



**Repairing Standard Enforcement Order  
Ordered by the Private Rented Housing Committee**

**PRHP REFERENCE PRHP/RP/13/0008**

**Re: Eastmost first floor flat forming and known as 88D Kemnay Gardens, Dundee DD4 7TP in the County of Angus being the subjects described in and disposed by Disposition by City of Dundee District Council in favour of Paul David McGregor and Helen O'Fee Mackenzie dated 19 July and recorded in the Division of the General Register of Sasines for the County of Angus on 8 September, both months in the year 1995.**

**The Parties**

**Mr. Bartolomiej Goluch, residing at the house (the "Tenant")**

**Mr. Paul McGregor and Ms. Helen Mackenzie, both residing at 2 Bennan Gardens, Broughty Ferry, Dundee DD5 3EJ (the "Landlord")**

**NOTICE TO PAUL MCGREGOR AND HELEN MACKENZIE (the "Landlord")**

Whereas in terms of their decision dated 28 August 2013, the Private Rented Housing Committee 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") and in particular that the Landlord has failed to ensure that the house meets the repairing standard in that:-

- (1) the house is wind and watertight and in all other respects reasonably fit for human habitation;
- (2) 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.

The Private Rented Housing Committee now requires the Landlord to carry out such work as is necessary for the purposes of ensuring that the house 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 Private Rented Housing Committee requires the Landlord to:

1. carry out repairs to, or replace, the windows in the house in order to ensure that they are wind and watertight and are capable of being safely and properly opened, closed and locked;
2. improve the means of ventilation and heating in the house including, without limitation, installing mechanical ventilation in the kitchen and bathroom and providing adequate background heating to ensure that the house can be adequately ventilated while maintaining a reasonable ambient temperature within the house and avoiding the build up of excessive condensation;
3. clean out the rainwater guttering and ensure that rainwater from the roof discharges properly into the downpipes and does not leak or overflow,
4. remove all evidence of mould from the house;
5. treat and eradicate the dampness around the chimney breast in the living room.

The Private Rented Housing Committee order that the works specified in this Order must be carried out and completed within the period of 8 weeks from the date of service of this Notice.

**A landlord or a tenant aggrieved by the decision of the Private Rented Housing Committee may appeal to the Sheriff by summary application within 21 days of being notified of that decision.**

Where such an appeal is made, the effect of the decision and of the order is suspended until the appeal is abandoned or finally determined, and where the appeal is abandoned or finally determined by confirming the decision, the decision and the order will be treated as having effect from the day on which the appeal is abandoned or so determined: IN WITNESS WHEREOF these presents typewritten on this and the preceding page are signed by Derek William Hogg, Chairperson of the Private Rented Housing Committee, at Edinburgh on the Twenty eighth day of August Two Thousand and Thirteen in the presence of the undernoted witness:-

WITNESS..... **E Mitchell**

**EVAN MITCHELL**

**8 MELVILLE STREET**

**EDINBURGH**

**D Hogg**



**DETERMINATION BY PRIVATE RENTED HOUSING COMMITTEE**

**STATEMENT OF DECISION OF THE PRIVATE RENTED HOUSING COMMITTEE  
UNDER SECTION  
24(1) OF THE HOUSING (SCOTLAND) ACT 2006**

**In connection with**

**Property at 88D Kemnay Gardens, Dundee DD4 7TP  
(hereinafter referred to as the "house")**

**PRHP REFERENCE – PRHP/RP/13/0008**

**The Parties**

**Mr. Bartolomiej Goluch, residing at the house (the "Tenant")**

**Mr. Paul McGregor and Ms. Helen Mackenzie, both residing at 2 Bennan Gardens,  
Broughty Ferry, Dundee DD5 3EJ (the "Landlord")**

**DECISION**

The Committee, having made such enquiries as is 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 (hereinafter referred to as "the Act") in relation to the house concerned, and taking account of the written documentation attached to the application and written representations submitted by the parties; the representations made by the parties at the hearing; and the findings at an inspection of the house, determined that the Landlord had failed to comply with the duty imposed by Section 14(1) (b) of the Act.

