

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(1)**

Chamber Ref: FTS/HPC/RP/17/0361

Title no: MID 14498

15 (1F4) Dalgety Avenue, Meadowbank, Edinburgh, EH7 5UQ ("The Property")

The Parties: -

**Kathryn MacGregor, currently residing at Hearthside, Spey Avenue, Grantown
on Spey ("the Tenant")**

**James Eodanable, 18 Forest Park Road, Dundee, DD1 5NY; James Eodanable,
Bein Cottage, Glenfarg, Perth, PH2 9PY ("the Landlord")**

Whereas in terms of their decision dated 20 December 2017 The First-tier Tribunal for Scotland (Housing and Property Chamber) ('the Tribunal') determined that the Landlord had failed to comply with the duty imposed by Section 14(1)(b) of the Housing (Scotland) Act 2006 ("the Act") and that the Landlord had failed to ensure that the property meets the repairing standard with reference to the following provisions of Section 13 of the Act, as amended :-

- (a) 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; and
- (b) Any furnishings provided by the landlord under the tenancy are capable of being used safely for the purpose for which they are designed.

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: -

- (1) to instruct a suitably qualified plumber to investigate the cause of poor water pressure from the shower and carry out such repairs as are recommended to improve the water pressure, or install a new hot water booster pump,

- (2) to instruct a suitably qualified plumber to investigate the cause of insufficient hot water being produced by the hot water tank and carry out such repairs as are recommended to rectify the problem, or replace the hot water tank,
- (3) to replace the faulty hot water immersion device with a new fully functioning device with timer,
- (4) to replace the sofa in the property with a sofa which is capable of being used safely for the purpose for which it is designed, and
- (5) To instruct a suitably qualified plumber to install plumbing fittings to the middle sink at the property so that the sink is capable of being used and water can drain away.

The Tribunal order that the works specified in this Order must be carried out and completed within the period of six 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.

In terms of Section 63 of the Act, 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 Josephine Bonnar, Solicitor, Legal Member and Chair of the Tribunal at Motherwell on 20 December 2017 before this witness:-

A Bonnar _____ Witness

J Bonnar

Aidan Bonnar _____ Name in full

38 Alexander Gibson Way Address

Motherwell

Housing and Property Chamber

First-tier Tribunal for Scotland



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

Statement of Decision: Housing (Scotland) Act 2006 Section 24(1)

Chamber Ref: FTS/HPC/RP/17/0361

Title no: MID 14498

15 (1F4) Dalgety Avenue, Meadowbank, Edinburgh, EH7 5UQ ("The Property")

The Parties:-

Kathryn MacGregor, currently residing at Hearthside, Spey Avenue, Grantown on Spey (" the Tenant")

James Eodanable, 18 Forest Park Road, Dundee, DD1 5NY; James Eodanable, Bein Cottage, Glenfarg, Perth, PH2 9PY ("the Landlord")

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, determined that the Landlord had failed to comply with the duty imposed by Section 14(1)(b) of the Act.

The Tribunal comprised: -

Mrs Josephine Bonnar, Legal Member

Mrs Susan Napier, Ordinary Member

Background

1. By application received on 19 September 2017 the Tenant 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 Tenant considered that the Landlord had failed to comply with his duty to ensure that the house meets the repairing standard. The Tenant stated that the Landlord had failed to ensure that (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; and (ii) Any furnishings provided by the landlord under the tenancy are capable of being used safely for the purpose for which they are designed. Specifically, the Tenant stated that the boiler in the flat provides insufficient hot water for a shower or bath, the shower provides insufficient hot water and inadequate flow to shower, there is a gas fire and hob but no information as to the gas supplier, the macerator in the kitchen is not working, the freezer was not working but has been replaced, the sofa smells strongly of urine and there is a foul smell in the property.
3. The First-tier Tribunal for Scotland served Notice of Referral under and in terms of Schedule 2, Paragraph 1 of the Act upon both the Landlord and the tenant on 23 October 2017. The parties were notified that an inspection and hearing would take place on 29 November 2017.
4. Following service of the Notice of Referral both parties lodged written representations and documents. The Tenant's representative advised that as the tenant was in hospital she would be represented at the inspection and hearing by her father and brother.
5. Prior to the inspection and hearing the Landlord's agent contacted the Tribunal administration to advise that following service of a Notice to quit, the tenancy had come to an end, but that the keys had not been returned. The tenant's representative confirmed that a notice to quit had been served but that the tenant remained in occupation of the tenancy subjects.

