

Housing and Property Chamber

First-tier Tribunal for Scotland



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

Chamber Ref: FTS/HPC/RP/17/0085

Title no/Sasines Description: GLA163338

16 Culbin Drive, Glasgow G13 4PW

("the property")

The parties: -

**Mr David Cardigan, Glasgow City Council, Development and Regeneration
Services, Exchange House, 231 George Street, Glasgow G1 1RX**

("the third party")

Ms Sarah Wallace, 16 Culbin Drive, Glasgow G13 4PW

("the tenant")

**Ms Christine Thorburn, West Glasgow Carers Centre, 1561 Great Western
Road, Glasgow G13 1HN**

("the tenant's representative")

And

Miss Lorraine Gregal, 49 Crescent Road, Glasgow G13 3RY; Edinbarnet Cottage, Clydebank, G81 5QW

(“the landlord”)

The First-tier Tribunal for Scotland (Housing and Property Chamber) (‘the Tribunal’) comprised: -

Susan Christie - Legal/Chairing Member

Andrew McFarlane - Ordinary Member

Whereas in terms of their decision dated 15 May 2017 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”) in that the landlord has failed to ensure that the property meets the repairing standard whereby: -

- I. 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;
- II. the house has satisfactory provision for detecting fires and for giving warning in the event of fire or suspected fire;
- III. the house has satisfactory provision for giving warning if carbon monoxide is present in a concentration that is hazardous to health

under sections 13(1) (c), (f) and (g) of the Act;

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: -

- a) To install a smoke alarm in the lounge of the property to be mains wired and interlinked to those already installed complying with the revised Domestic

Technical Handbook guidance issued by Building Standards Division
(Technical Handbook 2013-Domestic-Fire),

- (a) To refit, repair or replace the smoke alarm in the lower hall so as to ensure the same is secured to the casing and in a reasonable state of repair and in proper working order,
- (b) To instruct a suitably competent qualified electrician (such as NICEIC, SELECT or NAPIT registered) to secure and fix all electric sockets in the kitchen to an appropriate surface or flush-mounted to ensure that they are safe and not prone to accidental damage and in a reasonable state of repair and in proper working order.
- (c) To ensure that a suitable battery operated carbon monoxide detector is installed in the lounge of the property in a proper location and in proper working order that has satisfactory provision for giving warning if carbon monoxide is present in a concentration that is hazardous to health.

The Tribunal orders that the works specified in this Order must be carried out and completed within the period of **28 days** from the date of service of this Notice.

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 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 typewritten on this and the preceding pages are
executed by Susan Christie, solicitor, chairperson of the Tribunal at Glasgow on 15
May 2017 before this witness: -

G Christie

witness

S Christie Legal Member

George Harvey Christie name in full

5 Albert Drive, Glasgow, G73 3RT Address

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(1A)

Chamber Ref: FTS/HPC/RP/17/0085

Title no/Sasines Description: GLA163338

16 Culbin Drive, Glasgow G13 4PW

("the property")

The parties: -

Mr David Cardigan, Glasgow City Council, Development and Regeneration Services, Exchange House, 231 George Street, Glasgow G1 1RX

("the third party")

Ms Sarah Wallace, 16 Culbin Drive, Glasgow G13 4PW

("the tenant")

Ms Christine Thorburn, West Glasgow Carers Centre, 1561 Great Western Road, Glasgow G13 1HN

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And

Miss Lorraine Gregal, 49 Crescent Road, Glasgow G13 3RY; Edinbarnet Cottage, Clydebank, G81 5QW

("the landlord")

The First-tier Tribunal for Scotland (Housing and Property Chamber) ('the Tribunal') comprised: -

Susan Christie - Legal/Chairing Member

Andrew McFarlane - Ordinary Member

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 Landlord has complied with the duty imposed by Section 14 (1) (b) of the Housing (Scotland) Act 2006 ("the Act") in relation to the property and taking account of all of the available evidence, determines that the landlord has failed to comply with the duty imposed on him by Section 14 (1) (b) of the Act. The Tribunal therefore issues a Repairing Standard Enforcement Order. The Tribunal's decision is unanimous.

