

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/17/0174

Title no: MID229557

The Property: 379 Old Dalkeith Road, Edinburgh EH16 4ST ("The House")

The Parties: Ms Tina Millar, residing at 379 Old Dalkeith Road, Edinburgh EH16 4ST ("the tenant")

Ms Patricia Donoghue, 49b Ferniehill Road, Edinburgh EH17 7BL ("the landlord")

Whereas in terms of their decision dated 21 July 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 not wind and watertight;
- (b) the structure 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, electricity and for sanitation, space heating and heating water are in a reasonable state of repair and proper working order;
- (d) fixtures and fittings and appliances provided are in a reasonable state of repair and in proper working order; and
- (e) the house has satisfactory provision for giving warning that carbon monoxide is present.

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:-

- (a) To check all draught proofing in the windows to ensure that draught proofing is fixed and in place and in proper working order.
- (b) To clean all blocked guttering and to re-lay and replace uneven and broken slabs.
- (c) To ensure that the boiler is certified as fit for use and that a gas safety certificate is provided.
- (d) To provide an electrical installation condition report.
- (e) To install a carbon monoxide detector within the property.

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 are executed by Mark Thorley, chairperson, 51 South Bridge, Edinburgh EH1 1LL, chairperson of the tribunal at Edinburgh on 21 July 2017 before this witness:-

T Brown

witness

M Thorley

chairperson

TRACEY BROWN name in full

51 SOUTH BRIDGE Address

EDINBURGH

EH1 1LL

Housing and Property Chamber

First-tier Tribunal for Scotland



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

Determination under Section 24(1) of Housing (Scotland) Act 2006

Chamber Ref: FTS/HPC/RP/17/0174

Title no: MID229557

Property address: 379 Old Dalkeith Road, Edinburgh EH16 4ST ("The House")

The Parties: Ms Tina Millar, residing at 379 Old Dalkeith Road, Edinburgh EH16 4ST ("the tenant")

Ms Patricia Donoghue, 49b Ferniehill Road, Edinburgh EH17 7BL ("the landlord")

The Tribunal comprised:-

Mr Mark Thorley – Legal Member

Mr Kingsley Bruce – Ordinary Member

The First-tier Tribunal for Scotland (Housing and Property Chamber) ('the tribunal') unanimously determined that the landlord has 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 and Enforcement Order (RSEO) as required by Section 24(2) of the 2006 Act.

Background

1. By application received on 3 May 2017 the tenant applied to the Tribunal for a determination of whether the landlord had failed to comply with the duties imposed on them by Section 14(1)(b) of the Act.
2. The application stated that the tenant considered the landlord had failed to comply with their duty to ensure that the house meets the repairing standard and in particular that the landlord had failed to ensure that –
 - a. There was not adequate insulation in the house.
 - b. There was inadequate heating in the house.
 - c. There was no gas or electric safety checks and certificates.
 - d. There was no carbon monoxide detector.
 - e. There were holes in the walls and mice infestation.
 - f. There was dampness and mould which damaged floors.
 - g. There were no extractors in the kitchen and bathroom.
 - h. There were issues with the guttering and slabs at the entrance to the property.

3. The tenant through her agent Ms Anna Mencil of the Edinburgh Housing Advice Partnership had also provided a copy of a letter sent to the late Mr John Donoghue, the former landlord of the property setting out the issues as identified. Following service of the notice of referral Messrs Fraser Brooks & Co WS, Solicitors, 45 Frederick Street, Edinburgh responded by email dated 3 July 2017 confirming that they acted on behalf of the late John Donoghue and his wife Mrs Patricia Donoghue. A further response was sent by Ms Anna Mencil to that email.

The inspection

The Tribunal attended at the property on the morning of Friday 14 July 2017. It was a clear and sunny day.

In attendance at the inspection were the tenant and the tenant's representative, Ms Anna Mencil.

The house is one of a terrace of cottages fronting Old Dalkeith Road. It is approximately 25 to 30 years old. The property is on one level and consists of livingroom, kitchen, bathroom and three bedrooms.

At the inspection it was also noted that a cupboard adjacent to the bathroom, there appeared to be a slight water leak on the mains supply line.

During inspection photographs were taken by the ordinary member and a schedule of photographs is attached to the decision.

The inspection was concluded and the Tribunal travelled to the venue for a hearing.

