

RSEO



## Repairing Standard Enforcement Order

Ordered by the Private Rented Housing Committee

**PRHP Ref: PRHP/RP/14/0058**

**Re: Property at 40 Clarence Gardens, Glasgow, G11 7JN ("the Property")**

**Title No: GLA 32166**

**The Parties:-**

**Miss Ailidh MacGregor, 40 Clarence Gardens, Glasgow, G11 7JN ("the Tenant")**

**Jacqueline McCluskey, c/o Countrywide Letting Agents, 4 Kersland Street, Glasgow, G12 8BL.  
("the Landlord")**

### **NOTICE TO Jacqueline McCluskey ("the Landlord")**

Whereas in terms of their decision dated 30th July 2014, 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 property is

**Compliant with the duties imposed by sections 13 (1) (a) and 14 of the Act by ensuring that the windows in the house are wind and water tight and in all other respects reasonably fit for human habitation.**

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 replace or repair all of the windows within the property to eradicate any condensation within the double glazing units and for all

windows to be sealed adequately to ensure that the windows are wind and water tight and in all other respects reasonably fit for human habitation.

The Private Rented Housing Committee order that the works specified in this Order must be carried out and completed by 26<sup>th</sup> September 2014.

**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.

**Please note that in terms of section 28(1) of the Act, a landlord who, without reasonable excuse, fails to comply with a RSEO commits an offence liable on summary conviction to a fine not exceeding level 3 on the standard scale. A landlord (and that includes any landlord's successor in title) also commits an offence if he or she enters into a tenancy or occupancy arrangement in relation to a house at any time during which a RSEO has effect in relation to the house. This is in terms of Section 28(5) of the Act.**

In witness whereof these presents type written on this and the preceding page(s) are executed by Simone Sweeney, Solicitor, PRHP, Europa Building, 450 Argyle Street, Glasgow, G2 8LH, Chairperson of the Private Rented Housing Committee at Glasgow on 1<sup>st</sup> August 2014 before this witness:-

<sup>1</sup>  
**B Divers**

witness

BARRY JOHN DIVERS

name in full

**S Sweeney**

Chair

C/O ADVOCATES' LIBRARY Address

PARLIAMENT HOUSE

EDINBURGH

ADVOCATE Occupation



## 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, 40 Clarence Gardens, Glasgow, G11 7JN ("the property")

Miss Allidh MacGregor, 40 Clarence Gardens, Glasgow, G11 7JN ("the tenant")

Jacqueline McCluskey, c/o Countrywide Letting Agents, 4 Kersland Street, Glasgow, G12 8BL ("the landlord")

Reference number: PRHP/RP/14/0058

#### Decision

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 ("the Act") in relation to the property concerned and taking into account the findings of the inspection, evidence led at the hearing and the written representations and documentation submitted to the Private Rented Housing Panel ("PRHP") by the parties, the Private Rented Housing Committee ("the committee") determine that there has been a failure on the part of the landlord to comply with the duty imposed by Section 14 (1) (b) of the Act.

#### Relevant Statutory Provisions

Section 13: The repairing standard

(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 14: Landlord's duty to repair and maintain

(1) The landlord in a tenancy must ensure that the house meets the repairing standard—

(a) at the start of the tenancy, and

(b) at all times during the tenancy.

### **Background**

1. By application dated 3<sup>1st</sup> January 2014, the tenant applied to the PRHP seeking a determination of whether or not the landlord had failed to comply with the duties imposed by Section 14 (1) (b) of the Act.
2. In the application the tenant stated that the landlord had failed to comply with section 13 (1) (a) of the Act ("the repairing standard").
3. In her application, at section 4, the tenant specified how she considered the landlord to have failed to meet the repairing standard:

*"The windows in the property are always extremely wet with puddles on the windowsills. We've raised the issue a number of times and they keep sending someone out to look but we're told to keep the windows open when we can to help condensation and that they can't do anything. Mould is growing on the windows, sills and walls which we clean as much as we can and constantly keep towels on the sills. I have a 1 year lease and have been raising this for months."*
4. In her application, at section 5, the tenant specified the nature of the work which she considers requires to be done, as:

*"The windows need replaced."*
5. In support of her application, the tenant had submitted copies of emails which the tenant and the joint tenant had exchanged with the landlord's letting agents, Countrywide, dated, 18<sup>th</sup> October, 2<sup>nd</sup>, 17<sup>th</sup> and 18<sup>th</sup> December 2013 and 16<sup>th</sup>, 17<sup>th</sup>, 21<sup>st</sup> and 26<sup>th</sup> February 2014. Also submitted with the application was a document headed, 'Details of a lease'. In this document the tenant explained that she had never received a copy of a lease between the parties. The document set out that Alison Scott was the joint tenant to the agreement.
6. By notice of referral dated 11<sup>th</sup> March 2014, the President of PRHP, referred the application to a Private Rented Housing Committee following her consideration of the application in terms of Section 23 (1) of the Housing (Scotland) Act 2006.
7. The landlord's letting agents had responded in writing to the application by completing the form attached to a letter from PRHP dated, 11<sup>th</sup> March 2014. In the

form the letting agents indicated that it was their intention to attend a hearing. The form was signed by a representative of the landlord. The title deeds of the property were made available to the committee. The title identified the owner of the property as Jacqueline McCluskey.

8. An inspection of the property and a hearing before a committee were assigned for 11<sup>th</sup> July 2014. The committee comprised the following members:
  - (i) Miss Simone Sweeney, Legal member;
  - (ii) Ms Carol Jones, Surveyor member and;
  - (iii) Mr Tom Keenan, Housing member.
  
9. An inspection of the property took place at 10am on 11<sup>th</sup> July 2014. The joint tenants were present. There was no appearance by the landlord. Neither was there a representative from the letting agents.
  
10. Following the inspection, a hearing of evidence took place within the Europa Building, 450 Argyle Street, Glasgow. In attendance at the hearing were the joint tenants, each of whom gave evidence to the committee. Also in attendance, as observers, were the mothers of each of the joint tenants. Neither the landlord nor a representative from the letting agents attended the hearing. The committee heard representations from the joint tenants and considered these together with the application and documentation provided by the parties. At the conclusion of the joint tenants' submissions, the committee adjourned to consider all the evidence presented to them and to make its determination.

#### **Submissions at the hearing**

11. The committee chair opened the hearing by setting out that the issue before the committee was whether, in view of the complaint within the tenant's application, the property met the repairing standard laid down at Section 13 of the Act at that date. The complaint related to the state of repair of the windows. The chair referred to the issue which the tenant had set out in her application at section 5 of her application.
  
12. The tenant advised the committee that she had moved into the property in August 2013 as a joint tenant with Ms Scott who had been residing at the property since August 2012. The tenant had brought to the attention of her landlord that there was an issue with the windows at an inspection of the property in October 2013. The tenant submitted that she had advised her landlord that water was coming in through the windows; that the windows were not wind and water tight and that dampness had developed around the windows. The tenant had identified the specific issues with each of the windows to the landlord during the inspection. The tenant advised that the

window sills of the living room often developed puddles of water during periods of wet weather and that she and Ms Scott required to place bath towels on the window sills to soak up the lying water. The tenant submitted that the water came in each of the three windows of the living room, the window of the kitchen and through the windows in each of the two bedrooms of the property. When asked what the landlord's response had been, the tenant submitted that landlord had accepted that there was an issue with the windows, had confirmed that they had previously been re-sealed and that she could not afford to have the windows replaced. Matters had been left at that time with the landlord providing the tenants with an undertaking that she would arrange for the windows to be re-sealed once again.