Background

1. By application received on 7 March 2017 the third party applied to the Housing and Property Chamber under section 22 (1A) of the Housing (Scotland) Act 2006 for a determination of whether the landlord had failed to comply with the duty imposed by section 14 (1) (b) of the Act.
2. The application specifically stated that the third party considered that the landlord had failed to comply with his duty to ensure that the property meets the repairing standard and that the landlord had failed to ensure that: -
 - (a) the house is wind and watertight and in all other respects reasonably fit for human habitation;
 - (b) The structure and exterior of the house (including drains, gutters and external pipes) are in a reasonable state of repair and in proper working order;
 - (c) The house has satisfactory provision for giving warning if carbon monoxide is present in a concentration that is hazardous to health.

The detail of the complaint being:

- (a) The hardwired smoke alarms, heat detector in the kitchen are not interconnected,
- (b) There are holes in the floor in the upper hall and in the cupboard under the stairs,
- (c) Kitchen units are defective,
- (d) Electric sockets under the kitchen sink and units are not attached to anything,
- (e) The electric socket in the rear bedroom is loose to wall,
- (f) No carpet on stairs, top hall or rear bedroom.

The tenant's representative stated that the following work required to be carried out at the property:

- (a) Fit interconnected and hard wired smoke and heat detectors,
- (b) Repair/replace missing floorboards,
- (c) Repair/replace kitchen units properly
- (d) Secure electric sockets
- (e) Supply and fit new carpet to stairs, upper hall and rear bedroom.

3. By e mail dated 16 March 2017 the third party withdrew the complaint relating to holes in the floor in the upper hall and in the cupboard under the stairs, as intimation of this complaint had not been made on the landlord prior to the application being submitted.
4. By Notices of Referral, Inspection and Hearing under and in terms of Schedule 2, Paragraph 1 of the Act, all dated 10 April 2017 the third party, tenant, the tenant's representative and landlord were all notified that the President of the Housing and Property Chamber had decided to refer the application to a Tribunal for determination.
5. Thereafter none of the parties made written representations to the Tribunal by the required date of 1 May 2017. The tenant intimated her intention not to attend the hearing citing health reasons.
6. The landlord made an application to adjourn the hearing by correspondence on 20 April 2017 to allow drainage issues to be explored and works carried out as necessary. The other parties were given intimation of the application to adjourn and the opportunity to respond to that before a decision was made by the Tribunal. No responses were received.

7. A Direction was issued to the parties by the Tribunal on 3 May 2017 requiring the landlord to submit to the Tribunal by close of business on 8 May 2017 the following:
- A copy of the current Electrical Installation Condition Report(EICR) pertaining to the property and any other relevant documentation showing or tending to show whether, or not, the smoke alarms and the heat sensor within the property are interlinked,
 - A copy of the Inventory referred to in the Lease Agreement between the Parties dated 7 May 2009, and
 - A copy of the current Gas Safety Certificate pertaining to the property.
8. On 4 May 2017, the landlord's application to adjourn was refused by the Tribunal as the landlord had intimated by e mail that the drainage works had been completed. The works in any event did not relate specifically to the complaints made in the application.

The Inspection

9. On the morning of 10 May 2017, the Tribunal inspected the property in the presence of the tenant and the landlord who was accompanied by her daughter as a supporter. The weather conditions at the time of the inspection were dry and overcast. Photographs were taken during the inspection and these are attached as a Schedule to this decision.
10. The property is one half of a semi-detached dwelling house with a back and front garden. The property has two bedrooms, a lounge, kitchen and bathroom and cupboards in the lower hall and under the stairs. The bedrooms and bathroom are accessed directly from the upper hall.
11. Access was given by the tenant who indicated that she might attend the hearing later, when asked. In any event, she stated that her representative would attend.

The Hearing

12. Following upon the inspection of the property, the Tribunal held a hearing at Wellington House, 134-136 Wellington Street, Glasgow G2 2XL.

13. The third party applicant, the tenant and the tenant's representative did not attend. The landlord attended and gave evidence. Her daughter Charlie Anderson attended as a supporter only and did not participate. The Tribunal was satisfied that the requirements of Rule 47 of the First-tier Tribunal for Scotland Housing and Property Chamber Rules of Procedure 2016 had been complied with in that all absent parties had received proper notice of the hearing and proceeded to deal with the application in their absence on the representations of those present and all the material before it.

