with their duty to ensure that the Property meets the repairing standard and in particular that the Landlord had failed to ensure that:-
 - The Property is wind and watertight and in all other respects reasonably fit for human habitation;
 - Any fixtures, fittings and appliances provided by the Landlord under the tenancy are in a reasonable state of repair and in proper working order;
 - The Property meets the tolerable standard, in particular that -
 - The Property is free from rising or penetrating damp;
 - The Property has satisfactory thermal insulation;
 - Any common parts pertaining to the Property can be safely accessed and used; and
 - The house has satisfactory provision for, and safe access to, a food storage area and a food preparation space.

3. By letter dated 27 August 2024 a Legal Member of the tribunal with delegated powers of the Chamber President intimated a decision to refer the application under Section 22(1) of the Act to a tribunal.
4. On 19 December 2024 the tribunal served Notice of Referral under and in terms of Schedule 2, Paragraph 1 of the Act upon the Tenant and the Landlord respectively.

Inspection

5. The tribunal, comprising Miss Gillian Buchanan, Chairperson and Legal Member and Mr David Godfrey, Ordinary Member, inspected the Property at 10.00am on 11 February 2025. The Tenant was in attendance and permitted access. The Landlord did not attend the inspection of the Property but was represented by Ms Laura Weir of Direct Lettings.
6. Photographs were taken and are contained in the attached Schedule of Photographs ("the Schedule of Photographs").

Hearing

7. Following the inspection of the Property the tribunal held a hearing by telephone conference at 11.45am on 11 February 2025. The Tenant attended the hearing and was represented by Mr Kenneth Marshall of Dundee Law Centre. Mr John O'Mera, an employee of the Landlord, attended the telephone conference and the Landlord was represented again by Ms Weir.
8. At the outset of the Hearing the tribunal raised with Mr Marshall that the Tenant's complaints in the application relative to the hallway of the Property and under the heading "Further Reported Concerns" were not articulated in prior correspondence sent by Dundee Law Centre to Direct Lettings on 19 December 2023 or 5 March 2024. On that basis the tribunal intimated that these complaints could not be considered by the tribunal. Mr Marshall accepted that to be the case.
9. Neither the Tenant nor Mr Marshall on his behalf made oral submissions at the telephone conference. Mr Marshall simply indicated that he had visited the Property himself and would defer to the determination of the tribunal as to what works are required.
10. For the Landlord, Ms Weir made the following submissions:-
 - i. With regard to the internal insulation, the contractor which carried out the work was "Heat". Heat was instructed by "Pride & Joy". The work was done by virtue of a Government grant called "Home Eco 4". This grant allowed upgrades to insulation and heating within properties to make them more energy efficient. The availability of the grant was means tested based on the Tenant's financial situation and therefore the Tenant instructed the work. The insulation and heating was installed in 2023. It was agreed that the Landlord would undertake the subsequent decoration of the Property as the scheme did not meet these costs which left bare plaster on the walls. The Landlord was happy to pay for the decoration and obtained a quote for those works to be done in January 2024. However, that work has not been carried out due to the Tenant's complaints about the insulation.
 - ii. With regard to the kitchen refurbishment, this was carried out in January 2022. These works were carried out by Hamptons Preservation along with works to the bathroom. The bathroom was fitted in July 2023. The kitchen and bathroom works were instructed by the Landlord. With regard to the kitchen, decoration is required and the quotation referred to

above for decoration elsewhere in the Property does not include the kitchen. The Landlord is happy to carry out the decoration required. However, the Tenant wants other issues dealt with first. Since the kitchen was fitted the Tenant has complained of issues with draughts and Hamptons have attended on more than one occasion. They last visited in 2023. Most recently another contractor, "Fax Joinery", looked at the kitchen floor and the source of any draughts. That took place in January 2024. Works were done to draught proof the kitchen and the invoice of the contractor narrates that the Tenant was satisfied. Ms Weir was not exactly sure of what works were carried out. There were, however, holes in the wall and floor that were repaired.

