



**REPAIRING STANDARD ENFORCEMENT ORDER**  
**Ordered by the Private Rented Housing Committee**

**RE: Property at 27 Stewart Clark Avenue, South Queensferry EH30 9QF as more particularly described in Land Certificate Title Number WLN4022 (hereinafter referred to as "the House")**

**The Parties:**

**Adrian Carberry, 27 Stewart Clark Avenue, South Queensferry EH30 9QF  
(hereinafter "the Tenant")**

**Janie McWilliam, 18 Ravelston House Road, Edinburgh EH4 3LR (hereinafter  
"the Landlord")**

**PRHP REFERENCE PRHP/RP/EH30/13**

**NOTICE TO JANIE MCWILLIAM**

**WHEREAS** in terms of their decision dated 7 October 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...*
- (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...*
- (f) the house has satisfactory provision for detecting fires and for giving warning in the event of fire or suspected fire..."*

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 have all windows in the House put into a good state of repair such that they are able to be opened and closed with ease, with all handles properly

- affixed to the windows, and with all windows sealed at their edges so as to reasonably exclude draughts.
- 2 To ensure that the flooring in the conservatory, living room and bathroom is secured in such a way that it does not move.
  - 3 To replace the loose and damaged flooring in the kitchen.
  - 4 To secure the oven with appropriate retaining screws.
  - 5 To clear the garden sheds of the possessions contained therein which do not belong to the Tenant.
  - 6 To repair or replace all sections of missing or rotten garden fence (for the avoidance of doubt, no front gate is required to be installed).
  - 7 To put into a state of good repair all damaged concrete window ledges.
  - 8 To repair or replace the gas meter housing at the front exterior of the House to ensure that it is secured to the House and that its door is capable of being opened and closed.
  - 9 To make safe the pipe protruding from the wall in the upper hall area either by removal of or boxing in of same.
  - 10 To ensure that the front door is put into a good state of repair such that it is able to be opened, closed and locked properly and with its integrated panels appropriately secure.
  - 11 To install interlinked mains powered smoke alarms on each level of the House.

The Committee order that the works specified in this Order must be carried out and completed within 60 days 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 Seventh day of October Two Thousand and Thirteen in the presence of the undernoted witness:

J McHugh

Chairperson

S Ross

Witness

Witness Address SUZANNE ROSS  
FLAT 9, 34 WAT TERRACE, EDINBURGH, EH11 1PS



**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 27 Stewart Clark Avenue, South Queensferry EH30 9QF (hereinafter referred to as "the House")**

**Adrian and Margaret Carberry, 27 Stewart Clark Avenue, South Queensferry EH30 9QF (hereinafter referred to as "the Tenant")**

**Janie McWilliam, 18 Ravelston House Road, Edinburgh EH4 3LR (hereinafter referred to as "the Landlord")**

**PRHP REFERENCE PRHP/EH30/70/13**

**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 evidence led by the Tenant at the hearing and of the written documentation attached to the application and submitted by the parties, determined that the Landlord had failed to comply with the duty imposed by section 14(1)(b) of the Act.

**Background**

By application dated 7 March 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,  
(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.”*

The Tenant complained of a number of defects in the House.

By letter of 17 June 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  
Ian Mowatt, 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.

On 26 August 2013, the Committee issued a Direction to the Landlord to produce an up to date Gas Safety Certificate for the House. The Landlord complied with the Direction.

The Committee inspected the House on 9 September 2013. Both the Tenant and the Landlord were present. The Tenant was also assisted by Gillian Collins of Barnardo's.

Following the inspection, the Committee held a hearing at South Queensferry and Roseberry Hall, High Street, South Queensferry. The Committee considered the written submissions and the evidence submitted by the parties and heard representations from the Tenant (including from Ms Collins on the Tenant's behalf) and from the Landlord.

The Committee considered the written submissions and evidence which had been sent on behalf of the Landlord and the Tenant.

## Submissions at the Hearing

The hearing, and the inspection which preceded it, were affected by the actions of Mr Carberry.