The evidence

14. The evidence before the Tribunal consisted of:

Written evidence in the form of the application form with the accompanying photographs, letters and e mail exchanges between the third party and the landlord accompanying it; a copy of the Land Register title for the property; a copy of the AT5 form and original lease between the landlord and tenant dated 7 May 2009; the e mail response from the landlord to the Direction along with additional e mails attached, photographs and copies of text exchanges with the tenant.

The landlord produced at the hearing a copy of the Landlord Gas Safety record dated 23 December 2016 and a copy of the Electrical Installation Condition Report dated 10 February 2017 for the property. The third party applicant had seen these documents beforehand, as intimated to the Tribunal office on 16 March 2017. The landlord had been unable to obtain copies for the Tribunal to answer the Direction until the date of the hearing. The Tribunal was satisfied that there was good reason to receive those documents late and did so.

The oral evidence of the landlord:

The landlord accepted that an Inventory of Contents should have been provided to the tenant but it had not been and that is why she was unable to comply with the Direction of the Tribunal in that regard. The landlord indicated that brand new floor coverings were provided on the stairs, upper hall and back bedroom when the tenant had taken entry. She could not recollect what other items had been included.

The tenant ordinarily lived in the property along with her child but was currently in temporary accommodation due to the ingress of waste water from a blocked drain. The landlord was of the view that the tenancy had ended on 7 May, as she had

served a Notice to Quit, but had agreed to allow the tenant a further week to remove her belongings due to the need for her to decant due to the drainage problem.

Smoke alarms and heat detector-These had been installed by Mr Hugh Gemmill, a qualified electrician whose identity and membership card had been produced in the bundle of documents, around January 2016 and were hardwired and interconnected. There had been battery operated smoke alarms provided before that time. She was unable to say why there was no smoke alarm in the lounge other than to say that she left it to the electrician to decide on where those items should be fitted in the property. She accepted that the lower hall smoke detector was hanging loose from its casing and was unaware of how it got to be so, albeit it had only been fitted recently.

Kitchen units-the landlord stated that over the duration of the lease she had installed three new kitchens within the property, the last one having been installed in January 2017. All the units were new and the kitchen sink was the original one. Due to the emergency work carried out to fix the blocked drains all base units around the kitchen sink had been dismantled and lay around the lower level waiting to be refitted. She stated that the blocked drains were down to the fault of the tenant as they were blocked with baby wipes and other items which should not have been in the drains. Two contractors had verified that baby wipes had caused the blockage and it was costly to fix as evidenced by quotes produced to the Tribunal as part of her bundle. The landlord was of the view that the kitchen units were of good condition as they had been fitted by an experienced workman. Any damage that had been occasioned was due to damage caused by the tenant. Her workman had viewed damage to kitchen unit doors after the complaint had been raised with her and he told her that the hinges were all bent and had been forced off.

Electric sockets-Mr Gemmill the electrician had fitted these in the kitchen after the new kitchen had been installed. He had said it was difficult to work around the units. After the complaint had been made he had inspected them and had fixed them at least to her belief. The kitchen units had now been removed to attend to the drain that had been blocked and backed up. When it was pointed out that a socket under the cupboards still *in situ* was lying loose, she was unable to assist the Tribunal as to how that had happened beyond what she had said.

In so far as the socket in the back bedroom was concerned the plasterwork around it had been filled in. The socket had been inspected and was safe.

Missing carpet to stairs, upper hall and rear bedroom-the landlord stated that the tenant had contacted her around the middle of December 2016 to say she had started to redecorate the hall and had removed wallpaper and lifted the carpets. She was unhappy that she had not sought her permission to do this. The tenant had indicated she would replace the carpets herself. This clearly had changed when she received a letter from Mr Cardigan, the third party. The landlord then agreed to provide further carpeting.

Carbon Monoxide detector- the landlord was asked about this item as it had been raised indirectly in the application as the third party had ticked the box relating to this, but had not made mention of it in the complaint section. She was unaware exactly where it was situated but thought the property had one as evidenced in the Gas Safety Certificate. She relied on a company she used called Saltire for the annual checks. She had to prompt them this year to attend at the property and as a result they had been slightly late in attending this property.