- iii. Ms Weir stated that when the list of complaints was lodged with the tribunal, she was unaware of a lot of them. Ms Weir stated that she has now taken ownership of the Tenant's complaints about the Property. She is not an expert in the field of insulation but has not felt the draughts about which the Tenant complains. Ms Weir contacted Trustmark which provided the insulation Certificate. She also received a letter from Ofgem indicating that there is an independent review being carried out of issues with the types of firm employed for these types of work. However, because the Tenant instructed the works any case requires to be presented by him. It cannot come from Direct Lettings. Ms Weir said she did not know if the works were done to the correct standard.
- iv. With regard to the numbered complaints in the Kitchen relative to the Tenant's tribunal application Ms Weir stated: –
 1. Whilst she agrees there is a drop in level of the kitchen floor, contractors have attended and confirmed the floor to be within acceptable tolerances
 2. The landlord is agreeable to redecorating the walls within the kitchen.
 3. With regard to the vent, the contractor has agreed to look for a "back door vent" which will allow air out but not in and costings are awaited.
 4. There was never any agreement to install insulation in the kitchen. The Grant provider determined what insulation could be installed and nothing was proposed for that area.
- v. With regard to the Front Room: –
 1. Whilst the carpets are under the insulation they can simply be cut if access is required. The method of installation is not incorrect and the carpet can be stretched. New vents had been installed and then removed. They were installed again and the Tenant wanted them siliconed in place but the contractor clipped them on. Another works order has been raised. The contractor requires to get hold of the Tenant to deal.
 2. Ms Weir is not sure what is meant by the complaint that the window has not been sealed.
 3. With regard to the windowsill, Ms Weir is happy to have the windowsill sealed but would rather that is dealt with along with the rest of the insulation issues if other works are required.
 4. The Tenant had fitted curtains to the recesses of the room previously and to the front door. A contractor was employed to refit the curtain rails. The Tenant had an issue about how the contractor spoke to him and did not want him back. The Tenant is to get costs for refitting the curtain rails and Ms Weir will ask the Landlord if payment will be made. The Tenant is liaising with Hilarys.
 5. The Tenant wants to ensure the complaints about the insulation are dealt with. Thereafter the decoration can take place. The Tenant wants the decoration carried out on a room by room basis to accommodate his health issues. There is no point instructing the decoration until the other issues are resolved.
 6. With regard to the alleged issues with the windows and the complaint of cold air constantly coming through, the windows are double glazed. Ms Weir said she could not

comment on the draughts as she does not feel them when she is at the Property. Nothing further is proposed.

- vi. With regard to the Back Room:-
 1. The gap between the internal door to the kitchen and the floor is within the acceptable tolerances and allows the door to open.
 2. The insulation issues have already been covered above.
 3. The gas cupboard is in proper order and no works are proposed.
 4. The windowsill can be sealed as proposed for the Front Room.
- vii. With regard to the bathroom Ms Weir stated that she is not happy with the bathroom as it stands. Dealing with the Tenant's particular complaints: –
 1. The wet wall does not require to reach the ceiling of the room. However Ms Weir accepts that the wall above the wet wall requires tidied and repainted with mould resistant paint.
 2. Ms Weir will accept the tribunal's view of the shower tray.
 3. With regard to the holes in the floor these require to be dealt with and quotes for these works are awaited. The floor may need to be replaced.

Ms Weir stated that there had been issues between Direct Lettings and the Tenant. There have been a lot of communication issues through no fault of the Tenant and he has now been asked to report any issues by email. There are several contractors who the Tenant does not want to attend but Ms Weir hopes to move forward and deal with any issues that require attending to.

Summary of the issues

11. The issues to be determined are:-
 - i. Is the Property wind and watertight and in all other respects reasonably fit for human habitation. In particular are the windows properly sealed such that there are no draughts, and are the windowsills properly installed? Are there draughts in the kitchen having particular regard to the vent, and are there draughts from the gas cupboard in the Back Room? Are there draughts from the holes in the bathroom floor and to what extent, if any, is the Property not reasonably fit for habitation?
 - ii. Are fixtures, fittings and appliances provided by the Landlord under the tenancy in a reasonable state of repair and in proper working order? The only fixtures complained about are the shower tray, the wet walls in the bathroom and the internal door between the kitchen and the Back Room.
 - iii. Does the Property meet the tolerable standard, in particular -
 - Is the Property free from rising or penetrating damp? There were no complaints to this effect.
 - Does the Property have satisfactory thermal insulation? Does the internal insulation installed by "Heat" meet the Repairing Standard?
 - Are there any common parts pertaining to the Property that cannot be safely accessed and used? There are no relevant complaints relative thereto.
 - Does the Property have satisfactory provision for, and safe access to, a food storage area and a food preparation space?

