

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/RP/17/0310

**Property at 206 Brown Street, Paisley, PA1 2SN
("The House")**

The Parties:-

Mr Zain-ud-din Mohammad, residing at 206 Brown Street, Paisley, PA1 2SN ("the Tenant")

Miss Sophie Ahmed, residing at 18 Fairview Drive, Renfrew, PA4 0EG ("the Landlord")

Mr Irshad Ahmed, residing at 18 Fairview Drive, Renfrew, PA4 0EG ("the Landlord's Representative")

The Tribunal comprised:-

Mrs Ruth O'Hare	-	Legal Member
Mr Colin Hepburn	-	Ordinary Member

Whereas in terms of their decision dated 27 November 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") and in particular that the landlord has failed to ensure that:-

- (a) The house is wind and watertight and in all respects reasonably fit for human habitation; and
- (b) 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.

the Tribunal now 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 to:-

- (a) Replace the floor coverings in the kitchen;
- (b) Replace the kitchen units and kitchen worktop to ensure these are in a reasonable state of repair;
- (c) Instruct a qualified plumber to inspect the pipework pertaining to the kitchen sink and carry out such works as are necessary to prevent water leakage;
- (d) Repair or replace the ceiling light in the kitchen and instruct a qualified electrician to check to ensure it is safe and in proper working order;
- (e) Repair the bathroom flooring to ensure it is in a safe condition;
- (f) Carry out such works as are necessary to the shower bath and in particular the shower screen to prevent water leakage;
- (g) Repair the floorboards in the upper landing;
- (h) Repair the laminate flooring in the front bedroom;
- (i) Repair the fence to the right hand side of the back garden;
- (j) Carry out internal decoration following the works at (a) to (i).

The Tribunal order that the works specified in this Order must be carried out and completed within the period of two months 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(s) are
executed by Ruth O'Hare, Chairperson, 2 Mill O'Forest Grove, Stonehaven, AB39
2GH, chairperson of the Tribunal at Aberdeen on 27 November 2017 before this
witness:-

L Dibble

witness

Lorna Dibble, c/o Aberdeenshire Council,
Woodhill House, Westburn Road, Aberdeen

R O'Hare

chairperson

Housing and Property Chamber

First-tier Tribunal for Scotland



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

Determination under section 24(1) of the Housing (Scotland) Act 2006

Chamber Ref: FTS/HPC/RP/17/0310

**Property at 206 Brown Street, Paisley, PA1 2SN
("The House")**

The Parties:-

Mr Zain-ud-din Mohammad, residing at 206 Brown Street, Paisley, PA1 2SN ("the Tenant")

Miss Sophie Ahmed, residing at 18 Fairview Drive, Renfrew, PA4 0EG ("the Landlord")

Mr Irshad Ahmed, residing at 18 Fairview Drive, Renfrew, PA4 0EG ("the Landlord's Representative")

The Tribunal comprised:-

Mrs Ruth O'Hare	-	Legal Member
Mr Colin Hepburn	-	Ordinary Member

Decision

The First-tier Tribunal for Scotland (Housing and Property Chamber) ("the Tribunal") unanimously determined that the Landlord had failed to comply with the duties imposed by Section 14 (1)(b) of the Housing (Scotland) Act 2006 ("the Act") The Tribunal accordingly made a Repairing Standard Enforcement Order ("RSEO") as required by Section 24(2) of the 2006 Act.

