



## **Repairing Standard Enforcement Order**

**Ordered by the Private Rented Housing Committee**

**Reference Number:- PRHP/RP/15/0255**

**Re: Property at 56 Whitson Road, Edinburgh, EH11 3BS all as more particularly described in and registered in Land Certificate MID122793 (hereinafter referred to as “the property”).**

### **The Parties:-**

**Miss Stacey Robertson (“the Tenant”)**

**HMK Properties Limited, 2A Lord Street, Douglas, Isle of Man, IM1 2BD (“the Landlord”)**

### **NOTICE TO**

**HMK Properties Limited, 2A Lord Street, Douglas, Isle of Man, IM1 2BD (“the Landlord”)**

**Whereas in terms of their decision dated 18 October 2016, 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 the Landlord has failed to ensure that: 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 and that that the fixtures, fittings and appliances provided by the Landlord under the tenancy 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:-**

- (a) To produce a Portable Appliance Test (PAT) on all portable electrical appliances and equipment supplied by the Landlord and located within the property.
- (b) To produce a report by a suitably qualified Gas Safe registered engineer to address the state of repair and working order of all gas appliances in the property.
- (c) To produce an Energy Performance Certificate in respect of the property.

The Private Rented Housing Committee order that the works specified in this Order must be carried out and completed within the period of 28 days 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.

**Please note that in terms of Section 28(1) of the Act, a landlord who, without reasonable excuse, fails to comply with an 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 an RSEO has effect in relations to the house. This is in terms of Section 28(5) of the Act.**

In witness whereof these presents type written on this page and the preceding page are executed by Patricia Anne Pryce, Chairperson of the Private Rented Housing Committee at Glasgow 18 October 2016 before this witness:-

Signed

Date 18 October 2016

Patricia Anne Pryce, Chairperson

WITNESS

NICHOLAS PRYCE  
55 BLYTHSWOOD ST, GLASGOW  
ACCOUNTANT



**Statement of decision of the Private Rented Housing Committee under  
Section 24 (1) of the Housing  
(Scotland) Act 2006**

**Reference Number: PRHP/RP/15/0255**

**Re: Property at 56 Whitson Road, Edinburgh, EH11 3BS ("the Property ")**

**The Parties:-**

**Miss Stacey Robertson ("the Tenant")**

**HMK Properties Limited, 2A Lord Street, Douglas, Isle of Man, IM1 2BD ("the  
Landlord")**

**Decision**

The Committee, having made such enquiries as it saw fit for the purpose of determining whether the Landlords have 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 account of the evidence submitted by the application by the Tenant, determined that the Landlord has failed to comply with the duty imposed by Section 14 (1) (b) of the Act.

**The Committee consisted of:-**

Patricia Anne Pryce	-	Chairperson
Charles Reid Thomas	-	Surveyor Member

**Background**

1. By application comprising of all documents received between 11 September 2015 and 13 November 2015, from the Tenant, the Tenant applied to the Private Rented Housing Panel for a determination as to whether the Landlord had failed to comply with the duties imposed by Section 14 (1) (b) of the Act.
2. The application by the Tenant stated that the Tenant considered that the Landlord had failed to comply with his duty to ensure that the

property meets the repairing standard and the Tenant brought forward the following breaches:-

That the gas boiler needs to be repaired.

That the windows are poorly fitted.

That there is dampness and mould throughout.

That there are large cracks in the ceilings.

That there are crumbling walls in the hallway and living room.

That the wallpaper is peeling in the bedrooms.

That there are poorly fitted floor coverings.

That there is no extractor fan in the bathroom.

That the washing machine has not been repaired.

That there are no smoke detectors.

That there is no carbon monoxide detector.

The Tenant considers that the Landlord is in breach of his duties under the Housing (Scotland) Act 2006 in relation to the repairing standard and in particular the Landlord has failed to ensure:-

- (i) The house is wind and watertight and in all other respects reasonably fit for human habitation.
- (ii) 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.
- (iii) 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.
- (iv) Any fixtures, fittings and appliances provided by the Landlord under the tenancy are in a reasonable state of repair and in proper working order.
- (v) The house has satisfactory provision for detecting fires and for giving warning in the event of fire or of suspected fire.
- (vi) The house has satisfactory provision for giving warning if carbon monoxide is present in a concentration that is hazardous to health.