The hearing

The hearing took place at George House, Room D8, 126 George Street, Edinburgh. The landlord was not present. Ms Anna Mencil, the tenant's representative attended.

Ms Mencil made submissions to the Tribunal on behalf of the tenant. Ms Mencil confirmed that the tenant at no stage had declined remedial works being undertaken to the house.

Findings in fact

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

1. That the tenancy was a Short Assured Tenancy between the landlord and the tenant. The tenancy commenced on 5 March 2012.
2. The property consists of a mid-terraced cottage with three bedrooms, livingroom, kitchen and bathroom and an outside paved enclosed area.
3. That for a house of its age there is adequate insulation.
4. That no gas safety certificate had been made available and that the boiler did not appear to be functioning correctly.

5. That although the property suffered from condensation that this is an occupational issue in the first instance and that there were no issues surrounding mould nor dampness.
6. That the windows and doors were relatively modern and did include draught proofing. Some seals round the glazed units were loose.
7. That there appeared to be no electrical installation condition report available. There were issues regarding wiring. A defective switch had apparently highlighted the need for the appropriate investigation to be undertaken and certificate to be produced.
8. That there was no carbon monoxide detector.
9. That the extractor fan in the kitchen was not working appropriately and it would need to be investigated and thereafter fixed.
10. That the extractor fan in the bathroom did appear to be working but was covered in dirt. This is a matter that the tenant should deal with.
11. The point at which mice or vermin were entering the property could not be immediately determined, having regard to the situation of the property, it would not be unusual for mice to be present. There were no apparent holes or access points that mice could get into the property in the visible, external fabric of the subject property. There appeared nothing more than the landlord could do in relation to this.
12. There were some uneven and broken slabs which require to be fixed.
13. There was guttering to the front and rear of the building that was choked and should be cleared to ensure that rainwater fittings are operating satisfactorily.

Reasons for decision

The Tribunal determined the application having regard to the terms of the application, the findings of their inspection and the submissions and documents of the tenant, the tenant's representative and the landlord's agent.

The Tribunal was satisfied with regard to all of the available evidence that there was sufficient information and material upon which to reach a fair determination of the application.

The Tribunal was in no doubt from this inspection that the property did not meet the repairing standard. No gas safety certificate was available. It appeared that there were issues with the boiler.

There also required to be an electrical installation certificate report prepared. There were clearly concerns surrounding the wiring within the property, a defective switch having caused a fuse to blow.

There was no carbon monoxide detector in the house at all and this required to be made available.

The extractor fan in the kitchen was not working properly and requires to be investigated and thereafter any such works undertaken to ensure that it is in proper working order.

There are slabs outside the property at the entrance which are uneven and broken and which require to be fixed and re-laid.

There was guttering to the front and rear of the building that was choked and should be cleared to ensure that rainwater fittings are operating satisfactorily.

There does not appear to be any issue relating to adequate insulation in the property in terms of the repairing standard and there is draught proofing to the windows and doors. The draught proofing may need to be looked at to ensure that all the seals are secured.

In addition it was highlighted that there is a cold water pipe in the cupboard next to the bathroom which has a leak which will require to be investigated (although not part of the application).

The issue of the mice is one that is beyond the landlord's control. There are no obvious holes for mice to enter. That may not be the same of adjoining properties but the landlord could do no more to the building. Taking into account where the building is situated and the time of year it would not be unusual for mice to be present.

Likewise in relation to the issue of mould or damp there appears to be a condensation issue. The tenant should obtain advice in relation to the issue of condensation.

Decision

1. In respect of Section 13(1)(a) of the Act, the Tribunal determined that the landlord has complied with the duty imposed by Section 14(1)(b) of the Act and that the house is wind and watertight.
2. In respect of Section 13(1)(b) of the Act, the Tribunal determined that the landlord has failed to comply with the duty imposed by Section 14(1)(b) of the Act as the structure and exterior of the house (including drains, gutters and external pipes) are not in a reasonable state of repair and in proper working order.
4. In respect of Section 13(1)(c) of the Act the Tribunal determined that the landlord has 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, electricity and for sanitation, space heating and heating water are not in a reasonable state of repair and proper working order.
5. In respect of Section 13(1)(d) of the Act the Tribunal determined that the landlord has failed to comply with the duty imposed by Section 14(1)(b) of the Act as the fixtures, fittings and appliances provided at the tenancy are not in a reasonable state of repair and proper working order.
6. In respect of Section 13(1)(g) of the Act the Tribunal determined that the landlord has failed to comply with the duty imposed by Section 14(1)(b) of the Act as the house does not have satisfactory provision for giving warning if carbon monoxide is present.

