



## Repairing Standard Enforcement Order

Ordered by the Private Rented Housing Committee

prhp Ref: PRHP/RP/0012

Re : Property at 1/2 152 Almada Street, Hamilton, ML3 0EW (“the Property”)

Title No: LAN 40229

The Parties:-

**Ajmal Mushtaq, 78 Union Street, Hamilton ML3 6NE; Next Move Scotland Ltd, 40 Gateside Street Hamilton ML3 7JG (“the Landlord”)**

**Liam White and Chloe Balfour, residing at 1/ 2 152 Almada Street, Hamilton, ML3 0EW (“the Tenants”)**

### NOTICE TO Mr Ajmal Mushtaq (“the Landlord”)

Whereas in terms of their decision dated 23 April 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 that the landlord has failed to ensure that the property is:-

- (a) wind and watertight 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 proper working order;
- (c) any fixtures, fittings and appliances provided by the landlord under the tenancy are in a reasonable state of repair and in proper working order;
- (d) the house has satisfactory provision for detecting fires and for giving warning in the event of fire or suspected fire.

the Private Rented Housing Committee now requires the landlord to carry out such work as is necessary for the purposes of ensuring that the property 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:-

1. To instruct a suitably qualified Building Contractor to inspect the property, investigate the source of water penetration in the living room and kitchen and report on the works required to eradicate any water penetration and render the property wind and watertight. Thereafter to carry out the repairs recommended by said Building Contractor and make good all internal plaster work and paintwork.
2. To repair the washing machine to restore it to proper working order or replace it with a new washing machine.

3. To investigate the cause of any water penetration at the windows in the front master bedroom and carry out repairs to ensure that the property is wind and watertight.
4. To replace the centre and right side lower double glazing of the windows in the front master bedroom with new sealed double glazing units.
5. To repair or replace the windows in the living room so that they are in a reasonable state of repair and in proper working order.
6. To install a mains wired interlinked smoke detector in the living room.

The Private Rented Housing Committee order that the works specified in this Order must be carried out and completed within the period of six weeks 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 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 are executed by Josephine Bonnar, solicitor, chairperson of the Private Rented Housing Committee at Motherwell on 23 April 2016 before this witness:-

**J Bonnar** \_\_\_\_\_ Chairperson

**G Bonnar** \_\_\_\_\_ Witness

GERARD BONNAR \_\_\_\_\_ Name in full

58 PORT DUNDAS ROAD \_\_\_\_\_ Address

GLASGOW \_\_\_\_\_

SOLICITOR \_\_\_\_\_ Occupation



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

prhp Ref: RP/16/0012

Re : Property at 1/2 152 Almada Street, Hamilton ML3 0EW (“the Property”)

Title No: LAN 40229

The Parties:-

Liam White and Chloe Balfour (“the Tenant(s)”)

Ajmal Mushtaq, 78 Union Street, Hamilton ML3 6NE; Next Move Scotland Ltd, 40 Gateside Street, Hamilton, ML3 7JG (“the Landlord(s)”)

### Decision

The Committee, having made such enquiries as it saw 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, and taking account of the evidence led by both the Landlord and the Tenants at the hearing, determined that the Landlord had failed to comply with the duty imposed by Section 14 (1)(b) of the Act.

The Committee comprised:-

**Mrs Josephine Bonnar, Chairperson**

**Ms Carol Jones, Surveyor Member**

### Background

1. By application received on 18 January 2016 the Tenants applied to the Private Rented Housing Panel for a determination of whether the Landlord had failed to comply with the duties imposed by Section 14 (1)(b) of the Housing (Scotland) Act 2006 (“the Act”).
2. The Application by the Tenants stated that the Tenants considered that the Landlord had failed to comply with his duty to ensure that the house meets the repairing standard and in particular that the Landlord had failed to ensure that:- the house is wind and watertight and in all other respects reasonably fit for human habitation; 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; any fixtures, fittings and appliances provided by the landlord under the tenancy are in a reasonable state of repair and in proper working order; any furnishings provided by the landlord under the tenancy are capable of being used safely for the purpose for which they are designed; the house has satisfactory provision for detecting fires and for giving warning in the event of fire or suspected fire; the house has satisfactory provision for giving warning if carbon monoxide is present in a concentration that is hazardous to health. Specifically the Tenants complained of ceiling leaks in the kitchen and living room, significant damage to multiple windows, defects in the shower and washing machine, lack of mains wired smoke and carbon monoxide detectors and lack of a gas safety certificate.

