

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/17/0078

Title no/Sasines Description: REN112837

4B Woodbank Crescent, Johnstone, PA5 8ER

("The property")

The parties :-

Ms LEEANNE REILLY, 4B Woodbank Crescent, Johnstone, PA5 8ER

("the tenant")

**Ms Claire Strong, Shelter Scotland, 10 Falcon Crescent, Ferguslie, Paisley PA3
1NS**

("the tenant's representative")

And

Mr Alan Hayes, 4 Ollach, Erskine, PA8 7 EU

("the landlord")

The First-tier Tribunal for Scotland (Housing and Property Chamber) ('the Tribunal') comprised: -

Susan Christie - Legal/Chairing Member

Lori Charles - Ordinary Member

Whereas in terms of their decision dated 09 May 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") in that the landlord has failed to ensure that the property meets the repairing standard whereby: -

- I. the house is wind and watertight and in all other respects reasonably fit for human habitation;
- II. 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;
- III. any fixtures, fittings and appliances provided by the landlord under the tenancy are in a reasonable state of repair and in proper working order;
- IV. the house has satisfactory provision for detecting fires and for giving warning in the event of fire or suspected fire;

under sections 13 (1) (a), (c), (d) and (f) of the Act;

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: -

- (a) To investigate the cause of dampness in the main bedroom gable wall near to the windowsill and to repair as necessary to ensure that all dampness is eradicated and that the property is wind and watertight and in all other respects reasonably fit for human habitation.
- (b) To install sufficient smoke alarms and heat detector that are mains wired and interlinked and otherwise comply with the relevant fire legislation and to produce to the Tribunal such documentation evidencing same.
- (c) To refit a bedroom door between the lounge and the second bedroom.
- (d) To instruct a suitably competent qualified electrician (such as NICEIC, SELECT or NAPIT registered) to inspect, test and thereafter repair, renew or upgrade the electric lighting and wall sockets in the kitchen to ensure that they are in a reasonable state of repair and in proper working order.
- (e) To exhibit an Electrical Installation Report, including Portable Appliance Testing (PAT), to the Tribunal at conclusion of the works in this Order in which the overall assessment of all electrical installations in the property is satisfactory in all respects.
- (f) To repair or replace the bath waste pipe to allow for the free egress of water and so that it is in a reasonable state of repair and in proper working order.
- (g) To replace the missing section of skirting in the kitchen under the worktop and repair the surrounding plasterwork.
- (h) To instruct a suitably qualified pest control contractor to eradicate any vermin issue within the property and to produce to the Tribunal a copy of the Report and any works carried out at conclusion of any action taken.
- (i) To commission and produce to the Tribunal a Gas Safety Report for the property from a suitably qualified Gas Safe registered engineer in which the overall assessment of the gas installations in the property is safe in all respects.
- (j) On completion of all the above works, to restore all affected finishes and decoration.

The Tribunal order that the works specified in this Order must be carried out and completed within the period of **28 days** from the date of service of this Notice.

In terms of section 46 of the Tribunals (Scotland) Act 2014 a party 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 pages are executed by Susan Christie, solicitor, chairperson of the Tribunal at Glasgow on 09 May 2017 before this witness: -

G Christie

witness

S Christie

Legal Member

George Harvey Christie name in full

Address

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/17/0078

Title no/Sasines Description: REN112837

4B Woodbank Crescent, Johnstone, PA5 8ER

("the property")

The parties: -

Ms Leeanne Reilly, 4B Woodbank Crescent, Johnstone, PA5 8ER

("the tenant")

Ms Claire Strong, Shelter Scotland, 10 Falcon Crescent, Ferguslie, Paisley PA3 1NS

("the tenant's representative")

And

Mr Alan Hayes, 4 Ollach, Erskine, PA8 7 EU

("the landlord")

The First-tier Tribunal for Scotland (Housing and Property Chamber) ('the Tribunal') comprised: -

Susan Christie - Legal/Chairing Member

Lori Charles - Ordinary Member

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 and taking account of all of the available evidence, determines that the landlord has failed to comply with the duty imposed on him by Section 14 (1) (b) of the Act. The Tribunal therefore issues a Repairing Standard Enforcement Order. The Tribunal's decision is unanimous.

