

Housing and Property Chamber

First-tier Tribunal for Scotland



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

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

Chamber Ref: FTS/HPC/RT/18/1003

Land Registration Title Number ANG25099

**Property at 9 Earlston Avenue, Dundee DD4 0TH
("the Property")**

The Parties:-

**Ms Catherine Low residing at 9 Earlston Place, Whitfield, Dundee, DD4 0TH
("The Tenant")**

**Mr Stuart Glen and Mrs Ashley Glen, both residing at 32 Ballumbie Meadows,
Ballumbie, Dundee DD4 0UL,
("The Landlords")**

**Dundee City Council, Private Sector Services Unit, 3 City Square, Dundee
DD1 3BA
("the Third Party Applicant ")**

NOTICE TO: Mr Stuart Glen and Mrs Ashley Glen ("the Landlords")

Whereas in terms of their decision dated 31st July 2018 ,The First-tier tribunal for Scotland (Housing and Property Chamber) ('the tribunal') determined that the landlords have failed to comply with the duty imposed by Section 14 (1)(b) of the Housing (Scotland) Act 2006 ("The Act") and in particular that the landlords have failed to ensure that :-

- (a) The property is wind and water tight and in all other respects reasonably fit for human habitation;
- (b) The structure and exterior of the property (including drains, gutters and external pipes) are in a reasonable state of repair and in proper working order;

- (c) The installations in the house for the supply of water, gas and electricity for sanitation, space heating and heating water are in a reasonable state of repair and in proper working order ;
- (d) Any fixtures, fittings and appliances provided by the Landlord under the tenancy are in a reasonable state of repair and proper working order;
- (e) Any furnishings provided by the Landlord under the tenancy are capable of being used safely for the purpose for which they are designed;
- (f) The property has satisfactory provision for detecting fires and for giving warning in the event of fire or suspected fire; and
- (g) The house has satisfactory provision for giving warnings if carbon monoxide is present in a concentration that is hazardous to health

the tribunal now requires the landlord to carry out such work as is necessary for the purposes of ensuring that the property 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 to:-

- (a) instruct suitably qualified contractors to repair or replace (i) the front and back door locks of the house (ii) the decking in the garden and (iii) the rhones / downpipe of the front exterior of the house to ensure that the house is wind and watertight and in all other respects reasonably fit for human habitation and that the structure and exterior of the house (including drains, gutters and external pipes) are in a reasonable state of repair and proper working order.
- (b) instruct a certified Electrical Installation Condition Report (EICR) and Portable Appliance Test (PAT) which report should be carried out by a suitably qualified and registered SELECT or NICEIC electrical contractor, and carry out such works as are necessary to rectify any identified issue in the EICR and provide the Tribunal with a report from a suitably qualified and registered SELECT or NICEIC electrical contractor confirming that the works are completed;
- (c) carry out such works as are necessary to obtain a gas safety record in respect of the house by a Gas Safe registered engineer
- (d) carry out such works as are necessary to ensure that there is an acceptable provision for detecting fires and for giving warning in the event of fire or suspected fire, all as required in terms of the Scottish Government Guidance for the satisfactory provision for the detection and warning of fires and current building regulations

- (e) carry out such works as are necessary to ensure the house has satisfactory provision for giving warnings if carbon monoxide is present in a concentration that is hazardous to health , all as required in terms of the Scottish Government Guidance for the provision of Carbon Monoxide alarms in Private Rented Housing;
- (f) instruct suitably qualified contractor(s) to provide reports on the electric shower and bath in the house and to repair or replace as required in terms of said reports to ensure these are in a reasonable state of repair and in proper working order;
- (g) instruct a suitably qualified contractor to repair or replace the cooker located in the kitchen of the house to ensure it is in a reasonable state of repair and proper working order.
- (h) instruct a suitably qualified contractor to repair or replace the door handle of the living room door of the house to ensure it is in a reasonable state of repair and in proper working order;
- (i) instruct a suitably qualified contractor to install flooring in the kitchen of the house which flooring is capable of being used safely for the purpose for which it has been designed.

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.

Please note that 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. This is in terms of Section 28(5) of the Act.