The decision of the Tribunal was unanimous.

Comment

As referred to above there is a leak at the cold water pipe in the cupboard adjacent to the bathroom that requires to be investigated and although not referred to specifically in the application may potentially cause an ongoing problem.

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M Thorley

chairperson

HOUSING PROPERTY CHAMBER

SCHEDULE OF PHOTOGRAPHS

taken on 14 July 2017

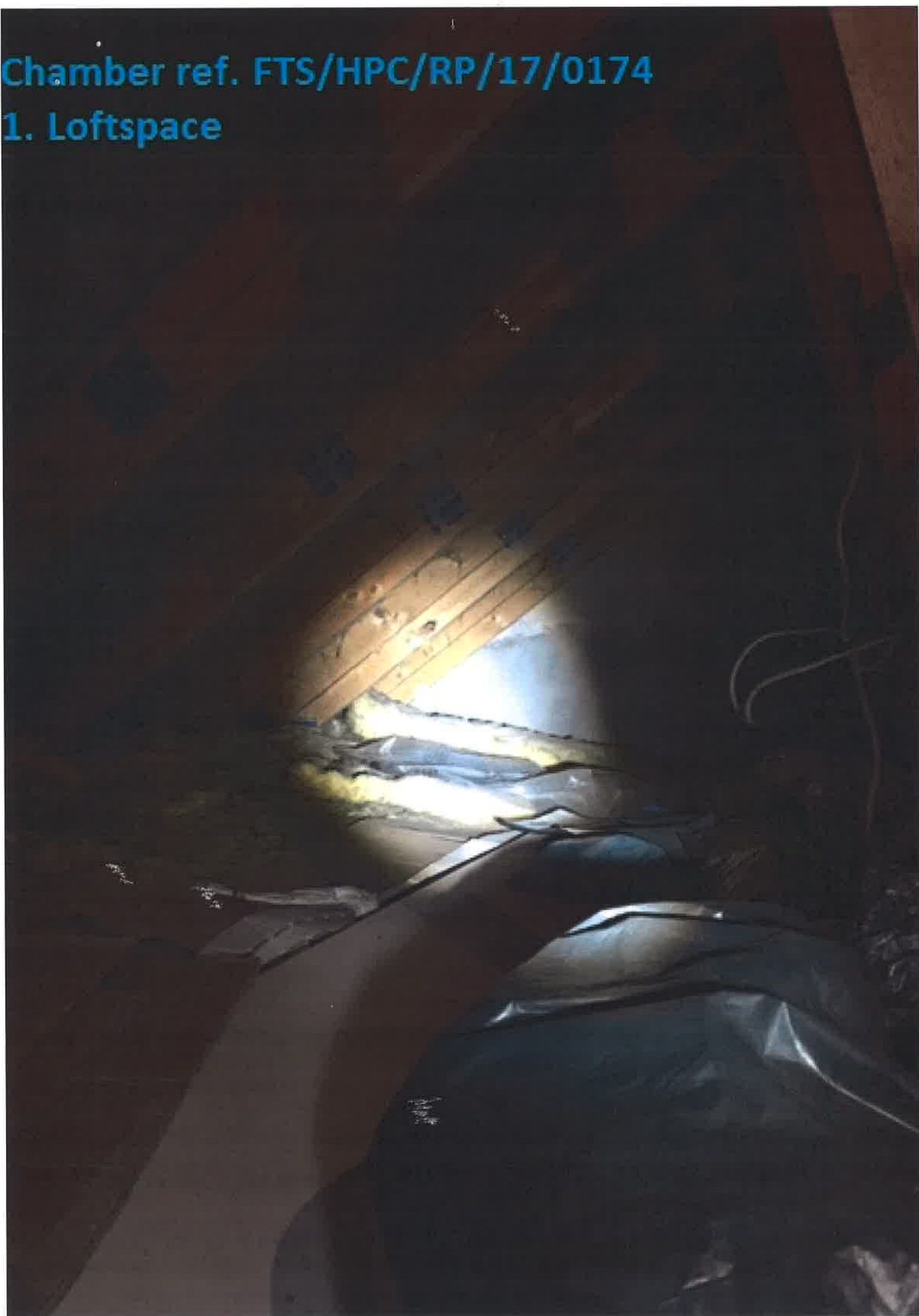
**Property: 379 Old Dalkeith Road,
Edinburgh EH16 4ST**