13. With reference to email submitted in support of her application, dated, 17<sup>th</sup> December 2013, the tenant submitted that she had communicated with the letting agents that the issue with the windows was continuing and that there had been no action taken following on from the inspection in October 2013 despite the undertaking provided by the landlord at that date .
14. The tenant gave evidence that, in response to her email, the letting agents had arranged for a tradesman from a firm called Rapid Response to attend the property to inspect the windows. Both tenants confirmed that this had occurred in January 2014. It was the tenant's evidence that the tradesman's advice was that nothing could be done to address the windows letting in water except to replace them entirely. The tenant submitted that this had been the advice of another tradesman who had attended the property in connection with an entirely separate issue with the bathroom but whom the tenant had requested to inspect the windows. On 7<sup>th</sup> February 2014, the joint tenants complained again to the letting agents of water coming in through the windows. Again the letting agents arranged for a tradesman to attend the property to inspect. The tradesman confirmed that the windows were not water tight. The tenant submitted that the tradesman had commented that he identified a smell of dampness within the property. The tenant advised that the letting agents had indicated that they would make the landlord aware of the ongoing issue. There had been some communication between the tenants and the letting agents thereafter about the possibility of a further inspection of the property by the landlord or the landlord's mother on her behalf but no inspection had ever occurred. Since then the landlord had taken no action to address the issue.
15. The tenant provided submissions that she occupied the first bedroom which the committee had inspected. The tenant referred to significant mould growth having developed on the window sill of the bedroom she occupied which she would wash away at regular intervals. She suffered from asthma which meant that she could not

open the windows of the bedroom. The tenant believed that the conditions were aggravating her asthma.

16. The tenant stated that the property was very warm in the summer months but between September and April it became cold and the problem with condensation around the windows was significantly worse during those months. The windows throughout the property would be open regularly throughout the summer as the flat became warm when the sun was shining through the windows. She confirmed that the windows were double glazed and that electric heating was the source of heating in the property. The tenants found the electric heating to be expensive and made use of convector heaters which they had positioned in the living room and in each of the bedrooms.
17. The tenant provided evidence to the committee that she had received a telephone call the previous week from the letting agents. The letting agents had confirmed, on behalf of the landlord, that the windows would be replaced. No timescales had been provided.
18. The joint tenant, Ms Scott, submitted, also, that there was an issue with the windows letting in water in the living room, kitchen and bedrooms. Ms Scott confirmed the evidence of the tenant that the landlord had inspected the property in October, that the complaint with the windows had been communicated to the landlord and that she had provided an undertaking to re-seal the windows as she had been required to do in the past but that she could not afford to replace the windows. She submitted that in the living room there are three windows, when one is sitting in the living room area, there is a draught coming through the windows and at times rain comes in and that, in her submission, this is because they are not wind and water tight. Ms Scott confirmed that the emails produced in support of the tenant's application dated, 16<sup>th</sup>, 17<sup>th</sup> and 21<sup>st</sup> February 2014 were sent by her to the letting agents. These emails contained complaints about the issue with the windows of the property. Ms Scott confirmed the evidence of the tenant about the letting agents having arranged tradesmen to inspect the property and their comments about the windows requiring to be replaced, in full. Ms Scott advised the committee that one of the tradesman had commented that there was a smell of dampness within the property. Ms Scott confirmed the evidence of the tenant that no action had been taken by the landlord to address the issue.

#### **Summary of the issues**

19. The issues to be determined are;

- (i) whether the landlord has complied with the duty imposed by sections 13 (1) (a) and 14 of the Act by ensuring that the house is wind and water tight and in all other respects reasonably fit for human habitation and;
- (ii) whether the landlord has complied with the duty imposed by Section 14 (1) (b).

