



**REPAIRING STANDARD ENFORCEMENT ORDER  
Ordered by the Private Rented Housing Committee**

**Re: Property at flat 1/2, 26 Park Avenue, Dundee, DD4 6LU, as more particularly described in the Title in favour of the Landlord registered in the Land Register on 15 September 2006 under Title Number ANG32910 (“the House”)**

**The Parties:**

**Grazyna Kowalewska and Anna Misztal, both residing at the House (“the Tenants”)**

**Caledonian Investments No.1 LLP, c/o Pavillion Properties (Scotland) Limited, 86 Bell Street, Dundee, DD1 1HN (“the Landlord”)**

**PRHP REFERENCE PRHP/RP/15/0125**

**NOTICE TO**

**Caledonian Investments No. 1 LLP, the Landlord**

**WHEREAS** in terms of their decision dated 17 July 2015 the 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 the House meets the repairing standard in respect that:

*“(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 and  
(c) the installations in the house for the supply of water, gas and electricity and for sanitation, space heating and water heating are in a reasonable state of repair and in proper working order”*

The Committee now requires the landlord to carry out such work as is necessary for the purposes of ensuring that the House 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 Committee requires the Landlord:

1. To replace the misted double glazed window units and window frames in the main bedroom to the front of the House and in the living room so that they are in a reasonable state of repair and in proper working order.
2. To repair the ceilings in the kitchen and bathroom of the House.
3. To repair the window on the first stair landing in the common stairwell.
4. To provide the Committee with a copy of an up to date Electrical Installation Condition Report containing no C2 or C3 recommendations in respect of the House.

The Committee orders that the works specified in this Order must be carried out and completed within two calendar months from the date of service of this Notice and for written proof of having done so to be supplied to the Private Rented Housing Panel.

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 the decision.

Where such an appeal is made, the effect of the decision and 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.

**Please note that in terms of section 28(1) of the Act, a landlord who, without reasonable excuse, fails to comply with a RSEO commits an offence liable on summary conviction to a fine not exceeding level 3 on the standard scale. A landlord (and that includes any landlord's successor in title) also commits an offence if he or she enters into a tenancy or occupancy arrangement in relation to a house at any time during which a RSEO has effect in relation to the house. This is in terms of Section 28(5) of the Act.**

IN WITNESS WHEREOF these presents typewritten on this and the preceding page are signed by Maurice O'Carroll, Chairperson of the Private Rented Housing Committee at Edinburgh on the seventeenth day of July, Two Thousand and Fifteen in the presence of the undernoted witness:

Chairperson  
Maurice O'Carroll

Witness: Tracey Whitelaw

Name in full: Tracy Whitelaw

Occupation and address: Advocates Clerk, Advocates Library, Edinburgh, EH1 1RF



**DETERMINATION BY PRIVATE RENTED HOUSING COMMITTEE**

**STATEMENT OF DECISION OF THE PRIVATE RENTED HOUSING COMMITTEE  
UNDER SECTION 24(1) OF THE HOUSING (SCOTLAND) ACT 2006**

In connection with

Property at Flat 1/2, 26 Park Avenue, Dundee, DD4 6LU (“the House”)

Grazyna Kowalewska and Anna Misztal, both residing at the House (“the  
Tenants”)

Caledonian Investments No.1 LLP, c/o Pavillion Properties (Scotland) Limited,  
86 Bell Street, Dundee, DD1 1HN (“the Landlord”)

**PRHP REFERENCE PRHP/RP/15/0125**

**DECISION**

The Committee having made such enquiries as are 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 House, and having taken account of the evidence led at the hearing and of the written documentation attached to the application and submitted by the parties, has made the following decision:

It has determined that the Landlord has failed to comply with the duty imposed by section 14(1)(b) of the Act in terms of section 13(1)(b) and (c) of that Act.

The decision was unanimous.

**Background**

By application dated 20 March 2015 (the “Application”) the Tenants applied to the Private Rented Housing Panel (“PRHP”) for a determination of whether the Landlord had failed to comply with the duties imposed by section 14(1)(b) of the Act.

