



## Repairing Standard Enforcement Order

Ordered by the Private Rented Housing Committee

**PRHP Ref:** PRHP/RP/15/0287

**Property at:** 5 Castle Gardens, Drymen, Glasgow, G63 0HT

**Title No:** STG50319

### The Parties

Joseph Gillespie, residing at 5 Castle Gardens, Drymen, Glasgow, G63 0HT ("the tenant")

and

Paul & Pamela Watson, spouses, residing at Cabin Heyes, Moss Side, Formby, Liverpool, L37 9BE ("the landlord") represented by Endrick Property Ltd, 38 Stewart Street, Milngavie G62 6BY

**NOTICE TO** Paul & Pamela Watson, spouses, residing at Cabin Heyes, Moss Side, Formby, Liverpool, L37 9BE ("the landlord")

Whereas in terms of their decision dated 23 December 2015, the Private Rented Housing Committee determined that the landlord has failed to comply with the duty imposed by Section 14 (1)(b) of the Housing (Scotland) Act 2006 and in particular that the landlord has failed to ensure that:

(a) The structure and exterior of the house are in a reasonable state of repair and in proper working order, in terms of Section 13(1)(b) of the 2006 Act;

(b) The installations in the house for the supply of water, gas, space heating and heating water are in a reasonable state of repair and in proper working order, in terms of Section 13(1)(c) of the 2006 Act;

the Private Rented Housing Committee 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 Private Rented Housing Committee requires the landlord to:-

(i) Provide the PRHP with a report from a suitably qualified, and Gas Safe registered heating engineer on the functionality of the central heating timer/programmer, &, if necessary, carry out any repairs or replacement to ensure that the programmer is in proper working order.

(ii) Repair or replace the trickle ventilator on the bathroom window so that it is in proper working order. On completion of this (and the fitting of the updated extract fan) treat mould on walls and ceilings and make good decoration.

All within 6 weeks of the date of service of service of this order

**A landlord or a tenant aggrieved by the decision of the Private Rented Housing Committee may appeal to the Sheriff by summary application within 21 days of being notified of that decision.**

Where such an appeal is made, the effect of the decision and of the order is suspended until the appeal is abandoned or finally determined, and where the appeal is abandoned or finally determined by confirming the decision, the decision and the order will be treated as having effect from the day on which the appeal is abandoned or so determined.

In witness whereof these presents are executed by Paul Doyle, solicitor, 24 Haddington Place, Edinburgh, chairperson of the Private Rented Housing Committee, at Edinburgh on 23 December 2015 before Emma Doyle, 24 Haddington Place, Edinburgh.

**Emma Doyle** witness

**Paul Doyle** chairman



**Statement of Decision of the Private Rented Housing Committee under  
Section 24(1) of the Housing (Scotland) Act 2006**

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**The Parties**

Joseph Gillespie, residing at 5 Castle Gardens, Drymen, Glasgow, G63 0HT ("the tenant")

and

Paul & Pamela Watson, spouses, residing at Cabin Heyes, Moss Side, Formby, Liverpool, L37 9BE ("the landlord") represented by Endrick Property Ltd, 38 Stewart Street, Milngavie G62 6BY

**Decision**

The Committee, having made such enquiries as it sought 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 in relation to the property concerned and taking account of all of the evidence available to the Committee, determined that the landlord has failed to comply with the duty imposed by Section 14(1)(b) of the 2006 Act.