Floorboards in upper hall and under stair cupboard-the landlord had seen the floorboards in the proper position after works had been carried out by the electrician. She believed they had been disturbed by the tenant.

The findings of the inspection:

- There were smoke detectors fitted to the ceiling in the lower and upper hall of the property.
- There was a heat sensor fitted in the kitchen of the property.
- The smoke detectors and heat sensor in the kitchen are hard wired and interlinked.
- The smoke detector in the lower hall was hanging loose from the casing.
- The kitchen units around the kitchen sink area were partially removed and dismantled and not in position.
- The door below the sink unit had been forcibly damaged at the hinges.
- The electric sockets under where the kitchen sink would have been positioned had been disturbed and were not fixed to a surface.
- The electric socket under the kitchen unit and behind the kick plate to the right of the back door looking from the lounge was not fixed to a surface.
- The electric socket in the back bedroom had been repaired and the surrounding plasterwork filled in.
- The floorboards on the upper hall and in the under-stair cupboard were all in position and secured.
- There were no floor coverings on the stairs, upper hall and rear bedroom.

Summary of the issues

15. The issue to be determined was whether the property meets the repairing standard as set out in section 13 of the Act, and whether the landlord had complied with the duty imposed on him by section 14(1) (b) of the Act.

Findings in fact

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

- I. The landlord is the registered owner of the property and the landlord.
- II. The tenancy between the parties is a Short-Assured Tenancy and one to which the repairing standard applies.
- III. The tenancy agreement between the landlord and tenant commenced on 7 May 2009 and has continued since then by agreement. The property was let with floor coverings included.
- IV. The third party raised the extant complaints referred to the application with the landlord in writing on 22 December 2016, that is prior to the current application being made.
- V. The Tribunal carefully inspected the property and the items that were the subject of the complaint and found on the day of the inspection that:
 - (a) There were smoke detectors fitted to the ceiling in the lower and upper hall of the property.
 - (b) There was a heat sensor fitted in the kitchen of the property.
 - (c) The smoke detectors and heat sensor in the kitchen are hard wired and interlinked.
 - (d) No smoke alarm had been fitted in the lounge, the room which is frequently used by the tenant for general daytime purposes.
 - (e) The smoke detector in the lower hall was hanging loose from the casing
 - (f) The kitchen units around the kitchen sink area were partially removed and dismantled and not in position
 - (g) The door below the sink unit had been forcibly damaged at the hinges
 - (h) The electric sockets under where the kitchen sink would have been positioned had been disturbed and were not fixed to a surface.
 - (i) The electric socket under the kitchen unit and behind the kick plate to the right of the back door looking from the lounge was not fixed to a surface
 - (j) The electric socket in the back bedroom had been repaired and the surrounding plasterwork filled in.
 - (k) The floorboards on the upper hall and in the under-stair cupboard were all in position and secured
 - (l) There were no floor coverings on the stairs, upper hall and rear bedroom
- VI. The property does not meet the repairing standard required under section 13 (1) (c), (f) and (g) of the Act.

Reasons for decision

17. The Tribunal was satisfied that the tenancy between the parties was a tenancy to which the repairing standard duty applies in terms of section 12 of the Act being a Short - Assured tenancy.
18. The Tribunal observed that there was a smoke alarm on the lower and upper hall ceiling. There was a heat detector in the kitchen. The Tribunal observed the smoke alarms and heat detector being activated. When each of them were activated the remainder sounded after a short time and were in fact interlinked. The smoke detector in the lower hall was however loose from its casing and requires to be checked, repaired or replaced to secure it to the ceiling to comply with Section 13(1) (f) of the Act which provides that the property requires satisfactory provision for detecting fires and for giving warning in the event of fire or suspected fire, to meet the repairing standard.
19. The revised Domestic Technical Handbook guidance issued by Building Standards Division (Technical Handbooks 2013: – Domestic – Fire), states there should be at least:
 - one functioning smoke alarm in the room which is frequently used by the occupants for general daytime living purposes,
 - one functioning smoke alarm in every circulation space, such as hallways and landings,
 - one heat alarm in every kitchen, and
 - all alarms should be interlinked.