By letter dated 21 May 2015, the President of the PRHP intimated a decision to refer the Application under section 23(1) of the Act to a Private Rented Housing Committee (hereinafter referred to as "the Committee").

The Application 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 compliance with the following paragraphs of section 13(1) of the Act:

- "(a) the house is wind and water tight and in all other respects reasonably fit for human habitation;*
- (b) the structure and exterior of the house...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 water heating 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 capable of being used safely for the purpose for which they are designed; and*
- (e) any furnishings provided by the landlord under the tenancy are capable of being used safely for the purpose for which they are designed... "*

The Tenants with the assistance of the Dundee Citizens Advice Bureau intimated to Pavillion Properties, the Landlord's agent, a list containing 32 points which they said required rectification by letter dated 1 May 2014. That correspondence went unanswered. The tenants sent a further letter dated 18 August 2014 (in pro forma terms as supplied by PRHP) intimating a failure to comply with s 14(1)(b) of the Act which again, was not responded to directly by the Landlord's agents.

The Tenants were served with a Notice to Quit on 26 June 2015 by the Landlord's agents and by Sheriff Officers on 29 June 2015. The Notice to Quit was not to take effect until 30 November 2015 being the end of the present lease. Accordingly, the Tenants were in occupation at the time of the inspection. Entry was provided by one of the Tenants.

The Committee comprised the following members:

Maurice O'Carroll, Chairperson  
Susan Shone, Housing Member  
David Godfrey, Surveyor Member

The Committee inspected the House at 10.00am on 15 July 2015. One of the Tenants, Ms Misztal was present at the inspection, the other Tenant being on vacation. Mr Letley on behalf of the Landlord's agent, Pavillion Properties was also present at the inspection.

Following the inspection, the Committee held a hearing at Douglas Community Centre, Balmoral Avenue, Dundee at 11.00am. The Tenant, Ms Misztal, was again present at the hearing as well as Mr Letley for the Landlord. Neither party was separately represented. The Committee considered the written evidence

submitted by the parties and heard representations from the Tenant and the Landlord's agent.

### **Evidence at the Hearing**

At the hearing, the Committee discussed the background to the Application. The Tenants took occupation of the House some time in 2008 with the tenancy being organised by the previous letting agents, Shepherds. At the outset of the tenancy, the Tenants had concerns regarding the state of the property but, despite numerous inspections having been carried out by the previous letting agents, nothing had been done to improve the condition of the House and no Inventory had been produced.

The present letting agents, Pavillion Properties (Scotland) Limited took over the management of the House during 2013 and had produced tenancy agreements since that time. The Committee had sight of a tenancy agreement between the Tenants and Pavillion on behalf of the Landlord which had been signed on 10 October 2014. That tenancy agreement was for 6 months to run between 1 December 2014 and 31 May 2015. The agreement was not formally renewed and ran by operation of tacit relocation for a further 6 months on the same terms. It is therefore due to expire on 30 November 2015. The Notice to Quit referred to above was served by Pavillion in order to bring the tenancy to an end on that date.

Ms Misztal gave evidence that the Tenants had previously written to complain about defects in the House towards the end of 2013. At that time, the 32 points which were subsequently formally intimated on 1 May 2014 were raised. Nothing was done further to that correspondence which was why the assistance of the Dundee CAB was obtained. Further to the CAB correspondence, another formal letter was sent by the Tenants on 18 August 2014. When again no formal response was received, the Tenants lodged the Application with the PRHP.

Shortly prior to the Application being lodged, a surveyor came to the House (as instructed by Pavillion Properties). Approximately one month after that, on 30 March 2014, after the Application had been lodged, a contractor attended with the stated aim of replacing the door to the lounge and various other works further the complaints raised in the Application. The door was not in fact replaced due to difficulties in providing entry caused by holidays taken by each of the Tenants and due to Ms Misztal's work commitments.

However, the Committee heard evidence from both parties that certain works had in fact been carried out which therefore no longer formed part of the Application. These were, the replacement of a cracked window in the single bedroom to the rear of the property and the fixing of all electrical appliances such as electricity sockets and light switches to ensure their safe use. These items were in fact remedied on 4 March 2015, as vouched by Mr Letley at the hearing. A bed had also previously been removed at the request of the Tenants (also detailed on the Tenants' list).