**Background**

- 1 By application dated 21 October 2015, the tenant applied to the Private Rented Housing Panel to determine whether or not the landlord had failed to comply with the duties imposed by Section 14(1)(b) of the Housing (Scotland) Act 2006 ("the 2006 Act").
- 2 The application by the tenant stated that the tenant considered that the landlord had failed to comply with the 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, in terms of Section 13(1)(a) of the 2006 Act;
  - (b) The structure and exterior of the house (including drains, gutters and external pipes) are in a reasonable state of repair and in proper working order, in terms of Section 13(1)(b) of the 2006 Act;

(c) The installations in the house for the supply of water, gas and for space heating and heating water are in a reasonable state of repair and in proper working order, in terms of Section 13(1)(c) of the 2006 Act;

- 3 By interlocutor dated 29 October 2015, the President of the Private Rented Housing Panel intimated a decision to refer the application under Section 23(1) of the 2006 Act to a Private Rented Housing Committee. The Committee was made up of:

Paul Doyle	Chairperson
Andrew Taylor	Surveyor Member

- 4 The Private Rented Housing Panel served notice of referral under and in terms of Schedule 2 Paragraph 1 of the 2006 Act on the landlord and the tenant on 5 November 2015. Following service of referral, the landlord's agents made representation in a letter dated 20 November 2015, placing reliance on a survey report dated 26 October 2015 prepared by Wise Property Care Ltd. The Tenant made representations on 24 November 2015, & produced a copy of email correspondence passing between the tenant and the landlord's agents.
5. The tenant made additional representations by letter dated 25 November 2015. At the hearing on 14 December 2015 committee members could not place their hands on the tenant's further representations (25 November 2015). The tenant provided a copy of the further representations during the hearing for committee members benefit. After the hearing, and before reaching a decision, committee members found that the file of papers included the tenant's further representations. The tenant made further representations on 21 December 2015 (7 days after the hearing).
- 6 The Committee inspected the property at 1.00pm on 14 December 2015. Both the tenant and the landlord's agent were present.
- 7 Following inspection of the property, the Private Rented Housing Committee held a hearing at 2.00pm within the Buchanan Arms Hotel, Drymen.
- 8 The tenant's position is that the house is damp and covered in mould, that the heating system cannot be adequately controlled. The tenant complains that landscaping and gardening works are required to the rear of the property, and that there are defects in the roof of summer house in the rear garden. In the course of the inspection, the tenant raised a complaint (for the first time) about the standard of the electrical installation serving the property.
- 9 The landlord's position is that the tenant is complaining unnecessarily, and that the landlord has made every effort to ensure that the property meets the repairing standard. The Landlord relies on the report from Wise Property Care Ltd, dated 26 October 2015, and insists that the mould staining is caused by condensation, and not penetrating damp.

## Summary of Issues

- 10 The issues to be determined are whether or not the house complies with the repairing standard set out at Sections 13 and 14 of the 2006 Act.

## Findings in Fact

11 (a) The landlord is the heritable proprietor of the property which is the subject matter of this application. The landlord let the property to the tenant on 29 April 2015. The lease entered into between the tenant and the landlord contains repairs and maintenance obligations consistent with the repairing standard set out in the Housing (Scotland) Act 2006.

(b) The property is a detached bungalow with garden ground to the front, side and rear. The front door opens onto a vestibule providing access to a central hallway. The property has a large living room, a kitchen, a bathroom and four bedrooms. The master bedroom has an en-suite bathroom off. The property has double glazed windows throughout and benefits from gas fired central heating.

(c) The bathroom is situated to the centre rear of the house. It has a double glazed frosted window opening onto the rear garden. The window opens and closes properly, however the trickle ventilator does not function properly. The bathroom has an extract fan venting to the rear of the property. The extract fan is activated when the light switch is turned on, and then runs on a timer - continuing to run for a short period after the light is switched off. The bathroom has a white three-piece sanitary suite together with a walk-in shower. There are signs of mould staining around the window and on the ceiling of the shower in the bathroom.

(d) The master bedroom sits to the rear of the property and has double glazed patio doors opening onto the rear garden. The wooden frame around the patio doors has signs of water staining. The double glazed units which form the patio doors are intact and do not have a defect. The doors open properly and close securely. There are signs of mould staining on the lining of the curtains adjacent to the patio doors and the carpet is wet below the patio door. There is an en-suite bathroom off the master bedroom containing a white three-piece sanitary suite. A double glazed skylight provides natural daylight. There are some signs of mould staining in the en-suite bathroom.