Mr Carberry and Ms Collins explained to the Committee at the beginning of the inspection that Mr Carberry had mental health problems such that he would be likely to lose his temper quickly and would shout and swear. Mr Carberry said he did not know that he was doing this at the time and that we should not be offended if he behaved in that manner during the hearing or the inspection. He said that there would be an aggravated risk of this behaviour as he felt irritated by the presence of the Landlord.

We suggested to Mr Carberry that he should take such steps as he was able to to avoid behaving in this way. If he would have difficulty in controlling his behaviour, we suggested that he might instead leave the conduct of the inspection and hearing to his wife and Ms Collins. Mr Carberry preferred, as was his right, to attend both the hearing and the inspection and at both he was the principal person representing the Tenant's interests.

Mr Carberry did indeed react adversely both at the inspection and the hearing. Particularly during the hearing, he spent very significant periods of time apparently having lost his temper and engaging in swearing and shouting. His behaviour was highly disruptive to the hearing process and he was repeatedly warned to control his temper. He was provided with (and accepted) opportunities to leave the hearing to calm down. Mrs Carberry also became emotional on one occasion and left the room for a brief time to calm herself.

It was explained repeatedly to Mr Carberry that his behaviour was not acceptable and was obstructing the Committee.

But for the explanation that was given to us by Mr Carberry about his mental health, we would have had to give serious consideration to excluding him from the hearing or, indeed, abandoning it.

The Landlord advised that she was well aware of Mr Carberry's behaviour and she did not appear to be concerned or intimidated by it. We invited her to proceed with caution in her choice of language in such a way as to avoid provoking Mr Carberry. There was no evidence of her heeding that invitation and on occasions her responses seemed calculated to further inflame an already heated situation.

The Tenant advised that they live in the House with their two children.

The Tenant had a substantial number of complaints regarding the condition of the property.

The Tenant and the Landlord had at one time been on good terms and the Tenant had previously rented a property from the Landlord.

The Landlord accepted that there were some areas of the House where repair was necessary. She advised that she had sent workmen to do works and they had been abused or turned away by Mr Carberry. If the Committee ordered works to be done, she would be quite happy to have them attended to.

Mr Carberry's view was that the workmen sent by the Landlord had shown themselves to be incompetent because of various previous allegedly unsuccessful repairs. One had been abusive towards him. He doubted the expertise of the workmen.

The Tenant complained that bulbs would regularly "blow" in the upstairs hall light fitting. The Landlord's position was that the fitting worked and that some bulbs would last longer than others.

The Tenant complained that the fuse box is an old style unit and that it would be difficult to find replacement fuse wire. The Landlord's position was that the fuse box was old but that it was working.

The Tenant advised that an engineer from Scottish Gas had attended to the removal of the wiring in the conservatory which had been the subject of complaint originally.

The Tenant complained that they could not use the garden sheds as these remained full of the possessions of third parties. The Landlord acknowledged this and that clearance of the sheds was required. She advised that there had been a partially successful attempt at clearance on a previous occasion.

The Tenant complained regarding the opening and closing of windows and their draughtiness. The Landlord indicated that her attempts to deal with these had been refused by the Tenant.

The Tenant complained of an absence of carpet in the hall. The Tenant accepted that no carpet was present or promised when they had agreed to take the property and the Landlord advised that the Tenant had accepted the House without a carpet and so she had no intention of providing one.

The Tenant complained of the height of the front doorstep and that visitors to the House had fallen over it. The Landlord advised that the steps were as the house was originally purchased by her. The front doorstep appeared to her to be of a normal height and she had not fallen over it.

The Tenant also complained that he had had to pay the outstanding balance on pre-payment power meters on moving in. Mr Carberry conceded that he had done this of his own choice and had since been refunded by the power supplier.

## 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 Landlord and the Tenant entered into a Tenancy Agreement in respect of the House on 4 October 2012.

The Tenant and their family took possession of the House from October 2012 and have remained in occupation since.

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 recorded delivery letters dated 7 March and 25 May 2013.

The inspection on 9 September 2013 revealed:

In the kitchen, the electric oven was not properly secured by retaining screws so that it moved in and out when the oven door was opened and closed. The vinyl style self adhesive floor tiles were insecure and some were damaged.

In the hall, the smoke alarms were not linked and mains powered.