Background

1. By application received on 6 March 2017 the tenant's representative on behalf of the tenant applied to the Housing and Property Chamber under section 22(1) of the Housing (Scotland) Act 2006 for a determination of whether the landlord had failed to comply with the duty imposed by section 14(1)(b) of the Act.
2. The application specifically stated that the tenant's representative considered that the landlord had failed to comply with his duty to ensure that the property meets the repairing standard and that the landlord had failed to ensure that: -
 - (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;
 - (b) any fixtures, fittings and appliances provided by the landlord under the tenancy are in a reasonable state of repair and in proper working order.

The details of the complaint being:

- (a) dampness and mould affecting the bedrooms of the property,
- (b) poor flow of water in the bathroom,
- (c) no electrics in the kitchen,

- (d) boiler broken,
- (e) no bedroom door,
- (f) fungal growth in the bedroom and
- (g) mice coming through a wall in the kitchen.

The tenant's representative stated that the following work required to be carried out at the property:

- (a) dampness and fungal growth requires to be addressed
- (b) water regulator in the bathroom to be fixed
- (c) boiler to be fixed
- (d) bedroom door to be fitted
- (e) electrics in kitchen to be fixed.

3. By Notices of Referral, Inspection and Hearing under and in terms of Schedule 2, Paragraph 1 of the Act, all dated 21 March 2017 the tenant, the tenant's representative and landlord were notified that the President of the Housing and Property Chamber had decided to refer the application to a Tribunal for determination.
4. Thereafter the tenant's representative made written representations to the Tribunal on 20 April 2017. The landlord did not make a written representation to the Tribunal. The tenant's representative intimated her intention to attend the hearing.
5. The landlord made an application to postpone the hearing by correspondence dated 25 April which was refused by the Tribunal and the refusal was intimated to the landlord on 27 April 2017. It was pointed out to the landlord that he could be represented at the hearing and that late written representations could be considered by the Tribunal if there was good reason to do so.

The Inspection

6. On the morning of 3 May 2017, the Tribunal inspected the property in the presence of the tenant and the tenant's representative. The weather conditions at the time of the inspection were warm and sunny. The landlord was not present or represented at the inspection. Photographs were taken during the inspection and these are attached as a Schedule to this decision.
7. The property is a ground floor cottage style flat within a block of four flats in total. The property has two bedrooms, a lounge, kitchen and bathroom

and a storage cupboard housing the boiler and a small access hallway. The second bedroom is accessed directly from within the lounge area.

The Hearing

8. Following upon the inspection of the property, the Tribunal held a hearing at Wellington House, 134-136 Wellington Street, Glasgow G2 2XL attended by the tenant and the tenant's representative.
9. The landlord did not attend and was not represented. The Tribunal was satisfied that the requirements of Rule 47 of the First- tier Tribunal for Scotland Housing and Property Chamber Rules of Procedure 2016 had been complied with in that the landlord had received proper notice of the hearing and proceeded to deal with the application in his absence on the representations of those present and all the material before it.

The evidence

10. The evidence before the Tribunal consisted of:

Written evidence in the form of the application form, a copy of the Land Register title for the property, two letters sent to the landlord from Shelter Scotland on behalf of the tenant dated 6 February and 1 March 2017, a copy of the signed tenancy agreement between the parties and the written representations submitted by the tenant's representative; the findings of the inspection of the interior and exterior of the property and the tenant's oral evidence at the hearing.

Summary of the issues

11. The issue to be determined was whether the property meets the repairing standard as set out in section 13 of the Act, and whether the landlord had complied with the duty imposed on him by section 14(1) (b) of the Act.