The Tenants remained dissatisfied with the condition of the House and wished to have all of the remaining parts of the 32 point list referred to above considered by the Committee.

Mr Letley provided evidence that the Landlord is a London based investment vehicle with approximately 45 properties in its portfolio. He accordingly has full discretion to cause works to be carried out to properties which he manages as letting agent. He was unable to provide an explanation as to why the Tenants' correspondence of 1 May and 18 August 2014 went unanswered. He was, however, able to provide the Committee with 15 works orders which demonstrated works that had been carried out at the House between 28 March 2012 and 24 June 2015. Some of these related to mandatory safety checks such as obtaining a Gas Safety Certificate for the House and an Electrical Safety check carried out as recently as 24 June 2015. A roof repair had been carried out approximately one year ago. Many of the works orders related to repairs to the gas central heating system at the House which appears to have been problematic. The works orders provided vouching of the repairs to certain electrical installations and replacement of the cracked window.

Mr Letley further explained that ideally, given that the House had not been decorated in over 20 years and was in need of an upgrade, he would like to be in a position to have contractors move in and complete all necessary works as soon as possible. It was for this reason that the Notice to Quit had been served as a "fall back position" so that work could commence at the end of November at the latest. It was simply not possible to carry out all of the necessary works, which he accepted are extensive, given the crowded nature of the House and therefore the inability of contractors to access all necessary areas while the Tenants are still living in the House. He would prefer that work was carried out sooner than that which was the reason why alternative accommodation in more modern upgraded properties in the city centre was offered on 2 July 2015. The works simply could not be carried out while the Tenants were still living in the House. Further, he undertook to the Committee that in the event of the Tenants agreeing to such a temporary move, their deposit would be refunded in full without any deductions being made in respect of any further defects which might be discovered. He also undertook to provide assistance in the removal which would be at Pavillion's own expense and to make the necessary arrangements to facilitate the Tenants' transfer to the new property.

Unfortunately, despite appearing eminently reasonable and practical, none of the above was communicated to the Tenants, both of whom are Polish nationals. They took the Notice to Quit as being a requirement to vacate the House forthwith (which would normally be the implication of that course of action) and were not aware that their deposit would be safeguarded. Nor, it would appear, were they aware that they could take up the offer of alternative accommodation and either stay in it or else remove back to the House as they wished. Ms Misztal also confirmed that she had been unaware that removal services would be provided at the Landlord's expense.

Had these matters been adequately communicated at the outset, at least from 1 May 2014, the present Application would unlikely have been necessary. With that

said, the Landlord's intentions were made clear at the hearing and may yet be the subject of agreement between the parties. Accordingly, a relatively long period of compliance for the Repairing Standard Enforcement Order ("RSEO") to follow hereon has been allowed in order to allow that to happen, should the parties choose to come to an amicable arrangement.

### **Summary of the Issues**

The issues to be determined are: whether (1) the House meets the repairing standard as laid down in section 13(1)(a)(b)(c)(d) and (e) of the Act; and therefore (2) whether the Landlord has complied with the duty imposed by section 14 (1)(b).

### **Findings in Fact**

The Committee made the following findings in fact:

The Landlord and the Tenants entered into a Tenancy agreement in respect of the House sometime in 2008 when they first took entry. The present lease was entered into between the Tenants and Pavillion Properties on the Landlord's behalf and signed on 10 October 2014. The duration was for the period 1 December 2014 to 31 May 2015 but the lease continued by operation of tacit relocation for a similar period on similar terms for a further 6 months. The expiry date is therefore 30 November 2015. The rent payable is £420 per calendar month.

The registered owner of the House is Caledonian Investments No. 1 LLP, a limited liability partnership based in London. It has title by virtue of a disposition in its favour registered in the Land Register on 15 September 2006 under Title Number ANG32910. The Committee was satisfied that Mr Letley and Pavillion Properties, as letting agents had authority to act as its agent.

The provisions of Chapter 4 of Part I of the Act apply to the tenancy.