Background

1. By application received 7 August 2017 the Tenant applied to the Tribunal for a determination of whether the landlord has failed to comply with the duties imposed by Section 14(1)(b) of the Act.
2. The application stated that the Tenant considered that the Landlord had failed to comply with her duty to ensure that the house meets the repairing standard and in particular 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 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;
 - (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;
 - (e) any furnishings provided by the landlord under the tenancy are capable of being used safely for the purpose for which they are designed.
3. In summary, the Tenant submitted that the external doors were draughty, there were broken tiles in the back garden as well as a broken fence, water leaked from the bathroom into the kitchen, there was a hole in the floor close to one of the bedrooms, the light in the kitchen was broken, the fridge leaked water, the kitchen units were damaged and the sink pipe leaked.
4. By Minute dated 9 August 2017 the Convener of the First-tier Tribunal (Housing and Property Chamber), with delegated powers under section 96 of the Housing (Scotland) Act 2014, intimated her decision to refer the application under Section 22 (1) of the Act to a Tribunal for determination. The Tribunal served Notice of Referral under and in terms of Schedule 2, Paragraph 1 of the Act upon the Landlord, the Landlord's Representative and the Tenant.
5. Following service of the Notices of Referral the Tribunal received written representations from the Tenant intimating his wish to attend the hearing and from the Landlord's Representative confirming that he too wished to attend the hearing with a witness Brian Manson and enclosing the following documentation:-
- (i) A proof of delivery for letter sent to the Tenant on 31 August 2017;
 - (ii) An invoice from Ultimate Heating dated 4 April 2015 in respect of a boiler;
 - (iii) A Form AT5 and Tenancy Agreement between the Landlord and Tenant dated 15 April 2015;
 - (iv) An invoice from Perfect Glazing (Scotland) Ltd dated 17 March 2015 in respect of window installation;
 - (v) An invoice from Top Cat Window Blinds;
 - (vi) A letter from Alan McMillan, Plumber detailed attempts to gain access to the property in August 2017 to inspect a leak;
 - (vii) A letter from the Tenant to the Landlord's Representative dated 1 September 2017 advising that the date given for repairs was not suitable and intimating the Tenant's wish to leave the property;
 - (viii) A letter from Brian Manson of 204 Brown Street, Paisley, advising that he had witnessed the Tenant's child damaging the fence in the back garden;

- (ix) A letter from Brian and Catherine Manson, 204 Brown Street, Paisley, advising of the condition of the property in March 2015;
 - (x) A Housing Benefit/Council Tax Benefit Claim Form Receipt from Renfrewshire Council dated 19 May 2017;
 - (xi) A letter from the Landlord's Representative to the Tenant dated 22 October 2016 regarding rent arrears;
 - (xii) An invoice from Hills Flooring Services in respect of flooring dated 12 March 2015.
 - (xiii) An invoice from TradePoint Building Supplies regarding bathroom materials;
 - (xiv) A Renfrewshire Council Benefit Decision Notice dated 5 June 2017;
 - (xv) A letter from the Landlord's Representative to the Tenant undated regarding maintenance of the garden and removal of rubbish;
 - (xvi) A letter from the Landlord's Representative to the Tenant dated 3 December 2015;
 - (xvii) A letter from Louise Todd, 29 Tarras Drive, Renfrew with a character reference for the Landlord's Representative;
 - (xviii) A letter from Renfrewshire Council to the Landlord's Representative dated 25 May 2017 regarding direct payment of Local Housing Allowance; and
 - (xix) Copies of a rent book detailing various payments made by the Tenant.
6. The Tribunal attended the Property on the morning of 29 September 2017. The weather was cloudy and overcast. The Tenant was present and accompanied by his wife and son. The Landlord's Representative was present. As a preliminary matter, the Tenant indicated that his spoken English was not proficient and accordingly he wished his son to act as interpreter. The Tribunal agreed to proceed on this basis. The Tribunal proceeded to inspect the property.

The Inspection

7. During the inspection the Tribunal members examined the various areas of complaint raised by the Tenant.
8. The Tribunal examined the back garden. The fence to the rear on the right hand side had a broken panel.
9. The Tribunal examined the kitchen. The flooring appeared to have deteriorated with cracking to the vinyl. There was a stain to the ceiling which indicated water spillage/leakage from the bathroom above. Damp levels where tested were above normal parameters indicating that this was a current problem . The fluorescent tube ceiling light was not working. The kitchen units were broken in parts with defective doors and drawers. The kitchen worktop had insufficient support and had become dislodged from the wall. It was resting on the washing machine with gaps between the sink unit and the worktop. Leakage was evident from the pipework below the kitchen sink although the source of the leak could not be established. It seemed to come from the junctions/ connections of the supply and waste pipes for the washing machine. There was a gap between the sink and the worktop. The Tribunal could see no evidence of water leakage from the fridge at the time of the inspection.