In this property, no smoke alarm had been fitted in the lounge, the room which is frequently used by the tenant for general daytime purposes. Accordingly, the repairing standard has not been met (section 13 (1) (f) of the Act).

20. The kitchen units around the sink area had been dismantled and removed to allow for emergency works. There was evidence of force having been used on one door at the hinges. The kitchen units were due to be reinstated after the drain issues had been rectified. The kitchen had only been installed in January 2017. The Tribunal was not prepared to make an order against the landlord in this respect as all works needed of the kitchen units is likely to have been caused by the tenant's failure to use the property in a proper manner.
21. The electric socket identified by the Tribunal in the kitchen under the unit to the right of the back door looking from the lounge was not

secured to a surface as it required to be safe. Accordingly, the repairing standard has not been met (section 13 (1) (c) of the Act).

22. The Tribunal was satisfied that the carpets in the stairs, hall and back bedroom had been removed by the tenant without prior permission of the landlord and not replaced. The tenant being liable to do so. The Tribunal was not prepared to make an order against the landlord in this respect as all works needed is likely to have been caused by the tenant's actions and failure to use the property in a proper manner.

23. Carbon Monoxide detectors should be powered by a battery designed to operate for the working life of the detector which is usually between five and seven years. The detector should incorporate a warning device to alert the users when its working life is due to expire and should be replaced on or before the expiry date, to meet the repairing standard (section 13(1) (g) of the Act). This property had such a detector in the lounge as evidenced by the Gas Safety Certificate dated 23 December 2016. However, as it was not readily visible to the Tribunal at inspection, possibly due to the property being in disarray, the landlord should ensure that one is installed and is in the proper location and in working order at completion of all remedial works that she intends to carry out (section 13(1) (d) of the Act).

Observation

24. Whilst the floor in the upper hall and in the cupboard under the stairs did not form part of the application and was not an issue to be determined by the Tribunal, it was observed that at the date of inspection they were all in order and secured in place.

Summary of Decision

The landlord has failed to comply with the duty imposed by section 14 (1) (b) of the Act and has failed to ensure that the property meets the repairing standard under sections 13(1) (c), (f) and (g) of the Act. The Tribunal accordingly proceeded to make a Repairing Standard Enforcement Order as required by section 24 (2) of the Act.

Right of Appeal

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 First-tier Tribunal. That party must seek permission to appeal within 30 days of the date the decision was sent to them.