The Tenant formally notified the Landlord of the defects in the house which are now the subject of the Application on 1 May 2014 and again on 18 August 2014, although they had previously informally complained about what they considered to be defects approximately six months prior to that date.

The inspection on 15 July 2015 revealed:

The House is a first floor two bedroom flat in a block comprising eight flats over four floors. It is entered from the street via a common stairwell. On the first stair landing, there is evidence of water leakage into the common stairwell. The window at the first stair landing is damaged and leaking and therefore a common repair is required. It will be for the Landlord to make arrangements for contributions by the other common owners, if so advised.

The exterior of the block shows historic evidence of water staining between the first floor windows to the property above the common entry. However,

there is recently replaced guttering in place at the top of the block and new plastic downpipes are in place.

On entry through the front door to the House, there is a central hallway giving access to all of the rooms in the flat. To the front of the House facing the street, there is the main double bedroom and adjacent to that on the right hand side, the lounge. To the rear of the House is a single bedroom, adjacent to which is the kitchen and adjacent to that the bathroom.

The House is presently occupied by the two Tenants and also the six year old daughter of Ms Kowalewska. It is a relatively small property and suffers from extreme overcrowding as a result of the necessarily large amount of furnishings and personal items contained within it. For example, the main bedroom to the front is almost fully occupied by the double bed and single bed used by Ms Kowalewska and her daughter. On the date of the inspection, three bicycles were also being stored within that room. With all the bookshelves, domestic appliances, personal effects and other storage facilities, there is very little circulation space anywhere within the House.

The House is in very poor decorative order throughout with extensive damage and cracking being visible in the ceilings in most rooms: In the lounge, there is cracking in the corner and in the cornicing nearest the window; in the kitchen and especially the bathroom, the plasterwork is extensively damaged and in need of replacement. The plasterwork in those rooms has lost its key with the strapping above it and is therefore in danger of collapse.

The double glazed units at the front of the House in both the main bedroom and the lounge have failed. There is condensation clearly visible between the panes in the double glazed units. The timbers surrounding the units are affected by condensation and in need of replacement.

There is evidence of mould near the skirting boards in the lounge and the rear bedroom. Throughout the House, there is evidence of condensation which is unusual in a property which is centrally heated. No dampness was found anywhere in the House as confirmed by the various meter readings which were taken at inspection. The Committee considered that the mould present was caused by condensation which was itself most likely caused by over-occupation of the property.

In the kitchen, there is a large damp stain opposite the window which has apparently been caused by a leaking pipe, although damp meter readings confirmed that there is at present no water ingress.

Despite repairs having been carried out to certain electrical works, some of the cabling and equipment in the House appears to be very dated, in particular the fuse box and electricity meter. In addition, the Committee noted exposed cabling to the light unit and pull cord in the bathroom. All of the foregoing give some continued cause for concern regarding the safety of the electrical items within the House. A safety certificate is therefore required.



The House has a mains smoke detector in the hallway.

Photographs of the House were taken at the time of inspection and are appended to the present decision and RSEO.

### **Decision of the Committee and reasons**

The Committee considered all 32 of the stated defects in the House as narrated by the Tenants in their letter to Pavillion Properties on 1 May 2014. It should be noted that not all of the defects as narrated, even if found to exist, would constitute a breach in the Repairing Standard in terms of the Act.

As noted above, some of the items contained within the list had been attended to and repaired. In relation to some of the complaints contained within the list, such as uneven floorboards, gaps in the floorboards and shrinkage cracks in the ceiling, the Committee had regard to section 13(3)(a) of the Act: In determining whether the structure of a house meets the Repairing Standard, regard is to be had to the age, character and prospective life of the house. Accordingly, the Committee was of the view that certain of the remaining defects narrated in the list were commensurate with the age and character of the House and were not therefore breaches of the Repairing Standard. Many of the faults detailed could be characterised as cosmetic issues requiring some care and redecoration, which matters have been discussed above.

The Committee was therefore of the view that none of the complaints in relation to paragraphs (d) or (e) of section 13(1) of the Housing (Scotland) Act 2006 should be upheld. It, however, determined that the complaint in respect of living room and main bedroom windows should be upheld under sub-section 13(1)(b) in respect of the faults found as narrated above in respect of those windows.

