Submission No 19

INQUIRY INTO THE MANAGEMENT OF NSW PUBLIC HOUSING MAINTENANCE CONTRACTS

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SUBMISSION: Inquiry into the Management of NSW Public Housing Maintenance Contracts

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Redfern Legal Centre



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1. Introduction: Redfern Legal Centre

Redfern Legal Centre (RLC) is an independent, non-profit, community-based legal organisation with a prominent profile in the Redfern area.

RLC has a particular focus on human rights and social justice. Our specialist areas of work are tenancy, domestic violence, credit and debt, employment, discrimination and complaints about police and other governmental agencies. By working collaboratively with key partners, RLC specialist lawyers and advocates provide free advice, conduct case work, deliver community legal education and write publications and submissions. RLC works towards reforming our legal system for the benefit of the community.

2. RLC's work in Tenancy

RLC has a long history of providing advice, assistance and advocacy, with a key focus on the provision of information and services to public housing tenants and strong emphasis on the prevention of homelessness. Since RLC was founded in 1977, tenancy has been one of our core areas of advice. Since 1995, RLC has been funded by NSW Fair Trading to run the Inner Sydney Tenants' Advice and Advocacy Service (ISTAAS). ISTAAS assists tenants living in City of Sydney, Leichardt and Botany local government areas through advice, advocacy and representation.

The Inner Sydney area has a significant number of people living in public housing and there are now over 9,000 public housing dwellings in this area. Our submission is informed by the experiences of our clients, the majority of whom are public housing tenants. A large part of our casework involves assisting public housing tenants who have serious and ongoing repairs and maintenance issues.

We have provided input into recent similar Inquiries in the past such as:

- FACS Discussion Paper on Social Housing in NSW;
- NSW Legislative Assembly Inquiry conducted by the Public Accounts Committee into Tenancy Management in Social Housing; and
- Select Committee on Social, Public and Affordable Housing Inquiry into Social, Public and Affordable housing.

We have also raised the systemic issue of repairs in public housing in the media, assisting tenants to tell their stories such as <u>Terence</u> and providing assistance to tenants to get repairs done by producing the <u>repairs kit</u>.

We see maintenance in public housing as a serious issue in need of urgent attention and due to our experience in providing advice and assistance to tenants as well as raising these systemic issues in the past we believe we are ideally placed to provide input into this Inquiry.

3. RLC's view in summary

RLC endorses the submission provided by the Tenants' Union of NSW and provides the following submission in relation to the experiences of tenants in the Inner Sydney area specifically.

RLC has assisted a large number of Housing NSW (HNSW) tenants to get repairs done through advocacy and Tribunal representation. We have identified a set of common concerns from tenants with the way that repairs and maintenance are conducted.

They include:

- Difficulties faced by tenants in getting HNSW to recognise and prioritise the need for repairs;
- Difficulties experienced by tenants with contractors and sub-contractors;
- Lack of structural repairs undertaken to HNSW properties;
- Failure by HNSW to address long-term maintenance issues;
- Non-compliance with Tribunal orders; and
- Problems with the flow of information between the NSW Land and Housing Corporation (LAHC) and Housing NSW (HNSW);

To address these problems, a full evaluation of the repairs and maintenance system is needed. LAHC should report to the public about the efficiency of the head contractor system, and evaluate the cost efficiency of the separation of HNSW and LAHC.

In this submission we will respond to the terms of reference we have experience in or can provide input to. We are not in a position to respond to the second term of reference regarding the cost of maintenance of the current public housing stock.

4. RLC's responses to specific issues

a) The current repair status and physical condition of the public housing stock managed by Housing NSW

One of RLC's major areas of advice and casework for public housing tenants is repairs and maintenance issues. In the 2014/2015 financial year around 30% of the advices we provided to public housing tenants were about repair issues. In the same year 25% of the cases we provided representation for public housing tenants were repairs matters that the clients had not been able to have attended to despite having followed the procedures provided for reporting maintenance and repairs issues to HNSW. We have included an appendix with photographs of some of the properties we have seen in the more serious cases we have assisted with.