3. The Private Rented Housing Committee served Notice of Referral under and in terms of Schedule 2, Paragraph 1 of the Act upon both the Landlord and the Tenants on 4 March 2016.
4. Following service of the Notice of Referral the Landlord made written representations to the Committee by email dated 23 March 2016.
5. On 30 March 2016 the Committee issued a Notice of Direction to the Tenants requiring them to provide a copy of the Inventory referred to in the tenancy agreement and a copy of replies and acknowledgements to their emails intimating complaints by 11 April 2016. The Tenants responded on 1 April 2016 and stated that no inventory had been provided and no responses had been received.
6. On 30 March 2016 the Committee issued a Notice of Direction to the Landlord requiring him to provide a current gas safety record from a gas safe registered engineer by 11 April 2016. The Landlord failed to comply with the Direction.
7. The Private Rented Housing Committee inspected the Property on the morning of 14 April 2016. The Tenants and the Landlord were present during the inspection.
8. Following the inspection of the property the Private Rented Housing Committee held a hearing at The Bothwell Bridge Hotel, Bothwell. The Tenants and the Landlord were both present and gave evidence.

### **The Inspection**

9. At the time of the inspection the weather was dry and bright. The Committee were able to inspect the whole property. In the kitchen they noted the presence of a washing machine. There was evidence of water penetration, namely large damp patches on the ceiling and one wall above the kitchen units, cracks in the ceiling and peeling paint. The Tenant pointed out a recessed light fitting on the

suspended ceiling. He indicated that it had previously been hanging down from the ceiling but had recently been repaired although there was no bulb so it could not be established if it was in working order. In the living room there was a further patch of damp above the bay window, again with peeling paint on the ceiling. The left hand window could not be opened and due to broken or missing hinges was not secured to the frame. The middle window was capable of being opened and shut but was also not secured to the frame and had defective hinges. In the upstairs bathroom the shower was identified by the Tenant as having been recently repaired and was now in working order. In the front bedroom the middle and right side lower window panes had condensation in between the double glazing. There was a towel positioned on the window ledge. The tenant indicated that there was water ingress at the window during rainfall and the towel was to absorb same. A gas safety certificate was produced by the landlord. The tenant confirmed that he had recently been provided with a copy. The Committee noted a mains wired smoke alarm in the upstairs landing and the downstairs hall, a heat detector and a carbon monoxide detector in the kitchen.

### **The Hearing**

10. At the Hearing the first named Tenant, Liam White gave evidence on behalf of both Tenants. He made a verbal statement regarding the history of the dispute. He made reference to a series of copy emails which he had brought to the hearing. He was questioned by the Committee regarding the matters raised. He had provided no written representations in advance of the Hearing.
  
11. The Tenant indicated that he first reported repairs issues by email to the Letting Agent Gavin Wallace of Next Move Scotland on 28 September 2015. Specifically he mentioned lack of gas safety certificate, shower fault, cooker fault and problems with the windows. After further complaints intimated by email a new shower was fitted on 21 October. He stated that leaks from the ceiling started on 8 November and were notified on 10 November by text to the Agent who responded that the matter would be attended to. Between 10 and 17 November the Landlord visited to inspect the ceiling and advised that an expensive structural repair was needed and that he required the consent of the other owners. Roofers attended on 20 November and carried out an external repair. The Tenant spoke to the Agent on 1 December and confirmed that the ceiling was still leaking. He made further intimation of repairs issues namely a further problem with the shower, problems with the windows, problem with the roof tiles and a fault with the washing machine in an email sent on 30 November. Further intimation of the repairs issues were made on 5 and 30 December. On 17 March 2016 a gas engineer attended and issued a gas safety record dated 18 March 2016. A warning/advice notice was left at the property but

subsequently removed on the advice of the gas engineer following necessary identified works to secure the flue properly. A joiner attended on 18 March and attempted to screw the living room windows shut. The Tenant instructed him to remove the screws. On 4 April an electrician attended, carried out a full inspection and changed the fuse on the shower. Since then the shower has functioned satisfactorily. Smoke and CO detectors were fitted.