The Committee was also of the view that the complaint in relation to the ceilings in the bathroom and kitchen should be upheld under the same sub-section because their condition is such that the structure of the House has been compromised.

Having regard to section 15(1) of the Act (whereby section 13(1)(b) may apply to common parts where a house forms only part of any premises), the Committee was of the view that the window on the first landing in the communal stairwell was also in breach of that subsection. It therefore requires to be repaired in order to maintain the structure of the building of which the House forms part.

In relation to subsection 13(1)(c) which relates to installations in the House, the state of the electrical installations within the House has been noted above. Further to those findings, the RSEO to follow hereon will require the Landlord to produce an Electrical Installation Condition Report. In terms of Mr Letley's evidence, this has already been obtained on behalf of the Landlord as recently as 24 June 2015 and so could readily be supplied to the Committee.

The Committee was therefore of the view that it was necessary for it to make a RSEO in terms of section 24(2) of the Act in relation to the living room and

bedroom windows the ceilings in the bathroom and kitchen and the window on the first landing of the common stairwell. It also considered it necessary to make a RSEO in relation to the Electrical Safety Report.

The decision of the Committee was unanimous.

### **Right of Appeal**

**Section 64 of the Act provides a right of appeal to a landlord or tenant aggrieved by a decision of a private rented housing committee. An appeal may be made to the Sheriff within 21 days of the Landlord or Tenant being informed of the decision.**

Where such an appeal is made, the effect of the decision and 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.