Reasons for the Decision

12. The Property is a ground floor flat situated in a stone tenement block of flats set back from Hilltown, Dundee. Entry to the Property is from a common close.

13. During the inspection the tribunal carefully considered the Tenant's complaints relative to the Property, including those in the hallway, and those relative to the security gate, the retaining wall in the garden and the roof and guttering. However, the tribunal identified that the complaints relative to the hallway and externally had not previously been intimated to the Landlord in terms of section 14(3)(a) of the Housing (Scotland) Act 2006 and accordingly for the purposes of this application the complaints relative to these areas are not for the tribunal's determination, the Landlord's duty to repair and maintain not having been properly engaged relative to these alleged issues prior to the application being made.
14. Internally, within the Front Room and Back Room, internal insulation has been installed on the external walls with plaster having been applied thereafter but with final decoration being outstanding. Whilst, in some locations, the internal installation had been installed to a minor extent over the existing carpet at the skirting boards there is no breach of the Repairing Standard and the final decoration is only outstanding as a consequence of the Tenant not being prepared to allow these works to take place until this application is determined. The Landlord has previously obtained a price quotation for these works and the Tenant requires to allow those works are to be undertaken.
15. With regard to the windows within the Front Room and Back Room, these are wind and watertight, properly sealed and meet the Repairing Standard. No draughts could be felt and no source of any draughts could be found.
16. With regard to the windowsills in the Front Room and Back Room, these were loose in that they could be used lifted upwards out of position and the Landlord's agent confirmed that there is no difficulty in the sills being permanently fixed into place. This is a minor issue.
17. In that, in the Front Room, the curtain rails required to be removed to allow the internal insulation to be installed, the Tenant is now liaising directly with Hilarys to have the curtain rails re-attached and the Landlord is prepared to consider meeting the cost thereof once a price has been received by the Tenant and forwarded to the Landlord's agents.
18. With regard to the internal door between the Back Room and the kitchen, the gap between the door and the floor is necessary to allow the door to open over the carpet and no works are required.
19. With regard to the Gas Cupboard in the Back Room, it has been installed correctly no draughts could be felt. There is no breach of the Repairing Standard.
20. In the kitchen, the tribunal had regard to the age and character of the tenement block of which the Property forms part. Whilst, within the kitchen, there is a slight gradient in the floor level running downwards towards the window, that gradient is within acceptable tolerances and meets the Repairing Standard.
21. The kitchen units and worktop were relatively recently installed and the Landlord's agent intimated Landlord's willingness to deal with decoration required to the walls.
22. With regard to the vent installed high up to the left of the window in the kitchen, this was covered by a carrier bag at the time of the tribunal's inspection. The Landlord's agent has appointed a contractor to source a "back door vent" which will allow air out of the kitchen but not back in. Costings therefore are awaited.

23. Within the bathroom the wet wall is properly installed and meets the Repairing Standard. There is no need for the wet wall to reach the bathroom ceiling. Whether the shower tray is squint or otherwise is of no consequence in that it meets the Repairing Standard and the Tenant made no complaint of water leaking from the shower, for example. The Landlord's agent accepted that further works to the bathroom are required to the floor and to the decoration above the wet wall and arrangements are being made therefore.
24. Given that the Landlord is ready and willing to carry out additional works but, at least to some extent, is being prevented from undertaking these works by virtue of these proceedings, the tribunal determined that no Repairing Standards Enforcement Order is presently required and that it would be appropriate, in light of the tribunal's remarks above, to allow the Landlord a period of time to effect the remedial works identified by the Landlord's agent as being necessary. A period of six weeks from the date of issue of this determination is considered by the tribunal to be adequate for these works and a further inspection will take place thereafter to determine the extent to which any works remain outstanding. At that point further consideration will be given to the need or otherwise for a Repairing Standards Enforcement Order relative to any outstanding works.
25. The tribunal expects the Tenant to cooperate fully with the Landlord's agent in making access to the Property available for contractors employed by them to carry out necessary works and the Landlord requires to liaise with the Tenant to ensure that any contractor attending executes the works sensitively having regard to the Tenant's health issues.

