



A Brief Guide for LANDLORDS





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This guidance has been prepared by the **prhp** for the assistance of landlords wishing to know what to do if a tenant makes an application to the **prhp**. It is not, and not meant to be, a comprehensive description of all aspects of the changes introduced by the Housing (Scotland) Act 2006 in relation to repairs in the private rented sector. The legislation is contained within the Housing (Scotland) Act 2006 and The Private Rented Housing Panel (Applications and Determinations) (Scotland) Regulations 2007 SSI No 173.

WHAT IS THE NEW DUTY I HAVE TO COMPLY WITH?

From 3rd September 2007 onwards, landlords in the private rented sector have a duty to ensure that a rented house meets a basic standard of repair called the “repairing standard”. If a rented house does not meet that standard, and the landlord refuses to carry out the necessary repairs, the tenant can apply to the **prhp** for a decision by a Private Rented Housing Committee (a “Committee”) on whether the landlord has failed to comply with that duty. The Committee can then order the landlord to carry out the necessary repairs. Various penalties apply if the landlord then does not do so.

WHAT IS THE REPAIRING STANDARD?

The standard is fairly basic. A house meets the repairing standard if:

- a) it is wind and watertight and in all other respects reasonably fit for human habitation,
- 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,
- c) 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,

- d) any fixtures, fittings and appliances provided by the landlord under the tenancy are in a reasonable state of repair and in proper working order,
- e) any furnishings provided by the landlord under the tenancy are capable of being used safely for the purpose for which they are designed, and
- f) the house has satisfactory provision for detecting fires and for giving warning in the event of fire or suspected fire.

DOES THE REPAIRING STANDARD APPLY TO ALL PRIVATE SECTOR TENANCIES?

The Housing (Scotland) Act 2006 (the 2006 Act) sets out the tenancies to which the repairing standard applies. It applies to most tenancies in the private rented sector (including tied houses) but there are some exceptions. Occupancy arrangements are not covered by the standard.

A TENANT CANNOT APPLY TO THE **PRHP** IF THE TENANCY IS:

- a Scottish secure tenancy or a short Scottish secure tenancy,
- a tenancy of a house retained or purchased by a local authority for use as housing accommodation as an alternative to demolition;
- an agricultural tenancy or a croft;
- a tenancy of a house on holdings to which the Small Landholders (Scotland) Acts 1886 to 1931 apply.

A TENANT CANNOT APPLY TO THE **PRHP** IF THE LANDLORD IS:

- a local authority
- a registered social landlord
- Scottish Homes, or
- Scottish Water

THE **PRHP** WILL NOT DEAL WITH THE CASE IF:

- the repair work needing done does not come within the terms of the repairing standard;
- the tenancy was originally for a period of three years or more and the tenant is responsible for carrying out repairs;
- the repair work needing done results from damage caused by the tenant or a member of the tenant's family, or the wrongful acts of a third party;
- the house has to be rebuilt or reinstated in the event of destruction or damage by fire or by storm, flood or other inevitable accident;
- the work relates to the repair or maintenance of anything that the tenant is entitled to remove from the house.

CAN MY TENANT APPLY TO THE **PRHP** BEFORE I KNOW THE PROBLEM EXISTS?

No, the tenant must notify you that work requires to be done to comply with the duty to meet the repairing standard **before** he or she can make an application to the **prhp**. The tenant must also give you a reasonable period of time to carry out the work required. How much time is "reasonable" will depend on the nature of the work needing done, and all the circumstances of the case. For example, if your tenant's bedroom ceiling is leaking



you would be expected to sort this very quickly, whereas an external drain which chokes from time to time would be a less urgent repair.

WHAT HAPPENS IF I DON'T DO THE WORK?

If you do not carry out the work, then your tenant can apply to the **prhp** for a determination that you have failed to meet the duty to ensure that the house meets the repairing standard. If the Committee decides that you have failed to meet the duty, then it can make an order called a Repairing Standard Enforcement Order (RSEO) requiring you to carry out the work.

MY TENANT HAS MADE AN APPLICATION TO THE **PRHP** – WHAT HAPPENS NOW?

Once a valid application is received, the President has 14 days from the date of receipt to decide whether the application can be referred to a Committee or whether it should be rejected. A valid application will only be rejected if the President considers it to be vexatious or frivolous, or the tenant has recently made an identical or very similar application, or the dispute has already been resolved.

The President has the power to delay referring the case to a Committee where “there is a reasonable prospect of the dispute being resolved by the parties”. This might be appropriate if, for example, it appears that there has been a simple misunderstanding that could be sorted out. The **prhp** will also offer the option of **mediation**.

WHAT IS MEDIATION AND WILL IT BE OFFERED TO ME?

Mediation is a way of settling disputes informally without the stress, time and bad feeling often involved in using formal procedures. **Mediation is practical, confidential, quick and free.** Mediation is only available where both parties agree to it. As the tenant contacts the **prhp** first, you will only be given the option of mediation if your tenant has already agreed to go to mediation. You will be sent a letter enclosing a copy of the application and asking whether you are willing to take part in mediation to resolve the issue. If you wish to try mediation you **must** reply to that letter **before** the date given in the letter. If you do not reply, it will be assumed that you do not want to take part in mediation and the application will be referred to a Committee. There is a separate leaflet which explains how the mediation process works. If you choose to go to mediation, then you will be given a date, time and venue for the mediation session to take place. If mediation doesn't work, then the application will be considered by a Committee just as if you had never tried mediation.



MY CASE HAS BEEN REFERRED TO A COMMITTEE – WHAT HAPPENS NOW?