(e) There is a second bedroom to the rear of the property, across the hallway from the master bedroom. The double glazed window in that room overlooks the rear garden. There are signs of mould staining on the window frame in that bedroom.

(f) The third bedroom in this property is to the front of the property and immediately adjacent to the master bedroom. The double glazed window in that bedroom opens onto the front garden. There are signs of mould staining on the wooden surround of the double glazed window in bedroom number 3.

(g) The fourth bedroom is to the front of the property. The double glazed window in the bedroom number 4 overlooks the front garden. There are signs of mould staining on the interior fascia of the window frame in bedroom four. In the living room to the front of the property there is a wooden door opening onto a small balcony. There is some evidence of slight water staining on the floor immediately adjacent to the door, but the door opens properly and closes securely.

(h) The mould staining noted around the window and on the ceiling in the bathroom, and in each of the bedrooms and in the en-suite bathroom off the master bedroom is blackspot mould caused by condensation. The property does not suffer from either penetrating or rising damp.

(i) Condensation is moisture (caused by everyday living) which is absorbed into the warm atmosphere of a house; when the house cools down the moisture condenses on cool surfaces. Condensation is largely the result of improved standards of insulation, double glazing and draught proofing of properties which allows for better heat retention, but results in a lack of air ventilation, and trapped moisture. The remedy is striking a careful balance between heat and ventilation, over which the tenant has control.

(j) The property benefits from gas central heating fired by a Vokera boiler in a cupboard adjacent to the rear side door of the property. The programmer/thermostat control unit had been attached to the wall in the kitchen but has been removed from there, and, at the time of inspection, sat on a worktop in the kitchen. There is a timer unit on the boiler, which, according to the tenant, has been deactivated so that the tenant activates the central heating by switching the boiler on and off manually.

(k) The property has mains wired smoke detectors and carbon monoxide detectors, but does not have a heat detector in the kitchen. The property has a current gas safety certificate.

(l) There is garden ground to the rear of the property. The landlord and the tenant are discussing various gardening works. At the end of the rear garden, separate from the property, there is a wooden summerhouse. On the date of inspection, the exterior lights of the property did not work.

### **Reasons for Decision**

12 (a) Committee members inspected this property at 1.00pm on 14 December 2015. It was a dull, damp, December afternoon. Committee members were met by the landlord's representative outside the property, and were welcomed into the property by the tenant. The tenant allowed committee members to inspect each room of the property before examining the rear garden, with its summerhouse. After the inspection a hearing took place at 2.00pm within the Buchanan Arms hotel, Drymen. Both the tenant and the landlord's representative were present.

(b) Committee members explained to the tenant that their jurisdiction arises from the Housing (Scotland) Act 2006 and The Private Rented Housing Panel (Applications and Determinations) (Scotland) Regulations 2007. In the tenant's application the tenant raises four specific issues (at sections 4 and 5 of the

application form completed by the tenant on 21<sup>st</sup> of October 2015). In summary, those issues are

- (i) a complaint about damp staining
- (ii) a complaint that the central heating system is defective
- (iii) a complaint that the summerhouse roof in the garden requires a repair
- (iv) a complaint that external garden works have not been carried out.

(c) The tenant accepted that his desire for gardening works and his complaints in relation to the summerhouse roof are beyond the jurisdiction of the private rented housing committee, but he wanted to raise a complaint about a defect in internal and external lights serving the property. Committee members told the tenant that that complaint is beyond this committee's jurisdiction because it does not form part of the original application. The tenant complained that he had made further submissions and 25<sup>th</sup> November 2015 which did not appear to be before the committee. Committee members could not place their hands on the tenant's further representations, but the tenant provided committee members with a copy. It is the tenant's position that his further representations of 25<sup>th</sup> of November raise a complaint about the quality of the electrical installation serving the property.