12. The Tenant stated that the current position was that the windows have not been repaired and that water leaks from the ceiling in the kitchen and living room during moderate and heavy rain. The water drips down but can also gather on the suspended ceiling in the kitchen and lead to a lot of water suddenly pouring down. There is water ingress at the bedroom window, The washing machine does not spin properly and has not been repaired because the Landlord says it was not included in the lease, The tenant advised that the machine was in the property when it was viewed, does not belong to the Tenants, and was not mentioned as being excluded from the lease at the time of viewing. The Tenant also confirmed that he has dealt almost exclusively with the Letting Agent who showed them the flat and signed them up to the tenancy. The Landlord was not present on those occasions

13. The Landlord had provided written representations in advance of the Hearing which stated that the leaks from the ceiling had been repaired, a partial repair to the windows had been carried out to make them safe, the shower had been replaced, the washing machine was not part of the lease, smoke and CO2 detectors were to be fitted shortly and a gas safety certificate was available.

14. At the Hearing the Landlord indicated that he had no issue with copy emails and did not dispute that that notification of the repairs issues had been made to his Agent. He stated however, that he had not become aware of the repairs issues (except the shower problem and leak reported in October 15) until he received intimation of the PRHP application. He claimed that the Tenants application to the Panel was motivated by a desire to establish a basis for a claim against him for £2000 compensation and that he was not prepared to be blackmailed. He indicated that his agent had failed to pass on many of the complaints to him. He confirmed that the Agent was still instructed. He advised that he had only been advised of the shower and the leaks in October/November and attended to them promptly getting a new shower fitted and instructing a roof repair which he paid for himself as he was unable to get in touch with the other owners. He thought both matters had been attended to satisfactorily and heard nothing further. He stated that the washing machine did not belong to him and must have belonged to the previous owner or tenant. When questioned by the Committee he indicated that the Agent had told him that at the viewing the Tenants were informed

that the washing machine was excluded. He said that he had not arranged for the ceiling in the property to be painted after the roof repair because he wanted to check the ceiling after an episode of torrential rain but there had been no such rain since the repair in November. Although the application to the Panel made reference to the leaks from the ceiling he assumed that this was a historical issue.

## **Findings in Fact**

15. The property is a tenement flat on two levels situated above a row of shops and an Indian Restaurant located just to the west of Hamilton town centre. It is a two storey tenement with an attic conversion and is constructed of red sandstone with a pitched and tiled roof. The accommodation comprises a hall, living room with bay window, kitchen/dining room and bathroom on the first floor and two double bedrooms and a shower room on the attic floor.
16. The Tenants signed a tenancy agreement for the subjects on 24 September 2015 and took entry on the same date. A third person, Connor Balfour also resides there. The Tenants viewed the property with Gavin Wallace of Next Move Scotland who is the Letting Agent. He also arranged for them to sign the tenancy agreement. The Tenants have been served with a Notice to Quit and are due to vacate the subjects on 24 May 2016.
17. The Tenants first notified the Landlord of repairs issues at the property on 28 September 2015. This notification was made to the Letting Agent. Thereafter the Tenants made further reports of repairing issues by email, by telephone and in person to the Letting Agent. A final detailed email dated 30 December 2015 was sent and hand delivered to the letting Agent.
18. On 21 October 2015 a new shower was installed at the property to replace the defective one. The Tenants subsequently reported problems with the new shower. On 20 November a repair to the roof was carried out. The Tenants continued to report leaks from the ceiling.
19. The kitchen ceiling and one wall above the kitchen units have patches of damp which are cracked and paint is peeling from same. There is a washing machine in the kitchen.
20. The living room has a damp patch on the ceiling. The windows are defective. The left window unit is not secured to the frame properly and cannot be opened. The centre window unit is not adequately secured to the frame and cannot safely be opened.

21. Two of the double glazed units in the front bedroom are defective with internal condensation. The seals in these windows have failed.
22. A gas safety certificate dated 18 March 2016 is available. A CO detector has been installed in the kitchen along with a heat detector. Smoke detectors have been installed in the hall and upper landing. There is no smoke detector in the living room.