**Background**

1. By application dated 21 March 2013 and acknowledged by the Private Rented Housing Panel (hereinafter referred to as "PRHP") by letter dated 16 May 2013 the Tenant applied to the PRHP for a determination of whether the Landlord had failed to comply with the duty imposed by Section 14(1)(b) of the Act.

Section 14(1)(b) provides that the landlord in a tenancy must ensure that the house meets the repairing standard set out in the Act at all times during the tenancy. The repairing standard (hereinafter referred to as the "Repairing Standard") is set out in Section 13(1) of the Act. Section 13(1) provides as follows:-

"13(1) A house meets the repairing standard if—

- (a) the house is wind and water tight 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."

Section 13 (3) of the Act makes clear that in determining whether for the purposes of section 13(1)(b) of the Act a house meets the Repairing Standard during the tenancy regard is to be had to (a) the age, character and prospective life of the house, and (b) the locality in which the house is situated.

Section 15(1) of the Act also provides that in the case of houses which form part of larger premises (such as the present case where the house is a flat within a larger tenement block), the reference in Section 13(1)(b) to the house includes reference to any part of the larger premises which the owner of the house is responsible for maintaining, either solely or in common with others, by reference to ownership of the house, or in terms of title burdens or otherwise. Accordingly, Section 15(1) is relevant to any consideration of whether any common parts of the larger tenement of which the house forms part (such as rainwater guttering and downpipes) meet the Repairing Standard.

2. The application was submitted to the PRHP for and on behalf of the Tenant by Dundee North Law Centre. The application by the Tenant stated that the Tenant considered that the Landlord had failed to comply with the duty to ensure that the house meets the Repairing Standard and that the Landlord had failed to ensure compliance with Section 13(1)(a) of the Act (in that the house was not wind and water tight and in all other respects reasonably fit for human habitation). The application did not set out in detail the specific complaints of disrepair but did refer to the terms of a survey report commissioned by Dundee North Law Centre on behalf of the Tenant and prepared by Graham & Sibbald Chartered Surveyors, dated 24 January 2013, a copy of which accompanied and was referred to in the application. That report was commissioned in order to report on the presence of dampness in the house. Its main findings, which effectively represented the Tenant's complaints of disrepair within his application, were:-
  - 2.1. Mildew or mould was found on a number of surfaces within the house, predominantly the external walls and surfaces behind Tenant's fixtures and fittings.
  - 2.2. Isolated significant moisture meter readings identified dampness in various locations within the house.
  - 2.3. A number of windows in the house did not operate or close correctly.
  - 2.4. The external rainwater guttering was extensively clogged with vegetation and debris.
3. The Tenant submitted evidence of notification of the disrepair complained of by recorded delivery post. A copy of the missives of let was submitted as a production.
4. By letter dated 18 June 2013 the President of the Private Rented Housing Panel intimated a decision to refer the application under Section 23(1) of the Act to a Private Rented Housing Committee (hereinafter referred to as the "Committee").

The Committee comprised the following members:

Mr. Derek Hogg, Legal Member  
Mr. David Godfrey, Surveyor Member  
Mr. Michael Scott, Housing Member

5. The Committee served Notice of Referral under and in terms of Schedule 2 Paragraph 1 of the Act upon the Landlord. Following service of that notice, no

written representations were made by or on behalf of the Landlord. The Tenant did not submit written representations beyond what was set out in his application to the PRHP and the accompanying survey report.

6. The Committee inspected the house on the morning of 5 August 2013. The Tenant was present as was his wife, Mrs. Dominika Goluch. The Landlord did not attend the inspection and was not represented. The PRHP provided an interpreter, both at the inspection and at the hearing, given that Mr. and Mrs. Goluch are Polish.
7. Following the said inspection the Committee held a hearing at the Douglas Community Centre, Balmoral Avenue, Dundee. Both the Tenant and the Tenant's wife attended the hearing, as did one of the Landlords, Mr. Paul McGregor. The Tenant had indicated that their solicitor, Paul Kinghorn of Dundee North Law Centre, was due to attend the hearing but he did not appear. The Committee considered the findings from the inspection, representations and productions and made their determination of the application.