6. The Tribunal inspected the property on the morning of 29 November. The tenant's brother David Macgregor and her father Donald McGregor were present. The letting agent for the property, Kjartan Behm of Braemore Property also attended. The landlord was not present.
7. Following the inspection of the property the Tribunal held a hearing at George House, 126 George Street, Edinburgh. David and Donald MacGregor attended on behalf of the tenant. The landlord, James Eodanable, attended with Kjartan Behm, the letting agent.

The Inspection

8. At the time of the inspection it was cold, dry and sunny. The Tribunal inspected the property which is a first-floor tenement flat in Leith. The property is furnished but there was no evidence of personal possessions and it appeared to be unoccupied. The Tribunal inspected the hot water tank located in a hall cupboard. Mr Donald MacGregor indicated that there is no boiler as such, just a device attached to the tank which is used to switch the hot water on and off. He advised that the device is very old and is broken. It is supposed to operate as a timer, but is damaged and can only be used to switch the hot water on and off. He further advised that David MacGregor had switched it on the previous evening so that the Tribunal could see evidence of the quantity of hot water produced. The tribunal then inspected the bath and shower. The shower was switched on and hot water was noted to come out of the shower head. The taps were fully opened by Mr McGregor and the Tribunal noted that the quantity of water produced from the shower head was very limited. Thereafter Mr Macgregor filled the bath with hot water until the hot water ran out. The quantity of hot water obtained filled the bath to a height of 4 or 5 inches. In the open plan living room/kitchen the Tribunal noted the presence of a gas fire and hob, both of which are in working order. A small sofa was noted. The tribunal noted that it is very dirty, and that an unpleasant smell emanates from same. The property was otherwise noted to be clean. There is a smell in other parts of the property, but worst around the sofa. In the living room the Tribunal noted a cardboard box containing a new freezer, not yet installed. Mr MacGregor opened a door to a small utility room containing a washing machine and advised the previous faulty freezer had been located there and was removed when the new one had been delivered. In the kitchen the Tribunal inspected the sink. It noted that there is no macerator and was advised that the broken macerator had been removed but has not been replaced

and no pipes have been fitted so that the middle sink cannot be used. The Tribunal noted that hard wired smoke detectors and a CO detector are installed at the property. A schedule of photographs taken at the inspection is attached to this decision.

The Hearing

9. At the hearing the tribunal heard evidence from all four attendees. Mr Donald MacGregor advised the Tribunal that the tenant moved into the property on 18 April 2017. She had only lived there for a couple of months when she was admitted to hospital because of mental health difficulties. She was discharged from hospital recently and is currently residing with him, but has not yet fully recovered from her condition. He further explained that she has been assisted in the application process by Claire Nias, her named person in terms of the Mental Health legislation. Clare Nias was unable to attend the hearing and had arranged with David and Donald MacGregor for them to attend on behalf of the tenant. David MagGregor also confirmed that he has written authority from the tenant to deal with all matters relating to the tenancy since her admission to hospital.
10. Donald MacGregor advised the Tribunal that the immersion device for the hot water is defective. It should be possible to time the hot water to go on and off but currently it must be manually switched on and off. Furthermore, he is of the view that the hot water tank is too small and can only hold 100 -120 litres. Water pressure is also a problem. The water coming from the shower head is often little more than a trickle when the shower is at head height and there is only a reasonable level of pressure when the shower head is taken down and held at waist height. There is insufficient hot water to have a bath, with the hot water running out when there is little more than 4 or 5 inches of hot water in the bath. He advised that although the gas fire and hob are working, the tenant was unable to establish the identity of the gas supplier. There is gas being supplied but no bills have been received. The landlord has not supplied a gas safety certificate for the property at any time and British Gas advised the tenant that her address does not exist. Mr MacGregor confirmed that the faulty macerator was eventually removed on 11 September 2017. The contractor who attended advised that the sink needed to be replaced, and that the repair he carried out was temporary and that he would return to finish the job. He did not do so. There is therefore a hole in the middle sink which has no plumbing fittings for water to drain away, and can therefore not be used. Mr MacGregor then referred to an invoice which had been lodged by the