Findings in fact

12. The Tribunal finds the following facts to be established:

- I. The landlord is the registered owner of the property and the landlord.
- II. The tenancy between the parties is one to which the repairing standard applies.
- III. The tenancy agreement between the landlord and tenant commenced on 1 June 2015 and has continued since 31 May 2016, by agreement. The property was let with a cooker, a fridge/freezer and a single bed included, notwithstanding being described in the agreement as a furnished let.
- IV. The tenant's representative wrote to the landlord on 6 February and 1 March 2017 and raised the complaints referred to the application.
- V. The Tribunal carefully inspected the property and the items that were the subject of the complaint and found
 - (a) There was a high dampness reading in the main bedroom at the gable wall of the property in a section of wall below the windowsill.
 - (b) The readings taken in other areas of the internal walls in the main bedroom and second bedroom were all within the normal range.
 - (c) Water was not draining away properly from the bath and backed up in the bath.
 - (d) Only one of the ceiling spotlights in the bathroom was working.
 - (e) A piece of skirting was missing from the kitchen and broken plasterwork was evident there. No mouse droppings were seen.
 - (f) All ceiling spotlights in the kitchen did not turn on when the light switch was operated.
 - (g) One outlet in a double socket in the kitchen at worktop level did not work.
 - (h) The gas boiler was working and produced heat at the radiator, having been repaired.
 - (i) There were no hard wired and interlinked smoke detectors and no heat detector within the property.
 - (j) The portable electrical appliance within the kitchen provided by the landlord had not been labelled as tested for safety.
 - (k) The bedroom door between the lounge and the second bedroom was missing.
- VI. The property does not meet the repairing standard required under section 13 (1) (a), (c), (d) and (f) of the Act.

Reasons for decision

13. The Tribunal was satisfied that the tenancy between the parties was a tenancy to which the repairing standard duty applies in terms of section 12 of the Act. The tenant spoke of not being provided with an Inventory of Contents or a form AT5. The tenant spoke of the cooker and fridge/freezer being provided at the outset of the tenancy along with a single bed, despite the tenancy agreement referring to it being furnished.
14. The tenant lives in the property along with her three children.
15. The tenant stated that she was using an adjustable desk light to light the kitchen at night, as the ceiling spotlights were no longer working despite a change of bulbs, a similar problem to that in the bathroom where only one bulb was in operation. She said she had raised this with the landlord but no checks or repairs had been carried out. The ceiling lighting requires to be repaired or replaced to meet the repairing standard (section 13(1) (c) of the Act)
16. It was observed by the Tribunal there was no labelling on the moveable electrical item in the kitchen provided by the landlord to evidence it having been tested for electrical safety. The tenant stated that no appliances had ever been tested at or during the tenancy to date and no Portable Appliance Test (PAT) report had ever been given to her. Such appliances provided by a landlord require to be tested to meet the repairing standard (section 13(1) (d) of the Act).
17. The tenant stated that she had never been provided with an electrical safety certificate (EICR) for the property. The Tribunal considered that this was an urgent ongoing safety issue relating to the health and safety of the occupants given that there was evidence of electrical issues. In terms of section 19A of the Act the landlord must before the start of the tenancy provide the tenant with a copy of the record of the most recent electrical safety inspection carried out and to satisfy the repairing standard, section 13(1) (c) of the Act.