(d) Committee members considered the representations made on 25<sup>th</sup> of November 2015. The tenant relies on the following is part of those representations

*" On Monday the 19th of November I reported a problem with the lighting circuit in the house. The lights were tripping at the RCD board as a result of faulty external lighting which is on the same circuit. Mrs Mackie arranged for an electrician to visit the house the same day and he was able to isolate the external lights making the internal ceiling lights operational. This issue is mentioned because it is indicative of the failure to maintain and repair the property on a regular basis."*

(e) After considering matters the committee told the tenant and the landlord's agents that a complaint about the electrical installation does not form part of this application and was out-with the jurisdiction of the committee for the purposes of the hearing held on 14 December 2015, because the extract of the representations dated 25 November 2015 is not a complaint of a continuing failure in the electrical installation. It is in fact a record of the landlord's agent's prompt response to a complaint made by the tenant, a complaint which was resolved weeks before the hearing. Even if the committee were wrong to take that view, if the representations of 25 November 2015 raise a complaint it is a complaint raised almost a month after the date of application; it is a complaint about which the landlord does not have fair notice.

(f) The committee do not close their minds to the tenant's complaint at inspection that the external lights property do not work, but that is an ongoing maintenance matter between the landlord and tenant which is not subject of an application to the private rented housing panel

(g) The only remaining jurisdictional issue relates to the provision for detection of fires and for giving warning in the event of fire or suspected fire. At inspection, committee members noted that the property has mains wired smoke detectors and a

carbon monoxide detector, but the kitchen does not have a heat detector. If a complaint had been made in terms of section 13(1)(f) of the 2006 Act, the committee would have to uphold it on the basis of their own observations. The landlord should take heed of this warning that the provision of detection of fire or suspected fire does not comply with the British Standard on the design of fire detection installations for dwellings (BS5839 Part 6) in conjunction with the Scottish Government's Technical Handbook 2013 Domestic under Section 2 -Fire, Sub-section 2.11 Communication.

(h) The questions of damp or condensation and the efficiency of the central heating system are matters which were competently before the committee. Committee members own observations disclosed that there are signs of mould staining in the bathrooms & in each of the four bedrooms of the property. In answering questions from committee members, the tenant himself said that the source of the mould staining was condensation. The landlord relies on a report from Wise Property Care Ltd which finds that there is no sign of penetrating damp and that the mould staining and excessive moisture is entirely attributable to condensation.

(i) On 3 November 2015, Stirling Council's environmental services department visited the property. The documents produced by the tenant disclose that the environmental services inspectors are not qualified to investigate dampness, but indicated higher than normal moisture content in several bedroom walls. They record *"there was also clear evidence of extensive condensation on the aluminium doors within the master bedroom."*

(j) The weight of reliable evidence indicates that this property does not suffer from either penetrating or rising damp. The mould staining in the property has been caused by condensation. The remedy is in the tenants own hands. Striking a balance between ventilation and heating would prevent condensation. As it is tenant who occupies the property, it is for the tenant to strike that balance. The Committee noted the landlord's agents stated intention to replace and uprate the bathroom extract fan.

(k) Throughout the application, the tenant emphasises that the moisture problem is the central issue in his application. The committee find that the moisture problem identified by the tenant relates solely to condensation, and does not engage the repairing standard. The landlord has met the landlord's obligations in terms of sections 13(1)(a) of the 2006 Act, however, the trickle vent in the bathroom window is part of the structure of the house and is not in proper working order. The landlord therefore fails to comply with s.13(1)(b) of the Act.

