

Housing and Property Chamber
First-tier Tribunal for Scotland



**Repairing Standard Enforcement Order (RSEO): Housing (Scotland) Act 2006
Section 24**

Chamber Ref: RT/18/00840

THE PROPERTY:

59 Quoybanks Crescent, Kirkwall, Orkney KW15 1EN

Title Number: OAZ2579

THE PARTIES:

Orkney Islands Council, School Place, Kirkwall, Orkney KW15 1NY per Mr Paul Turner, Environmental Health Officer. ("third party applicant")

Mr Jon O'Joyce, residing at the property. ("the tenant")

and

Henry Clive Chaddock and Mrs Cynthia Rebecca Chaddock, residing at The Manse, Harray, Orkney KW15 2JR per Ms Serena Sutherland, Solicitor, D&H Law, 56A Albert Street, Kirkwall, Orkney KW15 1HQ. ("the landlords")

THE TRIBUNAL:

The First-tier Tribunal for Scotland (Housing and Property Chamber) (formerly the Private Rented Housing Committee (PRHC):

David M Preston (Chairman) and Greig Adams (Surveyor Member)

Whereas in terms of its decision dated 30 July 2018, the First-tier Tribunal for Scotland (Housing and Property Chamber) ('the tribunal') determined that the landlord has failed to comply with the duty imposed by Section 14 (1)(b) of the Housing (Scotland) Act 2006 ("The Act") the tribunal requires the landlord to carry out such work as is necessary for the purposes of ensuring that the house concerned meets the repairing standard and that any damage caused by the carrying out of any work in terms of this Order is made good.

In particular the tribunal requires the landlord:-

- 1. To obtain a report from a suitably qualified timber and damp specialist to identify the cause of elevated sub-surface readings in the kitchen to the rear and gable walls and in the bathroom to the rear wall adjacent to the bath and wash hand basin and to carry out any recommendations as recommended by such a report;**
- 2. To carry out such repairs to the bathroom and bathroom fittings as are necessary to eliminate water leaks from the bathroom to the kitchen. In particular: all fittings, pipes, walls and floors required to be properly sealed; effective seals should be installed between the bath and wall coverings and between the bath and flooring;**
- 3. To provide and fit suitable floor coverings in the bathroom.**
- 4. To dry out the floor timbers in the bathroom and to repair or replace the damaged or missing plasterboard ceiling in the kitchen;**
- 5. To fit the carbon monoxide alarm already provided in the master bedroom;**
- 6. To obtain a report from a suitably qualified heating engineer on the solid fuel stove and the wet radiator heating system in the property and to carry out such repairs or replacements as may be identified by such a report to ensure efficient and effective operation of the entire heating system;**
- 7. To instruct a SELECT or NICEIC electrician to provide a PAT report in respect of the domestic appliances and to label the appliances as appropriate.**

The tribunal order that the works specified in this Order must be carried out and completed within the period of eight weeks from the date of service of this Notice.

A landlord, tenant or third party applicant 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 First-tier Tribunal. That party must seek permission to appeal within 30 days of the date the decision was sent to them.

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.

In terms of section 28(1) of the Act, a landlord who, without reasonable excuse, fails to comply with a RSEO commits an offence liable on summary conviction to a fine not exceeding level 3 on the standard scale. A landlord (and that includes any landlord's successor in title) also commits an offence if he or she enters into a tenancy or occupancy arrangement in relation to a house at any time during which a RSEO has effect in relation to the house: IN WITNESS WHEREOF these presents, typewritten on this and the preceding two pages are, together with the Schedule of photographs annexed hereto, subscribed as follows:

E Thorton

D Preston

<u>OBAN</u>	Chairing Member	Witness signature
<u>31st July 2019</u>	Place of signing	<u>EDWARD THORNTON</u> Witness full name
	Date of signing	<u>17-19 Leuchside St.</u> Witness Address
		<u>OBAN</u>
		<u>PA34 4XP.</u>

Housing and Property Chamber
First-tier Tribunal for Scotland



**STATEMENT OF DECISION FOR REPAIRING STANDARD ENFORCEMENT
ORDER (RSEO) UNDER SECTION 24 HOUSING (SCOTLAND) ACT 2006.**

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THE PROPERTY:

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THE PARTIES:

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Mr Jon O'Joyce, residing at the property. ("the tenant")

and

Henry Clive Chaddock and Mrs Cynthia Rebecca Chaddock, residing at The Manse, Harray, Orkney KW15 2JR per Ms Serena Sutherland, Solicitor, D&H Law, 56A Albert Street, Kirkwall, Orkney KW15 1HQ. ("the landlords")

THE TRIBUNAL:

The First-tier Tribunal for Scotland (Housing and Property Chamber) (formerly the Private Rented Housing Committee (PRHC):

David M Preston (Chairman) and Greig Adams (Surveyor Member)

Decision:

The tribunal, having made such enquiries as are fit for the purposes of determining whether the landlords had complied with the duty imposed by section 14(1)(b) of the Housing (Scotland) Act 2006 (hereinafter referred to as "the Act") in relation to the property, and taking account of the representations by all parties:

- a. Determined that the landlords had failed to comply with the said duty; and**
- b. Determined to issue a Repairing Standard Enforcement Order (RSEO) under section 24(2) of the Act.**

Background:

1. By application dated 11 April 2018, Mr Turner, on behalf of the third party applicant applied to the Private Rented Housing Panel (PRHP) 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 he considered that the landlords had failed to comply with their duty to ensure that the house meets the repairing standard at the start of the lease and throughout its duration and in particular that the landlords had failed to ensure that:-
 - 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.
 - Any fixtures, fittings and appliances provided by the landlords under the tenancy are in a reasonable state of repair and in proper working order.
 - The house has satisfactory provision for giving warning if carbon monoxide is present in a concentration which is hazardous to health.
3. In particular the third party applicant complained that:
 - a. There was evidence of water penetration from the bathroom to the kitchen below, resulting in damage to the ceiling plasterwork in the kitchen in the area of the kitchen sink;
 - b. The bathroom floor had no floorcovering over bare floorboards and no sealant between the floor and the bath panel;
 - c. A carbon monoxide (CO) alarm had been supplied by the landlord but had not been fitted.
 - d. The living room solid fuel stove and wet radiator central heating system had missing parts and did not operate adequately;
 - e. Curtain rail fittings provided by the landlord to the rear window in the living room were insecure;
 - f. Although a valid Electrical Installation Condition Report (EICR) had been produced by the landlords to the Council, no PAT report had been produced in respect of domestic appliances.
4. By Minute of Decision to Refer Application to Committee dated 18 April 2018, a legal member of the Tribunal, having delegated power for the purpose, referred the application under Section 23(1) of the Act to the tribunal. In terms of the Minute the application paperwork comprises documents received by HPC on or between 11 and 12 April 2018.

5. A Notice of Referral, Inspection and Hearing under and in terms of Schedule 2, Paragraph 1 of the Act was served on both the parties on 1 June 2018.
6. Following service of the Notice of Referral written representations were received from the landlords dated 25 June 2018. Written representations were received from the tenant by email on 29 June 2018. No further representations were received from the third party applicant.

Inspection:

7. The tribunal inspected the property on the morning of 12 July 2018. The tenant was in attendance throughout the inspection. Mr Chaddock was present on behalf of the landlords for parts of the inspection but he was represented throughout by Ms Sutherland.
8. The property is a two storey semi-detached former council house, dating from the 1960s of traditional cavity wall construction with a render finish and incorporating a simple pitched roof with concrete tiles and common chimneystack. Internally, ceilings are formed in plasterboard, walls are a combination of plaster on the hard and plasterboard and floors are formed in suspended timber construction with tongue and grooved floorboards with the exception of the Kitchen which is of concrete construction. Accommodation comprises entrance hall at ground floor level leading to the Kitchen, Living Room and stair providing access to first floor level. At first floor level that is a small landing, Bathroom and 2 No. bedrooms.
9. In respect of the items complained of the inspection revealed:
 - a. There was evidence of water penetration from the bathroom to the kitchen below, resulting in damage to the ceiling plasterwork in the kitchen in the area of the kitchen sink:
 - i. A visual inspection commencing within the Kitchen confirmed that the rear area of the Kitchen ceiling has previously collapsed with a section of plasterboard removed and exposed timber joists and the underside of the first floor Bathroom floorboards evident. The visual inspection also noted that woodchip paper within the Kitchen at the rear corner was loose at high level.
 - ii. Exposed timber joists and the underside of the Bathroom flooring was noted to be stained as a result of water escape with isolated early signs of decay noted in part.
 - iii. Utilising a non-invasive moisture meter, elevated sub-surface readings were obtained within the Kitchen to the rear wall and gable wall of the property internally directly below the area of collapsed plasterboard ceiling within the Kitchen.
 - iv. A visual inspection of the Bathroom evidenced water staining to the exposed floorboards. The inspection revealed an active drip and corresponding water saturation below the WC waste pipe, thermal imaging also revealed the presence of saturation of timber flooring to this area.

