

## Can I withhold Rent if my Landlord has not carried out repairs to the Property I am renting?

During your tenancy if the Landlord has not carried out repairs you can apply to the Private Rented Housing Panel (PRHP) who can decide that the Landlord has failed in his obligations to keep the Property in the appropriate 'Repairing Standard'.

It is not acceptable to withhold rent due to the Landlord's failure unless you have been permitted to do by following the process below. It is for the Private Rented Housing Committee (PRHC) to make the appropriate decision proportionate to any established breach.

If you are considering raising a dispute at the end of the tenancy because you think the Landlord has failed to comply with his Repairing Standard, you must have followed the procedure below.



### What is the Repairing Standard?

It refers to the minimum conditions of a property as defined by Section 13 Housing (Scotland) Act 2006:

- ✓ Wind and water tight
- ✓ Reasonably fit for human habitation
- ✓ Structure and exterior being in a reasonable state of repair and in proper working order
- ✓ Installations for the supply of water, gas, electric...sanitation, space heating and heating water in a reasonable state of repair and in proper working order
- ✓ Any fixtures, fittings and appliances...in a reasonable state of repair and in proper working order
- ✓ Any furnishings...capable of being used safely for the purpose for which they are designed
- ✓ Satisfactory provision for detecting fires and for giving warning in the event of fire or suspected fire

Exceptions to the Landlord's 'repairing' duty. These are situations where it would be unreasonable to penalise the Landlord:

- ✓ Damnum fatale (act of god)
- ✓ Damage caused by tenants improper use
- ✓ Damage to tenant's belongings
- ✓ Obvious defects existing at start of tenancy?
- ✓ Actions of third parties

*continued overleaf...*

## How do I apply?

In writing **AFTER** having made the Landlord aware of the required repair.

## What are the timescales?

- Within 14 days the case must be referred by the PHRP to the PHRC OR rejected (unless there is reasonable prospect of the dispute being resolved).

What will the committee be looking at?

- Only the issue that is disputed by the Tenant taking into consideration:
  - > Age, character and prospective life of the property
  - > Locality of the property
  - > Building regulations
- They will not look at every requirement of the Repairing Standard to see if there are any other issues
- They will need to see that the Tenant gave prior notice to the Landlord
- A Notice of Referral or Rejection is served OR the case is referred for mediation
- If referred, a hearing date is fixed
  - The Committee will inspect the property
  - The hearing will take place at a local venue
  - Each party can make representations
  - The Committee will issue their decision at a later date stating whether or not the Landlord has 'complied' with the Repairing Standard duty. If not, they can issue a '**Repairing Standard Enforcement Order**'.

## What is the 'Repairing Standard Enforcement Order'?

The Order requires the Landlord to carry out such work as is necessary to ensure that:

- The property concerned meets the Repairing Standard
- Any damage caused by carrying out the work is made good
- The time allowed for work to be carried out is specified
- The particular steps required are specified

The Committee will not expect any work to be carried out in less than 21 days and will normally re-inspect the property after the time allowed for repair.

## What remedy may I hope for if the Landlord does not comply with the Order?

The Committee will normally re-inspect the property after the time allowed for repair. If the order has not been complied with:

- Notice will be served on the Local Authority
- A Rent Relief Order may be made. Failure to comply with the order is a criminal offence
- A report will be sent to the Procurator Fiscal

If convicted a Landlord will be liable for a fine.

## Can I just withhold rent from the Landlord? – common scenario

**Landlord** claims there are rent arrears and wishes to deduct them from the deposit at end of tenancy.

**Tenant** claims there were repairs outstanding and they have “withheld their rent”.

Issues to determine:

- Has the Tenant withheld their rent in a separate account?
- Did the Tenant advise the Landlord of this?
- Did the Tenant report the issue to the PRHP? If not, why not?
- Has the Tenant accrued rent arrears?
- Has the Landlord refused to carry out repairs? (“Tenant isn’t adhering to his side of the bargain, so why should I?”)

## Is there any other possible outcome?

If the Committee is satisfied that the Landlord is unable to comply, it will not be found to be a ‘failure’.  
(Section 38 – not an offence if landlord has ‘reasonable excuse’)

It is an offence to re-let a property covered by a Repairing Standard Enforcement Order. To do so may effect the Landlord Registration and their status as a “fit and proper person”. The Landlord can be struck off the Landlord Register.