(l) The only remaining matter competently before the committee relates to the central heating system. The applicant complains that the central heating system does not have a working timer, so that the system must be manually turned on and off. The tenant says that the central heating system has been that way since that day he moved in. The landlord's agent insists that the timer works, but the tenant does not understand how to work the timer. Committee members could see that control unit was sitting on a work surface in the kitchen. The landlord's agent picked it up and held it in her hand. The landlord's agent insists that the tenant has removed that control unit from the wall. The tenant insisted he did not move the unit, but that it has always simply sat on a work surface in the kitchen.



(m) The landlord's agent and the tenant agree that there is a current gas safety certificate for the gas installation in the property. Whilst there is consistency in that evidence, there is an unresolved conflict in the evidence. In the simplest of terms, the landlord says that the central heating programmer/thermostat works and the tenant says that it does not. That conflict is one which cannot safely be determined by the committee making findings in relation to credibility and reliability. It is a matter which can be determined by a report from a suitably qualified heating engineer who can determine whether or not the central heating programmer is in proper working order.

(n) Without that report the committee cannot be satisfied that the installation for space heating is in proper working order. The committee therefore finds, on the balance of probabilities, that the landlord has failed to meet the obligation under section 13(1)(b)&(c) of the 2006 Act, and so make a repairing standard enforcement order in the following terms.

The landlord must provide the PRHP with a report from a suitably qualified, and Gas Safe registered heating engineer on the functionality of the central heating timer/programmer, &, if necessary, carry out any repairs or replacement to ensure that the programmer is in proper working order.

The landlord must repair or replace the trickle ventilator on the bathroom window so that it is in proper working order. On completion of this (and the fitting of the uprated extract fan) treat mould on walls and ceilings and make good decoration.

All within 6 weeks of the date of service of the order.

### **Decision**

13 The committee accordingly determined that the landlord has complied with the duty imposed by Section 14(1)(b) of the Act.

14. The decision of the Committee was unanimous.

### **Right of Appeal**

15. A landlord or tenant aggrieved by the decision of the Private Rented Housing committee may appeal to the Sheriff by summary application within 21 days of being notified of that decision.