Chamber Ref. FTS/HPC/RP/17/0174

- 1. Loftspace**
- 2. Loftspace**
- 3. Window frame**
- 4. Radiator**
- 5. Bathroom**
- 6. Water pipe in cupboard next to bathroom**
- 7. Fusebox**
- 8. Smoke detector in hall**
- 9. Main door leading to outside paved area**
- 10. Kitchen**
- 11. Velux in kitchen**

Chamber ref. FTS/HPC/RP/17/0174

1. Loftspace

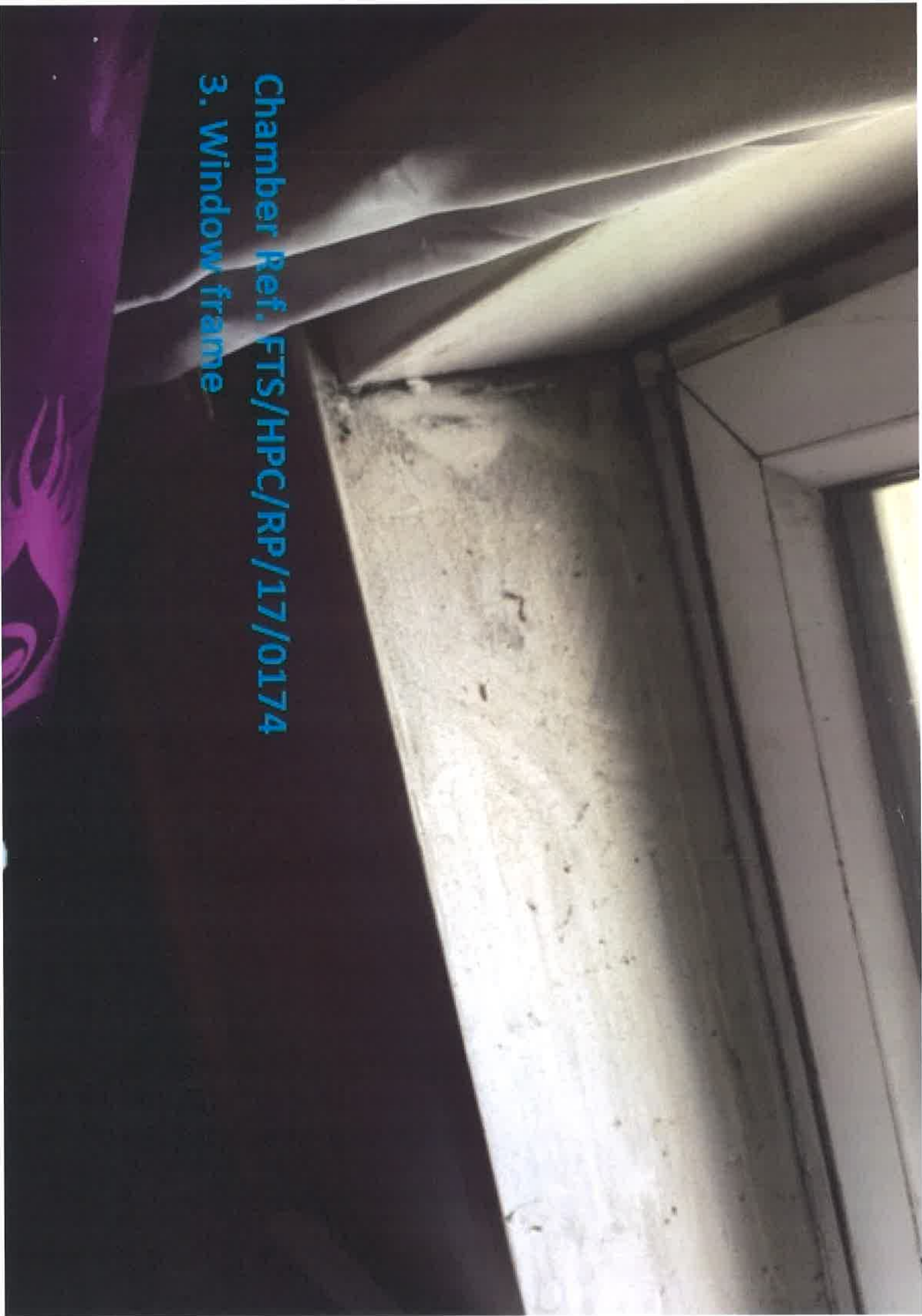