- v. Elevated moisture readings were recorded using a moisture meter within the Bathroom to the rear wall in particular, adjacent to the bath and wash hand basin.
 - vi. An area of missing wall tiling was noted at the foot of the bath and defective seals at the base of proprietary wall panels within the bath area were evident. The current arrangement was unsuitable and incapable of preventing water leakage during showering.
- b. The bathroom floor had no floorcovering over bare floorboards and no sealant between the floor and the bath panel:
 - i. The visual inspection confirmed that no floorcovering was present to the Bathroom whilst visual evidence of water staining was noted to the floorboards.
 - ii. The use of a moisture meter and thermal imaging revealed that exposed floorboards were exhibiting high moisture content.
 - iii. A skirting board had been provided along the base of the bath panel, neither the bath panel nor skirting were sealed.
- c. A carbon monoxide (CO) alarm had been supplied by the landlord but had not been fitted:
 - i. Carbon Monoxide alarms have been fitted within the property, with the exception of the Master Bedroom within the First Floor.
 - ii. A Carbon Monoxide detector is required in high risk accommodation (bedroom or principal habitable room) where a flue passes through these rooms in order to give early warning.
- d. The living room solid fuel stove and wet radiator central heating system had missing parts and did not operate adequately:
 - i. No testing was able to be undertaken to the heating installation given that it was not operational at the time of inspection.
- e. Curtain rail fittings provided by the landlord to the rear window in the living room were insecure:
 - i. At the time of our inspection, curtain rail fittings serving the rear window within the Living Room were secure.
- f. Although a valid Electrical Installation Condition Report (EICR) had been produced by the landlords to the Council, no PAT report had been produced in respect of domestic appliances:
 - i. During our inspection it was noted that domestic appliances evidenced at the property had no PAT test labels.

10. A series of photographs was taken throughout the inspection and form the Schedule attached hereto.

Hearing:

11. Following the inspection of the property the tribunal held a hearing at Kirkwall Community Centre, Broad Street, Kirkwall KW15 1DH and heard representations from the parties.
12. At the start of the hearing the convener confirmed the procedure which it was intended to be followed.
13. The tribunal noted that the tenant had sought to lodge a large volume of photographic evidence the day before the hearing. The tenant advised in his covering email that these photographs demonstrated the condition of the property when he took possession of it initially. The convener advised that as the pictures did not relate to the condition of the property at the time of the inspection and as they were lodged so late before the hearing, the tribunal would not admit them as evidence for the hearing.
14. Ms Sutherland referred to the written representations lodged and outlined her clients' position in relation to the application. She said that he relied on section 16 exceptions to the landlord's duty under section 14(1). In particular she referred to: section 16(1)(a) and (b); and section 16(4).
 - a. Section 16(1)(a) provides that the duty imposed by section 14(1) does not require any work to be carried out which the tenant is required by the terms of the tenancy to carry out. Section 16(1)(b) provides that the duty does not apply to any work to be carried out for which the tenant is liable by virtue of the tenant's duty to use the house in a proper manner.
 - b. Ms Sutherland argued that the matters complained of in the application had arisen through the tenant using the property in such a way as to make him responsible for the repairs. In particular she said that the water penetration in the kitchen had resulted from burst or leaking pipes in the bathroom above which had been caused by the tenant leaving the property unoccupied for a period of three weeks in December 2017 / January 2018. She submitted that this demonstrated that any repairs required arose from the way in which the tenant had used the property.
 - c. Ms Sutherland said that the tenant had removed the ceramic tile floorcovering in the bathroom and that he was therefore responsible for replacing them.
 - d. The landlords had not received any complaints about the stove and heating system from previous tenants. He accepted that a new grate had been required and that the tenant had undertaken to resolve the problem and obtain and fit one. He therefore said that the tenant had agreed to undertake the necessary work.