In witness whereof these presents type written on this and the preceding page (are executed by Morag Leck, solicitor, chairperson of the tribunal at Glasgow on 31st JULY 2018 before this witness:-

J Devlin

M Leck

witness

chairperson

Jordan Devlin name in full

15 Brackenhill Address

Drive, Hamilton

ML3 8AY

Housing and Property Chamber

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

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

Chamber Ref: FTS/HPC/RT/18/1003

Property at 9 Earlstoun Place, Whitfield, Dundee, DD4 0TH (“the Property”)

The Parties:-

**Ms Catherine Low residing at 9 Earlstoun Place, Whitfield, Dundee, DD4 0TH
 (“The Tenant”)**

**Mr Stuart Glen and Mrs Ashley Glen, both residing at 32 Ballumbie Meadows,
Ballumbie, Dundee DD4 0UL,
 (“The Landlords”)**

**Dundee City Council, Private Sector Services Unit, 3 City Square, Dundee
DD1 3BA
 (“the Third Party Applicant “)**

Decision

The First-tier Tribunal for Scotland (Housing and Property Chamber) (‘the Tribunal’), having made such enquiries as it saw fit for the purposes of determining whether the Landlords have complied with the duty imposed by Section 14 (1) (b) of the Housing (Scotland) Act 2006 (the Act “) in relation to the Property, determined that the Landlords have failed to comply with the duty imposed by Section 14 (1) (b) of the Act.

The Tribunal consisted of-

**Morag Leck (Legal Member and Chair)
Mark Andrew (Ordinary Member)**

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Background

1. By application received on 1st May 2018, the Third Party Applicant applied to the First-tier Tribunal for Scotland (Housing and Property Chamber) 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 Third Party Applicant considered that the Landlord had failed to comply with the duty to ensure that the Property meets the repairing standard and in particular that the Landlord had failed to ensure that:-
 - (a) The house is wind and water tight and in all other respects reasonably fit for human habitation (as required by section 13(1)(a) of the Act);
 - (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 (as required by section 13(1)(b) of the Act);
 - (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 (as required by section 13(1)(c) of the Act);
 - (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 (as required by section 13(1)(d) of the Act);
 - (e) Any furnishings provided by the Landlord under the tenancy are capable of being used safely for the purpose for which they are designed (as required by section 13(1)(e) of the Act);
 - (f) The house has satisfactory provision for detecting fires and for giving warning in the event of fire or suspected fire (as required by section 13(1)(f) of the Act); and
 - (g) The house has satisfactory provision for giving warning if carbon monoxide is present in a concentration that is hazardous to health (as required by section 13(1)(g) of the Act).
3. The Third Party Applicant attached details of the following complaints to the application :-
 - 1) *Smoke detectors required for living room and upstairs landing. Heat detector required for kitchen. The detectors are to be hard wired and interlinked.*
 - 2) *Electrical Installation Condition Report required*
 - 3) *Gas Safety Certificate required for all gas boilers and appliances*

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- 4) *Carbon monoxide detector required*
 - 5) *Front façade of house – rhones / downpipes require to be repaired*
 - 6) *Front door requires to be repaired so that it locks*
 - 7) *Rear door required to be repaired so that it opens or key provided to tenant*
 - 8) *Cooker to be repaired or replaced*
 - 9) *Shower to be repaired so that it does not trip the fuse when used*
 - 10) *Leak in the bath to be repaired*
 - 11) *Door handle in living room to be replaced*
 - 12) *Rear garden decking to be repaired*
 - 13) *Flooring for kitchen to be provided*
4. By Minute dated 2nd May 2018, a Convener of the Tribunal with delegated powers under section 23A of the Act, intimated a decision to refer the application under Section 23(1) of the Act to a Tribunal for a determination.
 5. The Tribunal served a Notice of Referral under and in terms of Schedule 2, Paragraph 1 of the Act upon the Landlords, the Tenant and the Third Party Applicant on 6th June 2018. An inspection of the house and a hearing were fixed for 11th July 2018.
 6. Following service of the Notice of Referral, no written representations were received from any of the parties.