In a 2013 report the Auditor-General noted that the majority of dwellings (more than 60%) in the public housing portfolio were constructed between 1970 and 2000. At that time, approximately 25% of the dwellings were over 40 years old, while just over 10% had been constructed since 2000. The report found that in 2012-13, approximately \$85,000,000 worth of maintenance and upgrade work had been deferred due to lack of funds. The consequence of this is that the condition of much of the public housing stock in NSW is deteriorating. LAHC has identified that at 2010-2011 between 30% and 40% of its housing does not meet its "well maintained" standard.

In our experience, the condition of much of the public housing stock located within our catchment area is deteriorating. On a regular basis public housing tenants report that they have been told that LAHC cannot afford to carry out necessary repairs. We see a steady decline in the state of repair in not only older dwellings but also in dwellings that have been constructed more recently.

We consider that some of the key issues contributing to the poor state of repair and physical condition of public housing stock managed by HNSW are:

- The failure of LAHC to complete serious structural repairs; and
- The lack of response to repairs and maintenance reports by tenants.

Failure to do structural repairs

Failing to address serious structural damage results in greater costs and increased expenditure as the problems worsen over time. In many cases it eventually leads to the tenant having to vacate the property and the property being sold as the cost to repair has become so great due to an ongoing lack of maintenance.

There is no easy mechanism for tenants to identify structural problems that are the cause of repairs and maintenance issues, or to compel LAHC to look at the causes of a problem that affects an entire building or area. In the Inner Sydney region, public housing tenants often tell us that they have regularly reported problems like mould and damp coming from the foundations of their buildings or significant structural damage as a result of termite infestations. We are often told that the result of reporting these issues is that the tenant is visited by a technical officer who inspects and photographs the property. In many cases several inspections may occur, with no further

¹ Auditor General Peter Achterstraat, 'Making the Best Use of Public Housing' (Performance Audit, Audit Office of NSW, 2013), p22.

https://www.audit.nsw.gov.au/ArticleDocuments/280/01_Public_Housing_Full_Report.pdf.aspx?Embed=Y

follow up or actual work carried out on the property.

RLC recognises that LAHC made progress in 2013-2014 in addressing structural maintenance issues in the Inner Sydney region. This is a positive trend, and we are aware that steps have been taken by LAHC to move towards more preventative maintenance work. Wherever possible, this model of maintenance is preferable, as ongoing maintenance prevents degradation of stock. This however needs to be in conjunction with a responsive service to the immediate need for repairs.

Case Study: Structural repairs to older properties

Sally (not her real name) had lived in her Inner Sydney house for over 20 years. The property had a number of structural problems, particularly in regards to the roof due to the age of the property. Sally had been reporting the problems to the Housing Contact Centre (the HCC) and the local office for a number of years.

Structural problems with the roof also caused leaking in the second upstairs bedroom in March 2015, causing the light to stop working. Sally was very concerned about the safety of the light fitting and reported the issue to the HCC. She was unable to use this bedroom as it was not safe.

In August 2015, the property sustained significant damage as a result of a severe storm. The ceiling of one upstairs bedroom fell in, leaving a large hole that exposed the sky. Sally reported the damaged caused by the storm to the HCC the next day. The damage was not inspected for three weeks.

Sally was given multiple completion dates before the roof was finally repaired in December 2015, four and a half months after the major damage occurred. During this time Sally was not able to use either bedroom in her property and experienced mould and dampness due to the hole in the roof.

This case study shows how failure to respond to requests for structural repairs, particularly for older properties, often results in greater costs and increased expenditure as the problems worsen over time.

b) The nature and administration of maintenance contracts, including private sector arrangements

While we are not in a position to comment about internal business management of LAHC contracts, in our experience the practise of contractors often sub-contracting can result in an increased lack of communication between the tenant, LAHC, HNSW and the people undertaking the repairs.

It is also the experience of our clients that contractors often perform poor quality work or sometimes no work while reporting to LAHC that the repair has been completed. In some cases our clients also report that contractors do not treat them respectfully. Better accountability, expectations and standards of behaviour could help address these issues. We discuss these issues in more detail in the following sections.