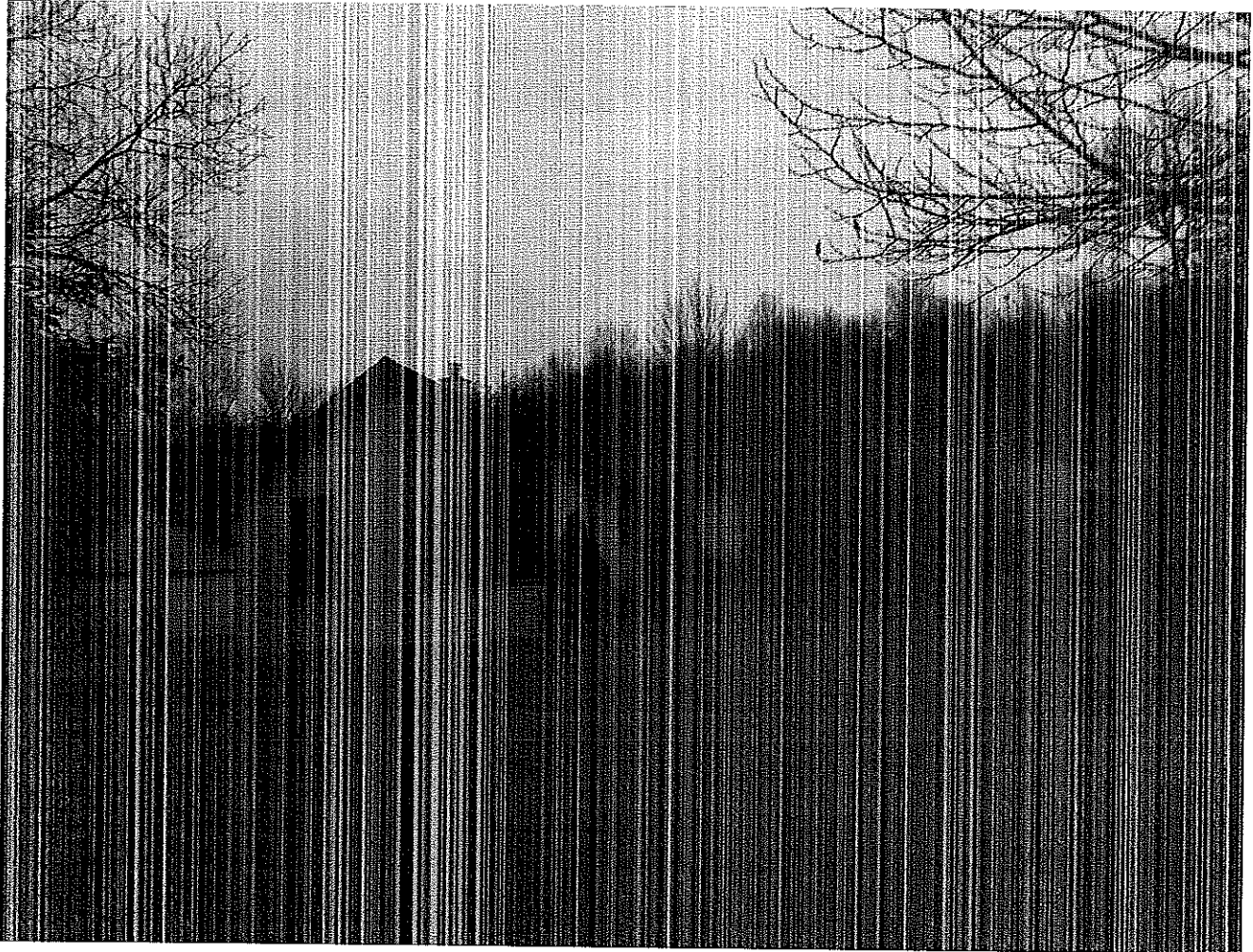
**Effect of section 63**

16. Where such an appeal is made, the effect of the decision and of the order is suspended until the appeal is abandoned or finally determined, and where the appeal is abandoned or finally determined by confirming the decision, the decision and the order will be treated as having effect from the day on which the appeal is abandoned or so determined.

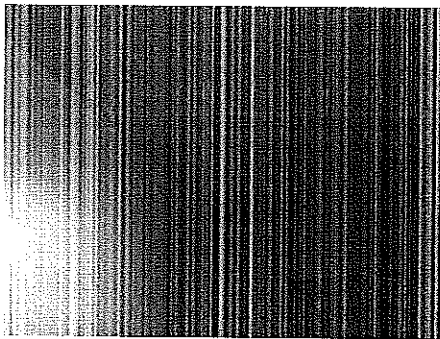
Signed..... **Paul Doyle** ..... Date...*23/12/2015*  
Chairperson



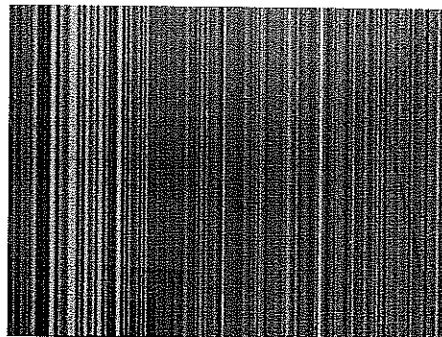
5 Castle Gardens, Drymen, Glasgow, G63 0HT  
PRHP/RP/15/0287  
Schedule of Photographs - Inspection Date 14/12/2015  
Weather – Overcast, dry.