18. The tenant stated she was promised that a door would be re-fitted between the lounge and the second bedroom at the viewing of the property and despite raising this thereafter with the landlord's father, it was never fitted. She has experienced a lack of privacy. Two children sleep in the bedroom. The Tribunal was concerned of the implications of there being no door there in the event of a fire, in addition to any privacy issues. The Tribunal noted on inspection that there were door fixings on the frame consistent with a door having been there in the past as a fixture and fitting. A door requires to be fitted (section 13(1) (d) of the Act).
19. Whilst the Tribunal observed that there was an old battery operated smoke alarm on the hall ceiling, it was not working. There were no other smoke alarms evident, nor was there a heat detector in the kitchen. The Tribunal considered that this was an urgent safety issue relating to the health and safety of the occupants. Section 13(1) (f) of the Act provides that the property requires satisfactory provision for detecting fires and for giving warning in the event of fire or suspected fire, to meet the repairing standard. This property does not meet that repairing standard.
20. On inspection by the Tribunal whilst being tested by the tenant who operated the bath tap, the bath was clearly not draining water away as it should and water was backing up. The tenant stated that it took around an hour to drain after a bath and only short showers could be taken due to the poor drainage. The installation was not in a reasonable state of repair and in proper working order (section 13(1) (c) of the Act).
21. The gas boiler had been repaired and was working at the inspection. The tenant stated that had been told by the person who repaired it however that it would continue to break as there was a leak elsewhere with a consequent lowering of water pressure-she believed this to relate to there being a leak at the bathroom radiator which she did not use now to avoid any problems. The shower pressure dropped when the radiator had been in use. She could not confirm that the repair had been carried out by a suitably registered engineer as she had not been provided with any documentation. The tenant stated that she had never been provided with a gas safety certificate. A landlord must comply with the Gas Safety (Installation and Use) Regulations 1998 and a tenant must be given a copy of the annual gas safety certificate showing that all gas installations and appliances have been checked by a Gas Safe registered engineer, to show that it meets the repairing standard in section 13(1) (c) of the Act.

Accordingly, the installation is not in a reasonable state of repair and in proper working order (section 13(1) (c) of the Act).

22. Whilst mould was evident on the upper corners of the bedrooms adjacent to the outside walls and at skirting level, only one high dampness reading was noted in the main bedroom. Whilst it was likely that there was a condensation type issue that needed to be addressed by the tenant, there was equally a dampness issue in the main bedroom at a section of wall under the window which needed to be investigated and addressed by the landlord. There were trickle vents on the window frames which were in use. Investigation and repair of the dampness issue is needed by the landlord to meet the repairing standard (section 13 (1) (a) of the Act).
23. The tenant said she and her partner had seen mice within the property, her direct evidence being she had seen a mouse in the kitchen and he had seen two in the living room. She explained the mouse had disappeared from her view at the location of the missing skirting in the kitchen and her boyfriend had seen them exit the lounge at a hole in the lounge wall behind the same area. She had since placed a temporary boarding at the wall in the lounge and this was in place at the inspection and evident to the Tribunal. No mouse droppings were seen however at the inspection. The Tribunal accepted the evidence that it was likely that a mouse had been seen within the kitchen of the property. The area of missing skirting needed to be replaced and repair to the plasterwork surrounding to close the void there to meet the repairing standard (section 13 (1)(a) of the Act).
24. The tenant stated that she has had the Environmental Health Department of the local authority involved who had placed traps in the property to catch mice. This was done with some success; however, the mice had returned. She intended to call them out again. They had also been asked to look at the mould in the bedrooms but had not yet provided feedback to the tenant.
25. The tenant stated she was keen to resolve the complaints with the landlord and they had spoken by telephone but could not agree any resolution. This application was therefore necessary. The tenant was still keen to resolve matters amicably.

Observation

26. Whilst the kitchen tap did not form part of the application and was not an issue to be determined by the Tribunal, it was observed that it was leaking and spraying water when operated which was in turn damaging the windowsill paintwork. Similarly, the casing of an electrical socket in the second bedroom was insecure. The landlord may wish to consider these matters and attend to the electrical item when taking action in respect of the other electrical issues.

Summary of Decision

27. The landlord has failed to comply with the duty imposed by section 14 (1) (b) of the Act and has failed to ensure that the property meets the repairing standard in that: the house is wind and watertight and in all other respects reasonably fit for human habitation; 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; any fixtures fittings and appliances provided by the landlord under the tenancy are in a reasonable state of repair and in proper working order; the house has satisfactory provision for detecting fires and for giving warning in the event of fire or suspected fire (sections 13(1) (a),(c),(d),and (f) of the Act).