Respondent. It is dated 21/9/17 and states "attended property to investigate issue with waste disposal unit. On inspection found unit beyond repair. Removed and capped exposed pipes." Mr MacGregor advised that the freezer in the property when the tenant moved in did not work at all and was never capable of being used. The new one was delivered on 18 August 2017, by the landlord himself. Mr David MacGregor was present and advised the landlord that it could be left in the box since the tenant was still in hospital. The old one was removed at that time. Mr Donald MacGregor advised the tribunal that the sofa had been in a terrible condition from the outset – foul smelling with cat urine stains. There is other evidence around the flat of a cat's presence although the tenant does not own one. The tenant asked promptly for the sofa to be removed. The landlord came to inspect and said he would make arrangements for its removal and replacement.

11. Mr Donald MacGregor advised that the tenant raised all of the issues regarding the tenancy subjects within 2 weeks of moving in and that he has copy emails with regard to these complaints. Her first intimation to the letting agent was on 2 May 2017. The complaints were promptly acknowledged, and assurances given that the matters would be addressed, but other than contractors attending to inspect the property, the complaints were not addressed. The tenant was admitted to hospital at the end of June 2017. She had been living in the property although stayed at her brothers for a couple of weeks before her admission.
12. David MacGregor advised that on 3 July 2017 he phoned the letting agent to advise that the tenant was ill and that he had authority to deal with matters relating to the tenancy. He provided contact details, including an email address. Despite this instruction, contractors instructed by the letting agent continued to contact the tenant direct. David MacGregor emailed the letting agent to complain, and had to contact them a third time when the hospital advised him that the tenant was still getting calls which were causing distress and that her phone had to be confiscated for the sake of her health. On 21 July 2017 the tenant, still in hospital, had a long telephone conversation with the landlord about the various issues. Donald and David MacGregor were present with the tenant and both felt that it had been a productive discussion. There were assurances given that all matters would be resolved within 3 weeks. Thereafter the landlord arranged for the delivery of the freezer, but failed to remove the sofa. A contractor came and cleaned the floors but on 2 occasions David MacGregor took time off work, when other contractors were scheduled to attend, and failed to do so. A contractor did attend on 21 September 2017 and removed the macerator, but took no further action. No repair to the shower was

carried out. Mr David MacGregor advised the Tribunal that he has (prior to the end of October 2017) always responded to phone calls and emails about access, and facilitated same when possible. He advised that he did not allow access in the 2 or 3 weeks before the Tribunal hearing because the hearing was approaching and he felt it was too late for the Landlord to sort out the problems.

13. Mr Behm advised the tribunal that a gas safety certificate was included in the tenant information pack, given to the tenant at entry and he has a written acknowledgment from her of same. The gas safety check was renewed in September 2017. He confirmed that copies of these would be forwarded to the tribunal administration and the tenant. He also confirmed that the flat is supplied by British Gas, and that there is nothing untoward about the gas supply to the property. He did not comment on the lack of utility bills, mentioned by Mr MacGregor.
14. Mr Behm advised the tribunal that the water heater is in working order. It can be switched on and off and he is of the view that a timer is not a legal requirement. He advised that when the tenant took entry to the flat her signed copy of the inventory was returned, albeit late. He accepted that on 2 May 2017 the letting agency was made aware of the complaints. Instructions were issued to Lomond Maintenance, an affiliate company, who were subcontracted to do the maintenance work. Although the letting agents were of the view that the shower pressure is adequate, the contractors were instructed to fit a new booster pump to the shower, which was carried out on 11 September 2017. He advised the tribunal that the quantity of water and the water pressure are adequate to meet the repairing standard. Mr Behm then advised that following the removal of the macerator, the landlord and letting agent were unaware that there was work outstanding in relation to the sink, the information provided at the inspection and hearing being the first intimation of ongoing concerns. He pointed out that the main sink is in working order and stated that the absence of pipes for the other sink does not amount to a breach of the repairing standard.
15. Mr Behm and the landlord confirmed that a new freezer had been delivered to the property in August 2017, and that David Macgregor had confirmed that it should be left in the box and that he would install it in due course. It is not disputed that the sofa needs to be replaced. However, Mr Eodanable advised the Tribunal that he was unaware of any smell at the property on the occasions that he visited. Nonetheless, he arranged for the floors to be cleaned because of the complaint in the hope that this resolved matters. The tenant only agreed to same if environmentally friendly cleaning products were used. He checked this out, confirmed the position,