In our view having only one maintenance contractor for such a large organisation can contribute to this feeling of unaccountable behaviour as well as to anti-competitive behaviour. Recent

changes to the *Residential Tenancy Act 2010* (the Act) may also contribute to anti-competitive behaviour and unreasonable costs being charged in cases where repairs are undertaken by the landlord but the cost of the repair is the tenant's responsibility. An example of this is when a tenant vacates the premises and the property is not left in the same condition as when they moved in and the damage is beyond fair wear and tear. Another example is when a tenant negligently or intentionally causes or allows damage the property during their tenancy. In these cases LAHC undertake the repairs and then charge the debt to the tenants account. If the tenant does not repay the debt then LAHC, like any landlord, is able to apply to the Tribunal for an order for compensation.

When a landlord or a tenant applies to the Tribunal for compensation for a breach of the agreement, the legal principle of mitigation of loss applies. This means that costs claimed have to be reasonable costs.

The Act was amended in December 2015 to include section 156B which that states that the Tribunal no longer has discretion to determine whether the costs a social housing landlord claims from a tenant for repairs are reasonable.

Where tenants are unable to challenge the reasonableness of the amount of money that they are charged for repairs, they may be exposed to being levied with unjustified expenses that are not subject to the mitigation of loss principle. This change means that social housing landlords are not subjected to the same level of scrutiny as private landlords, which places social housing tenants at a distinct disadvantage to other tenants.

The introduction of this law could potentially contribute to anti-competitive behaviour by maintenance contractors in public housing.

Recommendation:

Section 156B of the *Residential Tenancies Act 2010* (NSW) be repealed.

c) Methodologies and processes for ensuring consistent public housing maintenance standards across NSW, including quality assurance, effectiveness, efficiency and contract supervision

Our service has identified a number of areas where processes could be improved to assist in promoting greater consistency in public housing maintenance standards.

Improving communication with tenants

An issue we commonly hear is the difficulty tenants face when reporting repairs and maintenance needs to HNSW.

Tenants have reported:

- It is difficult for them to get information about when their repairs will be completed;
- It is difficult for them to explain how their issue might require a different or more immediate solution than the one in the matrix provided to staff in the HCC; for example:
 - LAHC sending a domestic plumber to a water leak coming from building foundations that had spread through the carpets of an entire house; or
 - A tenant being told by a contractor that the work can not be done by that type of worker, only to call through the maintenance line and have the same type of

contractor sent again;

- Contractors often repeatedly attend properties with no information, incorrect information, without identification or without the equipment or expertise to complete the work;
- Contractors are often hours or even days late for a scheduled appointment, or do not come at all;
- Maintenance line operators do not have complete information about when works are scheduled;
- Maintenance line operators do not have technical knowledge about the problem, and may not assess the problem correctly;
- No record of the works completed being registered with LAHC, only a record that a contractor has attended; and
- Tenants often incorrectly told that the repair is their responsibility.

Our service has experienced an improvement where we have been in direct communication with LAHC, however this would not be the same for tenants without advocacy and should not be necessary.

Tenants are in the best position to describe the repair problem and its urgency. One example of the problem with the maintenance line system is the response to tenants' reports of mould. Previously the response from the maintenance line was 'mould is a tenant's responsibility'. This was the case even when the mould was caused by structural problems with building foundations, which are the landlord's responsibility.

Tenants should be able to indicate whether work is completed satisfactorily, and should be able to notify LAHC when contractors repeatedly come unprepared or unable to do the work.

Recommendation:

LAHC should develop a better system for evaluating the work done by contractors, identifying repeat repair jobs and systemic trends in repairs, and provide for greater participation and input from tenants.

Additional difficulties in communication faced by Aboriginal or Torres Strait Islander tenants, tenants who do not speak English as a first language and tenants with mental illnesses

Tenants often report that contractors do not communicate with them respectfully. In many cases they do not attempt to use an interpreter when tenants do not speak English. While tenants also have a responsibility to treat contractors respectfully, there do not appear to be any systems in place to provide training and minimum standards for contractors.

As with all services and government departments that provide services to the public, maintenance contractors who work for LAHC should be required to undertake Aboriginal cultural safety training and mental health training.

Recommendation:

Maintenance workers contracted by LAHC should be required to undertake Aboriginal cultural safety training, CALD cultural awareness training and mental health training.