3. By Minute dated 24 November 2015 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.
4. On 10 December 2015, the Private Rented Housing Committee ("the Committee") wrote to the Landlord to advise that the Committee intended to inspect the property on 3 February 2016 at 10.00 hours. The letter further confirmed that a Hearing had been arranged in relation to the application, which Hearing would be held in George House Room D8, 126 George Street, Edinburgh, EH2 4HH commencing at 11.00 hours. Finally, the letter confirmed that any written submissions had to be received by the Committee by 31 December 2015.

5. On 15 December 2015, the Committee received written representations from the Landlord dated 14 December 2015.
6. On 7 January 2016, the Private Rented Housing Committee received notification from the Tenant that she had terminated her tenancy of the property and therefore the Committee was to be treated as having terminated her application. By Minute of Continuation to a Determination dated 20 January 2016, being a decision under Schedule 2, Paragraph 7(3) of the Housing (Scotland) Act 2006, the Committee decided that the application should be determined on public interest grounds due to the nature of the complaints relating to the property wherein the Tenant had complained about dampness, dysfunctional heating, ill-fitting windows and lack of smoke detectors. Given the foregoing, the Committee decided that the application should be determined on public interest grounds and in the best interests of the health and safety of occupants of the property.

#### **The First Attempted Inspection and Hearing**

7. On 2 February 2016, the Private Rented Housing Panel received a phone call from the Landlord who advised that he would be unable to attend the inspection on 3 February 2015 but provided details of the name of the new Tenant residing within the property, although he could not provide a phone number for this Tenant, and suggested that the Panel arrange access directly with the new Tenant. The Committee decided to continue with the inspection to see if access to the property to be gained. On 3 February 2016, the Committee attended at the property for the purposes of inspection but there was no one present to provide access to the property. No one attended at the hearing.
8. On 26 August 2016, the Private Rented Housing Committee ("the Committee") wrote to the Landlord to advise that the Committee intended to inspect the property on 4 October 2016 at 10.00 hours. The letter further confirmed that a Hearing had been arranged in relation to the application, which Hearing would be held in George House Room D8, 126 George Street, Edinburgh, EH2 4HH commencing at 14.00 hours.
9. On 30 August 2016, the Committee issued a Notice of Direction in terms of Schedule 2 Paragraphs 2(1) and 3(1)(b) of the Housing (Scotland) Act 2006 and Regulation 14 of the Private rented Housing Panel (Applications and Determinations)(Scotland) Regulations 2007, which Notice required the Landlord to provide to the Committee an Electrical Installation Condition Report (EICR) by a suitably qualified and registered electrician and a Portable Appliance Test on all portable



electrical appliances and equipment supplied by the Landlord and located within the property, a report by a suitably qualified Gas Safe registered engineer to address the state of repair and working order of all gas appliances in the property and an Energy Performance Certificate in respect of the property. The said documents were to be lodged with PRHP no later than midday on 13 September 2016.

### **The Second Inspection**

10. On 4 October 2016, the Committee attended at the property for the purposes of inspection. The Landlord was represented by Hugh Mackenzie who advised that he was the owner of the property was present at the inspection. The new Tenant was also in attendance at the inspection. Both the Landlord and the new Tenant were unhappy at the attendance of the Committee at the property. The Landlord advised that he felt he was being hounded by the PRHP and both the Landlord and the new Tenant advised that the inspection was a waste of public money. However, the Landlord allowed the inspection to proceed.

At the inspection on 4 October 2016, the Committee noted the following points:-

- (a) That the property is a two bedroomed/three apartment former local authority upper quarter villa and is constructed of rendered brick with a slate roof. The property has a living room, bathroom and kitchen.
- (b) That the windows were wind and watertight.
- (c) That, in general, there was no evidence of dampness or mould other than some black spot mould located beneath the toilet which was due to condensation.
- (d) That there were no cracks visible in the ceilings of the property.
- (e) That there were no crumbling walls within the property.
- (f) That there was no wallpaper peeling within the property.
- (g) That there was a window which opened within the bathroom and therefore no need for an extractor fan to be fitted within this room.
- (h) That there was a hard wired smoke detection device located within the hallway of the property together with a hard wired heat detection device within the kitchen of the property.
- (i) That there were two carbon monoxide detectors located within the kitchen and the living room of the property.
- (j) That the boiler was located within the living room of the property but that there was nothing obvious to confirm that this had been inspected to confirm that it was in good working order.