and the cleaning went ahead. Mr E also advised the tribunal that he had confirmed to the tenant that the sofa would be replaced. She said she only wanted the existing one removed, which he had been willing to do.

16. Mr Behm advised the tribunal that access to the property to deal with complaints had been a problem. The tenant had initially been cooperative, but it had then become very difficult to get a response. He accepted that contractors had initially continued to contact the tenant direct, after the letting agency had been advised to deal with David MacGregor, but thereafter the records had been updated. He advised that both Lomond Maintenance and his colleagues at the letting agency had experienced problems getting a response from David MacGregor – phone calls and emails were not answered. This resulted in delays to work being carried out. The letting agency also attempted to contact David MacGregor during this period in relation to rent arrears, with the same result. Both the landlord and the letting agent also advised the Tribunal that they had not been made aware of the extent of the tenant's illness. The landlord also confirmed to the tribunal that the keys to the property have not been returned by the tenant although he has served the relevant notices to bring the tenancy to an end.

Findings in Fact

17. The property is a first-floor tenement flat in Leith. The Tenant took entry to the property on 18 April 2017 and resided there until the end of June 2017 when she was admitted to hospital. Following her admission, she retained the tenancy. The landlord has served a notice to quit but the tenant has not relinquished the keys although she is not currently residing at the property.
18. The Tenant notified the Landlord's agent of repairs issues at the property on 2 May 2017, and on various further occasions. Following her admission to hospital the tenant authorised her brother David MacGregor to deal with tenancy related matters on her behalf. The letting agent was notified of this arrangement.
19. The defective macerator and freezer have been removed from the property. A new freezer has been delivered, but not installed.

20. The immersion water heater is defective. There is inadequate water pressure from the shower head and insufficient hot water is produced by the hot water tank for bathing and showering. The sofa is dirty and smells.

Reason for decision

21. The Tribunal considered the issues of disrepair set out in the Application and noted at the inspection.
22. The Tribunal considered the issue of access to the property for the purposes of carrying out repairs and replacing the items accepted by the Landlord as defective. The Tribunal notes that the Tenant's lengthy absence from the property, and the fact that it has been unoccupied for a number of months, did make it more difficult for the Landlord and letting agent to deal with the complaints. However, the Tribunal is satisfied that the tenant and her family took reasonable steps to ensure that there was a person to contact for access, and that access was generally provided when requested. It is unfortunate that contractors continued to contact the tenant direct. Specific and clear instructions had been given to the letting agent, and the Tribunal is of the view that the agent ought to have made sure that all relevant people were advised of the contact arrangements. The Tribunal accepts that the Landlord and letting agent were not fully aware of the nature and extent of the tenant's illness, but this does not excuse the failure. In any event, the repairs issues were all promptly reported in early May 2017, and the tenant was not admitted to hospital until late June 2017. The repairs could have and indeed ought to have been dealt with before the hospital admission. The Tribunal is satisfied that the tenants brother took steps to allow access, and that any access problems were clearly not insurmountable, since the landlord himself was in the property in August 2017 and a contractor had access to remove the macerator in September 2017. The Tribunal is therefore satisfied that the Landlord was not prevented from dealing with the repairing standard issues through lack of access to the property.
23. The Tribunal considered the condition of the hot water immersion device at the inspection and the representations of the parties at the hearing and is satisfied that the device is defective and requires to be repaired or replaced. The device is designed to allow hot water to be on a timer, and it does not do this. This was not disputed by