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Signed **S Christie**

Date 15 May 2017

Susan Christie, Legal Member



Property Address

16 Culbin Drive
GLASGOW
G13 4PW

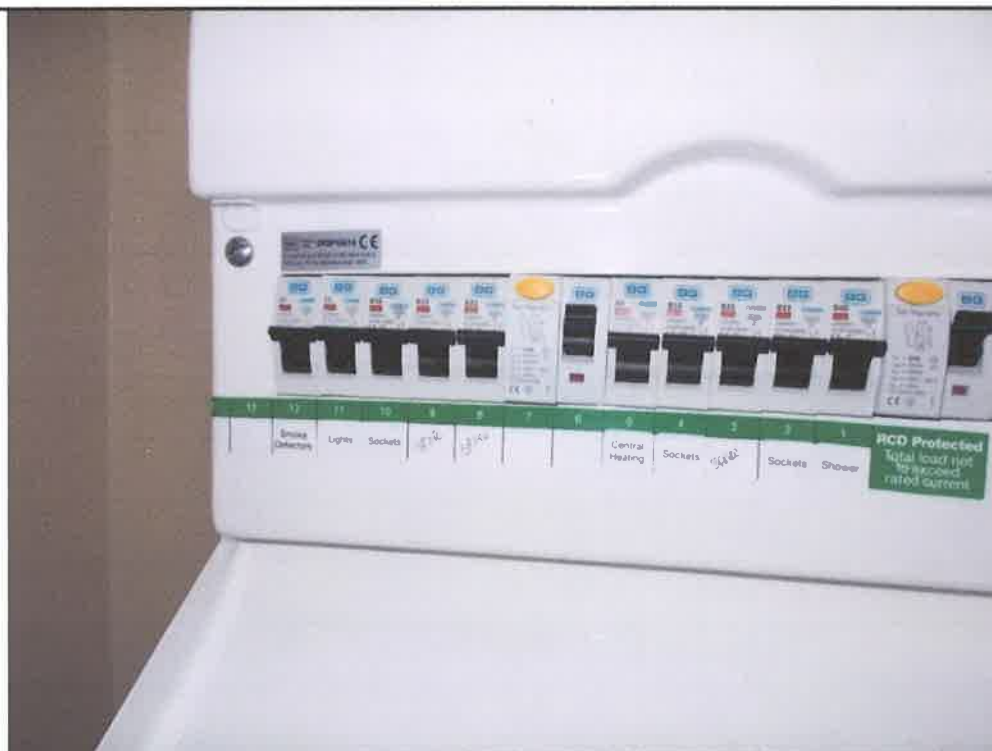
Case Reference

FTS HPC RT 17 0085

Schedule of Photographs taken during the inspection by tribunal members on 10 May 2017



1. General view of Front and Side Elevations



2. Main switchgear with Smoke Detector circuit



3. Heat Detector in Kitchen



4. Smoke Detector in Upper Hall



5. Smoke Detector in Lower Hall



6. General view of partially stripped Kitchen Units



7. Stripped out Sink Base Unit



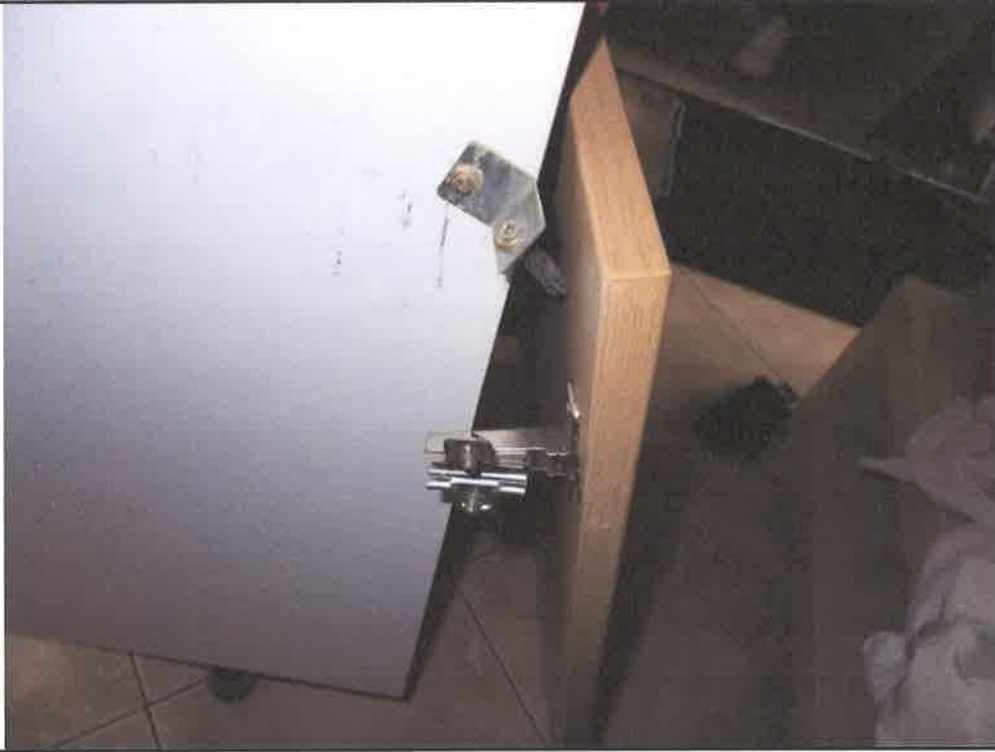
8. Stripped out Sink Unit



9. Stripped out Worktop with sink cut out



10. Another stripped out Base Unit



11. Removed door hinge



12. Electrical Socket in Rear Bedroom at first floor level



13. Electric Socket outlet below unit in Kitchen



14. Stair



15. Upper Hall



16. Rear Bedroom at first floor level



17. Floor to Upper Hall



18. Floor to Understair Cupboard