### **Findings in fact**

- 20. The committee make the following findings in fact:
- 21. That the tenancy between the parties for the property is dated 20<sup>th</sup> August 2013 being the date on which the tenancy commenced. That Jacqueline McCluskey is the landlord. The lease is a short assured tenancy in terms of the Housing (Scotland) Act 1988. The provisions of Chapter 4 of the Act apply.
- 22. That, during an inspection of the property in October 2013, the landlord was made aware of the tenants' complaints of there being an issue with the windows not being wind and water tight, that the landlord gave an undertaking to the tenants that she would arrange for the windows to be re-sealed.
- 23. That the tenant submitted an application to the PRHP on 3<sup>1st</sup> January 2014.
- 24. That a further inspection of the property took place in February 2014, that the landlord was again made aware by the tenants' that their complaint of the windows not being wind and water tight continued.
- 25. That no action has been taken by the landlord to address the tenants' complaint.
- 26. That a representative of the landlord's letting agents', Countrywide Letting Agents, responded to a Notice of Referral from the PRHP of 11<sup>th</sup> March, indicating that there would be representation for the landlord at a hearing of the committee. That the landlord was notified of the date, time and place of the inspection and hearing under cover of letter of 20<sup>th</sup> June 2014 from the PRHP. That there was no appearance by the landlord nor the letting agents at either inspection or the hearing and that no written representations were submitted by or on behalf of the landlord.
- 27. That on the date of the inspection, the weather was dry, sunny and warm.
- 28. That the property comprises a 1st floor flat in a 3 storey block of flats built circa 1980 and located in Hyndland, Glasgow. The property is situated in a very good residential area in the west end of Glasgow around 3 miles west of the city centre. The block has a facing brick exterior with part tile cladding and it has a flat roof. There is a security



door entrance system, communal gardens and parking. The accommodation comprises a hall, living room, 2 double bedrooms, bathroom (internal) and kitchen. The property has electric heating with a mix of storage heaters and wall mounted panel heaters. The windows are upvc double glazed.

29. That on inspection of bedroom 1, occupied by the tenant, the committee found there to be one upvc double glazed window. Condensation was present between the panes in the lower part of the window where the seal of the double glazing unit had failed. Mould growth as a result of high moisture content in the air leading to condensation was also present on the window frames, sills and surrounds. An electric panel heater was fitted to the wall to the right of the window.
30. That on inspection of bedroom 2, occupied by Ms Scott, the committee identified two windows. The windows were of the same material throughout the property. There was no evidence of condensation within the window panes indicating that the double glazed seals were intact. There was significantly less condensation related mould growth in bedroom 2. The windows in both bedrooms were facing out onto the rear of the property. An electric panel heater was fitted to the wall of the bedroom.
31. That, on inspection of the kitchen, the committee identified two windows facing onto the front of the building. The windows were above the sink. The committee identified mould growth along the window sill. The windows were open. There was no heating in the kitchen.
32. That, on inspection of the living room, the committee identified 3 windows facing onto the front of the property. That there was evidence of condensation within the lower panes in the middle and right hand side windows where the seals of the double glazing units had failed. That there was evidence of mould on the window frames, sills and surrounds. That there was little ventilation to avoid condensation developing. That the age, poor quality and low energy efficiency of the windows generally contributed to the extent of the condensation. A night storage electric heater was fitted to the wall in the living room and the tenant said that she did not use it.
33. That, on inspection of the property, the committee found that the windows were not wind and water tight and in all other respects reasonably fit for human habitation and therefore the property does not meet the repairing standard of section 13 (1) (a) of the Act.

#### **Reasons for decision**

34. The committee accepted the evidence of both tenants that during an inspection of the property in October 2013 the tenants made a formal complaint to the landlord that

they did not consider the windows to be wind and watertight and this complaint was not disputed by the landlord. The committee accepted the evidence of the tenants that the landlord had confirmed that she had had the windows re-sealed in the past and provided them with an undertaking that she would do this again. The committee accepted the evidence of the tenants that she could not afford to replace the windows.