the Landlord or his agent. The Tribunal is also satisfied that there is insufficient hot water being produced for bathing and showering, partly because of poor water pressure. The Tribunal notes the evidence of the letting agent that a booster pump has been fitted. He advised that this had been instructed and was carried out the same day as the removal of the macerator and that an invoice has been received. The Tenant's brother, who was present in the property on that occasion, is adamant that the contractor did not do any work in relation to the shower. The Tribunal noted that the water pressure from the shower head is very poor, with no evidence of a booster pump in operation. The Tribunal concluded that either no pump has been fitted, or if it has, it is not working properly. The Tribunal also concluded that there is not enough hot water being produced by the water tank and that investigations and repairs are certainly required to address this issue. The Tribunal is of the view that the condition of the sofa is such that it requires to be removed from the property and, as there is limited alternative seating in the property, replaced. This is not disputed by the landlord. It is also of the view that the removal of the macerator leaves part of the sink unusable and that plumbing requires to be provided or the whole unit replaced with a fully functioning sink.

24. The Tribunal notes that there is a new freezer, in a box, and recommends that steps are taken to install same without delay. Also, if the removal of the sofa does not result in the removal of the unpleasant smell within the property, investigations should be carried out to determine the cause of the smell and steps taken to eradicate same. Although not part of the application, the Tribunal notes that the tenant's family state that no gas safety certificates have been exhibited. The letting agent disputes this saying that both the certificate included within the tenant information pack, and the renewal of same in September 2017, are available. These have not however been exhibited. Lastly, the Tribunal notes that the tenant's inability to establish the gas supplier perhaps requires investigation and clarification. However, this does not amount to a breach of the repairing standard, there being no suggestion that the gas appliances are not in working order.

25. The Tribunal accordingly took the view that the property fails to meet the repairing standard in relation to subsection 13(1)(c) and (e). The Tribunal is therefore required to make a repairing standard enforcement order in terms of these subsections. The Tribunal concluded that it will require to make a Repairing Standard Enforcement Order in respect of the hot water immersion device, the

hot water tank, the water pressure, the lack of plumbing at the sink, and the sofa.

Decision

26. The Tribunal determined that the Landlord had failed to comply with the duty imposed by Section 14 (1)(b) of the Act.

27. The Tribunal proceeded to make a Repairing Standard Enforcement Order as required by section 24(1)

28. The decision of the Tribunal was unanimous

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.

Signed..... **J Bonnar** 20 December 2017
Josephine Bonnar, Legal Member

Property – Flat 1f4, 15 Dalgety Avenue, Edinburgh EH7 5UQ

Inspection Report 29 November 2017 - Photographs

Front Elevation (all windows of Flat 1f4 to rear)



Rear Elevation (First floor – 3 windows)



MORRISWELL 20 DECEMBER 2017

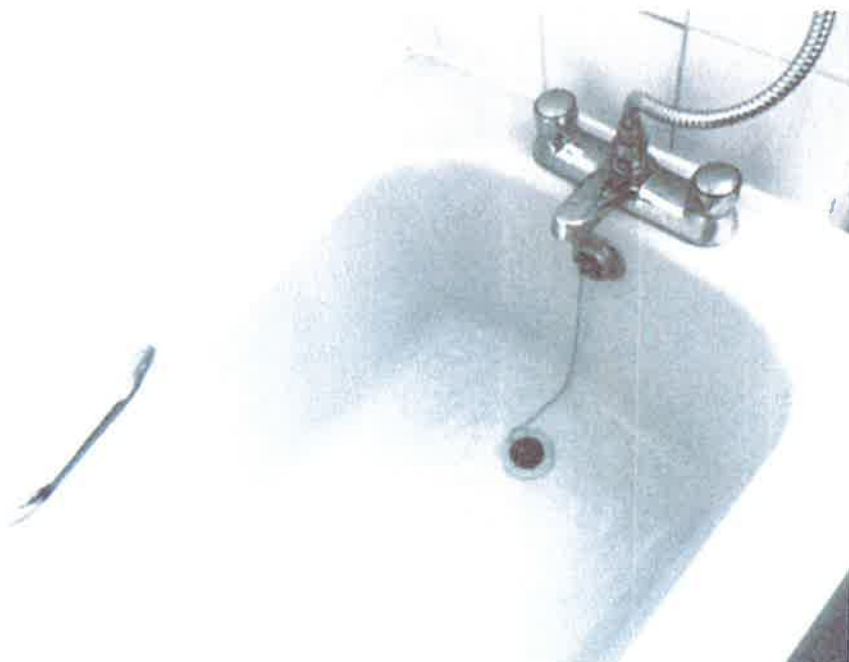
This is the schedule of photographs referred to
in the decision of 20 December 2017