The Inspection

7. The Tribunal inspected the Property on the morning of 11^h July 2018. The weather conditions were mixed with sunshine and intermittent showers.
8. The Property is a terraced house in residential estate located within a cul-de-sac of similar properties dating from around the late 1980s. It is situated in Whitfield on the outskirts of Dundee around approximately four and a half miles from the city centre. The accommodation comprises two bedrooms, living room, kitchen and bathroom. .
9. The Tenant Ms Catherine Low was not present at the inspection. The Landlords did not attend. Mr Stuart Cuthill from Dundee City Council as the representative of the Third Party Applicant was in attendance. Ms Vicky Hammill, Tribunal Clerk accompanied the Tribunal. There were tradesmen working in the property during the time of the inspection. Photographs were taken and are attached as a Schedule to this decision.

The Hearing

10. Following the inspection of the Property the Tribunal held a hearing at Dundee Carers Centre, Seagrove House, 132-134 Seagate, and Dundee. The Third Party Applicant was represented by Mr Cuthill. Mrs Ashley Glen, Landlord attended and

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explained that she also attended on behalf of her husband and joint Landlord Mr Stuart Glen. The Tenant did not attend.

11. It was agreed in respect of the procedure to be adopted at the hearing that the Tribunal would look at each repair issue set out in the application in turn.

12. Thereafter the Tribunal considered the issues in the following order:-

12.1 Smoke and Heat detectors

The Tribunal noted that multi sensor detectors had been fitted in the living room and upstairs hall whilst the inspection was taking place and that another was just about to be installed in the kitchen. As these were just being fitted the Tribunal did not have an opportunity to test them. This position was accepted by Mr Cuthill and Mrs Glen.

12.2 No Electrical Installation Condition Report (EICR)

Mrs Glen confirmed that this would be provided after the work in the property was complete.

12.3 Gas Safety Certificate

Mrs Glen advised that the boiler had been serviced on 25th June and she had an invoice for that. She confirmed a Gas Safety Certificate would be obtained.

12.4 Carbon monoxide detector

The Tribunal noted that the electrician in the property had confirmed that this was to be fitted but had not been installed by the end of the inspection

12.5 Front façade of house – rhones/downpipes

Mrs Glen accepted this repair was required and explained that they had instructed a firm who were coordinating all the repairs which were required in the property. The contactor had to arrange access with the tenant.

12.6 Front door

Mr Andrew explained there had been a key left by the tenant but this had not operated the lock of the front door during the inspection.

Mrs Glen advised that the tenant had been provided with keys when she moved in.

Mr Cuthill added that when he had inspected the property the tenant had stated that she was sleeping downstairs as security was an issue.

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Mrs Glen acknowledged that the contractor had reported a problem with the front door mechanism and this was on the list of repairs to be carried out.

12.7 Rear door

Mr Andrew pointed out that during the inspection the rear door was found to be unlocked and no keys available. He pointed out that the cover plate of the door lock was loose and screws were missing.

Mrs Glen confirmed this would be dealt with at the same time as the front door.

12.8 Cooker

Mr Andrew pointed out that the oven was not working during the inspection.

Mrs Glen confirmed that she had been advised that the selector switch needed repaired and was obtaining a price to replace this. Mr Andrew also pointed out that the rubber seal around the door was loose and Mrs Glen confirmed that this would be looked at also.

12.9 And 12.10 Electric Shower and Leak in bath

Mr Andrew explained that when he pulled the shower cord it would not operate so the shower could not be tested.

Mrs Glen suggested that the tenant had not been using the cord correctly and that may be the issue to be checked out and not the shower itself. Mr Andrew noted that the cord had been tied around a metal loop and the ceramic tiling around the switch was cracked and a screw missing. He observed that nowadays most shower switches were located outside the bathroom which Mrs Glen accepted.

He added that it had been explained by Mr Cuthill during the inspection that from previous discussion with the tenant, it was understood that when the bath was used water came into the kitchen. There was no evidence of this during the inspection as the front panel of the bath had not been removed to look at the waste pipe but it was noted that there was some evidence of a bulge on the kitchen ceiling panel above the boiler and directly below the bath.

Mrs Glen advised that she had not been made aware of any obvious signs of a leak and the matter would take some investigation.

Mr Cuthill suggested the only way would be to loosen the wood panelling on the bath to observe underneath.