At the conclusion of the inspection, the Landlord questioned why the Committee was acting for the former Tenant. The Committee advised that it was an impartial, judicial body which did not act on behalf of any party and whose only interest was whether or not the property met the repairing standard. The Landlord sought the answer to a question but did not allow the

Committee to answer the questioning, interrupting the Committee on three occasions. The Landlord then asked the Committee to leave the property, indicating that he would not attend the hearing fixed for later in the day.

The surveyor member of the Committee took several photographs which form the Schedule attached to this decision.

### **The Hearing**

11. No one attended the hearing.

### ***Preliminary Issues***

- (1) The Committee decided that, although the former Tenant had sought to include consideration of broken guttering, poorly fitted floor coverings and the lack of repair of the washing machine, the Committee could not properly consider these issues at the hearing as the former Tenant had failed to properly notify the Landlord of these specific issues in advance of making the application to the Committee.
- (2) The Committee noted that the Landlord had complied with part of the Notice of Direction issued by the Committee but had not complied with all parts of the said Direction. The Landlord had provided an EICR. However, the Landlord had failed to provide a Portable Appliance Test certificate, a report by a Gas Safe engineer and an Energy Performance Certificate. The Landlord had provided a copy of a Gas Safety Record but there was little or no writing apparent on this. It appeared that the Gas Safety Record provided by the Landlord had not been properly completed by a registered Gas Safe engineer and therefore this document did not satisfy the terms of the said Notice of Direction.

The Committee concluded that it could make a decision without the attendance of the Landlord at the hearing. The Landlord had made it clear at the hearing that he had no intention of attending or taking part in the hearing.

Given all of the circumstances as narrated above together with what the Committee had viewed at the inspection, the Committee is of the opinion that the property is wind and watertight and in all other respects reasonably fit for human habitation given that the windows are in good working order and there was no dampness or mould in evidence at the property other than a small amount on black mould located within the bathroom. The Committee is of the opinion 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 as the windows are in proper working order. The Committee is of the opinion that the installations in the house for the supply of water, gas and electricity and for sanitation, space heating and heating water are not in a reasonable state of repair and in proper working order as there was no evidence that the boiler had been recently inspected and confirmed to be in proper working order and the Landlord had failed to provide a report by a Gas Safe registered engineer confirming the state of the boiler. The Committee is of the opinion that any fixtures, fittings and appliances provided by the Landlord under the tenancy are not in a reasonable state of repair and in proper working order as the Landlord had not provided the Committee with a Portable Appliance Test certificate as required by the Notice of Direction. The Committee is of the opinion that the house has satisfactory provision for detecting fires and for giving warning in the event of fire or suspected fire. The Committee is of the opinion that the house has satisfactory provision for giving warning if carbon monoxide is present in a concentration that is hazardous to health.

#### **Decision**

12. The Committee accordingly determines that the Landlord has 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 (1) of the Act.
13. The decision of the Committee was unanimous.
14. The Private Rented Housing Committee require the Landlord to carry out such works as are necessary to ensure that the property meets the Repairing Standard.
15. The Committee considered that it would be reasonable to allow a period of 28 days from the date of the RSEO to carry out these works.

#### **Reasons for Decision**

16. The Committee considers that the Landlord has had sufficient time to carry out the outstanding repairs or works.



The Committee considers that the Landlord has failed in his duty under Section 14(1)(b) of the Act and has not complied with the repairing standard in terms of Sections 13 (1) (a) of that Act.

### **Observations**

The Committee notes that it is a pity that the Landlord chose not to comply with the Notice of Direction issued by the Committee as, if he had done so, there is every chance that the property would have met the repairing standard and that the present conclusion of the Committee could have been different. However, from the outset of the inspection, both the Landlord and his new Tenant were aggressive and combative with the Committee. The Committee also notes that it was unfortunate that the Landlord chose not to attend the hearing, missing out on the opportunity to explain to the Committee why he had failed to comply with the Notice of Direction.

In the absence of any explanation by the Landlord, the Committee recommends that the PRHP Administration reports the Landlord to Police Scotland for his failure to comply with the Notice of Direction.

### **Right of Appeal**

16. 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**

17. 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.

Signed

Patricia Anne Pryce

Date 18 October 2016

**Photographic Record of: 56 Whitson Road, Edinburgh, EH11 3BS 4.10.16, 10am**



56 Whitson Road (Upper Flat)



Boiler. Confirmation required that it has been inspected and is in good working order.



Hard Wired Heat Sensor in kitchen



Hard Wired Smoke Detector



CO Alarm in Kitchen



CO Detector Living Room adjacent to Boiler