J Bonnar

Hot water tank with immersion heater and timer



Bath with approx 5" hot water



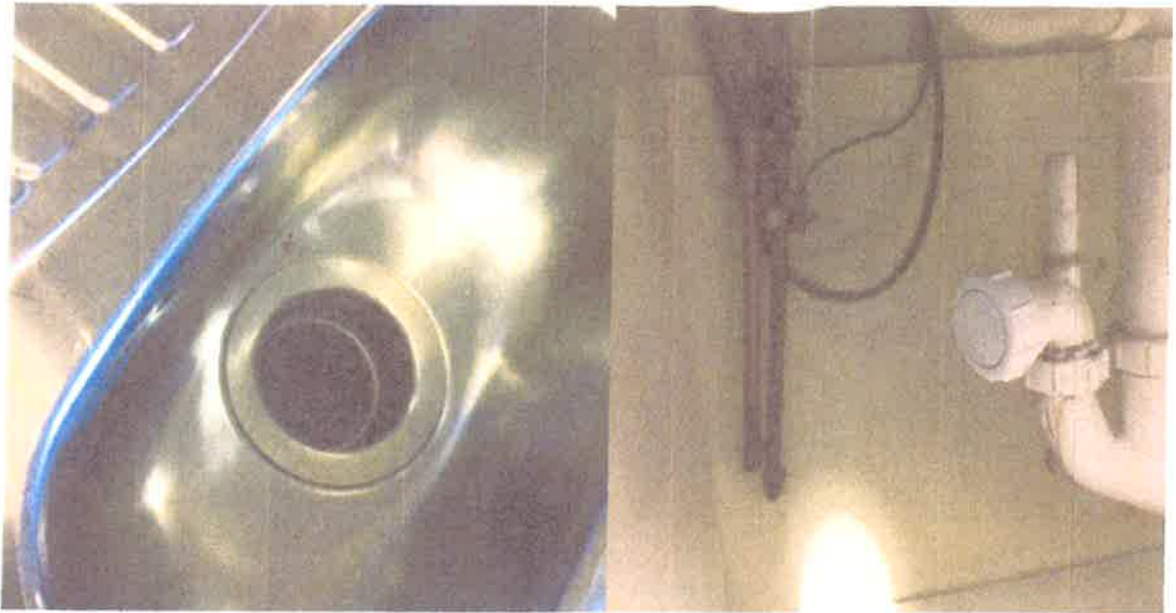
Shower at full flow



Gas fire and gas hob



Space in half bowl of kitchen sink for food waste macerator and cupboard below showing no connecting drain fitted.



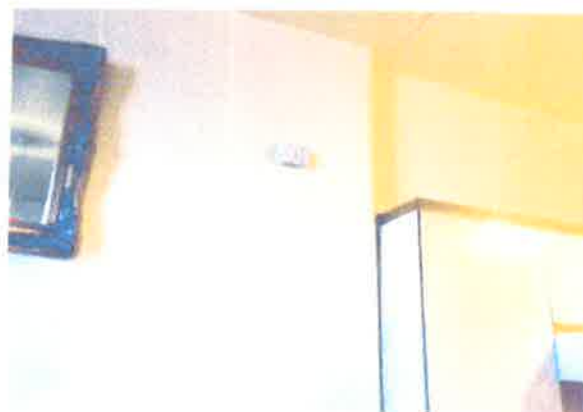
Freezer in cardboard box in living room and space in store cupboard where previous freezer had been fitted.



Sofa – poor condition with bad odour



Smoke and Carbon Monoxide Detectors installed



Windows – missing window rope, poor state of repair



Photographs taken by Susan Napier, Ordinary Surveyor Member 29 November 2017 at 10am