Decision

26. The tribunal determined that the application should be continued without any order being made for a period of 6 weeks from the date of issue of this Decision for the Landlord to progress those works identified by the Landlord's agent as being necessary. The Tenant must co-operate with the Landlord and the Landlord's agents in facilitating the execution of those works by contractors employed by them for that purpose and any contractor instructed by the Landlord must execute the works sensitively having regard to the Tenant's health issues.
27. The decision of the tribunal was unanimous.

Right of Appeal

- 28. In terms of section 46 of the Tribunals (Scotland) Act 2014, a party aggrieved by the decision of the tribunal may appeal to the Upper Tribunal for Scotland on a point of law only. Before an appeal can be made to the Upper Tribunal, the party must first seek permission to appeal from the tribunal. That party must seek permission to appeal within 30 days of the date the decision was sent to them.**

Effect of section 63

- 29. Where such an appeal is made, the effect of the decision and of any order is suspended until the appeal is abandoned or finally determined by the Upper Tribunal, and where the appeal is abandoned or finally determined by upholding the decision, the decision and any order will be treated as having effect from the day on which the appeal is abandoned or so determined.**

GILLIAN BUCHANAN

A large black rectangular redaction box covering the signature area.

Signed

Date : 13 March 2025

Legal Member and Chairperson

Housing and Property Chamber

First-tier Tribunal for Scotland



Pre-hearing inspection summary and schedule of photographs



Property: G/L 77 HILLTOWN, DUNDEE DD3 7AD

Ref No: FTS/HPC/RP/24/3608

Tribunal members: Ms G Buchanan & Mr D Godfrey

Purpose of inspection

The purpose of the inspection is to prepare a photographic record of the condition of the property, specifically as it relates to the items raised in the application and subsequent correspondence and any issues arising there from.

Access

The above Tribunal Members attended the property at 10:00 on 11th February 2025.

The Tenant, Mr Robin Carstairs was present and provided access to the property.

The Landlord, Trustees of St Mary's R.C. Church was represented by Laura Weir of Direct Lettings (Scotland) Ltd.

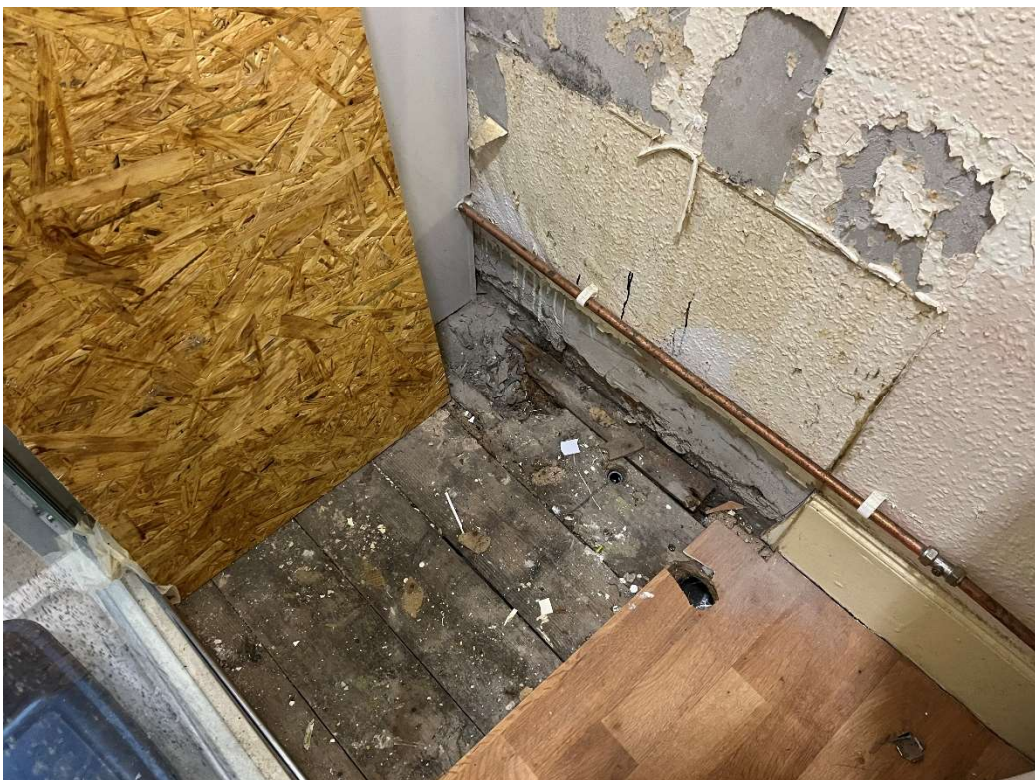
David Godfrey MRICS
Ordinary (Surveyor) Member
First-tier Tribunal for Scotland
11/02/2025