Chamber Ref. FTS/HPC/RP/17/0174

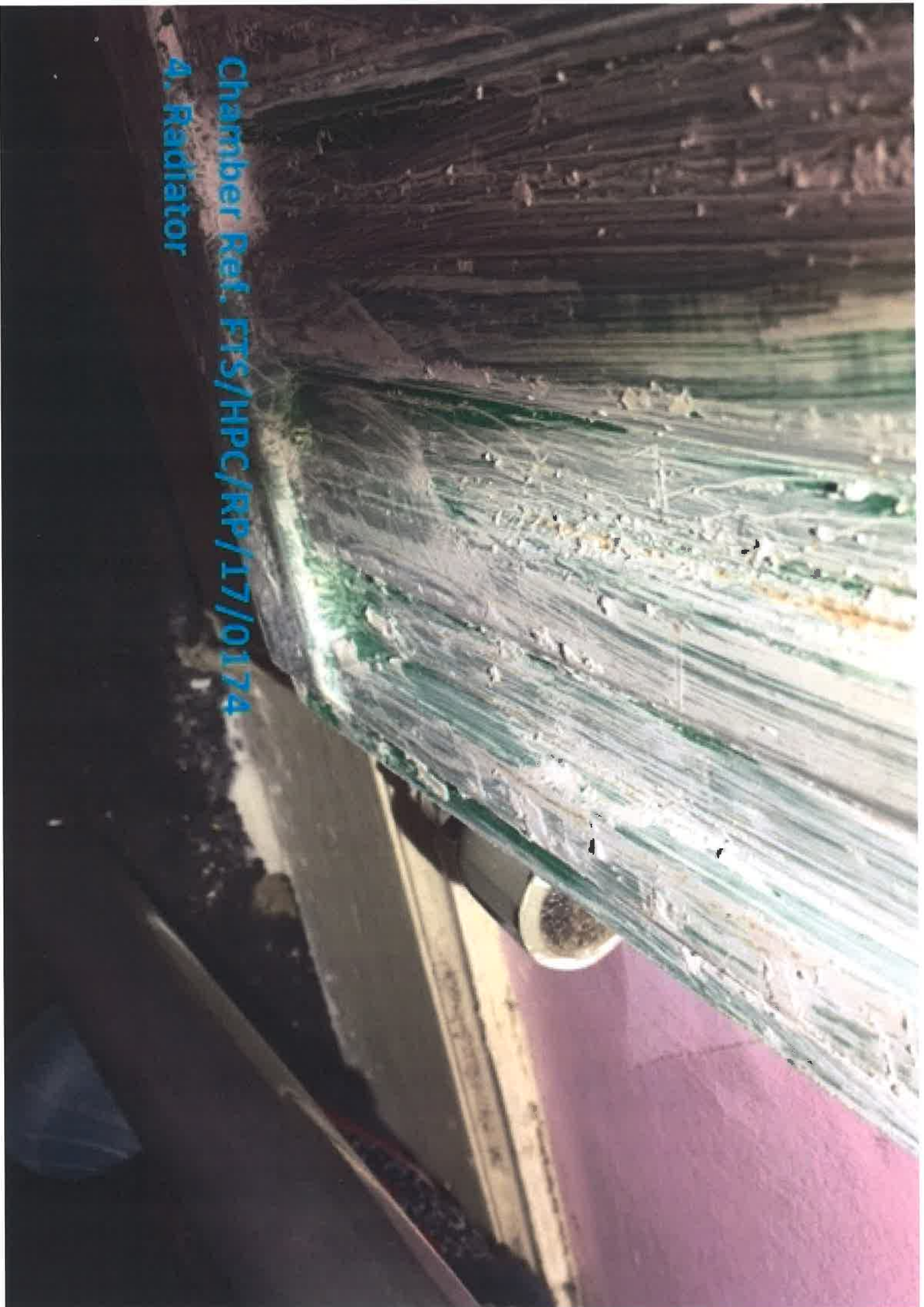
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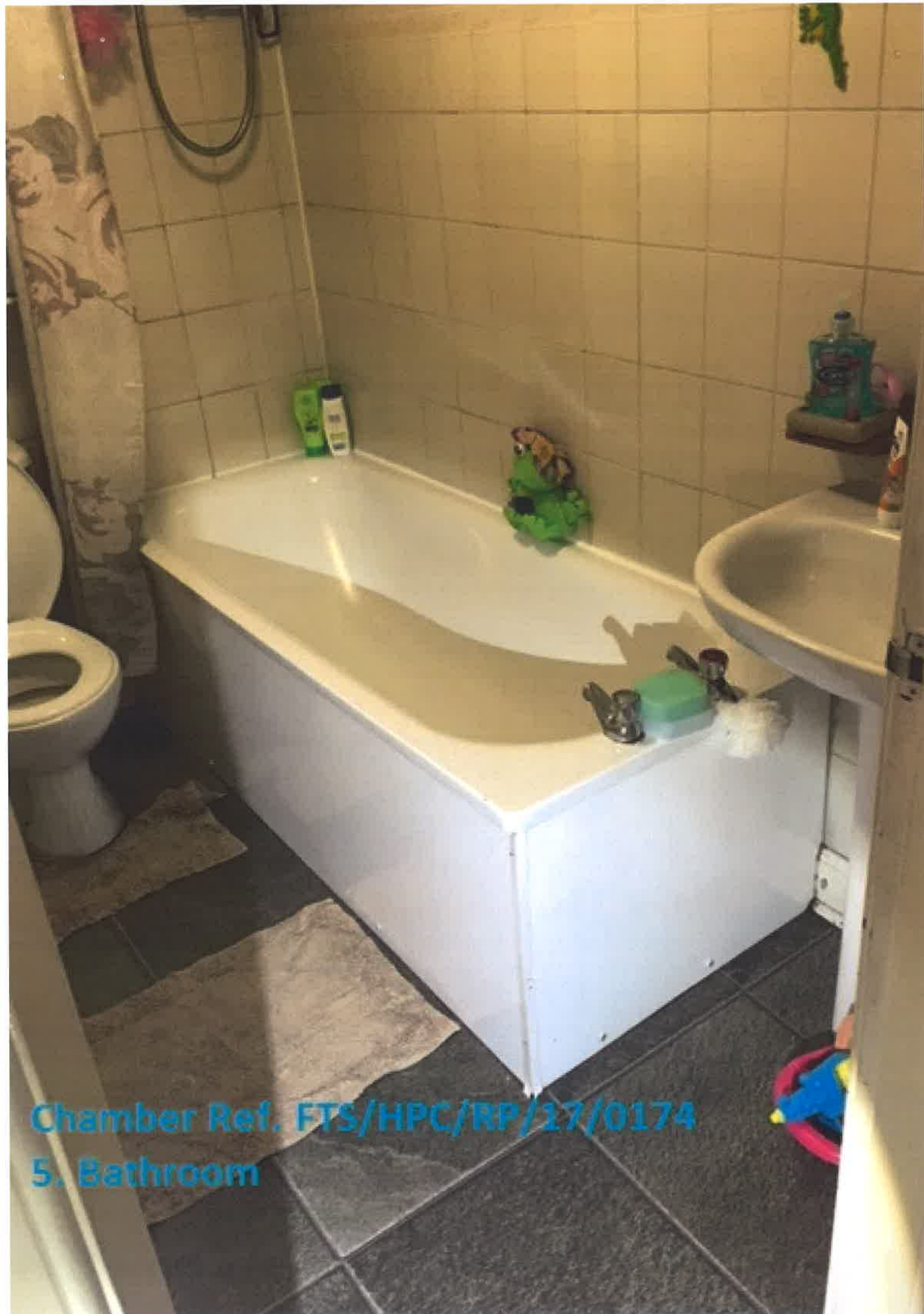