**Maurice O'Carroll**

Maurice O'Carroll  
Chairperson

Date: 17 July 2015

**PRHP REF: PRHP/RP/15/0125**

**Flat 1/2, 26 Park Avenue, Dundee, DD4 6LU**

**15th July 2015**

**Front elevation**



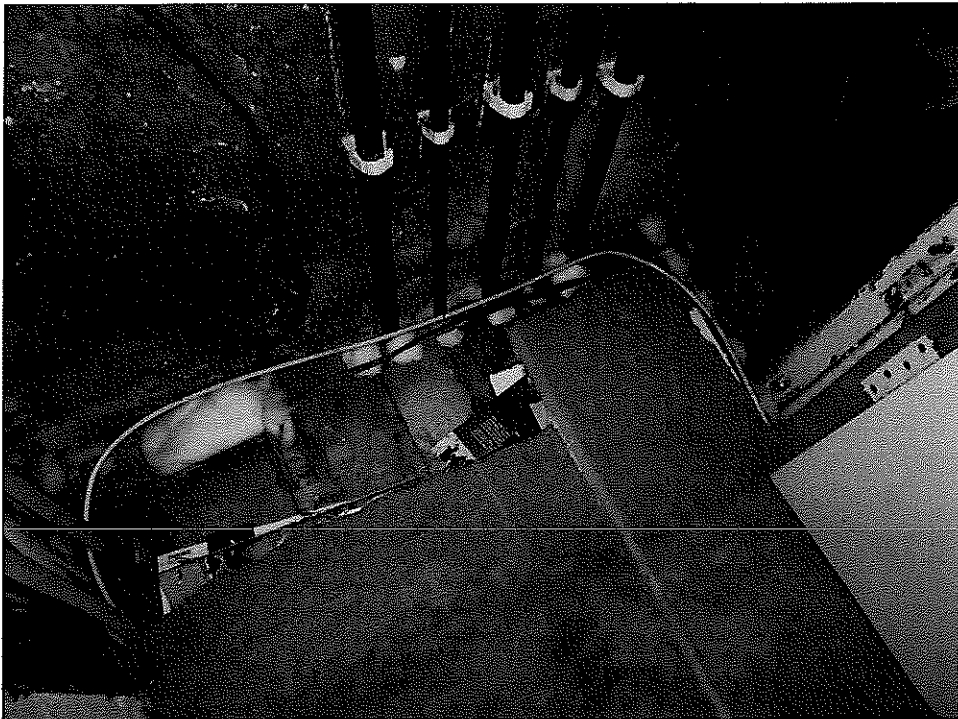
**Defective seal in Lounge window**



**Old damp stain on upper wall in Lounge and cracking to cornice**



**Holes in Bedroom 1 flooring**



**Condensation at Bedroom 1 window (Replacement window casement)**



