



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

**RE: Property 24 Dolphin Gardens West, Currie, EH14 5RE (“the House”)**

**The Parties:**

**Ms Kathleen McKay, residing at the House (“the Tenant”)**

**and**

**Mr Peter Henderson, 68 Crosswood Crescent, Balerno, EH14 7HS (“the Landlord”)**

**PRHP REFERENCE PRHP/RP/16/0067**

**NOTICE TO**

**Mr Peter Henderson, the Landlord**

**WHEREAS** in terms of their decision dated 5 July 2016 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; and*
- (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 to do the following:

1. Repair and complete the harling to the rear of the extension to the House;
2. Secure the rhone and guttering at the extension of the House;
3. Replace the harling on the garage where it has been removed;
4. Reinstall the rear window of the garage;
5. Replace or reinstall the rhone to the garage;
6. Repair or replace the woodwork surround to the door of the garage;
7. Reinstall the security light formerly attached to the garage and ensure that it functions correctly;
8. Reinstall the wall connecting the rear of the House to the garage in its prior location to the same height using similar materials to those used previously;
9. Ensure that the armoured electrical cable to the rear of the house is properly secured, repositioned or otherwise ensure that it no longer presents a trip hazard;
10. Reinstall the electrical connection and pump to the garden pond and ensure that pump is functional;
11. Clear all debris from the site and vegetation from the pond and reinstall paving slabs to either side of the pond where they have been removed;
12. Repair or replace the gas boiler to ensure that it meets current gas safety requirements;
13. Provide an up to date gas safety certificate demonstrating that the boiler meets current gas safety requirements;
14. Comply with the requirements contained with the EICR produced by Select dated 1 June 2016 in order to make the House fully compliant with current electrical safety standards.

The Committee orders that the works specified in this Order must be carried out and completed within two months of the date of service of this Notice and for written proof of having done so to be supplied to the Private Rented Housing Panel.

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.

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 typewritten on this and the preceding page  
are signed by Maurice O'Carroll, Chairman of the Private Rented Housing  
Committee at Edinburgh on the     day of July Two Thousand and Sixteen in the  
presence of the undernoted witness:

M O'Carroll

Chairman

P Stewart

Witness:

Full name: PAUL STEWART  
Occupation: TEAM LEADER, SCTS  
Address: 450 ARKYLE STREET  
GLASGOW  
G2 8LH



**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 24 Dolphin Gardens West, Currie, EH14 5RE (“the House”)

Ms Kathleen McKay, residing at the House (“the Tenant”)

and

Mr Peter Henderson, 68 Crosswood Crescent, Balerno, EH14 7HS (“the  
Landlord”)

**PRHP REFERENCE PRHP/RP/16/0067**

**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 (“the Act”) in relation to the House, and having taken account of the evidence led at the hearing and of the written documentation attached to the application and submitted by the parties, has made the following decision:

It has determined that the Landlord has failed to comply with the duty imposed by section 14(1)(b) of the Act.

The decision was unanimous.

**Background**

By application dated 15 February 2016 (the “Application”) the Tenant applied to the Private Rented Housing Panel (“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 Landlords had failed to comply with the duty to ensure that the House meets the repairing standard and in particular that the Landlords 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; and*
- (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...”*

By Minute of Decision dated 29 April 2016, the President considered that there was no prospect of the dispute between the parties being resolved and therefore to refer the Application to a Committee.

By letter dated 17 May 2016, the President of the PRHP intimated to the parties and their representatives 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:

Maurice O'Carroll, Chairperson  
Ian Murning, Surveyor Member

The Committee inspected the House at 10am on 27 June 2016. The Tenant was present at the inspection, together with her representative, Ms Anna Mancel of the Edinburgh Housing Advice Partnership (EHAP). The Landlord was not present at the inspection.

Following the inspection, the Committee held a hearing at George House, George Street, Edinburgh at 11.30am. The Tenant and her representative were again present at the hearing, both of whom gave evidence. The Landlord did not attend the hearing and was not represented.

### **Summary of evidence at the Hearing**

Prior to the hearing, both parties sent written submissions to the Committee which were considered as well as the oral evidence led. The Landlord submitted an estimate for works from a roofing contractor, Fisher and Anderson, erroneously dated 5 August 2016. He also submitted an Electrical Installation Condition Report (EICR) dated 1 June 2016 and an out of date Gas Safety Certificate dated 11 December 2012.