Appendix 1

Schedule of photographs taken during the inspection on 11/02/2025.



Damaged wall finish and decoration in Shower Room.



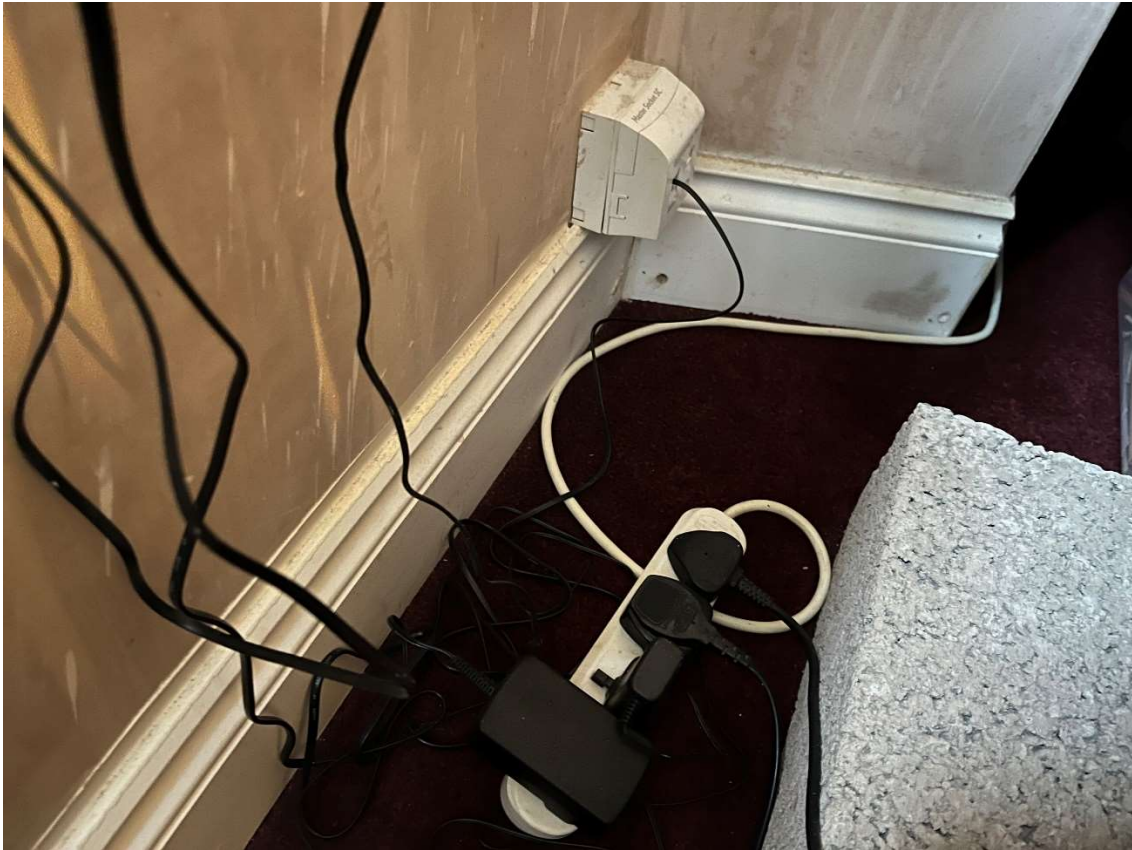
Damaged flooring in Shower Room.