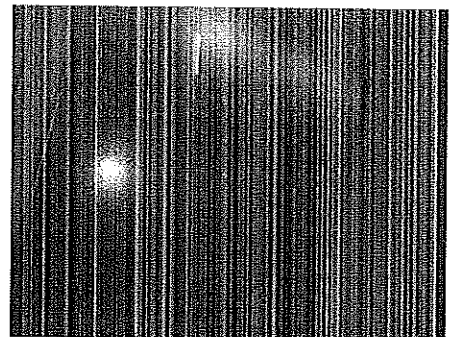
The property



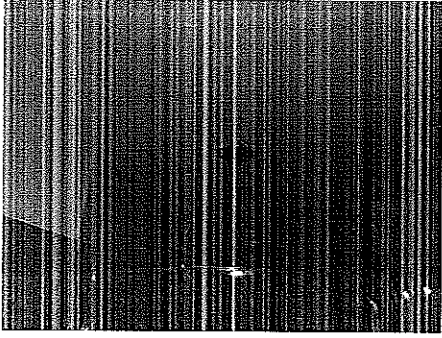
Bathroom ceiling



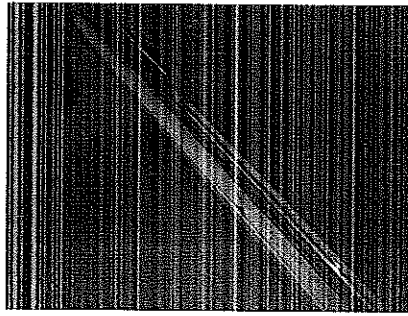
Bathroom ceiling



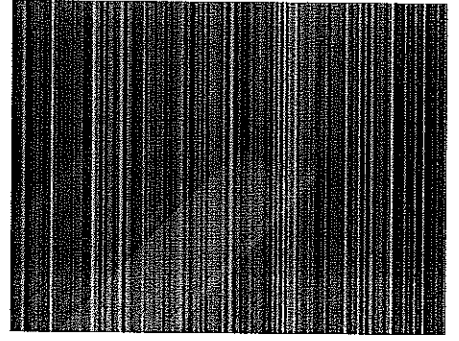
Bathroom window



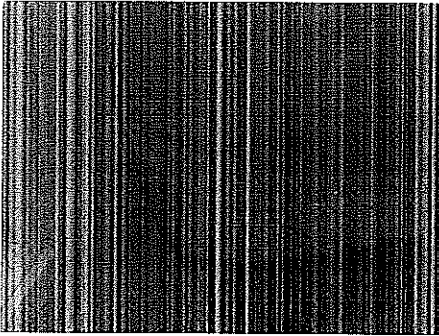
Bathroom ceiling



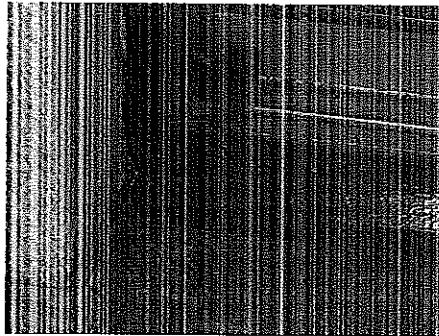
Bedroom patio door



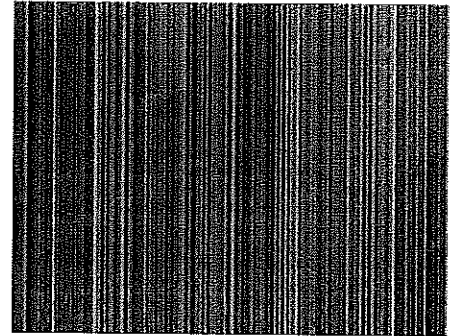
Bedroom patio door



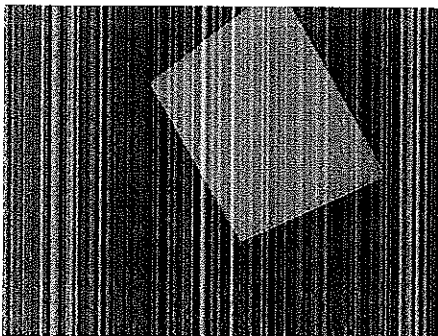
Curtain at bedroom patio door