### **Reason for decision**

23. The Committee considered the issues of disrepair set out in the Application and noted at the inspection and hearing.
24. There was clear evidence of dampness in both the living room and kitchen. It was a matter of agreement that a repair had been effected in November 2015. This had clearly been unsuccessful. The Committee accepted the evidence of the Tenants that they had taken all reasonable steps to notify the Landlord of the continuing problems. A record of the written notification was produced which the Landlord did not contest. The Landlord was asked to explain why no further action had been taken to repair the roof/ceiling or even to re-plaster or paint. The Committee did not find his responses convincing or reasonable. He claimed to have no knowledge of the continued water ingress stating that his Agent had not informed him. However, he made several references to conversations with the Agent regarding repairs issues at the property and confirmed Mr Wallace of Next Move has been his agent throughout the relevant period. He was unable to explain why he had not taken steps to repair the roof after receipt of the PRHP intimation, stating that he had assumed that the damage referred to pre-dated the repair which had been carried out. His explanation that he had not plastered or painted the ceiling following the repair because there had not been any torrential rain since October to test the effectiveness of the repairs was not a persuasive one.
25. Two of the glazing units in the living room are in a serious state of disrepair. The Committee accepted that the Tenants had taken the necessary steps to notify the Landlord regarding same. The Landlord again sought to blame his agent for failing to pass on the complaints. No steps were taken by the Landlord to carry out repairs until March 18 when a joiner instructed by him attended at the property and attempted to screw the windows shut. The Tenants refusal to allow this because of fire safety concerns seemed a reasonable position to take. The Landlord accepted that he had taken no further steps to arrange a proper repair to the windows indicating only that his joiner was trying to find suitable hinges.



26. The centre and right side lower glazing units in the window of the upstairs front bedroom are defective and require to be replaced. The Tenants explained that these windows also leaked during periods of rain although as it was a dry day this was not noted at the inspection. Again the Committee was satisfied regarding notification. The landlord could offer no explanation other than to state that the complaints had not been passed on. He did not explain why he had not attended to proper repairs to the windows since receiving intimation of the Application
27. The Landlord's position regarding the washing machine was not accepted by the Committee. He confirmed that it was within the property at the time the Tenants took entry but as he had rather inherited it from the previous owner or tenant stated that he should not have to repair it. No inventory was supplied with the tenancy agreement and the lease did not specifically exclude the washing machine from any obligations on the landlord. It could not be disputed that the washing machine did not belong to the Tenants and was in the property when they moved in. The Committee therefore took the view that it was part of the tenancy subjects and that the landlord had an obligation to ensure that it was in proper working order.
28. The Committee took the view that the Landlord had instructed the Letting agent to act on his behalf and that the Tenants were entitled to direct all their complaints and concerns to the Agent who had been their principal point of contact throughout. Any failures on the part of the Agent were not relevant to the determination of the Application
29. The Committee accordingly took the view that they will require to make a Repairing Standard Enforcement Order in respect of the living room and bedroom windows, the dampness in the kitchen and living room, the washing machine and the lack of a smoke detector in the living room. The Committee were satisfied that the Landlord had now complied with the repairing standard in relation to the provision of smoke and heat detectors in the hall, landing and kitchen and the provision of a CO detector in the kitchen. Also in relation to the fault with the shower, A satisfactory gas safety certificate had also now been exhibited.

## **Decision**

30. The Committee accordingly determined that the Landlord had failed to comply with the duty imposed by Section 14 (1)(b) of the Act.
31. The Committee proceeded to make a Repairing Standard Enforcement Order as required by section 24(1)

32. The decision of the Committee was unanimous

**Right of Appeal**

33. 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**

34. 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..... **J Bonnar** .....Date..... 23/4/16 .....  
Chairperson



Schedule of photographs taken during the inspection of Flat 1/2, 152 Almada Street,  
Hamilton ML3 0EW  
by the Private Rented Housing Committee on the 14 April 2016.

Reference Number : PRHP/RP/16/0012



External view - Front elevation of property



Kitchen ceiling



Kitchen ceiling



Kitchen ceiling and wall above fitted units



Kitchen ceiling towards door opening



Kitchen ceiling in recess



Living Room ceiling over bay window



Living Room - Bay window - left - screw holes



Living Room - Bay window - left - screw holes



Living Room - Bay window - central section - sill



Living Room - Bay window



Front Bedroom - Bay window - right lower section



Front Bedroom - Bay window - central lower section



Shower unit



Smoke alarm - top landing



Smoke alarm - lower hall



Heat alarm - Kitchen



CO alarm - Kitchen



Washing machine - Kitchen



Rear elevation