12.11 Door handle in living room to be replaced

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Mrs Glen¹ accepted the door handle was missing and would be replaced.

12.12 Rear garden decking

Mrs Glen confirmed that the decking was to be taken away completely.

The Tribunal pointed out that generally all of the back garden was in a state of disrepair and a window missing from the garden shed at the rear of the garden.

Mrs Glen advised that it was intended to remove the sheds as well but at present these were full of the tenant's belongings. They were hopeful of grassing over the decking when it would also be relevelled and the garden tidied up generally.

12.13 Flooring in kitchen

Mrs Glen said the agreement with the tenant had been that she would put flooring down after she moved in but this had never happened. The flooring would be replaced by them.

The Tribunal asked if parties had any other comments to make.

Mrs Glen pointed out that they had been trying to have the repair work commenced for some weeks and the tenant had previously put off the electricians and gas fitters on three occasions. She advised that the tenant had not been very forthcoming about allowing them access to the property. They had now commenced eviction proceedings on account of rent arrears. She assured the Tribunal that all the repair work required would be carried out.

Mr Andrew observed that an issue had been identified by the electrician during the inspection and brought to the Tribunal's attention, regarding the positioning of the hot water cylinder in the loft. He raised this as an observation only given it was not a matter included in the application and Mrs Glen noted this.

Mr Cuthill accepted the Landlords had undertaken to carry out the required work. He asked that copies of the EICR and Gas Safety certificate be provided to the Council who would also require to issue a Building Warrant in relation to the smoke and heat detectors.

In response to the Tribunal's query as to how long the work would be likely to take if a RSEO were to be issued, Mrs Glen advised that she hoped by mid to end of August.

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Summary of the issues

13. The issue to be determined is whether the Property meets the repairing standard as laid down in section 13 of the Act and whether the Landlord has complied with the duty imposed by section 14(1) (b)

Findings of fact

14. The Tribunal finds the following facts to be established:

- a) The Tenant entered into a Short Assured Tenancy Agreement with the Landlords with a start date of 1st June October 2016. The Tenant continues to occupy the Property.
- b) The Landlords of the Property are Mr Stuart Glen and Mrs Ashley Glen both residing at 32 Ballumbie Meadows, Dundee DD4 0UL
- c) Mr Stuart Glen and Mrs Ashley Glen are the registered owners of the Property recorded under Land certificate ANG25099,
- d) The provisions of Chapter 4 of Part 1 of the Act apply to the tenancy.
- a) The Third Party Applicant notified the Landlord by letter dated 9th April 2018 of all the repair issues detailed in the application.
- b) The Tribunal at its inspection on 11th July 2018 carefully checked the items which were the subject of the complaint and observed the following in relation to each item :-
- c) Multi sensor alarms were being fitted in the living room, upstairs landing and kitchen during the Tribunal inspection and therefore were not in a position to be tested.
- d) There was no Electrical Installation Condition report (EICR) available
- e) There was no Gas Safety Certificate available.
- f) There was no carbon monoxide detector fitted in the kitchen. It was noted that the electrician working in the property advised that this was still to be fitted.
- g) A downpipe was observed to be detached from the gutter at the front façade of the Property.

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- h) There was no key available for the front door which fitted the lock and therefore it could not be established if the front door locked.
- i) The rear door was found to be open but there was no key available. The cover plate of the door lock was loose and screws were missing. It could not be established if the rear door locked.
- j) The cooker oven was not working. It was also noted that the rubber seal around the oven door was loose.
- k) The pull cord for the shower in the bathroom would not work when pulled so the shower could not be tested. It was also noted that the cord had been tied around a metal loop and the ceramic tiling around the switch was cracked and a screw missing.
- l) There was no evidence of a leak in the bath. The front panel of the bath was not removed to look at the waste pipe during the inspection but it was noted that there was some evidence of a bulge on the kitchen ceiling panel above the boiler located in the kitchen and directly below the bath.
- m) The door handle on the living room door was missing.
- n) The rear garden decking was found to be rotted in parts and in a state of disrepair. Whilst not part of the application, it was also noted that the garden was generally overgrown and a garden hut at the foot of the garden had a window missing.
- o) There was no flooring in the kitchen.