28. The Tribunal accordingly proceeded to make a Repairing Standard Enforcement Order as required by section 24(2) of the Act.

Right of Appeal

In terms of section 46 of the Tribunals (Scotland) Act 2014 a party 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 S Christie

Date 09 May 2017

Susan Christie, Legal Member

*This is the schedule of photographs referred to
in the foregoing decision.*

Housing and Property Chamber First-tier Tribunal for Scotland



Schedule of Photographs



4B Woodbank Crescent, Johnstone PA5 8ER

FTS/HPC/RP/17/0078

Inspection 3rd May 2017 10:00am

Weather – Dry/Sunny

Description

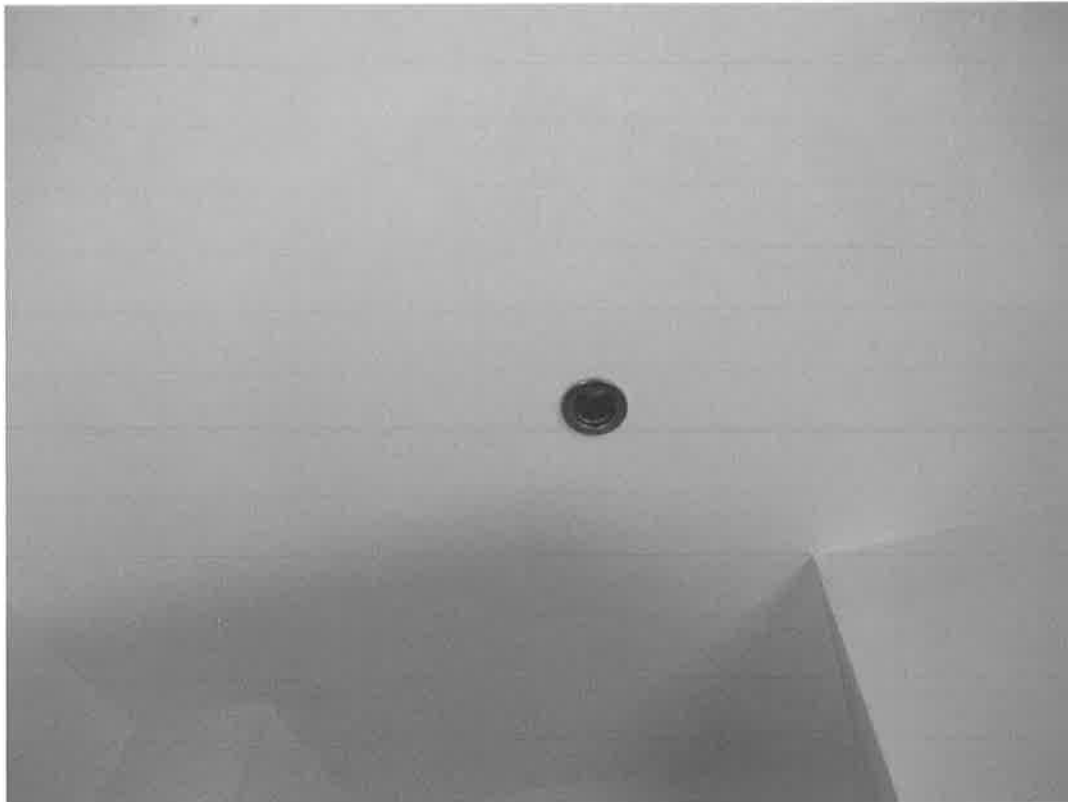
Ground floor cottage flat with two bedrooms situated to the south of Johnstone Town Centre in a predominately residential area close to all local amenities and transport links.

Inspection

The property was occupied at the time of inspection and the tenant Leeanne Reilly was present along with Clair Strong from Shelter. The landlord was not present.