#### **Tenant's representations**

8. Both the Tenant and his wife expressed their dissatisfaction with the state of the house and in particular, the lack of proper heating and the extensive presence of dampness. The state of the house had been a source of considerable stress to them and had resulted in them not being able to use one of the bedrooms at all because of the presence of dampness. At the hearing, the Tenant produced a large number of photographs showing various areas of the house which had displayed signs of dampness during the course of the tenancy. The Tenant also produced a copy of a letter sent to the Tenant and his wife by the Landlord dated 27 February 2013 in which the Landlord set out their views on the state of repair of the house. In particular, the Landlord indicated in the letter that the Tenant's insistence on there being an ongoing problem with dampness was unmerited and that the solution to issues of condensation was to properly ventilate the house.
9. The Tenant was questioned by the Committee on the available means of heating in the house. The Tenant advised that, during the course of the tenancy, the Landlord had recommended that the Tenant introduce a calor gas heater. The Tenant had done so but had removed the heater after two months or so because its presence and use had made them feel worse in the house.

### **Landlord's representations**

10. Mr McGregor expressed his regret that matters had reached the stage of the hearing. When asked about his views on the Graham & Sibbald report which the Tenant had commissioned, he did not feel that the report disclosed anything which compelled him to take any particular action in relation to the house, but he did acknowledge that he may not have taken it as seriously as he should have.

### **Summary of the issues**

11. The issue to be determined is whether the house meets the Repairing Standard as laid down in Section 13 of the Act and whether the Landlord had complied with the duty imposed by Section 14(1) (b).

### **Findings in Fact**

12. The Committee made the following findings in fact:-
  - 12.1. On 13 October 2011 the Tenant entered into a lease with the Landlord for the let of the house. The Tenant occupied the house by virtue of a short assured tenancy in terms of the Housing (Scotland) Act 1988. The provisions outlined in Chapter 4 of the Act apply. The Tenant remained in occupation of the house at the time of the inspection.
  - 12.2. Whilst in occupation of the house, the Tenant notified the Landlord of the required works to the house and submitted an application to the Panel on 21 March 2013.
  - 12.3. The Committee confined their inspection to the complaints in the Tenant's application. The inspection by the Committee on 5 August 2013 revealed:-
    - 12.3.1. The house comprises a first-floor flat within a three-storey block of six flats, originally constructed by the local authority.
    - 12.3.2. Extensive signs of dampness and mould growth were detected in the house, and in particular in the living room, bathroom and both bedrooms. Moisture meter readings which were taken gave a high reading in the living room adjacent to the chimney breast. Readings taken in other areas where there were clear signs of mould growth did not indicate dampness within the walls, which was indicative of condensation rather than penetrating dampness.

- 12.3.3. The windows in the house consist of double glazed units, a number of which do not open or close correctly. In particular, the window in the kitchen is not capable of being locked in the closed position. The window units do have trickle vents.
- 12.3.4. The only means of heating the house consisted of an electric fire in the living room and two relatively small portable oil heaters which were located in the bedrooms.
- 12.3.5. The bathroom had no means of mechanical air extraction, although it does have an external window.
- 12.3.6. The kitchen has no mechanical ventilation although again, the kitchen window is in an external wall.
- 12.3.7. Even from street level, it was clear that the front rainwater gutters of the block were heavily clogged with vegetation although at the time of the inspection, there were no visible signs of external staining of the external wall of the block.
- 12.3.8. Despite the Graham & Sibbald report suggesting that the block of which the house formed part did not have cavity wall insulation, the Committee found evidence of drill holes around the external walls of the block which were consistent with cavity wall insulation having been installed at some point in the past.
- 12.3.9. While not complained of in the Tenant's application, it was also noted that the house only has one battery-powered smoke alarm, which the Tenant indicated had been installed by the Landlord during the period of the tenancy. In order to comply with the Repairing Standard, the Landlord should have installed a mains-wired smoke detector.