**Condensation below Bedroom 1 window**





**Condensation at gas meter**



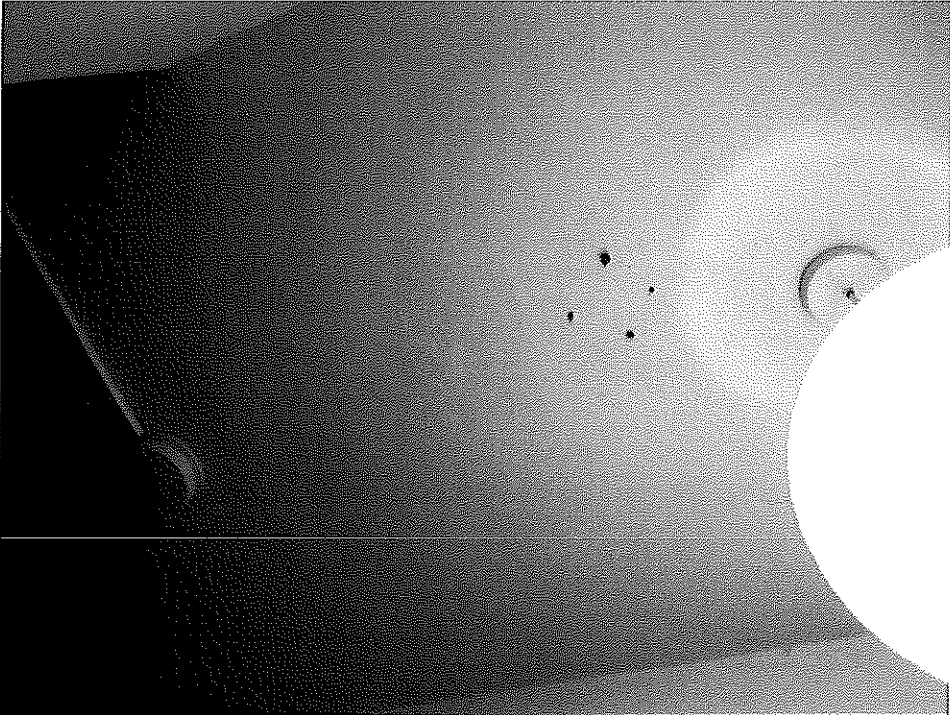
**Damp staining on upper wall of Kitchen from leaking pipe**



**Cracked/damaged Kitchen Ceiling**



**Damage to Hall ceiling where smoke detector removed**



**Thermostat removed from Hall radiator**



**Cracked/damaged Bathroom ceiling**





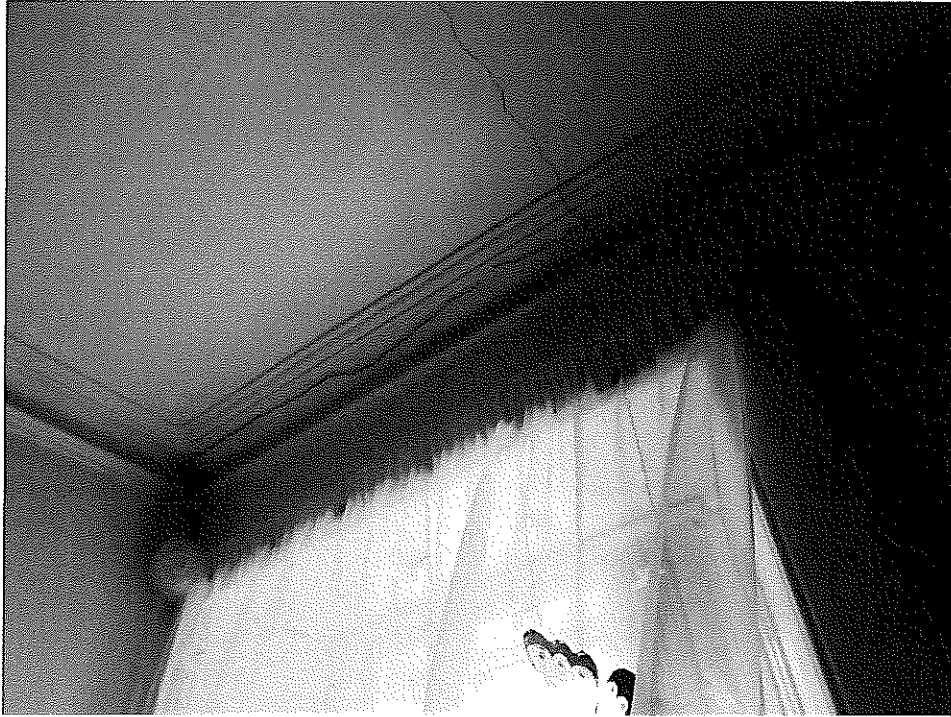
**Damaged seal in Bedroom 2 double glazed window**



