



## **Repairing Standard Enforcement Order**

Ordered by the Private Rented Housing Committee

**Re: Subjects GARGOWAN LODGE and WOODEND LODGE, GARTOCHARN, ALEXANDRIA, G83 8SB tinted mauve and hatched blue respectively on the Title Plan; Together with the servitude right contained in (One) the Disposition in Entry 5 of the Burdens Section, and (Two) Part III of the said Disposition in Entry 5 of the Burdens Section. Together also with the subsisting rights to real burdens specified in the Schedule below. As more particularly described in Land Certificate Title number DMB 85432 (hereinafter referred to as "the house")**

**PRHP Reference: PRHP/RP/16/0290**

### **The Parties:**

Miss Jennifer McDougall, Woodend Lodge, Wardhill, Gartocharn G83 8SB ("the tenant")

Mr Mark Dinardo, Dinardo and Partners, Mirren Court (One) 119 Renfrew Road, Paisley PA3 4EA ("the landlord")

### **Notice to Mark Dinardo ("the landlord")**

Whereas in terms of its decision of 28<sup>th</sup> November 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 and in particular that the landlord has failed to ensure that the house meets the repairing standard in 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*

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:

- (i) **To have the property inspected by a suitably qualified specialist to establish the extent of the issue of damp conditions within the property; to identify the cause of the damp conditions; and to provide recommendations on which works are required to remedy the problem of damp conditions;**

- (ii) To produce a report from the specialist to the PRHP with the findings of these investigations within 28 days of the date of receipt of this order;
- (iii) To carry out such works and repairs identified by the specialist in terms of his recommendations to eradicate all water damage and mould growth on all affected walls and flooring of the property.
- (iv) To renew or carry out such repairs as are necessary to the windows of the property to ensure that they are in a reasonable state of repair and in proper working order.
- (v) To carry out all ancillary works necessitated by the above works to and make good all decoration.

The Private Rented Housing Committee order that the works specified in this Order must be carried out and completed within a period of 6 weeks from the date of service of this Notice.

### **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.

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 determined.

IN WITNESS WHEREOF these presents typewritten on this are signed by Simone Sweeney, Chairperson of the Private Rented Housing Committee, at Glasgow, on 30th day of November, Two Thousand and Sixteen, in the presence of the undernoted witness:

**S Sweeney** Chairperson

**B Divers** Witness

Barry Divers, Advocate, Faculty of Advocates, Parliament House, 11 Parliament Square, Edinburgh, EH1 1RF



## **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 Woodend Lodge, Wardhill, Gartocharn G83 8SB ("the property")

Miss Jennifer McDougall, Woodend Lodge, Wardhill, Gartocharn G83 8SB ("the tenant")

Mr Mark Dinardo, Dinardo and Partners, Mirren Court (One) 119 Renfrew Road, Paisley PA3 4EA ("the landlord")

Reference number: PRHP/RP/16/0290

#### **Decision**

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 property concerned and taking into account the evidence led from the tenant and the landlord at the hearing and the documentation submitted to the Private Rented Housing Panel ("PRHP") by the parties, the Private Rented Housing Committee ("the committee") determine that there has been a failure on the part of the landlord to comply with the duty imposed by Section 14 (1) (b) of the Act.

#### **Relevant Statutory Provisions**

Section 13: The repairing standard

(1) A house meets the repairing standard if—

- (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.

#### Section 14: Landlord's duty to repair and maintain

(1) The landlord in a tenancy must ensure that the house meets the repairing standard—

(a) at the start of the tenancy, and

(b) at all times during the tenancy.

#### Background

1. By application dated 8<sup>th</sup> September 2016 ("the application") the tenant applied to the PRHP seeking a determination of whether or not the landlord had failed to comply with the duties imposed by Section 14 (1) (b) of the Act.
2. In the application the tenant stated that the landlord had failed to comply with sections 13 (1) (a) (b) (d) (f) and (g) of the Act ("the repairing standard").
3. In the application, at section 8, the tenant specified how she considered the landlord to have failed to meet the repairing standard:

*"On moving into the property, Jan 16, we advised there was a problem with the wood burning stove in the living room. DP Group organised a chimney sweep to attend the property, 1<sup>st</sup> Feb 16. Advised the stove was unsafe, no carbon monoxide alarm present, not to be used (report att) multiple contractors advised it should be removed, finally actioned on 13<sup>th</sup> of April (pic attached). DP Group advised 'place box/wood in front of whole.' State of fireplace has not changed in 5 months. No smoke detectors present. Ongoing issue with damp, mildew on both"*