### **Reasons for the Decision**

13. The Committee carried out an inspection of the house and in particular, closely examined the specified defects complained of by the Tenant and which were highlighted in the survey report which accompanied the Tenant's application. The Committee based its decision primarily on the evidence obtained during its inspection of the house, and also considered the representations made by the parties at the hearing.
14. The Committee concluded that the signs of mould and dampness within the house have been caused both by penetrating dampness – resulting from the



clogged rainwater gutters, dampness originating from the chimney breast in the living room and water ingress around the windows – and by condensation dampness, resulting from difficulties in the Tenant being able to both ventilate and heat the house, particularly having regard to the lack of adequate space heating in the house. The use of a calor gas heater was likely to have added to the condensation within the house, but even once that heater had been removed, the current electric fire and two oil heaters do not appear adequate to allow the house to be heated. In the Committee's view, the Landlord's duty to comply with the Repairing Standard includes a duty to provide a house which in respect of ventilation and heating can be reasonably heated to such an extent that there will be no dampness and so is reasonably fit for human habitation.

15. While Section 16(1)(b)(i) of the Act provides that the duty imposed on the landlord by Section 14(1) of the Act does not require any work to be carried out for which the tenant is liable by virtue of the tenant's duty to use the house in a proper manner, the Committee concluded that the lack of adequate space heating within the house meant that the tenant was unable to ventilate the house properly while still maintaining an adequate level of warmth within the house.

#### **Decision**

16. The Committee, considering the terms of Section 13(3) of the Act, determined that the Landlord had failed to comply with the duty imposed by Section 14(1) (b) of the Act.
17. The Committee found that the house does not meet the Repairing Standard in that:-
  - 17.1 the condition of the windows within the house and the presence of dampness in the living room, bathroom and both bedrooms means that the house is not wind and watertight and reasonably fit for human habitation. Accordingly the house does not meet the Repairing Standard laid down in Section 13(1)(a) which states that the Repairing Standard is met if the house is wind and watertight and in all other respects reasonably fit for human habitation;
  - 17.2 the condition of the windows, and also the external rainwater guttering do not meet the Repairing Standard laid down in Section 13(1)(b) which states that 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;

- 17.3 the provision of only a battery-powered smoke alarm does not meet the Repairing Standard laid down in Section 13(1)(f) which states that the house has satisfactory provision for detecting fires and for giving warning in the event of fire or suspected fire. As this was not a matter specifically complained of by the Tenant in his application, the Committee cannot include in any Repairing Standard Enforcement Order a requirement on the Landlord to instal a mains-wired smoke detector in the house, but the Committee does wish to bring this to the Landlord's attention and to make clear that if this matter had been included in the Tenant's application, the Committee would have so required.
18. The Committee proceeded to make a Repairing Standard Enforcement Order as required by Section 24(2).
19. The Committee were of the view that the Landlord would require to:
- 19.1. carry out repairs to, or replace, the windows in the house in order to ensure that they are wind and watertight and are capable of being safely and properly opened, closed and locked;
- 19.2. improve the means of ventilation and heating in the house including, without limitation, installing mechanical ventilation in the kitchen and bathroom and providing adequate background heating to ensure that the house can be adequately ventilated while maintaining a reasonable ambient temperature within the house and avoiding the build up of excessive condensation;
- 19.3. clean out the rainwater guttering and ensure that rainwater from the roof discharges properly into the downpipes and does not leak or overflow,
- 19.4. remove all evidence of mould from the house;
- 19.5. treat and eradicate the dampness around the chimney breast in the living room.
20. The Landlord is also reminded that Section 14(2) of the Act makes clear that the landlord's duty in terms of Section 14(1) of the Act to ensure that the house meets the Repairing Standard includes a duty to make good any damage caused to the house by carrying out any work for the purposes of complying with the Section 14(1) duty.
21. The Committee considered how long the Landlord would require to carry out the works in the circumstances. The Committee were of the view that eight weeks would be sufficient.
22. The decision of the Committee was unanimous.

**Right of Appeal**

23. A Landlord or Tenant aggrieved by the decision of the Private Rented Housing Committee may appeal to the Sheriff by Summary Application within 21 days of being notified of that decision.

**Effect of Section 63**

24. Where such an appeal is made, the effect of the decision and of the order is suspended until the appeal is abandoned or finally determined, and where the appeal is abandoned or finally determined by confirming the decision, the decision and the order will be treated as having effect from the day on which the appeal is abandoned or so determined.

# D Hogg

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Derek Hogg  
Chairperson, 28 August 2013