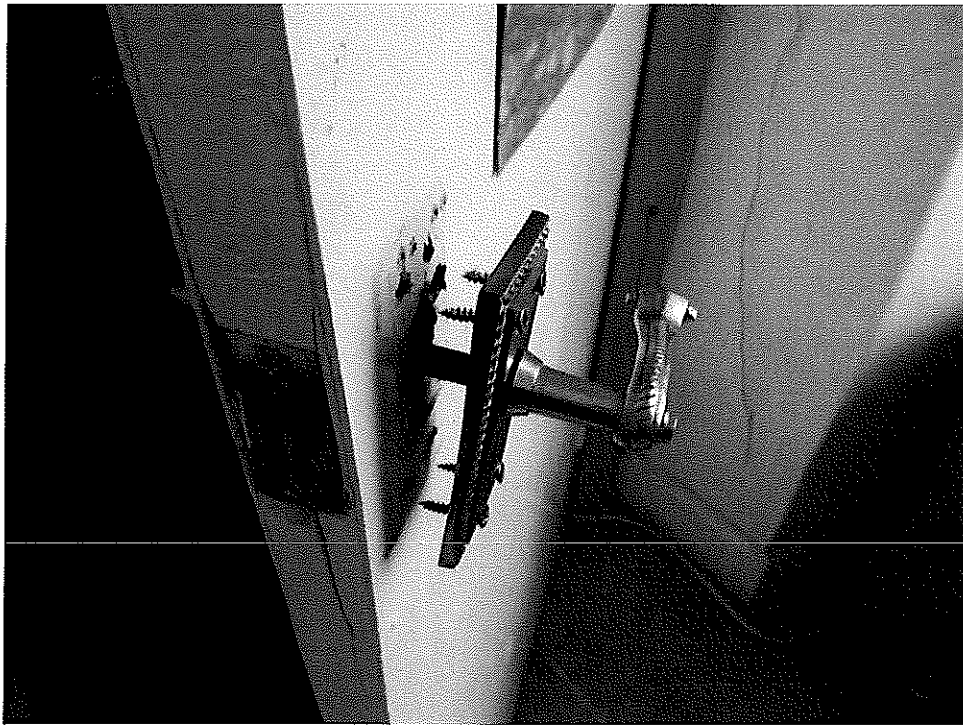
**Condensation at Bedroom 2 window**



**Cracks to Bedroom 2 ceiling/cornice/junction at party wall**



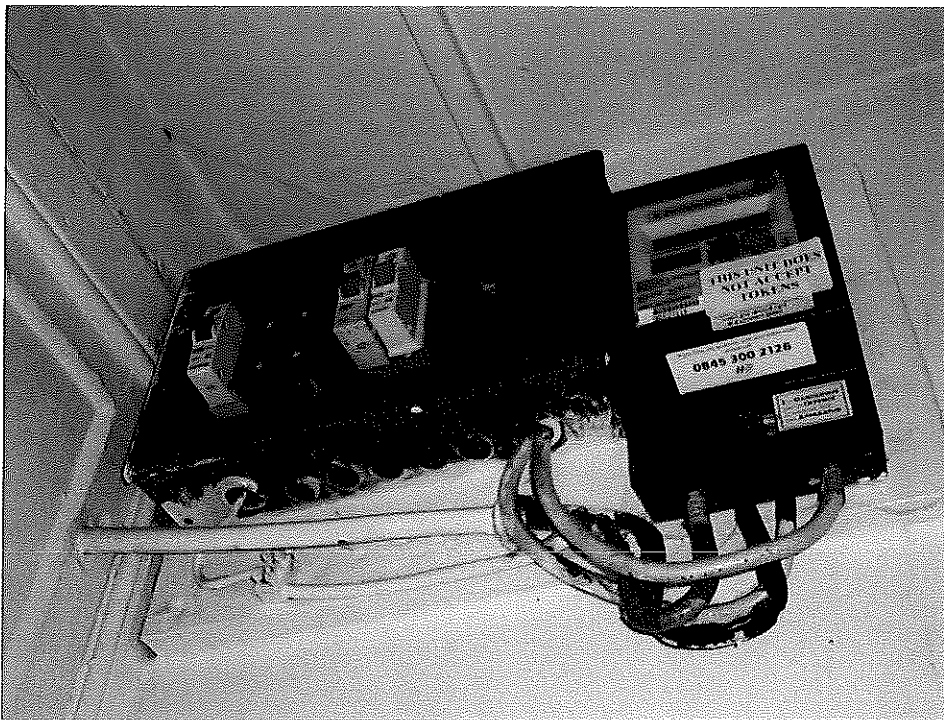
**Damage to wardrobe door handle**



**Damage to Lounge door**



**Dated cartridge fuses at consumer unit/fuse box**



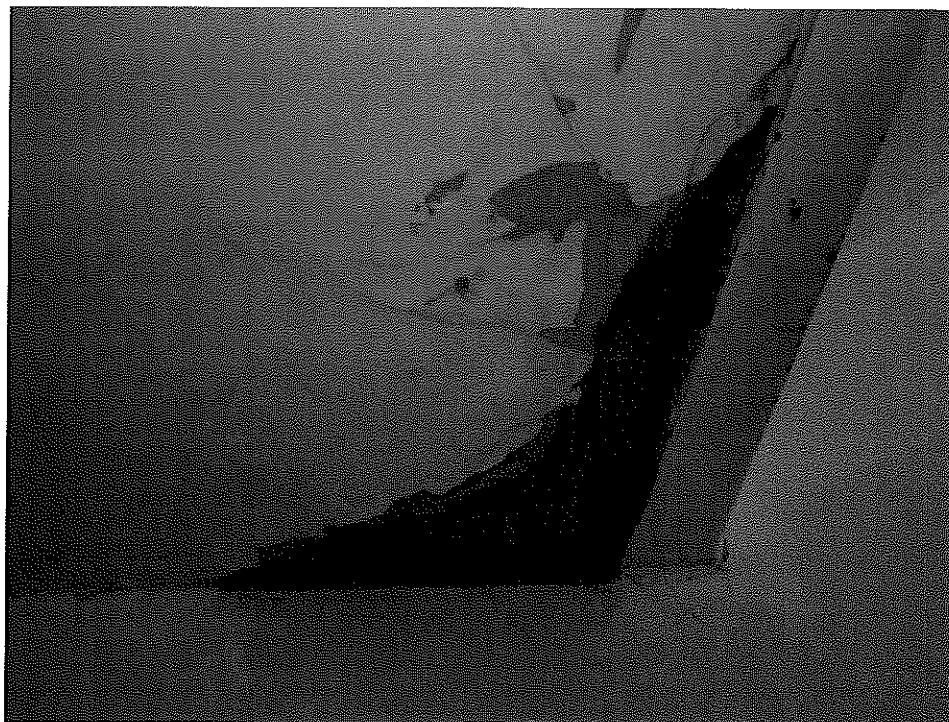
**Damage to stairwell window**



**Damage to stairwell ceiling**



**Damage to stairwell ceiling/plasterwork**



**David Godfrey**

**15<sup>th</sup> July 2015**