10. The Tribunal proceeded upstairs and examined the bathroom. There was evidence of water leakage on the bathroom floor around the shower screen. Grouting and Mastic were in poor condition with poor detailing to the seal between the bath and shower screen. There was a small nail protruding from the bathroom floor.
11. The Tribunal examined the upper hall. There was a dropped floorboard and the carpet had sagged.
12. The Tribunal examined the front bedroom. The laminate was loose and there was a gap in the flooring. The Tribunal further examined the back bedroom but due to the layout of furniture in the room were unable to undertake a full inspection of the flooring within the room.
13. The Tribunal examined the doors but found them to be wind and watertight within the confines of the inspection.
14. During the inspection photographs were taken by the Ordinary Member and a schedule of photographs is attached to this decision.
15. The inspection was concluded and the Tribunal travelled to the venue for the hearing.

The Hearing

16. The hearing took place in Wellington House, Glasgow. The Tenant was present and accompanied by his wife and son. The Landlord's Representative was present and accompanied by a witness Brian Manson. The Tenant again intimated a wish for his son to interpret for him. The Tribunal agreed to proceed with the hearing on that basis.
17. The Tribunal proceeded to hear submissions from both the Tenant and the Landlord's Representative on the following items:-

(i) The kitchen

With regard to the kitchen, the Tenant advised that when he and his family moved in the room had been full of the previous tenant's items. It was filthy. There was a hole in the floor that had since been repaired by the Landlord. Parts of the kitchen units were broken. The Landlords' Representative had advised that he would install a new kitchen after 6 months. The repairs required had been reported to the Landlord's Representative verbally.

The Landlord's Representative advised that he had photographic evidence of the condition of the kitchen. He produced photographs which he wished the Tribunal to consider. The Tenant was given sight of the photographs and allowed to comment. The Tribunal therefore agreed to consider the photographs in its determination of the application.

The Landlord's Representative confirmed that the photographs had been taken prior to the previous tenant moving into the property in 2014 however it was his position that they generally reflected the condition of the kitchen when the Tenant had moved in. The Landlord had not taken a similar photographic inventory of the property prior to the Tenant moving in. The Landlord's Representative stated that the Tenant had pulled the worktop away from the wall. There was previously a bracket supporting the worktop which had now been removed.

The Landlord's Representative confirmed that he had said he would replace the kitchen however he decided not to do so as the Tenant had fallen into arrears of rent. He had carried out some repairs, including to the floor. Everything had been in working order in the kitchen when the Tenant had moved in. The Landlord had not known about the leak under the sink and would have fixed it if known. The Tenant and his family had been unwilling to allow access for repairs to be carried out.

The Landlords' Representative had been notified by the Tenant of the water ingress from the bathroom to the kitchen and had arranged a plumber to attend. The Tenant however refused to let the plumber into the property. The Landlord's Representative advised the water ingress was a result of the way in which the Tenant and his family bathed, by throwing buckets of water over themselves. He had warned them on a number of occasions not to do this.

The witness for the Landlord Brian Manson advised that the kitchen had been in reasonable condition when the Tenant had moved in. He was impressed with the standard of decoration when he had been in the house.

(ii) The flooring

The Tenant advised that the flooring was unstable. On one occasion, he had tripped and nearly broken his ankle. The kitchen needed new flooring. The hole in the front bedroom laminate required to be repaired. The carpet in the back bedroom was old.

The Landlord's Representative advised that the flooring had been perfect when the Tenant moved into the property. It was understood that the Tenant and his family had broken the laminate flooring in the front bedroom. There was some movement with the floorboards in the upstairs hall which he conceded required repair however the Tenant had failed to allow him the opportunity to do this. The Landlord's Representative had only managed to gain access to the property three times throughout the tenancy.