Kitchen

- 1) No electrics in kitchen
- 2) Mice in kitchen
- 3) Boiler broken



Ceiling lights in kitchen tested and do not work – light bulbs taken out to try in bathroom. Tenant uses adjustable desk light.

Double power socket at cooker – tested at inspection only one outlet works



Skirting board under the worktop at kitchen window is missing this is where mouse droppings have been found. Tenant has witnessed mice in the kitchen. No evidence of mice at time of inspection. Skirting board requires to be repaired.

*No heat detector fitted in kitchen – hard wired interlinked heat detector required.

* No PAT test on electrical appliances

* No electrical certificate available

Boiler in hall cupboard has been repaired no gas safe certificate

Bathroom

- 1) Poor water flow bathroom – bath fails to drain after use this was noted at inspection
- 2) Lights in bathroom - only one in operation
- 3) Shower pressure changes when radiator is on – unable to confirm as radiator is switch off as the boiler pressure falls when the radiator is turned on tenant has been advised by landlords contractor not to switch radiator on.

Bathroom ceiling only one bulb working two bulbs missing



Bath water slow to draining away.



Bedroom 2

- 1) Bedroom door missing
- 2) Dampness/ mouldy in bedroom
- 3) Power socket broken



No bedroom door fitted at time of inspection



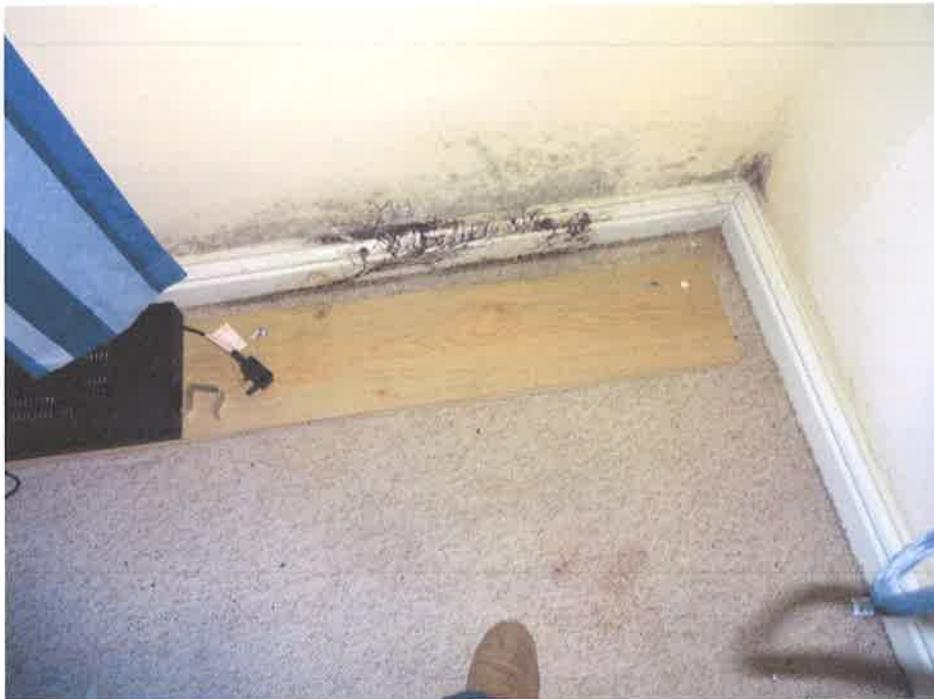
Moisture reading were all within the normal range no evidence of dampness were noted at time of inspection



Electrical socket off wall.

Bedroom 1

Dampness and mould





Reading taking at high and low levels are all within the normal ranges no evidence of dampness found.



A small area approximately 1 meter from the floor level showed a high moisture reading approximately 26%. On inspecting the external walls some cracking was noted at the rear elevation but no evidence to identify the cause of the high moisture reading.



- No hard wired smoke detector fitted in lounge
- Only One battery operated smoke detector fitted in hall
- No smoke detector fitted in kitchen

Signed L Charles

Dated 3/5/17