



REPAIRING STANDARD ENFORCEMENT ORDER
Ordered by the Private Rented Housing Committee

RE: Property at 17 Main Street, Gorebridge, Midlothian EH23 4BX as more particularly described in Land Certificate Title Number MID125409 (hereinafter referred to as "the House")

The Parties:

Laura Walker (hereinafter "the Tenant")

Krishnabavan Mathijaparanam, 4 Big Briggs Way, Newtongrange, Midlothian EH22 4DG (hereinafter "the Landlord")

PRHP REFERENCE PRHP/EH23/28/13

NOTICE TO KRISHNABAVAN MATHIJAPARANAM

WHEREAS in terms of their decision dated 5 December 2013 the Committee determined that the Landlord has failed to comply with the duty imposed by section 14(1)(b) of the Housing (Scotland) Act 2006 and in particular that the Landlord has failed to ensure that the House meets the repairing standard in that:

- "(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,..."*

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

- 1 To obtain a certificate from a qualified electrician that the electrical installations in the House are in safe working order and to produce a copy of same to the Committee.

- 2 To obtain a Landlord's Gas Safety Certificate from a Gas Safe registered engineer confirming that the central heating system in the living room is in safe working order and to produce a copy of same to the Committee.
- 3 To ensure that all exterior stonework is properly pointed such as to reasonably prevent the ingress of water.
- 4 To effect repairs to prevent the ingress of water to the conservatory.
- 5 To carry out works to ensure that the property is reasonably free of dampness and to obtain a report from a suitably qualified builder or contractor confirming the absence of dampness.
- 6 To clear all gutters of debris.

The Committee order that the works specified in this Order must be carried out and completed within three months from the date of service of this Notice.

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 the decision.

Where such an appeal is made, the effect of the decision and 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 John Miller McHugh, Chairperson of the Private Rented Housing Committee at Edinburgh on the fifth day of December Two Thousand and Thirteen in the presence of the undernoted witness:

J McHugh

Chairperson

Witness E Fong[^]
E-NING PONG

Witness Address c/o 3 Ponton Street, Edinburgh EH3 9QQ



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 17 Main Street, Gorebridge, Midlothian EH23 4BX (hereinafter referred to as "the House")

Laura Walker (hereinafter referred to as "the Tenant")

Krishnabavan Mathijaparanam, 4 Big Briggs Way, Newtongrange, Midlothian EH22 4DG (hereinafter referred to as "the Landlord")

PRHP REFERENCE PRHP/ EH23/28/13

DECISION

The Committee having made such enquiries as are 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 "the Act") in relation to the House, and taking account of the written documentation attached to the application and submitted by the Tenant, determined that the Landlord had failed to comply with the duty imposed by section 14(1)(b) of the Act.

Background

By application dated 14 February 2013 (hereinafter referred to as "the Application") the Tenant applied to the Private Rented Housing Panel (hereinafter "the PRHP") for a determination of whether the Landlord had failed to comply with the duties imposed by section 14(1)(b) of the Act.

The Application 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 in particular that the Landlord had failed to ensure compliance with the following paragraphs of section 13(1) of the Act:

*“(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,…”*

The Tenant complained of the following defects in the House: that there was no gas safety certificate for the central heating system; that gas equipment had been certified as “at risk”; gutters were leaking; the rear rain water down pipe was broken; rising and penetrating damp were present; masonry was in need of re-pointing; there were holes in the wall and that the electrical sockets in the kitchen did not work properly.

By letter of 10 April 2013, the President of the PRHP 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:

John McHugh, Chairperson
John Blackwood, Housing Member
Richard Burnett, Surveyor Member

The Committee served Notice of Referral in terms of Paragraph 1 of Schedule 2 to the Act upon the Landlord and the Tenant.

The Committee inspected the House on 29 November 2013. The Tenant was not present (no longer being in occupation). The Landlord was not present. Access was provided by the Landlord’s friend, Mr Uday Soundararajan.

Following the inspection, the Committee held a hearing at Middleton Village Hall, North Middleton, Gorebridge. The Committee considered the written evidence submitted by the Tenant. Neither the Landlord nor the Tenant were present or represented. Mr Soundararajan indicated that he had only been asked by the Landlord to give the Committee access and had not been asked to attend the hearing.

The Landlord had made no written submissions.

Summary of the Issues

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 has complied with the duty imposed by section 14(1)(b).

Findings in Fact

The Committee confined their inspection to the items of complaint detailed within the Tenant's Application.

The Committee made the following findings in fact:

The House is a ground floor flat in a traditionally built two storey property. It appears originally to have been a post office. A modern conservatory had been added to the rear.