The Landlord's witness Brian Manson advised that he had not really noticed any issues with the flooring in particular.

The submissions from the parties regarding the flooring led to some discussion regarding the provision of beds and furniture at the start of the tenancy as well as complaints regarding the boiler however the Tribunal

noted that these matters were not relevant to its determination of the application as they did not form part of the matters raised by the Tenant.

(iii) The bathroom

The Landlord's Representative advised that the bathroom was brand new at the start of the tenancy. It was in mint condition. The Landlord's witness Brian Manson confirmed that the bathroom had looked to be in good condition at the start of the tenancy.

The Tenant had no further submissions to make regarding the bathroom.

(iv) The back garden

The Tenant advised that he had repaired part of the fence to the left hand side of the garden which was broken when they moved into the property. The fence to the right hand side of the garden was already broken and old.

The Landlord's Representative advised that the Tenant's child had broken the panel on the fence to the right hand side of the garden. Brian Masson had contacted him to advise that the fence had been broken. Brian Masson confirmed that he had phoned the Landlord's Representative to complain about the fence. It had been loose and broken for a year.

(v) For the avoidance of doubt there were discussions during the hearing regarding arrears of rent and the suitability of the property for the Tenant and his family. The Tribunal were clear that these were matters that it could not take any decision on.

Findings in fact

18. Having considered all the evidence the Tribunal found the following facts to be established:-

- The tenancy is an assured tenancy which commenced on 15 April 2015.
- The House consists of a two-storey terraced dwelling house. The accommodation comprises an entrance vestibule, lounge, kitchen, three bedrooms and a bathroom.
- The vinyl flooring in the kitchen is damaged and is not in a reasonable state of repair.
- The kitchen fluorescent tube ceiling light is not in proper working order.
- The kitchen units and worktop are not in a reasonable state of repair.
- There is evidence of water leakage from the pipework pertaining to the kitchen sink therefore said pipework cannot be said within the confines of the inspection to be in a reasonable state of repair
- There is water leakage/spillage from the shower/bath and consequently water ingress/staining to the kitchen ceiling below.

- The flooring in the bathroom, the upstairs hall and the front bedroom is not in a reasonable state of repair.
- The fence to the right of the back garden is not in a reasonable state of repair.

Reasons for the decision

19. The Tribunal determined the application having regard to the terms of the application, the findings of their inspection, and the submissions and documents from the Tenant, the Landlord, the Landlords' Representative and the Landlord's witness Brian Manson.
20. The Tribunal was satisfied having regard to all of the available evidence that there was sufficient information and material upon which to reach a fair determination of the application.
21. The Tribunal found the external doors to be wind and watertight and therefore determined that there was no breach of the Landlord's duty in this respect. However it was apparent from the findings of the inspection and the Tribunal's own assessment of the property that there were a number of other areas detailed in the application in respect of which the property did not meet the Repairing Standard.
22. In the kitchen, the ceiling light did not work, the units and worktop were in a state of disrepair and the vinyl flooring was torn. Further there was evidence of leakage from pipework pertaining to the kitchen sink. The Landlord's Representative had accepted that he had previously offered to install a new kitchen but had decided not to do after the Tenant had fallen into arrears of rent. However the Tribunal was conscious that the duty to comply with the Repairing Standard was incumbent on the Landlord regardless of whether or not the rent account was up to date. Accordingly the Tribunal could not accept that as a reason for the works having not been done. For the avoidance of doubt the Tribunal saw no evidence of leakage from the fridge during its inspection and therefore made no findings in this respect.
23. The Tribunal did not accept that the photographs produced by the Landlord's Representative at the hearing were an accurate depiction of the condition of the kitchen at the start of the tenancy. The Tribunal noted that the photos had in fact been taken prior to the previous tenant moving in and that the Landlord had chosen not to do the same prior to the Tenant taking up occupation. The reason for this variance in the Landlord's letting practices was not clear to the Tribunal and raised questions as to what the condition of the kitchen had been when the current tenancy had commenced. The Tribunal noted the evidence from Brian Manson from his own viewing of the property however felt that his account lacked specification and could therefore be given little weight. In any event it was clear to the Tribunal that the kitchen did not presently meet the Repairing Standard and the Landlord's Representative appeared to concede that through his previous offer to replace it.
24. From the Tribunal's inspection, it concluded that the probable cause of the water ingress to the kitchen from the bathroom was leakage from the bath through the shower screen. The Tribunal noted the Landlord's Representative's assertion that

