

# The Private Rented Housing Panel (prhp)

## Repairs issues and the Housing (Scotland) Act 2006

### A brief guide for tenants

This guidance has been prepared by the **prhp** for the assistance of tenants wishing to make an application to the **prhp**. It is not, and is 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.

#### **The property I rent needs to be repaired – what can I do about it?**

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

#### **The house I rent does not meet the repairing standard – can I apply to the prhp?**

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. Also, you cannot apply to the **prhp** if you have an occupancy arrangement as opposed to a tenancy as such arrangements are not covered by the standard.

**You cannot apply to the prhp if your 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.

**You cannot apply to the prhp if your landlord is:-**

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

**The prhp will not be able to help you if:-**

- the repair work needing done does not come within the terms of the repairing standard;
- your tenancy was originally for a period of three years or more and you are responsible for carrying out repairs;
- the repair work needing done results from damage caused by you or a member of your family, or the wrongful acts of a third party;
- your 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 you are entitled to remove from the house.

**I think I am eligible to apply – how do I go about it?**

First of all, you need to **notify your landlord that work requires to be done** to ensure that your house meets the repairing standard. You cannot make an application until you have done this. You will have to produce evidence to show that you have done so. You must give your landlord fair notice of the problem – it is **not** enough just to make a general statement such as “my house does not meet the repairing standard”. You must set out what work needs to be done. (You can download a sample letter from the **prhp** website or obtain a copy from the **prhp**.)

Then you must **give your landlord a reasonable 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 bedroom ceiling is leaking it would be reasonable to expect the landlord to sort this very quickly, whereas an external drain which chokes from time to time would be a less urgent repair.

If your landlord does not carry out the work, then you can apply to the prhp. **You must apply in writing**. Applying to the **prhp** is free of charge and you cannot be held liable for your landlord’s expenses. There is an application form you can use which is available from our website or our offices. The application form guides you through what information is required. The form is

accompanied by a guidance note telling you what to do. This guidance note is available in various different languages and formats. However, you must submit your application in English, or provide a certified translation from a recognised translator.

You can deal with the application yourself or you can ask someone else to represent you. Please tell us whether you want us to deal directly with your representative, or whether you wish us to continue to send all correspondence to you by ticking the appropriate box on the application form.

You **must** attach to the application a copy of your **lease, tenancy agreement or rent book**, if you have one. If you don't, then you must give as much information about your tenancy as you can.

You **must** also attach to the application your **evidence to show that you have notified your landlord that the work specified in the application needs to be carried out**. You could do this by producing a copy of a letter you sent your landlord, accompanied by a recorded delivery certificate. This is a good way of showing that you did give notice. However, other forms of evidence will also be accepted provided they show that adequate notice has been given.

#### **Once I've made my application, what happens next?**

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 you have recently made an identical or very similar application, or the dispute has already been resolved. **If your application is rejected then you may appeal to the sheriff against this decision within 21 days of being notified of it.**

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**. 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 you and your landlord agree to it. There is a separate leaflet which explains how the mediation process works. **If you would like to try to resolve your dispute by mediation, please tick the appropriate box on the application form.** If you choose to go to mediation, then you will be contacted to arrange a date for the mediation session to take place. If mediation doesn't work, then you will be able to have your application 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 your 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 landlord 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 landlord makes on the day of the hearing and the Committee will not have the chance to ask you any questions. Attending the hearing may well increase the chances of your application succeeding because 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.

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.

Before the hearing, the Committee will carry out **an inspection** at your home to look at the problem you have complained about. This will usually happen on the same day as the hearing. The Committee will only be looking at the issue(s) you have raised and will not carry out a comprehensive inspection of your home. 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 your application relates if they consider it appropriate to do so. You may have to amend your application to take account of a new matter which has arisen, or to submit a second application to deal with this new matter. If that situation arises, the Committee will issue directions making clear to both you and your landlord what needs to be done.

**Hearings** will normally be held in public in a venue which is within reasonable travelling distance of the property in question. 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 you have raised and you can also bring witnesses if you wish. You will be able to ask your landlord 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 your landlord has failed to comply with the duty, then the Committee must make a “**repairing standard enforcement order**” (RSEO) requiring the landlord to carry out the necessary work. The Committee must specify the period within which the work must be carried out, but **the landlord must be given at least 21 days**. The RSEO may specify what particular steps the Committee require the landlord to take, or the Committee may leave it up to the landlord 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 your landlord has 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 your tenancy by whatever amount the Committee decide, up to a maximum of 90%. It does not affect the terms of your 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.

### **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 the President to reject an application;
- 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 not to make a rent relief order;
- a decision by a Committee to revoke a rent relief order;

- a decision by a Committee to grant a certificate that the work has been completed.

Your landlord 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 your house is situated. For example, if your 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),  
3<sup>rd</sup> Floor, 140 West Campbell Street,  
Glasgow  
G2 4TZ**

**Telephone – 0141 572 1170**

**Fax - 0141 572 1171**

**Email- [admin@prhpscotland.gov.uk](mailto:admin@prhpscotland.gov.uk)**

**Website - [www.prhpscotland.gov.uk](http://www.prhpscotland.gov.uk)**