- e. In any event, Ms Sutherland said that the landlords had been unable to gain access to the property to effect necessary repairs as the tenant had been abusive and aggressive when Mr Chaddock had attempted to do so and the police had been called in the recent past and that accordingly section 16(4) applied as the landlord had been unable to gain access, having taken reasonable steps.

15. Mr Turner referred to the application and to the accompanying reports dated 18 January and 11 April 2018 as well as the additional background information. He said that he had nothing further to add. He explained that he had been contacted by the tenant and had inspected the property on 18 January but had not followed through at the tenant's request until 13 February 2018 when the report had been sent to the landlords.
16. Mr Turner said that the ceramic tiles on the bathroom floor had been loose and lifting as a result of water which he thought could be from people using the shower. There had been no sealant between the bath panel and the tiles which would have caused the water to penetrate beneath the tiles. He was satisfied that the damage to the kitchen ceiling had been as a result of water from the bathroom.
17. Mr Turner said that he considered that a CO detector should be fitted to the master bedroom and that although one had been supplied by the landlord, he had said that he would fit it as it was battery operated and could be readily fitted. It was still in his possession.
18. Mr Turner confirmed his findings in regard to the stove and heating system which required replacement parts and required to be examined for effectiveness.
19. Mr Turner had noted the insecure curtain rail fittings but understood that this had been rectified.
20. Mr Turner had seen problems with the ventilation grills in the bedrooms, which he understood had been rectified by the tenant.
21. Since the report, an EICR had been produced by the landlords but no PAT report on appliances had been forthcoming, however Mr Turner was led to believe that the appliances were under five years old and, on the basis that PAT testing needs to be done every five years, he took it that this was satisfactory.
22. Mr Turner had re-visited the property on 11 April 2018 and had found much the same situation with work outstanding to the items inspected by the tribunal.
23. The tenant outlined the background to the situation as had been detailed in his written submissions. He said that there had been water on the floor in the kitchen when he moved in, which the landlord said was from the washing machine. He explained that in November 2017, shortly after he had moved in the kitchen ceiling had fallen in. He had tidied up the resultant mess and the landlord had carried out repairs to the ceiling and arranged for a plumber to trace and fix the source of the leak to the wash hand basin in the bathroom above. He had then

returned to Edinburgh to recover from illness and when he returned to Orkney on 8 January 2018 he found that the ceiling had fallen in again and it was evident that there continued to be a leak from the bathroom above.

24. The tenant said that he and the landlord had jointly removed floor coverings and beds and bedding from the property and the landlord had lifted some of the tiles in the bathroom. He denied that he had been responsible for the water leaks.
25. The tenant said that he had bought a new grate on the landlords' account at a local trader but that the other necessary items had been expensive and he had left them for the landlords to rectify, but nothing had been done. He also reported that in addition to the radiators not heating properly, smoke was blowing back into the living room.
26. The tenant had eventually acquired new curtain rails and fittings and had secured them himself.
27. The tenant attempted to raise a number of additional items of complaint with the tribunal but was told that the tribunal was unable to deal with issues not raised in the application of which the landlords had received due notification.

Findings of fact:

28. In reaching its decision the tribunal had regard to:

- a. The application dated 11 April 2018, including the accompanying documents, namely: letter from Mr Turner to the landlords dated 13 February 2018 with Schedule dated 18 January 2018; Document B being updated report of 11 April 2018; and Document C being background information;
- b. Landlords' representations dated 25 June 2018;
- c. Tenant's representations of 29 June 2018;
- d. The oral representations by the parties at the hearing.

29. The tribunal finds in fact that:

- a. The tenancy between the parties is an informal tenancy in respect of which there is no written record or terms under which the tenant is liable for rent to the landlords and was constituted by a verbal agreement between the parties dated entered into in about October or November 2017.
- b. The third party applicant had advised the landlord of the issues with the property and of the specific complaints as detailed above.
- c. The property fails to meet the repairing standard in a number of respects as detailed below.
- d. The landlords have sought to gain access to the property for the purpose of carrying out repairs.