the leakage from the bath was caused by the bathing habits of the occupiers. However the area in which the water was pooling on the bathroom floor appeared to indicate to the Tribunal that this was more likely a result of defects with the screen. Accordingly the Tribunal did not accept the evidence of the Landlord's Representative in this respect.

25. The Tribunal noted that the Landlord's Representative did not appear to dispute that the area of flooring in the upstairs hall required repair. With regard to the front bedroom, the Tribunal did not accept that this had been broken by the Tenant and therefore considered it the Landlord's duty to ensure the flooring was repaired to a reasonable standard. Further, it was clear that the flooring in the bathroom was presently unsafe with a nail protruding from it.
26. Finally with regard to the fence in the back garden, it was clear that this required repair. The Tribunal was not satisfied that there was sufficient evidence before it that would lead it to conclude that the Tenant was responsible for the damage. Accordingly the Tribunal considered it was the Landlord's duty to repair the fence to ensure it was in a reasonable condition.
27. The Act states that where a Tribunal decide that a landlord has failed to comply with their duty to ensure a property meets the Repairing Standard, the Tribunal "must by order require the landlord to carry out such work".
28. The Tribunal accordingly determined to make a Repairing Standard Enforcement Order as required in terms of section 24(2) of the Act.

Decision

29. In respect of section 13(1)(a) of the Act, the Tribunal determined that the Landlord had failed to comply with the duty imposed by Section 14(1)(b) of the Act as the house is not presently wind, watertight and in all respects reasonably fit for human habitation.
30. In respect of section 13(1)(c) of the Act, the Tribunal determined that the Landlord had failed to comply with the duty imposed by Section 14(1)(b) of the Act as the installations in the house for the supply of water, gas and electricity and for sanitation, space heating and heating water are not in a reasonable state of repair and in proper working order.
31. The decision of the Tribunal was unanimous.

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.

Signed **R O'Hare**

Ruth O'Hare
Chairperson
27 November 2017

Schedule of photographs taken during the inspection of: 206 Brown Street, Paisley
PA1 2SN

By: Colin F Hepburn MRICS, Ordinary Member of the First-Tier Tribunal for
Scotland(Housing and Property Chamber) on the 29th September 2017.