4. At section 9 of the application, the tenant specified the nature of the work to be done, as:

*"Fireplace*

*Smoke detectors*

*Damp"*

5. In support of the application, the tenant submitted copy tenancy agreement together with colour photographs, technical report from The Vacuum Chimney Sweeps Chimney Technical Services and copy emails dated, 17<sup>th</sup> and 18<sup>th</sup> February, 7<sup>th</sup>, 9<sup>th</sup>, 21<sup>st</sup> and 23<sup>rd</sup> March, 6<sup>th</sup> and 13<sup>th</sup> April, 6<sup>th</sup> and 10<sup>th</sup> May, 6<sup>th</sup> June, 19<sup>th</sup> July, 8<sup>th</sup>, 9<sup>th</sup>, 10<sup>th</sup>, 15<sup>th</sup>, 18<sup>th</sup>, 22<sup>nd</sup>, 24<sup>th</sup>, 30<sup>th</sup> August, 6<sup>th</sup>, 7<sup>th</sup> and 8<sup>th</sup> September 2016, between herself and the landlord. The title deeds of the property were made available to the committee. The title identified the owner of the property as Mark Douglas Dinardo.
6. The tenant intimated to the PRHP that she was no longer residing at the tenancy, having vacated the property on 15<sup>th</sup> September. The email read, *"We were last in the premises on 15<sup>th</sup> of September. At this time I took further images of the ceilings in both the bedrooms and hallway as well as the damp on the wall in the main bedroom. Please see attached."* Photographs were provided.

7. Although the applicant was no longer a resident and the tenancy was at an end, the President of the PRHP considered that the application should still proceed as the content of the complaint raised risks to the health and safety of anyone coming onto the property. By minute of continuation of 19<sup>th</sup> September the President referred the application to the committee.
8. By minute of decision, also dated 19<sup>th</sup> September 2016, the President of the PRHP, referred the application to the committee for a final determination of the application, in terms of Section 23 (1) of the Act, on the basis that there did not appear to be any reasonable prospect of the parties reaching a conclusion between themselves .
9. An inspection of the property and a hearing before the committee were assigned for 14<sup>th</sup> November 2016. Intimation of the date of the hearing and inspection together with the location of the hearing were intimated to the landlord by the PRHP by letter of 7<sup>th</sup> October 2016. The committee comprised the following members:
  - (i) Miss Simone Sweeney, Legal member and;
  - (ii) Mr Kingsley Bruce, Surveyor member.
10. An inspection of the property took place at 10.20am on 14<sup>th</sup> November 2016. The landlord was absent. In attendance was a female who identified herself as the new tenant at the property but did not provide her name to the committee.
11. Following the inspection, a hearing of evidence took place at Alexandria Community Centre, Main Street, Alexandria, G83 0NU. Neither party nor any representative on their behalf appeared at the hearing. The committee considered all the evidence before them and made its determination.

### **Summary of the issues**

12. The issues to be determined are: whether the property meets the repairing standard set out at section 13 (1) of the Act in terms of
  - (i) 13 (1) (a): the allegation of dampness, mould growth and poor ventilation at the property;
  - (ii) 13 (1) (b): the windows at the property not opening;
  - (iii) 13 (1) (d): the allegation that the wood burning stove in the living room was not working;
  - (iv) 13 (1) (f): there being unsatisfactory provision for detecting fires as there were no smoke detectors present;
  - (v) 13 (1) (g): that there was no provision in the property for detecting carbon monoxide and whether the landlord has complied with the duty imposed by Section 14 (1) (b).

### **Findings in fact**

13. The committee makes the following findings in fact:
14. That the tenancy agreement between the parties for the property is dated 22<sup>nd</sup> January 2016. The lease is a short assured tenancy in terms of section 32 of the Housing (Scotland) Act 1988. The provisions of Chapter 4 of the Act apply.

15. That the landlord is Mark Dinardo.

16. That the letting agents are DP Group, Mirren Court (One) 119 Renfrew Road, Paisley, PA3 4EA.

17. That the tenant sent a reply email to the letting agents on 17<sup>th</sup> February 2016.

18. That the email read:

*"The 2 bedrooms have the painted shut Windows. In the master bedroom, the window looking east has the broken latch and won't close properly, would be good if that can be secured*

*That's fine about the fire, looking forward to getting it working as the heating is on 24/7 atm.*

*One last thing, Is there someone coming to check on the damp in hall and master bedroom?."*

19. That the letting agent replied to the email from the tenant on 8<sup>th</sup> March 2016.

20. That the reply from the letting agent read:

*"...in the main bedroom, of the two windows, only one has opener, you mentioned its frame is poor externally and the joiner will return, at a time to be agreed, to repair. The window is secured.*

*In the spare room, of the two windows, each has an opening frame, painted shut. They tried to release the window facing river but didn't want to force. The window not facing river has been freed and planed and it needs another side handle to make it easier to shut which the joiner will bring. Karen says it's ok to open but a bit stiff to close.*

*With regards to the damp patch in main bed corner, we contacted roofer today, they will be in touch at the start of next week to come out to fix the problem which is related to the downpipe. I am sorry for the delay with this, they've been inundated due to the recent heavy rain."*

21. That, by February 2016, the landlord had been put on notice of the homeowner's complaint that the windows were not opening properly, that there was dampness at the property and that the wood burning stove was in need of repair.