If you do not choose mediation, or mediation fails, then **the case will be referred to a Committee**. You will be sent a **Notice of Referral** confirming this and asking you whether you wish to attend a hearing or whether you wish to make written representations. You can, if you wish, do both. Your tenant will also be given the same choice. Think carefully before you decide not to attend a hearing. Remember that if you choose not to attend, you will not be able to respond to any of the points your tenant makes on the day of the hearing and the Committee will not have the chance to ask you any questions. Attending the hearing means that you will be able to provide as much information as you can on the day. Remember that **you must reply to the Committee by the date given on the Notice**. If you need more time, you must contact the Committee to ask for this, giving a brief explanation as to why you need more time. If you want to change or add to your written representations you can do so by writing to the Committee at any time up to 5 working days before the hearing. After that, you can still amend your written representations but only with the consent of the Committee.

I HAVE BEEN SERVED WITH A CITATION – DO I HAVE TO ATTEND THE HEARING?

Yes. The Committee has the power to make inquiries and can require you to attend a hearing or produce documents or information. If you are served with a Notice from the Committee requiring your attendance or further information then **you must comply** with that, otherwise you may be guilty of a criminal offence and you could be fined. It is also an offence to knowingly give false information to the Committee.

WHAT PROCEDURE DOES THE COMMITTEE FOLLOW?

Before the hearing, the Committee will carry out **an inspection** of the rented house to look at the problem the tenant has complained about. This will usually happen on the same day as the hearing. The Committee will only be looking at the issue(s) the tenant has raised and will not carry out a comprehensive inspection of the house. However, in some cases another relevant issue may come to light in the course of that inspection. The Committee has the power to make inquiries about matters other than those to which the application relates if they consider it appropriate to do so. The original application can be amended to take account of a new matter which has arisen, or a second application can be submitted to deal with this new matter. If that situation arises, the Committee will issue directions making clear to both you and your tenant what needs to be done.

Hearings will normally be held in public in a venue which is within reasonable travelling distance of the rented house. If you have a special reason for wishing the hearing to be held in private then you must write to the Committee in advance explaining what the reason is and asking them to hold the hearing in private. The Committee will then decide whether to agree to your request.

You can conduct your case yourself or you can have your representative conduct the case for you. You will be able to tell the Committee about the repair issues the tenant has raised and you can also bring witnesses if you wish. You will be able to ask your tenant questions and also question any witnesses he or she has brought to the hearing. The Committee will decide what procedure is to be followed at your hearing, and the chairperson will explain to you what is to happen and when you are able to speak and ask questions. Do not be

put off attending a hearing – the procedure is fairly informal and the chairperson will ensure that you know what is happening.

Everyone attending the hearing is expected to behave in a polite and appropriate manner. The Committee has the power to exclude any person from the hearing, even if they are a party or a representative, if that person is being disruptive.

If you do not attend the hearing, then the Committee can decide to proceed with the hearing in your absence provided the Committee is satisfied that you have received proper notice of the hearing.

The Committee will not usually give a **decision** on the day. It will be sent out to you soon after the hearing along with a statement of reasons for the decision.



WHAT HAPPENS AFTER A DECISION IS ISSUED?

If the Committee decide that you have failed to comply with the duty, then the Committee must make a “**repairing standard enforcement order**” (RSEO) requiring you to carry out the necessary work. The Committee must specify the period within which the work must be carried out, but you will be given at least 21 days. The RSEO may specify what particular steps the Committee require you to take, or the Committee may leave it up to you to decide how to carry out the repairs.

It is a criminal offence not to comply with an RSEO. It is also a criminal offence to re-let the property to someone else while the RSEO remains in force (unless the Committee gives permission).

After the period allowed expires, the Committee will carry out a further inspection followed by a further hearing, if necessary. If the Committee decide that you have failed to comply with the RSEO, the Committee will **serve notice of the failure on the local authority** and decide whether to make a **Rent Relief Order**. This is an order which reduces any rent payable under the tenancy by whatever amount the Committee decide, up to a maximum of 90%. It does not affect the terms of the tenancy in any other way. A rent relief order comes into effect 28 days after the last date on which the decision to make the order comes into effect.

ONCE THE REPAIR WORK HAS BEEN DONE, CAN I CLAIM BACK THE MONEY WHICH WOULD HAVE BEEN PAID BUT FOR THE RENT RELIEF ORDER?

No. The reduced rent is all that the tenant is required to pay while the Rent Relief Order is in force and any rent lost is not recoverable from the tenant.

CAN I APPEAL AGAINST A DECISION IF IT IS NOT IN MY FAVOUR?

Yes, you can appeal to the sheriff within 21 days of being notified of the decision. You can appeal against the following decisions:

- a decision by a Committee on the tenant's application;
- a decision by a Committee to vary or revoke a RSEO;
- a decision by a Committee that you have failed to comply with a RSEO;
- a decision by a Committee to make a rent relief order;
- a decision by a Committee to revoke a rent relief order;
- a decision by a Committee to refuse to grant a certificate that the work has been completed.

Your tenant also has the right to appeal against decisions in your favour. An appeal is to the sheriff court by way of summary application. To find out how to make an appeal you should contact the sheriff clerk of the sheriff court which covers the area in which the rented house is situated. For example, if the rented house is in Dundee you should contact the sheriff clerk at Dundee Sheriff Court.





CONTACT DETAILS

If you wish more information about the **prhp** please contact us at:

Private Rented Housing Panel (prhp)

Europa Building

450 Argyle Street

Glasgow, G2 8LH

t: 0141 242 0142

e: prhpadmin@scotland.gsi.gov.uk

w: www.prhpscotland.gov.uk

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