Reasons for the decision:

30. From its inspection of the property and having heard the representations from the parties, the tribunal was satisfied that it failed to meet the repairing standard in relation to the issue detailed in the application in the following respects:

- a. Water penetration and dampness to the kitchen ceiling and walls resulting in damage to the plasterwork ceiling;
- b. Leaking water from the: bath/shower; toilet; and wash hand basin;
- c. Complete lack of appropriate floor covering in the bathroom;
- d. Lack of CO detector in master bedroom;
- e. Defective solid fuel stove in living room.

31. The tribunal considered the submissions in relation to the exceptions to the duty under section 16 of the Act made by Ms Sutherland on the landlords' behalf. It rejected the submissions for the following reasons:

- a. Section 16(1)(a):
This exception relates to work which the tenant *is required by the terms of the tenancy* to carry out. As there is no written tenancy agreement and as no evidence was presented as to any such terms of the tenancy, this exception cannot apply to any of the items complained of.
- b. Section 16(1)(b):
The tribunal does not accept that for a tenant to leave a property unoccupied for a period of three weeks is an unusually long period. The tribunal notes that the heating system provided by the landlords in the property is a solid fuel stove which by its nature has no 'frost prevention' setting. It cannot be left on when the property is unoccupied and it is not reasonable to expect a tenant to completely drain the water and heating systems when absent over the festive period for what is a normal length of time for vacation. In any event no evidence was presented to the tribunal to establish that the cause of any of the leaks referred to was frost.
- c. Section 16(4):
This section refers to the landlord lacking the necessary rights of access to the property. Such rights would be in relation to the need to take access over or through a neighbour's property which were not contained in the landlords' title. Merely being prevented from gaining access by the actions of a tenant do not extinguish the landlord's rights of access. Section 181(4) of the Housing (Scotland) Act 2006 underscores those rights and the provisions of section 35 of the Housing (Scotland) Act 2014 amended the 2006 Act to enable application to be made to the tribunal for assistance in exercising those rights where difficulties are encountered. The tribunal considers that such an application would be a reasonable step in any event as required by this exception.

32. The tribunal was satisfied that water continues to leak from the bathroom to the kitchen despite the repairs carried out. The tribunal noted that the sealant between the wall tiles and the bath is defective and has caused water to flow between the bath and the wall. The tribunal noted that some wall tiles were missing or loose in the vicinity of the bath as a result. The tribunal noted possible leakage from the toilet waste pipe. The tribunal considers that a thorough investigation by suitably qualified persons should be carried out to establish all sources of water leakage in the bathroom.
33. The tribunal noted the reported deficiencies of the solid fuel stove and the heating system. It was unable to carry out any testing as the system was not in operation at the time of the inspection. It determined that the entire heating system including the stove, back boiler, pipes and radiators should be thoroughly examined by a suitably qualified heating engineer and necessary work and repairs carried out.
34. The tribunal noted that a CO detector had been supplied by the landlord and that either the tenant or the third party applicant had said that they would fit same, however it is the duty of the landlord to do so. Section 17 of the Housing (Scotland) Act 2006 prohibits contracting out of the landlord's duties or responsibilities.
35. The tribunal therefore determined to issue a Repairing Standard Enforcement Order and considered that a period of eight weeks for the work to be completed was a reasonable time to undertake the works and ensure that the dampness in the property is thoroughly dried out.

In terms of section 46 of the Tribunals (Scotland) Act, 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 First-tier Tribunal. That party must seek permission to appeal within 30 days of the date the decision was sent to them.

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.

D Preston

..... Chairman

30 July 2018

Oban, 31 July 2018

This is the Schedule of photographs referred
to in the foregoing Statement of Decision.