The Landlord and the Tenant entered into a Tenancy agreement in respect of the House on 21 September 2011.

The Landlord was recorded on the Lease as Krishnabavan Mathijaparanam.

Krishnabavan Mathijaparanam is the registered owner of the House.

The Tenant and her family took possession of the House from 1 October 2011 and left the property on or around 13 April 2013.

The provisions of Chapter 4 of Part I of the Act apply to the tenancy.

The Tenant notified the Landlord of the defects in the house which are now the subject of the Application by letter addressed to the Landlord dated 22 December 2012. The Landlord also had notification of the defects from Moira Malcolm, Environmental Health Officer of Midlothian Council who confirmed this in her letter of 12 November 2012 addressed to the Tenant.

The inspection on 29 November 2013 revealed:

The property was unoccupied and unfurnished. Mr Soundararajam advised that it was currently being marketed for sale.

The downpipe at the rear of the conservatory was in order.

The pointing of stone wall between the conservatory and the main entrance door was in poor condition, with a hole being evident.

There was no evidence of problems with the gutters other than that some debris of the type which is typical at the time of year was present.

There was no evidence of rising damp. Remedial works had recently been undertaken including the installation of vents and redecoration in the two bedrooms which are at the front of the property.

There was cracking in the plasterwork behind the stone wall between the conservatory and the main entrance door consistent with there being water ingress.

There was staining on the wall between the kitchen and the living room. An attempt appeared to have been made to paint over this. It is not apparent whether this is historic staining relating to leaks around the gas flue above or whether there is continuing water ingress.

In the conservatory, water was entering at the junction of the conservatory and the original building. The wall was wet and stained and a pool of water had formed on the tiled floor.

The gas central heating boiler in the kitchen had a partly removed sticker which appeared to be a warning sticker concerning the safety of the boiler.

Mr Soundararajam advised: that there had been problems of dampness in the bedrooms which had recently been addressed by the installation of vents in the bedrooms and the living room; re-decoration had also taken place recently; the downpipe had been repaired; there was no current gas safety certificate and he thought that there had been none when the Tenants were in occupation; and an electrician had repaired problems with the kitchen electrics but he had no details of the electrician concerned.

Reasons for the Decision

Gas Safety

We accepted the Tenant's written submission that she has never been provided with a Gas Safety Certificate by the Landlord in respect of the central heating system. The Tenant had produced a copy of a Notice by Scottish Gas dated 18 March 2012 that the boiler was "at risk". This was supported by the presence of a safety warning sticker on the boiler.

Dampness

The Tenant complained of rising dampness and water penetration. The Landlord offered no evidence to the contrary. There was evidence of water ingress in the conservatory and in the living room behind the stone wall between the conservatory and the main entrance door. The poor condition of the pointing would allow water ingress. There was no evidence of dampness in the bedrooms, remedial works apparently having been successful. The presence of staining on the living room wall adjacent to the kitchen is evidence of there having been dampness but it is not apparent whether the remedial works have been successful.

Electrical

The Tenant complained of problems with the electrical installations in the kitchen. The Landlord offered no evidence to the contrary. Mr Soundararajam believed that (unspecified) remedial works had been carried out by an unnamed electrician. We were not satisfied on the available evidence that the electrical installations were in safe working order.

Other matters

The downpipe had been repaired and was in acceptable order. The gutters were in acceptable condition.

The Repairing Standard

The Committee consider that the defects in the condition of the exterior wall, the evidence of water ingress and dampness in the living room and conservatory, the evidence of electrical problems and the absence of evidence of compliance with gas safety certification requirements, constitute breaches of the repairing standard.

Repairing Standard Enforcement Order

Having decided to make a Repairing Standard Enforcement Order, the Committee considered the length of time which should be provided for compliance.

The Committee elected to impose a period of three months having regard to the nature of the defects identified, the fact that the property is unoccupied and the time likely to be required to carry out remedial works. If, contrary to what we were advised by Mr Soundararajam, the property is re-let, then the Landlord is reminded in particular of the need to comply with gas safety legislation and nothing in this decision should be taken as any kind of approval to fail to meet any legal obligations or to delay any safety related works.

Decision

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.

The Committee proceeded to make a Repairing Standard Enforcement Order as required by section 24(2) of the Act.

The decision of the Committee was unanimous.

Right of Appeal

Section 64 of the Act provides a right of appeal to a landlord or tenant aggrieved by a decision of a private rented housing committee. An appeal may be made to the Sheriff within 21 days of the Landlord or Tenant being informed of the decision.

Where such an appeal is made, the effect of the decision and 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.

J McHugh

John M McHugh
Chairperson

Date: 5 December 2013