Ensuring that root causes of repairs and maintenance issues are identified and addressed at the earliest opportunity

The majority of public housing tenants we advise and assist have reported repairs and maintenance issues on multiple occasions by the time they contact us. They contact us because despite reporting problems through the proper channels, works remain outstanding or alternatively have not been completed to a satisfactory standard. Many of them do not understand that LAHC is breaching their residential tenancy agreement by failing to attend to repairs and maintenance issues. There is also a large proportion of tenants who fear taking further action to compel LAHC to complete the necessary repairs.

We have many clients who have lived in homes that require essential repairs for significant periods of time, often for years. LAHC's policy to reduce maintenance and capital improvements to deliver its services within its budget² has had a significant impact on tenants, many of whom live in unsafe or unhealthy conditions.

We see many examples of 'band-aid' repairs being carried out by LAHC contractors. Unfortunately it is not uncommon for repairs to be carried out which only temporarily fix the issues that gave rise to the need for the repair in the first place. We regularly hear from tenants who go through a lengthy process to get repairs done only to find themselves experiencing the same problems again within a relatively short time frame.

While it may appear to be cost-efficient to complete repairs with the minimum expenditure possible, the costs of multiple visits over months or years adds up, creating inefficiency for LAHC and placing a burden on tenants.

Case Study: Living in severe mould and damp

Terence was a HNSW tenant in the Inner Sydney area who had lived in his property for over 8 years. The property was freshly painted when he moved in and it appeared to be in good condition. However soon after the tenancy began, water started to come through the air vents in the ceiling and down the bedroom walls.

As a result, the property developed mould and dampness that became so severe that Terence, who suffered from chronic bronchitis, could no longer sleep in his bedroom. His bedding was constantly damp and he had to replace the linen and mattress because they were so mouldy. He began sleeping in a reclining chair in his lounge room – the driest place in the apartment. Terence tried to ventilate the property, but there were few windows. Friends helped him by scrubbing down the walls, something he could not do himself because of his disability. Despite these actions, the mould and damp persisted. The smell of mould and damp throughout the property was overwhelming. He told us that other residents were experiencing the same problems.

Terence repeatedly reported the issues to the Housing Contact Centre. He was told that mould was his responsibility, and that he should open the windows to ventilate the property. As Terence had already been doing everything he could to remove and prevent the mould he contacted our service for help.

² Auditor General Peter Achterstraat, 'Making the Best Use of Public Housing' (Performance Audit, Audit Office of NSW, 2013), p18.

Following RLC's advocacy LAHC properly investigated and determined that the problem was caused by the foundations of the building, and that it was beyond his control. Works were carried out and the property was temporarily brought back to a reasonable state of repair. Terence was also given a rent reduction as a result of LAHC's failure to adequately address the repairs issues in a timely manner. In 2014 Terence assisted our service to raise the issue more broadly by making a film about the issues he suffered which can be seen here.

LAHC noted that it was likely that more complex structural repairs were required to completely remedy the problem. Unfortunately Terence's property did flood again and as recently as last week he visited RLC seeking assistance. He had already contacted the HCC to report that his ceiling was leaking and mould was building up. LAHC did send someone to repair the damage but the ceiling is still leaking and Terence has a bucket in his room to catch the water. He is currently waiting for LAHC to send someone out again to repair the problem properly.

This case study shows the difficulty tenants face in getting LAHC to investigate situations where there may be a need for structural repairs. This is even the case where a number of tenants in the same building are experiencing issues that indicate there is an underlying problem with the building.

Recommendation:

LAHC should implement a procedure for identifying systematic trends in repairs reporting. There should be alerts when a problem has been reported over a certain number of times. There should be alerts when a similar problem is identified in multiple units or dwellings in the same area.

Improvements to quality control and oversight

There is presently no oversight or quality control over repairs and maintenance work completed. In many cases contractors report that a repair has been completed when it hasn't or has been done to a poor standard. While the tenant can raise another maintenance order this often doesn't resolve the issue as LAHC have been notified that the repair has been completed and the maintenance line staff are unwilling to raise another order.

Having no quality control system to check work done leads to poor quality of repairs and maintenance. It also results in LAHC paying for maintenance that has not been done.

Recommendation:

A system be designed to check repair and maintenance work undertaken, either by tenants themselves or by LAHC staff or an independent body.

The split between assets and tenancy management

In July 2011 it was announced that HNSW and LAHC would be split and would be managed as two separate entities under two different Ministerial portfolios. The practical effect was that housing assets and maintenance were separated from housing management. In August 2013 the Department of Family and Community Services (FACS) announced that the Premier had transferred LAHC into FACS, but that LAHC and HNSW would remain separate entities.