Reasons for the decision

15. The Tribunal were concerned at the state of the Property in general. The Tribunal took into account Mrs Glen's submissions regarding difficulties with gaining access and that steps had been taken to instruct repairs to the property which were ongoing during the time of the Tribunal's inspection.

16. The Tribunal considered each of the complaints made by the Third Party Applicant in the application namely :-

16.1 Smoke and Heat detectors

Smoke detectors were required for living room and upstairs landing and Heat detector required for kitchen. The detectors should be hard wired and interlinked.

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Whilst the Tribunal noted that multi sensor alarms were being fitted during the inspection including in the living room, upstairs hall and kitchen, installation was not complete and the alarms could not be tested.

The Tribunal accordingly determined that there was a failure to comply with the repairing standard (section 13(1) (f)) with regard to the above.

16.2 And 16.3 EICR and Gas Safety certificate

EICR and Gas safety Certificate required.

These were not available. The Tribunal considered that an EICR should be obtained for the property to include PAT testing and a Gas Safety Certificate should also be obtained.

The Tribunal accordingly determined that there was a failure to comply with the repairing standard (section 13(1) (c)) with regard to the above.

16.4 Carbon monoxide detector

Carbon monoxide detector required.

The position regarding the installation of multi sensor alarms is set out above. At the time of inspection a carbon monoxide detector required to be installed.

The Tribunal accordingly determined that there was a failure to comply with the repairing standard (section 13(1) (g)) with regard to the above.

16.5 Front façade of house

Front façade of house – rhones/downpipes require to be repaired

A downpipe was observed to be detached from the gutter at the front façade of the Property and needed to be repaired.

The Tribunal accordingly determined that there was a failure to comply with the repairing standard (section 13(1) (b)) with regard to the above.

16.7/ 16.8 Front door and back door

Front door requires to be repaired so that it locks/Rear door required to be repaired so that it opens or key provided to tenant

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There was no key available that fitted the front door and therefore it could not be established if the front door locked.

The rear door was found to be open but there was no key available. The cover plate of the door lock was loose and screws were missing. It could not be established if the rear door locked.

The Tribunal accordingly determined that there was a failure to comply with the repairing standard (sections 13(1) (a) and (b)) with regard to the above.

16.8 Cooker

Cooker requires to be repaired or replaced

The Tribunal observed that the oven of the cooker was not working and a rubber seal around the oven was loose.

The Tribunal accordingly determined that there was a failure to comply with the repairing standard (sections 13(1) (d) with regard to the above.

16.9/ 16.10 Electric shower/ Leak in bath

*Shower to be repaired so that it does not trip the fuse when used/
Leak in the bath to be repaired*

The Tribunal found that the pull cord for the shower in the bathroom would not work when pulled so the shower could not be tested. It was also noted that the cord had been tied around a metal loop and the ceramic tiling around the switch was cracked and a screw missing.

The Tribunal found no evidence of a leak in the bath itself. The front panel of the bath was not removed to look at the waste pipe during the inspection but it was noted that there was some evidence of a bulge on the kitchen ceiling panel above the boiler located in the kitchen and directly below the bath. The Tribunal were of the opinion that this issue required further investigation.

The Tribunal accordingly determined that there was a failure to comply with the repairing standard (sections 13(1) (c) with regard to the above.

16.11 Door handle

Door handle in living room to be replaced

The door handle was missing and needed replaced.

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The Tribunal accordingly determined that there was a failure to comply with the repairing standard (sections 13(1) (c)) with regard to the above.

16.12 Rear garden decking

Rear garden decking to be repaired

The decking was found to be rotting and in a state of disrepair. The Tribunal observed separately that a garden shed was also in need of repair and the garden generally was overgrown.

The Tribunal accordingly determined that there was a failure to comply with the repairing standard (sections 13(1) (b)) with regard to the above.

16.11 Flooring in kitchen

Flooring for kitchen to be provided

There was no flooring in the kitchen. Whilst the Tribunal noted the Landlord's position that there had been an agreement that the tenant would provide this, the Tribunal were satisfied that it was the Landlord's responsibility under the Repairing Standard to provide flooring.