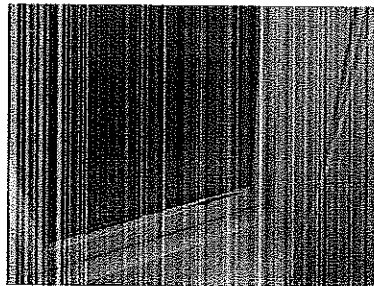
Patio door externally



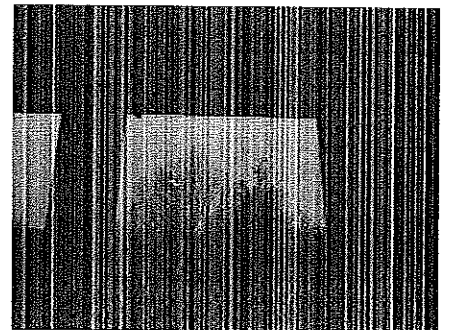
Patio Door externally



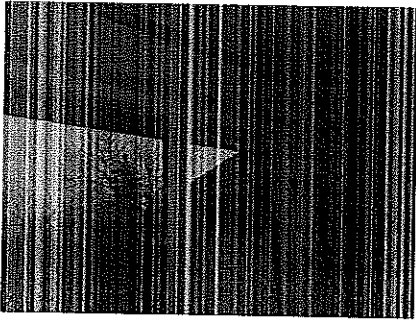
En-suite roof light



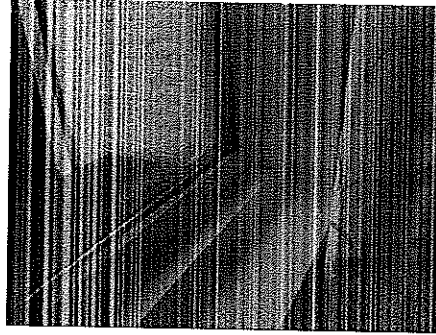
Window at bedroom



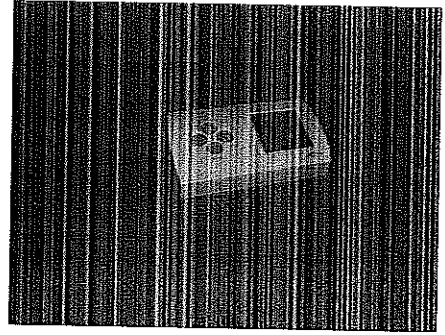
Window in bedroom



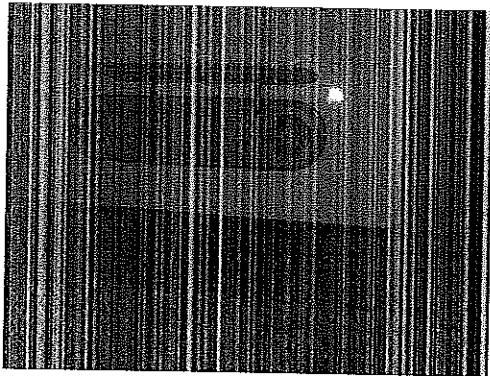
Bedroom window/ceiling



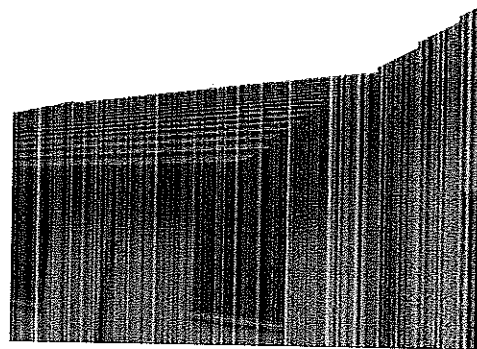
Bedroom window



Central Heating Programmer



Boiler controls



Roofline at bathroom