35. In support of her application of 31<sup>st</sup> January 2014, the tenant had submitted to the PRHP, copies of emails which had been sent to the letting agents by herself and joint tenant, Ms McGregor, dated 18<sup>th</sup> October, 17<sup>th</sup> December 2013 and 16<sup>th</sup> and 17<sup>th</sup> February and 21<sup>st</sup> February 2014 complaining of water coming in through the windows.

36. The committee accepted the tenants' evidence that their complaint had been raised with the letting agents again in February 2014, that another tradesman had inspected the windows on 7<sup>th</sup> February and had confirmed that the windows were not water tight and that the letting agents reported the ongoing issue to the landlord. The committee noted the content of the email of 16<sup>th</sup> February from Ms Scott to the letting agents read,

*"I am just emailing in regards to our recent flat inspection. We were hoping to hear the results from you, especially in regards to the windows. I understand that my flatmate, Ailidh, has been in contact with yourselves and the landlord several times with regard to the situation with the windows. We have also had someone out from Rapid Response to look at the windows, as well as someone from Countrywide. Both men informed us that there is very little that can be done. The windows are not water tight, in fact they are far from it. If you sit next to the windows on the sofa when it is raining, then the rain comes through the windows, and you will get wet. Despite us frequently wiping down the windows, cleaning them every couple of days, keeping towels on the windowsills and using moisture catching products, the wood round the windows is rotting away. There is mould on the walls, the curtains, and on the handles for the windows. The man sent out from Countrywide even commented that the flat smells like mould.*

*When the landlord came out to view the flat she said she said that she could only afford to replace the bathroom, and not the windows. However, as we are still paying rent every month for a flat that is not watertight, we are obviously not pleased with having nothing done. We were just wondering if the recent flat inspection brought us any further forward to having at least something done to improve the situation."*

The committee was satisfied that the landlord had received intimation of the tenant's complaint at the inspection in October 2013, by way of emails of 18<sup>th</sup> October and 17<sup>th</sup> December 2013 from the tenant to the letting agents, from the letting agents after their tradesman's inspection of 7<sup>th</sup> February 2014 and from the email from Ms Scott to the letting agents of 16<sup>th</sup> February 2014. The committee accepted that no action had been taken by the landlord to address the complaint.

37. That, on inspection, the committee found that some of the seals to the double glazing units in the windows in bedroom 1 and in the living room had failed resulting in condensation between the panes; that there was mould growth around the windows of bedroom 1, the kitchen and the living room. It was identified by the committee that there was significantly less mould growth in bedroom 2. In light of the evidence of the tenant who occupied bedroom 1 that she did not open the window of her room, the committee considered poor ventilation to be a contributory factor to the mould growth in evidence at bedroom 1; Significant condensation as a result of high moisture content in the air was evident around most windows although the age and poor quality of the fabric of the windows contributed to the extent of the condensation; that there were no integral vents in any of the windows and the age and type of the heating system and the extent to which it was used were all contributory factors to the evidence of the condensation.
38. On inspection, the committee observed a hard wired smoke detector fitted to the ceiling of the hallway at the property. No tests were undertaken to establish if the smoke detector was in working order as this was not part of the tenant's application and there had been no prior notification of this complaint to the landlord with the result that the committee is unable to make any comment on the smoke detector and whether or not it meets the repairing standard of section 13 (1) (f).

### **Decision**

39. The committee determined that the landlord has failed to comply with the duties imposed by sections 13 (1) (a) and 14 of the Act.
40. The committee proceeded to make a Repairing Standard Enforcement Order as required by Section 24 (1). The Repairing Standard Enforcement Order has a time limit of 26<sup>th</sup> September 2014 for the landlord to replace or repair all of the windows within the property to eradicate any condensation within the double glazing units and for all the windows to be sealed adequately to ensure that the windows are wind and water tight and in all other respects reasonably fit for human habitation.

41. The decision of the committee was unanimous.

**Right of Appeal**

42. 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**

43. 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 determined.

**S Sweeney**

Legal Chair

1<sup>st</sup> August 2014