



**Notice of a decision to Vary**

**A Repairing Standard Enforcement Order**

**Ordered by the Private Rented Housing Committee**

**Re: Eastmost first floor flat forming and known as 88 D 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 property")**

**The Parties:-**

**Mr Bartolomiej Goluch, formerly 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")**

**Reference PRHP/RP/ 13 /0008**

**NOTICE TO Mr Paul McGregor and Ms Helen Mackenzie ("the landlord")**

The Private Rented Housing Committee having determined on 13 January 2014 that the Repairing Standard Enforcement Order relative to the property dated 28 August 2013 should be varied, the said Repairing Standard Enforcement Order is hereby varied with effect from the date of service of this Notice in the following respect:-

1. The second requirement in the RSEO is delete. Such requirement stated that the landlord improve the means of ventilation and heating in the house, including without limitation, installing mechanical ventilation in the kitchen and bathroom and the 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, and
2. The period allowed for the completion of the works to the kitchen window

required by the Order is extended for a further 28 days from date of service of this Notice on the Landlord and for the Landlord to produce within that timescale satisfactory evidence in writing to the Committee of the repair to the kitchen window in the form of tradesman's receipts.

Subsection 25(3) of the Housing (Scotland) Act 2006 applies in this case.

**A Landlord or a Tenant aggrieved by this 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 variation is suspended until the appeal is abandoned or finally determined, and where the appeal is abandoned or finally determined by confirming the decision, the variation 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 executed by Mrs Aileen Margaret Devanny, Chairperson of the Private Rented Housing Committee at Glasgow on Fifteenth day of January 2014 in the presence of the undernoted witness :-

Witness

A Devanny ~

ASHLEY ROSS Name in full

EUROPA BUILDING Address

450 ARGYLE ST, GLASGOW

PANEL CLERK Occupation



**DETERMINATION BY PRIVATE RENTED HOUSING COMMITTEE**

**STATEMENT OF DECISION OF THE PRIVATE RENTED HOUSING COMMITTEE  
UNDER SECTION 26(1) OF THE HOUSING (SCOTLAND) ACT 2006**

In connection with

Property at 88 D Kemnay Gardens, Dundee DD4 7TP ("the house")

The Parties:-

Mr. Bartolomiej Goluch, formerly 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")

Reference PRHP/RP/ 13 /0008

**DECISION**

The Private Rented Housing Committee ("the Committee"), having made such enquiries as is fit for the purposes of determining whether the Landlord has complied with the Repairing Standard Enforcement Order (hereinafter referred to as "the RSEO") in relation to the house concerned, and taking account of the findings of the Surveyor Member of the Committee at the inspection of the house on 4 November 2013, determined that the Landlord should be given an extension of the period allowed for the completion of the required work in terms of Section 25(2) of the Housing (Scotland) Act 2006 (hereinafter referred to as "the Act"); and the Committee further considered given the findings of the Surveyor Member at the said inspection that there should be a variation of the Repairing Standard Enforcement Order in terms of Section 25(1) (a) of the Housing (Scotland) Act 2006. The decision of the Committee was unanimous.

**Findings in Fact**

1. A Repairing Standard Enforcement Order (hereinafter referred to as "RSEO") dated 28 August 2013 was issued requiring works as specified in the Order to be completed within a timescale of 8 weeks from the date of service of the Order on the parties. The Notice of the RSEO was sent to the Landlord on 30 August 2013.

2. Following upon expiry of the timescale for completion of works specified in the RSEO, the Surveyor Member, Mr. David Godfrey, re-inspected the house on 4 November 2013. The tenant Mr. Bartolomiej Goluch was absent as the tenancy had been terminated before the date of the re-inspection and it was clear from inspection that the tenant had vacated the property.
3. The re-inspection findings indicated that the rhones had been cleared of vegetation; all evidence of mould had been removed from the house; and the source of the dampness around the chimney breast in the Living Room is understood to have been repaired although the damp staining remains. The remaining outstanding works in the RSEO at the date of inspection are the lack of any installation of mechanical ventilation in either the kitchen or bathroom and the lack of provision of background heating in the house; and the required works to the kitchen window to ensure that it is capable of being safely and properly opened and closed.
4. The re-inspection report from the Surveyor Member detailing his findings was submitted to the Landlord and no response was received. A copy of the report is attached.
5. The Committee comprised the following members - Mrs. Aileen Devanny, Legal Member; Mr. David Godfrey, Surveyor Member; and Mr. Mike Scott, Housing Member.

### **Reasons for the Decision**

The Committee, in light of the information provided from the re-inspection, considered the remaining outstanding works in the RSEO and the works completed to date. The Surveyor Member indicated that the house is in much better order at the date of re-inspection and, if he had seen the house in that condition at the date of the original inspection on 5 August 2013, he would not have concluded that the house required an improved means of ventilation and provision of background heating to meet the repairing standard. The Surveyor Member considers that the dampness in the house appears to have been rectified by the repair to the chimney breast and the dampness is drying out. It appears that the extent of condensation apparent at the original inspection is no longer an issue. In these circumstances, the Committee considers it appropriate that the original RSEO is varied to delete the requirement relating to the installation of mechanical ventilation in the kitchen and bathroom and the provision of adequate background heating in the house.

However, the lack of repair to the kitchen window, although minor in nature, is a potential safety issue. The catch is broken and it would be feasible for the window to open with pressure applied such as someone falling against it. This is a first floor flat

and the Committee concluded that this repair remained a necessity because of the potential safety risk albeit that the required repair is having no impact on any tenant or occupier whilst the house is unoccupied.

The Committee, mindful of Sections 25(2) and (3) of the Act, considered that it would be appropriate to give the Landlord an extension of the period required to complete the work to the kitchen window detailed in the RSEO and issued a variation of the RSEO in terms of section 25(1)(a) of the Act. The variation provides for a further 28 days from the date of service of the Notice of Variation on the Landlord to complete the works to the kitchen window and for the Landlord to produce within that timescale satisfactory evidence in writing to the Committee of the repair to the kitchen window in the form of tradesman's receipts. The members of the Committee were unanimous in their decision.

### **Right of Appeal**

**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**

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.

A Devanny

Chairperson,  
13 January 2014