The Tribunal accordingly determined that there was a failure to comply with the repairing standard (sections 13(1) (e)) with regard to the above.

Decision

- 16 The Tribunal accordingly determined that the Landlord had failed to comply with the duty imposed by Section 14 (1) (b) of the Act.
- 17 The Tribunal proceeded to make a Repairing Standard Enforcement Order as required by section 24(1).
- 18 The decision of the Tribunal was unanimous.

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Right of Appeal

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.

M Leck

Signed

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Date

31/7/18

Chair and Legal Member

This is the Schedule of Photographs referred to in
the foregoing Decision.

M Leck

Chair/legals
Member

Schedule of photographs of 9 Earlstoun Ave., Whitfield, Dundee; Reference FTS/HPC/RT/18/1003



Front door – lock not working with key available



Rear door – lock not working and screws missing from lock coverplate



Front elevation



Front elevation. Downpipe unattached to gutter



Living room entrance door – missing handle



Living room ceiling – smoke / CO alarm. Fitted but not tested.



Decking to rear door / garden. Rotten and unsafe



Rear garden showing condition of garden, sheds and fence / gate



Kitchen floor – missing floor covering



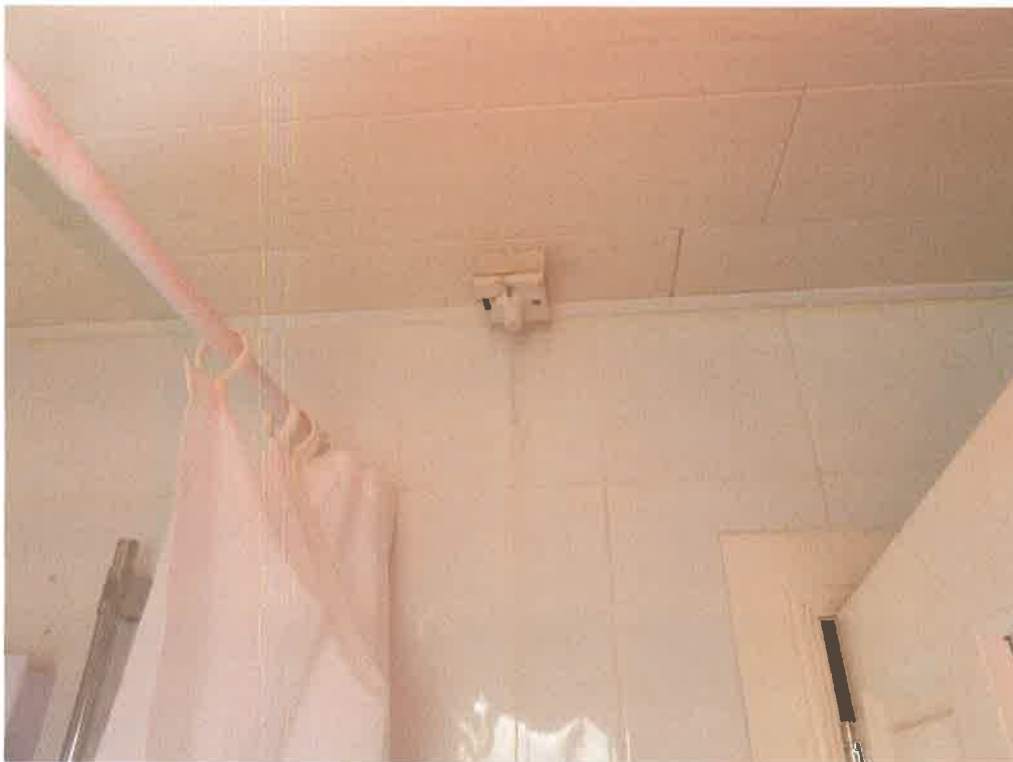
1st floor landing smoke detector being fitted. (not tested)



Heat detector in kitchen – fitted but not tested. Not a combined CO alarm



Single electric oven (Lamona) – not working



Bathroom shower pull switch – not working. Screw missing and cracked cover.



Steel bath and side panel



Kitchen ceiling below bath waste. Possible damage from ingress of water – see distorted panel.

Photographs taken by M H T Andrew FRICS FAAV on 11th July 2018