22. That the letting agent responded to an email from the tenant on 21<sup>st</sup> March 2016 which read:

*"...called the stove company today, the person dealing with the replacement fire is out at the moment but he will call her back and we will let you know what they say about the fire. Re. joiner/roofer/painter-We will chase them and email you later today or first thing tomorrow when we hear back from them."*

23. That the landlord was aware that the issues with the dampness, the defective wood burning stove and the windows remained as at 21<sup>st</sup> March 2016.

24. That the landlord issued an email, dated 6<sup>th</sup> May 2016, to the tenant which read:

*"Fireplace –Woodend Lodge, Gartocharn*

*...I got the chap this morning who described what he's quoting to us for reinstatement. We'll keep pushing it to resolution."*

25. That, by 6<sup>th</sup> May 2016, the issues with the wood burning stove remained unresolved.
26. That the landlord issued an email, dated 6<sup>th</sup> June 2016, to the tenant which read:

*"We are still chasing the fireplace people but they have been very poor at communicating"*
27. That, by 6<sup>th</sup> June 2016, the issues with the wood burning stove remained unresolved.
28. An email from the tenant's partner to the landlord dated 8<sup>th</sup> August 2016 read,

*"We expect our full deposit ...The nail in the coffin is the gaping hole in our livingroom which you guys have ignored..."*
29. That the tenant submitted an application to the PRHP dated, 8<sup>th</sup> September 2016.
30. That the tenant and her partner, Nick Wilson, left the property on 16<sup>th</sup> September 2016.
31. The PRHP intimated to the landlord a copy of the tenant's application under cover of letter, 7<sup>th</sup> October 2016. The landlord was provided with the date and time of the inspection and hearing. The letter of 7<sup>th</sup> October 2016 refers.
32. That, in response to the application, the landlord provided written representations by letter of 24<sup>th</sup> October 2016 to the PRHP.
33. That, by letter dated 24<sup>th</sup> October 2016, the landlord submitted that the issues with the wood burning stove and installation of a carbon monoxide detector has been addressed.
34. The letter of 24<sup>th</sup> October 2016 read,

*"Fireplace- the new stove was installed by Agnew Chimney Engineering on 7/11/16. please see invoice, certification of installation and photographs. The installer also installed a carbon monoxide detector (see photos)."*
35. That, attached to the letter were photographs of, inter alia, a carbon monoxide detector and a wood burning stove together with a document with the title, *"Certification of stove installation"* dated 7<sup>th</sup> October 2016. The certificate was completed by Agnew Chimney Engineering, 34 Clarion Crescent, Knightswood, Glasgow, G13 3LG. An invoice from the same company dated 9<sup>th</sup> October 2016 was attached.
36. That a typographical error existed was evident from the landlord's letter of 24<sup>th</sup> October 2016 and that the wood burning stove had actually been fitted on 7<sup>th</sup> October rather than 7<sup>th</sup> November 2016.
37. That, in his letter of 24<sup>th</sup> October 2016, the landlord responded to the complaint that there was inadequate smoke and heat detection in the following way:

*"Smoke/Heat Detection – These have been upgraded with new hard wired detectors fitted on 3/10/16 to include heat/smoke detection in the hall, lounge and kitchen. See EICR, electricians invoice and photographs."*
38. That, further in response to the complaint that the property was without a carbon monoxide detector, the landlord wrote in the letter of 24<sup>th</sup> October 2016 that,

*"Carbon Monoxide Detectors- A carbon monoxide detector is fitted in the kitchen above the oil central heating boiler and on was also fitted (noted in (1) above) when the new stove was installed in the lounge by the Contractor."*