From the evidence led, the Committee understood that a gas safety check had been carried out on 16 June 2016, although it was not provided with a Gas Safety

Certificate further to that inspection. The Committee was, however, provided with a written report from a Mr Ryan Kearney, Gas Safe Register dated 20 May 2016 following upon that inspection which listed a number of faults which required to be remedied.

The Tenant gave evidence that following the gas safety check, the boiler had been deemed unsafe so that she had no running or hot water unless she chose to use the boiler against advice. A "do not use" sticker has been attached to the boiler. The Tenant was advised that the boiler was at risk of leaking carbon monoxide at the time of the safety check. Fortunately, the boiler cupboard has a functioning carbon monoxide detector within it.

The Tenant gave evidence that she had applied for a grant and that a new boiler was installed within the House with the Landlord's knowledge and consent in February 2013. Shortly after that the radiator in the hallway had stopped working. The Landlord had disconnected the radiator in the front porch in an unsuccessful attempt to remedy that, stating that there were too many radiators. That did not in fact remedy the problem. As at the date of the hearing, neither radiator was operational.

Works had been carried out to the exterior of the House, but these had not been completed. The Tenant complained that on certain occasions debris had been left for her to clear up after work had been partially carried out. On one occasion, she had asked a contractor to leave as he had not been given permission to enter onto the property in order to carry out any work. She denied refusing entry to tradespeople when she was present within the House.

In view of previous experience of harling rubble and demolished stonework having been left lying in the past, the Tenant was concerned to ensure that she was present within the House when works were being carried out to prevent a recurrence of such action. This account was supported by what was seen by the Committee during the inspection: debris has been left to the left side of the pond in the back garden and within the pond itself making the garden area unsightly. It was also supported by a contemporaneous photograph taken on the Tenant's mobile telephone which was shown to the Committee. The Committee therefore accepted that evidence.

The Tenant also gave evidence that the motion activated security light to the rear of the House attached to the garage was operational at the start of the Tenancy. A further security light to the rear of the House attached to the extension had never been operational. Further, an electric pump had been connected to the pond within the garden to circulate the water within it but that had been disconnected by the Landlord in November 2015. The Committee accepted that evidence.

The Tenant has the Landlord's mobile telephone number and is able to communicate with him in order to arrange times for work to be carried out. She works each week from Tuesday to Friday and is therefore at home every Monday. She was, however, agreeable to works being carried out on other days of the week

as had been done in the past as long as debris was tidied up afterwards and not left lying for extended periods of time.

### **Summary of the Issue**

The issue to be determined is whether (1) the House meets the repairing standard as laid down in section 13(1)(a)(b) and (c) of the Act and therefore (2) whether the Landlord has complied with the duty imposed by section 14 (1)(b).

### **Findings in Fact**

The Committee made the following findings in fact:

The parties entered into a tenancy agreement dated on or about 1 November 2012. The lease ran for six months until 30 April 2013 and continued every two months thereafter. The lease was continuing on that basis as at the time of the inspection and hearing. The Tenancy Agreement was signed by the Tenant and by the Landlord. The rent is £600 per calendar month and has not changed since the inception of the rental agreement.

The House is registered in the name of the Landlord and Susan Janet Donaldson jointly, under title number MID75841 and has been since 25 March 2007.

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

The Tenant formally notified the Landlord of the defects in the house which are now the subject of the Application via the offices of EHAP by letter dated 18 January 2016. The notification letter was largely replicated in the submission on behalf of the Tenant to the Committee and was used as a check list of items considered during the course of the Committee's inspection.

When carrying out works to the House in the past, the Landlord had left debris behind without clearing it up.

The House had a working security light attached to the garage upon the commencement of the tenancy.

There had been a working pump operated by an electricity cable from the garage to the pond in the rear garden at the commencement of the tenancy. The pump and electrical connection had been deactivated by the Landlord in about October 2015.

The inspection on 27 June 2016 revealed:

The House is a three bedroom semi-detached two storey villa situated within a residential area. The main front door gives entry to the central hallway via a porch. To the left of the hallway is the lounge and further on access is provided to the kitchen and thereafter to the extension to the rear of the House. At the end of the hallway is the family bathroom with electric shower over the bath. To the right of the hallway is the staircase leading to the

three bedrooms on the upper level of the House. The modern condenser gas boiler is located in a cupboard within the rearmost bedroom upstairs. The House is in generally good decorative order inside.

A carbon monoxide detector was present within the boiler cupboard. There were two mains smoke alarms in the hallway and on the upper landing. The Committee noted that there was no smoke alarm in the lounge, nor was there a heat detector in the kitchen.