Chamber Ref. FTS/HPC/RP/17/0174
3. Window frame



Chamber Ref. FTS/HPC/RP/17/0174
4. Radiator



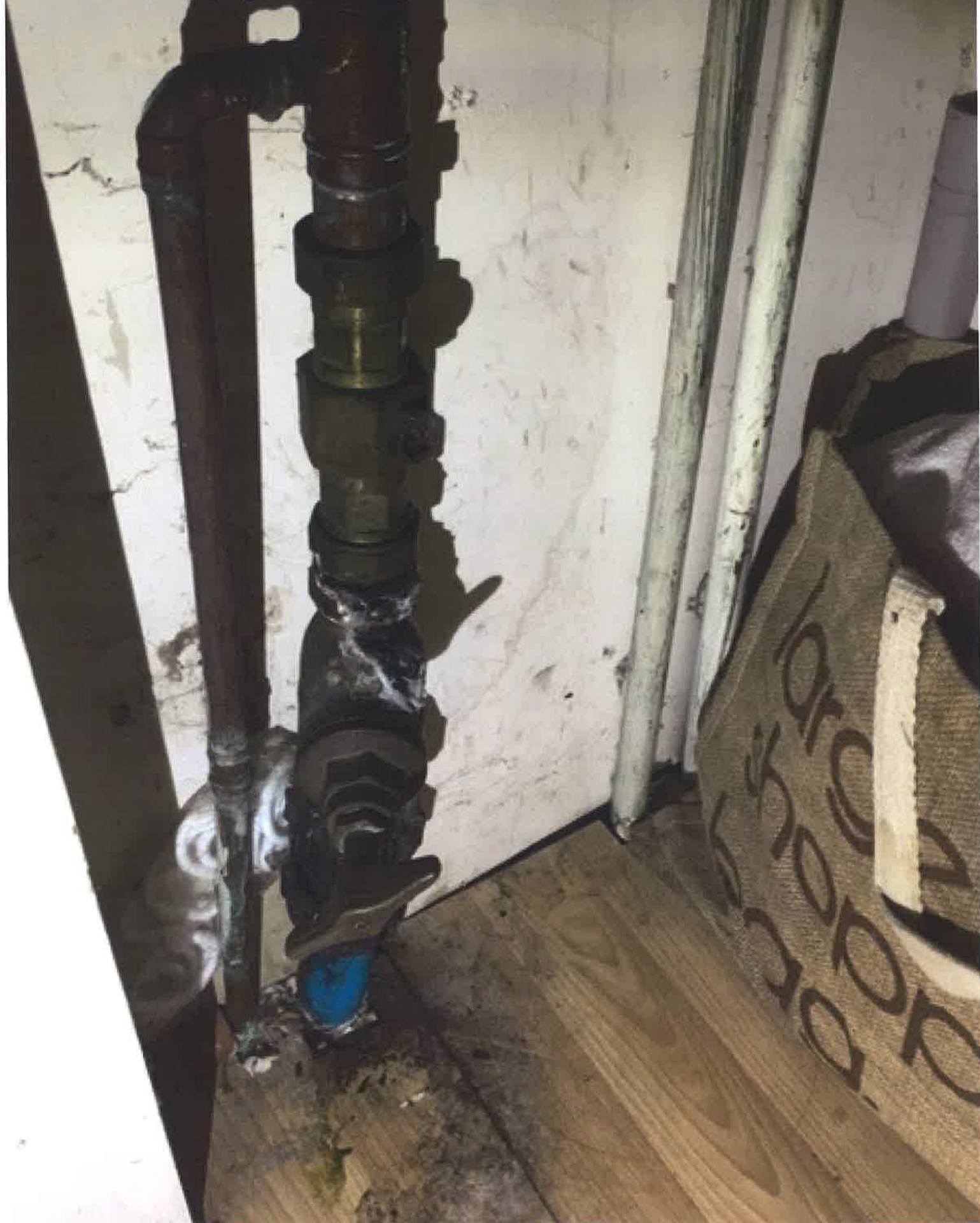


Chamber Ref. FTS/HPC/RP/17/0174

5. Bathroom

Chamber Ref. FTS/HPC/RP/17/0174

6. Water pipe in cupboard next to bathroom



Chamber Ref. FTS/HPC/RP/17/0174

7. Fusebox



Chamber Ref. F15/HRC/KP/11/01/4

8. Smoke detector in hall



Chamber Ref. FTS/HPC/RP/17/0174

9. Main door leading to outside paved area





Chamber Ref. FTS/HPC/RP/17/0174
11. Velux in kitchen