Tenants are affected by this split when attempting to get repairs done on their properties. The structure leads to difficulty in communicating and coordinating repairs for tenants. Tenants ultimately deal with HNSW and therefore they rely on good communication between the two entities.

In repairs and maintenance, the split means that often in representing LAHC in the Tribunal, HNSW staff will come to a matter without instructions or authority to agree to repairs, or that HNSW staff will agree to unrealistic deadlines or repairs that are not able to be completed.

The division is not only difficult for tenants, it is also difficult for housing managers and is inefficient. It results in unnecessary Tribunal appearances and preparation for LAHC and HNSW, increased administration and increased inter-agency communication.

Recommendation:

There should be a systematic review of the repairs and maintenance system, with a focus on the cost efficiency of the split between HNSW and LAHC.

d) Statutory obligations on tenants to take care of properties and report maintenance needs in a timely fashion

In our view, it is reasonable that tenants have a statutory obligation to take care of their property and report maintenance needs in a timely fashion. It is apparent from our experience assisting public housing tenants in relation to repairs and maintenance that delays often occur despite reporting their maintenance issues in accordance with their obligations. Unfortunately the lack of responsiveness to reports about maintenance issues may act as a deterrent to tenants fulfilling this obligation as diligently as they may if their reports were dealt with in a timely manner.

Tenants have reported that it is difficult to get information about when their repairs will be completed; contractors often repeatedly attend properties with no information, incorrect information or without the equipment or expertise to complete the work; and contractors are often hours or even days late for a scheduled appointment, or do not come at all.

Case Study: Non-compliance with Tribunal orders

Susan (not her real name) had been a HNSW tenant in Inner Sydney for nearly 20 years when she was transferred to a property that was in need of significant repair.

The repairs needed were all related to water ingress in the property which had caused severe damage in the kitchen and bathroom. Susan was particularly concerned about water running from the ceiling lights.

Over a period of four months, Susan continually reported the repairs to the Housing Contact Centre. The property was inspected on a number of occasions, but no repairs were carried out. The problems became worse, water began to seep through walls and the cupboards in her kitchen filled with mould.

Eventually, Susan came to our service for assistance. We helped her to make an application to the Tribunal seeking orders for repairs. The Tribunal made orders for numerous repairs to be completed by a specific date however the orders were not complied with.

This pattern continued and over a 2 year period, Susan had to attend the Tribunal 8 times because the Tribunal orders were not complied with. LAHC did not dispute that the repairs needed to be done, but still continued to miss the deadlines set by the Tribunal.

On a number of occasions the Tribunal ordered that LAHC pay Susan compensation because of its failure to complete repairs and the impact this was having on her employment and living conditions. Eventually after two years of Tribunal attendances and negotiations with her employer about changing shifts and leaving work early to meet contactors who sometimes did not turn up, the repairs the Tribunal had ordered were completed.

Case Study: Mother and children with health issues living with severe mould and repair issues

Maree (not her real name) and 5 children lived in a Housing NSW property for around 10 years. Over time their home became severely infested with mould despite Maree's efforts to clean and eradicate it. Maree and some of her children had severe respiratory illnesses which were exacerbated by the mould. Furniture, clothing and many other items were so badly damaged, the family could not use them any more and were forced to throw them out.

In addition to the mould, the home was infested with termites which resulted in severe damage throughout the property. There were holes in the walls, ceilings and floors, allowing rats to get into the property. Part of the ceiling collapsed due to water damage and the family were told not to use the balcony as it was unsafe. Although all of these issues were reported to the Housing Contact Centre many times, the property was not repaired.

Around six months after the ceiling collapsed, the family were temporarily relocated to another property nearby so that the extensive work required could finally be done. The temporary accommodation was significantly smaller than their home and some of the children had to sleep in the lounge room. The family accepted it anyway as they could not continue to live in the property while it was in such a bad state of repair. They were prepared to put up with the overcrowding if it meant their home would be fixed.