Shower Tray in Shower Room.



Undecorated plasterwork in Front Room.



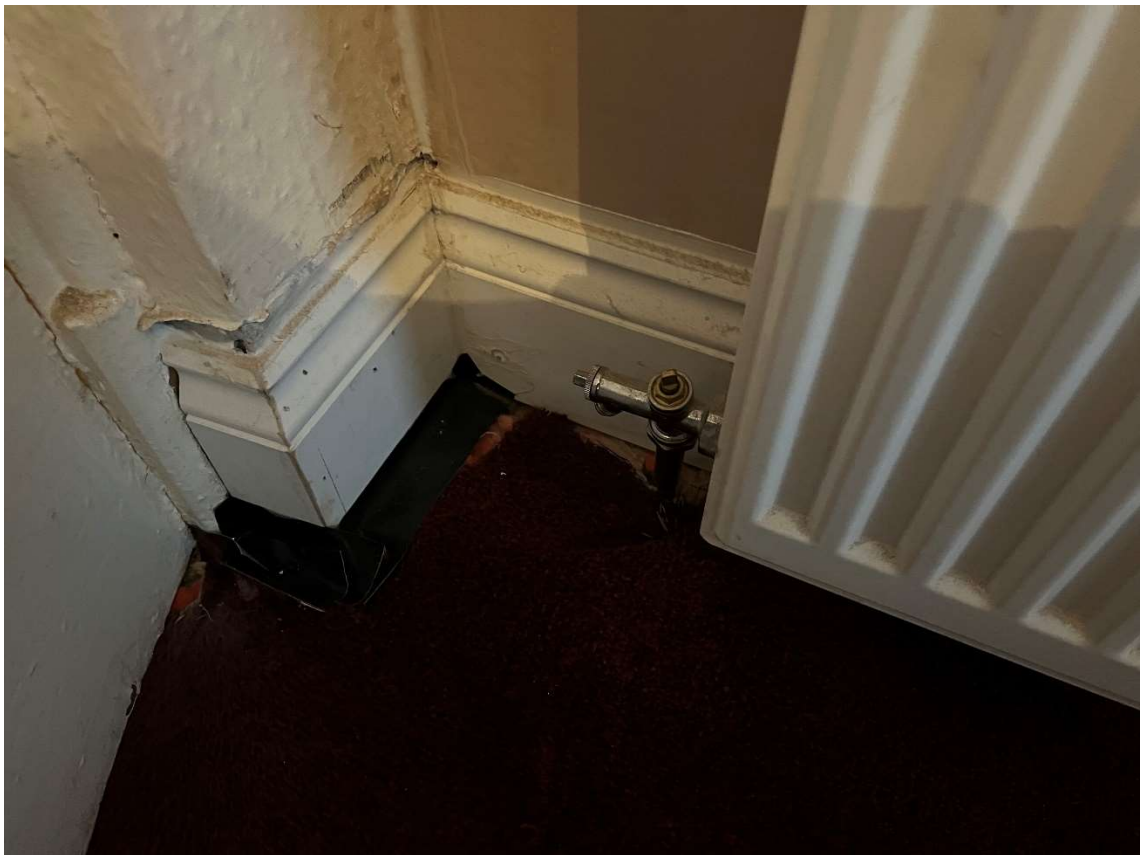
Fitted carpet/skirting in Front Room.



Loose/poorly sealed window sill in Front Room.



Double glazed window in Front Room.



Damaged carpet in Front Room.



Slight slope in Kitchen flooring.



Damage to decoration in Kitchen where fittings relocated.



Vent in Kitchen covered with plastic bag.



Gap below Kitchen door.



Carpet in Rear Room.



Window sill in Rear Room.



Undecorated plasterwork in Rear Room.



Gaps in lining boards of gas meter cupboard sealed with expanded foam.