There were small patches showing prior dampness in the ceiling of the rear extension where it meets the kitchen wall and in the corner to the rear of the extension at the back wall. Damp meter readings were negative showing there is at present no water ingress within the House despite recent heavy wet weather.

There was black condensation mould present in the downstairs bathroom in the corner of the ceiling above the window and to the right of the back wall. There was no extractor fan. The pendant bulb lighting fixture used was not appropriate for bathroom use. This was noted in the EICR supplied to Committee.

The radiators in the porch and the downstairs hallway were not functional.

On examination of the exterior of the House, the following was noted:

The harling attached to the rear of the extension has been removed over an area of approximately 1 metre square at the point at which previous damp stains had been noted on the corresponding interior wall. The wall now shows scored concrete, apparently in readiness for reharling. The uPVC guttering to the rear of the extension was not securely fixed.

There was no security lighting in the back garden of the house. It is still possible to see where it had been fitted to the side of the garage, as confirmed by the photograph shown in evidence at the hearing by the Tenant. The television ariel on the roof of the extension has been removed.

A retaining wall which formerly divided the front and rear gardens and joined the House to the garage had been completely removed. The wall had been to the same height as the garage roof. Its prior positioning could be determined by the markings on the ground where it had been. Prior to the wall being removed, access to the rear garden was only possible via the House. It is now possible for anyone and pet animals, especially dogs, to enter from the street. It is thus a security hazard.

The pond in the rear garden was not operational, having had the mains supply to the pump disconnected in or about October 2015, the same time as the wall had been taken down. The pond is overgrown with vegetation. There is debris strewn on either side of it and paving slabs have been removed. Debris is also strewn between the garage and the main House presenting a tripping hazard.



The window to the rear of the garage has been removed and the glass has been replaced by plywood boarding. The gutter/rhone at the side of the garage has been removed. The woodwork surrounding the garage door is rotten and in need of renovation and repainting. Harling has been removed from the front of the garage exposing the brickwork underneath.

A schedule of photographs was produced by the surveyor member and this is appended to the present decision.

### **Decision of the Committee and reasons**

In terms of the specific parts of the Repairing Standard, the Committee considered breaches of the following parts of section 13 of the Act to have occurred in relation to the above findings:

- (a) There is no evidence of water ingress to the House. However, the harling to the rear of the extension requires to be replaced to maintain the House in a watertight condition. The bathroom mould requires removal and treatment;
- (b) The garage window, rhone, harling, woodwork and security light. The condition of the pond and the surrounding garden, debris left lying, the removal of the partition wall and the uPVC guttering to the rear extension;
- (c) The functioning of the gas boiler, the hallway and porch radiators, the failings identified within the EICR and the light in the bathroom.

The Committee was therefore of the view that the House had failed to comply with the Repairing Standard in terms of section 13(1)(a) (b) and (c) of the Housing (Scotland) Act 2006 based upon its own observations at inspection and for the reasons stated above.

Accordingly, the Committee, considering the terms of section 13(3) of the Act, determined that the Landlords had failed to comply with the duty imposed by section 14(1)(b) of the Act.

The Committee was therefore of the view that it required to make a Repairing Standard Enforcement Order in terms of section 24(2) of the Act. The Committee considered that a time limit of two months was appropriate.

The decision of the Committee was unanimous.

The Committee also has the following observations: Although not part of the application, the fire safety provision does not come up to present standards. It is therefore recommended that a heat detector be fitted within the kitchen and a smoke alarm fitted within the living room of the House. All devices should be mains operated and interconnected with each other and the present smoke detectors already installed.

It is recommended that an extractor fan be fitted within the bathroom of the House in order to prevent recurrence of condensation mould.

The Committee received submissions regarding previous attempts at carrying out works to the House. It is not within its jurisdiction to adjudicate on such matters. It would however observe that both parties require to act reasonably in relation to the works now required by the RSEO to follow on from this decision, viz:

The Landlord requires to provide adequate notice to the Tenant of works which are about to be carried out. These should be carried out at reasonable times and debris after such works are completed should be cleared at the end of each working day and when the work is done.

For her part, the Tenant requires to allow and facilitate access at all reasonable times and to co-operate fully with the Landlord in complying with the RSEO and any contractor appointed on his behalf.

### **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.

M O'Carroll

Maurice O'Carroll  
Chairman

Date: 5 July 2016