Maree came to our service six months after they were relocated because works on their home had not yet started, she wanted to take the matter to the Tribunal. Our service advocated for the family with LAHC directly to try to get an outcome without needing to take it to the Tribunal. Within two weeks of our contact with LAHC, works began on the property. Four months later, the work was completed and the property and the family moved back into their home. The family also received financial compensation, however this aspect of the matter was not settled until nearly 12 months after Maree contacted our service.

We firmly believe that the family would not have obtained these outcomes without the intense advocacy and many hours of work that our service provided.

These case studies show that even when tenants follow the correct process to try to get repairs to their homes, they can still wait years for the work to be done. This is the case even in circumstances where there are serious health and safety risks to vulnerable people and children.

Tenants do not have access to the people at LAHC who can take action when the system is failing. Tenants should not need to get assistance from a tenancy service to get repairs done and it is an

unnecessary drain on our resources.

Recommendation:

The current obligations on tenants to take care of properties and report maintenance are appropriate. Any evaluation of tenants' responsibilities should take into account the difficulties in reporting repairs to LAHC.

e) Measures to meet the special maintenance requirements of aged and disabled tenants

The HNSW Disability Modifications Policy³ provides information about when tenants with a disability may be able to have their homes altered to meet their specific needs. Unfortunately even in circumstances where a tenant makes a reasonable application for a modification that is essential to them living safely in the home, LAHC sometimes does not appear to prioritise the work at the appropriate level.

Case study: Getting modifications for people with disabilities

Sam (not his real name) had lived in his HNSW property for 19 years. He had a chronic illness that limited his mobility. The staircase leading to the bedroom had a handrail on the first part of the stairs. When going up the second part of the stairs Sam had to hold on to the wall.

In early 2015, an occupational therapist visited Sam and sent HNSW a report about the need to install a handrail for the second part of the stairs. Unfortunately, the handrail was not installed and later that year Sam fell while walking up the second part of the stairs. As a result Sam sustained significant injuries and was hospitalised for more than a week.

RLC contacted HNSW on Sam's behalf requesting again that the handrail be extended. Five days later, a new handrail was installed at Sam's house.

This case study shows that modifications required for people with disabilities are not given the appropriate level of priority that is required to ensure they can move around their homes safely.

Public housing is designed to provide housing for those who are most in need. The Auditor General's Report projected that in 2021, 23% of all social housing clients would have a significant disability. The Act should impose stronger responsibilities for social housing landlords to ensure that tenants with significant disabilities are not forced to live in properties that are inappropriate or unmodified for them.

Recommendation:

The modifications policy of HNSW should be amended to give maximum timeframes for LAHC to respond to request for modifications.

The Act should be amended to allow tenants in social housing properties recourse to the Tribunal when necessary modifications are not completed in a reasonable amount of time.

³ http://www.housing.nsw.gov.au/forms,-policies-and-fact-sheets/policies/modifications-policy

⁴ Auditor General Peter Achterstraat, 'Making the Best Use of Public Housing' (Performance Audit, Audit Office of NSW, 2013), p12.

5. RLC's Recommendations

- 1. Section 156B of the *Residential Tenancies Act 2010* (NSW) be repealed.
- LAHC should develop a better system for evaluating the work done by contractors, identifying repeat repair jobs and systemic trends in repairs, and provide for greater participation and input from tenants.
- 3. Maintenance contractors in public housing should be required to undertake Aboriginal cultural safety training, CALD cultural awareness training and mental health training.
- 4. LAHC should implement a procedure for identifying systematic trends in repairs reporting. There should be alerts when a problem has been reported over a certain number of times. There should be alerts when a similar problem is identified in multiple units or dwellings in the same area.
- 5. A system be designed to check repair and maintenance work undertaken, either by tenants themselves or by LAHC staff or an independent body.
- 6. There should be a systematic review of the repairs and maintenance system, with a focus on the cost efficiency of the split between HNSW and LAHC.
- 7. The current obligations on tenants to take care of properties and report maintenance are appropriate. Any evaluation of tenants' responsibilities should take into account the difficulties in reporting repairs to LAHC.
- 8. The modifications policy of HNSW should be amended to give maximum timeframes for LAHC to respond to request for modifications.
- 9. The Act should be amended to allow tenants in social housing properties recourse to the Tribunal when necessary modifications are not completed in a reasonable amount of time.

6 Appendix: Photos of repairs issues in public housing properties.





