At the top of the stairs an apparently redundant pipe protruded from the wall dividing the hall from the bathroom.

In the conservatory, there was loose laminate flooring. There were no wires protruding from the walls. The window was said by the Tenant to be difficult to close on hot days although we could not observe that.

In the living room, the laminate flooring was loose.

Generally, the Tenant complained of draughty windows and windows which were difficult to close. We observed that the kitchen window was difficult to open and close. Generally, the windows were apparently poorly sealed. In the Tenant's daughter's bedroom, the window handles were loose.

The front door could be moved using force even when locked and panels within it appeared to be loose.

The garden sheds appeared full of possessions.

Outside the property, the gas meter housing was loose and had been taped up.

The garden fencing was damaged and rotten in places.

The concrete window ledges at the kitchen window and in the front facing bedrooms were damaged.

### **Reasons for the Decision**

At the inspection, we were presented by the Tenant with a long verbal list of all of the problems which they considered to be in existence at the House.

We indicated that we would look at and note all of the issues identified during the inspection and would later form a view about whether these were matters with which we could deal having regard to the requirements of the legislation of prior notification to the Landlord and the repairing standard.

Some of the alleged defects with the House appeared to be serious in nature and others were trivial. Mr Carberry took the same detailed approach in explaining each alleged defect to us.

The Tenant complained of the bedroom carpet smelling of urine. While there was a smell in the bedroom, it was not possible for us to identify the source as the carpet nor to determine that the problem with the carpet had arisen prior to the Tenant's occupation.

The laminate flooring in the living room, the conservatory and in the bathroom was badly fitted and sections were insecure.

The Tenant complained of the loft ladder arrangement. Changes had been made at the Tenant's request to the hatch to improve insulation. The Tenant explained that they were given the choice of retaining the existing hatch and ladder arrangement or having the works done and losing the integrated ladder. They agreed to the latter. We found no evidence of a breach of the repairing standard in this regard.

The Tenant complained about the gas central heating system. They had been advised by an engineer that the boiler was "not to current standards" and if it were to fail, it might be difficult to obtain parts because of the age of the boiler. There had been no failure although the Tenant complained that the pressure would fall every 2-3 weeks and he would have to either repressurise the system himself or call for an engineer. He also complained that the equivalent numbers on thermostatic radiator valves produced different temperatures in different rooms although these could be adjusted to suit the Tenant's heating requirements. The Landlord advised that she had a maintenance contract with Scottish Gas and that



the Tenant could and should call them out whenever required. There have been no faults reported to the Landlord. We found no evidence of a breach of the repairing standard in this regard.

The Tenant complained regarding the hard landscaping of the garden and in particular the relationship of the path and the patio and the design of the slabbing steps adjacent to the conservatory. We found no evidence of a breach of the repairing standard in this regard.

We find that there is no obligation upon the Landlord to provide a hall carpet as none was present at the time the Tenant agreed to take the tenancy.

We found that the front doorstep was of normal height such that persons could enter or leave the House without unusual risk. We found no evidence of a breach of the repairing standard in this regard.

The Tenant also complained that: the back door handle could be temperamental; regarding the presence of an overflow pipe at roof level; a pipe protruding through the rear exterior wall could be moved by moving the attached pipe under the sink; the kitchen sink is stained; there was a risk of persons wearing loose fitting clothing catching it on the stair handrail; the bathroom and stair floorboards were noisy; there was a lowered ceiling in the upper hall; the bathroom door was hung the opposite way from the Tenant's preference and that the front lawn was too bumpy for the Tenant to use their lawnmower on it. We found no evidence of a breach of the repairing standard in regard to any of these matters.

The Tenant complained about the kitchen hob but there was no evidence that this issue had previously been notified to the Landlord and so we make no finding in respect of it.

### The Repairing Standard

The Committee consider that the defects in relation to: the windows; the flooring; the oven; the sheds being unavailable to the Tenant because of being full of the possessions of third parties; the missing and rotten fencing; the damaged window ledges; the defective gas meter housing; the protruding pipe in the upper hallway; the condition of the front door and the absence of appropriate smoke alarms 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 60 days which it considered to be reasonable having regard to the nature of the repairs required.

## **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: 7 October 2013