D Preston

Chairman

Housing and Property Chamber
First-tier Tribunal for Scotland



**59 QUOYBANKS
CRESCENT, KIRKWALL,
ORKNEY KW15 1EN**

Chamber Ref: RT/18/00840

SCHEDULE OF PHOTOGRAPHS



1 Front Elevation



2 Water staining to underside of Bathroom flooring.



3 High moisture readings within Kitchen at gable wall.



4 High readings to gable wall within Kitchen.



5 View of collapsed ceiling.



6 Further view of collapsed ceiling.



7 Living Room Stove.



8 Grate inside Stove.



9 Smoke detector and CO alarm within Living Room.



10 CO alarm in Living Room.



11 Smoke detector.



12 Hardwired smoke detector label.



13 Curtain rail within Living Room.



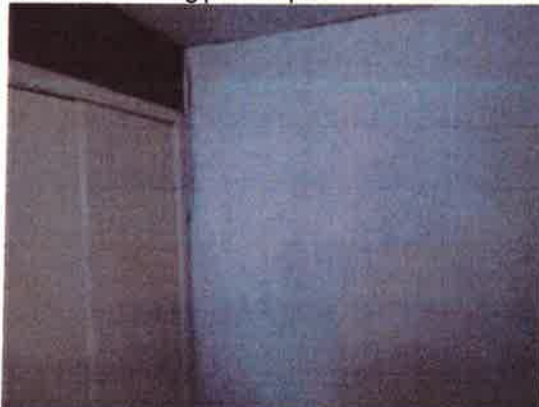
14 Hot water cylinder within Master Bedroom store.



15 Central heating pressed panel radiator.



16 Master Bedroom.



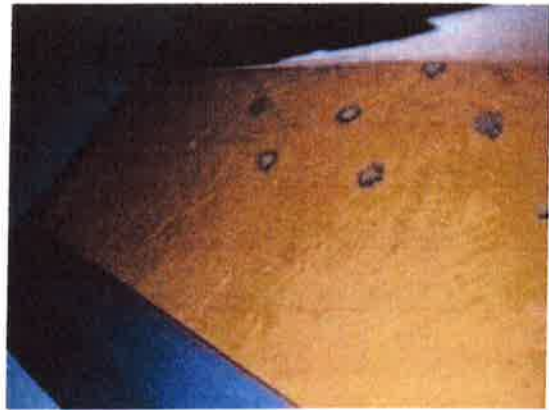
17 View towards blocked up vent in Master Bedroom.



18 Close view of blocked up vent in Master Bedroom.



19 Second Bedroom – blocked vent.



20 Close view of blocked vent.



21 Bathroom floor – no floor covering.



22 Skirting at base of bath panel.



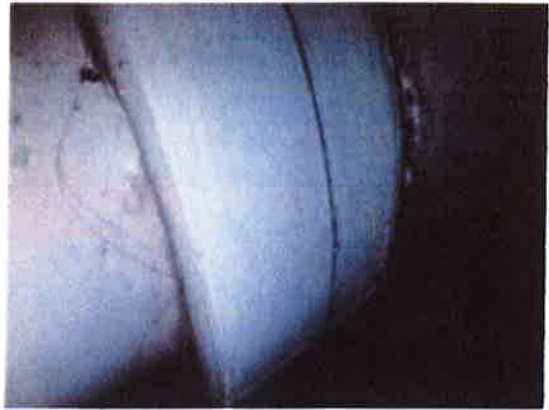
23 Poor detailing at bath panel.



24 Water staining below WC waste.



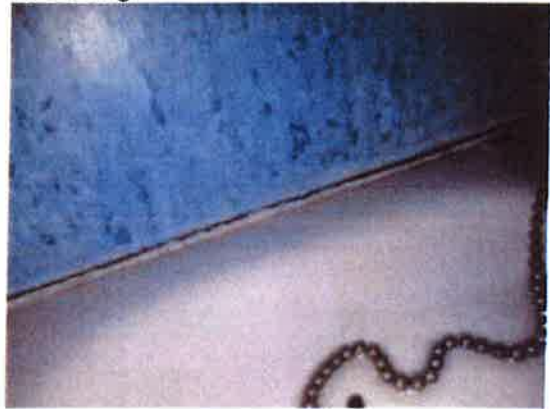
25 Close view of water stain below WC waste.



26 Cracking at seal of WC waste.



27 Staining below bath panel.



28 Defective seal to bath.



29 High moisture readings adjacent to wash hand basin.



30 High moisture readings adjacent to bath.



31 View of Bath.



32 View of WC.



33 Electric heating within Bathroom.



34 Vent within Bathroom.



35 Incomplete wall tiling to bath.



36 Cracked glazing.



37 Rear elevation soil pipe.



38 Railings to rear of property.