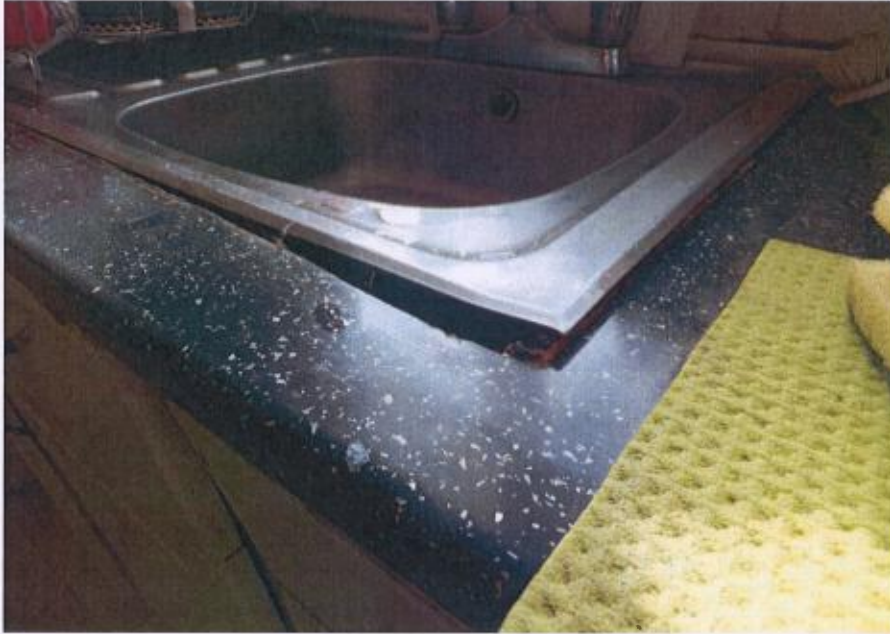
Front elevation



Kitchen

Schedule of photographs taken during the inspection of: 206 Brown Street, Paisley
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Scotland(Housing and Property Chamber) on the 29th September 2017.



Kitchen worktop



Under sink plumbing

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PA1 2SN

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Scotland(Housing and Property Chamber) on the 29th September 2017.



Damp stain to kitchen ceiling



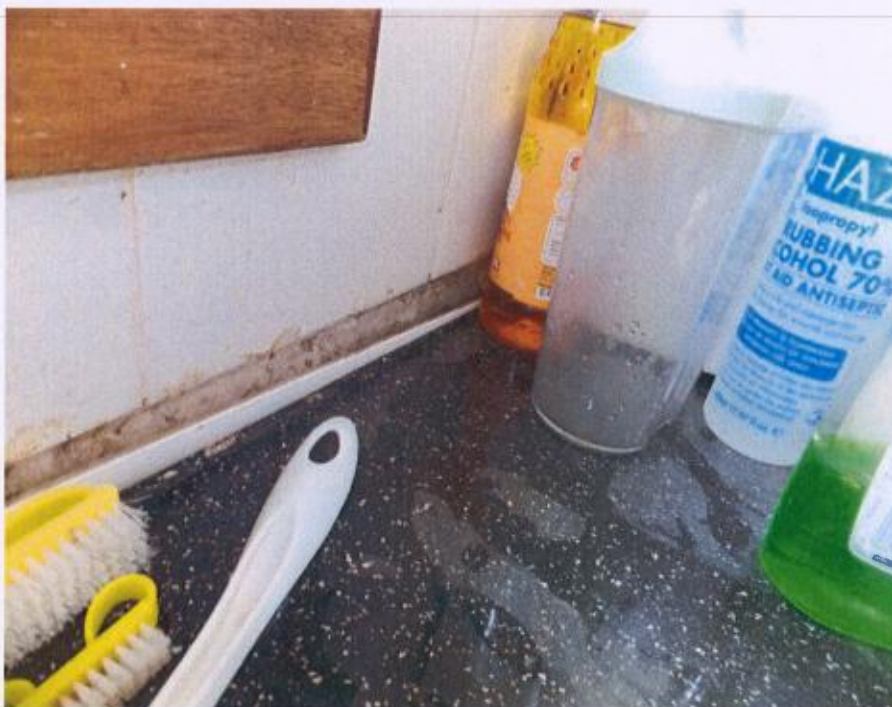
Cracking to kitchen vinyl

Schedule of photographs taken during the inspection of: 206 Brown Street, Paisley
PA1 2SN

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Worktop supported on washing machine



Drop to worktop

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Garden fencing



Garden fencing

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Rear garden



Rear garden timber deck

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Rear elevation



Fridge freezer

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Bath and shower screen



Seal to shower screen

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Grouting and mastic to bath



Spillage at side of bath

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Condensation to ceiling



Floor nail through vinyl

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PA1 2SN

By: Colin F Hepburn MRICS, Ordinary Member of the First-Tier Tribunal for
Scotland(Housing and Property Chamber) on the 29th September 2017.



Hall flooring



Decorative blemishes

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PA1 2SN

By: Colin F Hepburn MRICS, Ordinary Member of the First-Tier Tribunal for
Scotland(Housing and Property Chamber) on the 29th September 2017.



Condensation to window blinds



Damaged plaster ceiling