39. That the committee inspected the property on 14<sup>th</sup> November 2016 at approximately 10.20am. The weather was dry and bright. The property is a category C (S) listed building, situated in a rural environment on the edge of the River Endrick. Access to the property is along a private road.
40. That committee found a new tenant to be residing at the property. The new tenant did not provide her name but advised the committee that she had been residing at the property with her partner and two children for approximately 4 weeks. The new tenant allowed the committee access to inspect the property.
41. That the committee identified a strong smell of dampness throughout the property, most notably in the hallway.
42. That a sky light was positioned at the ceiling of the hallway.
43. That on the walls of the hallway, underneath the skylight, there was evidence of water ingress.
44. That, a dehumidifier was positioned on the floor of the hallway underneath the sky light.
45. That the new tenant advised the committee that she emptied approximately 2 litres of water from the dehumidifier each day.
46. That, in the hallway, there was evidence of dampness to lower walls extending along one wall in the hallway, which when tested with an electronic moisture meter indicated structural damp.
47. That, within the kitchen, slight mould growth and dampness was identified on the external wall close to the back door.
48. That, within the bathroom, there was further evidence of dampness to lower walls, which was checked with an electronic moisture meter.
49. That the flooring adjacent to the outer wall of the building, within the bathroom was uneven and there was significant deflection and movement indicative of defect to supporting joists, likely to be the result of timber decay.
50. That the committee finds a failure on the part of the landlord to meet the repairing standard in terms of section 13 (1) (a) of the Act.
51. That the property had single glazed windows in each of the 2 bedrooms.
52. That, within the master bedroom, there were windows positioned on the east side of the building and on the north side of the building and were in a poor condition.
53. That there was evidence of condensation on the windows of the master bedroom.
54. That the surveyor member of the committee attempted to open the windows of the master bedroom.
55. That only 1 of the windows could be opened.
56. That each of the windows within the master bedroom should be fully operational.



57. That there was no evidence of dampness on the ceiling of the master bedroom.
58. That a dehumidifier was positioned within the master bedroom which was operational at the time of the inspection.
59. That the purpose of the dehumidifier in the master bedroom was to address the issue of condensation in evidence within the room.
60. That, within the second bedroom at the property, there was no evidence of dampness on the ceiling of the room.
61. That there was no evidence of condensation at the windows of the second bedroom.
62. That the surveyor member of the committee attempted to open the windows of the second bedroom.
63. That only one of the windows within the second bedroom opened.
64. That each of the windows within the second bedroom should be fully operational.
65. That there was inadequate ventilation within each of the bedrooms.
66. That the committee finds a failure on the part of the landlord to meet the repairing standard in terms of section 13 (1) (b) of the Act.
67. That, within the living room, a wood burning stove was fitted to the centre of the external wall leaving no hole where a fire had previously been fitted.
68. That the stove was not in operation at the time of the inspection and the committee make no comment as to whether or not the stove is in proper working order.
69. That the current tenant advised that, throughout the period she had been resident at the property, she had been using the stove and found it to be operating effectively.
70. That the committee finds no failure on the part of the landlord to meet the repairing standard in terms of section 13 (1) (d) of the Act.
71. That a carbon monoxide detector was attached to the wall of the chimney to the left of the fireplace.
72. That no tests were undertaken by the committee to ascertain if the carbon monoxide detector was in proper working order.
73. That hard wired smoke detectors were identified attached to the ceilings of the living-room, hallway and kitchen.
74. That attached to the landlord's letter of 24<sup>th</sup> October 2016 was an Electrical Installation Condition Report dated, 3<sup>rd</sup> October 2016.
75. That the extent of the electrical installation covered by the report read, "*Complete installation + smoke detectors.*"
76. That the committee finds no failure on the part of the landlord to meet the repairing standard in terms of section 13 (1) (f) of the Act.
77. That the committee finds no failure on the part of the landlord to meet the repairing standard in terms of section 13 (1) (g) of the Act.

### **Reasons for decision**

78. Having inspected the property the committee found evidence of dampness to the lower walls of the hallway, kitchen and bathroom. The committee identified possible timber decay to the flooring of the bathroom, together with the evidence of water coming through the skylight in the hallway and the strong smell of dampness in evidence throughout the property, strongest within the hallway. Being satisfied that tenant was relying on dehumidifiers to address the issue of dampness and condensation with the property, the committee has reached the view that the landlord has failed to meet the repairing standard of section 13 (1) (a) of the Act.
79. The committee identified that only one of the windows within each of the bedrooms could be opened. This creates difficulties in ventilating the bedrooms. This, together with the fact that the committee identified condensation on one of the windows and that the tenant was relying on the use of dehumidifiers to address the issue of condensation brings the committee to the view that the landlord has failed to meet the repairing standard of section 13 (1) (b) of the Act.

### **Decision**

80. The committee determined that the landlord has failed to comply with the duties imposed by sections 13 (1) (a) and (b) and 14 of the Act.
81. The committee proceeded to make a Repairing Standard Enforcement Order as required by Section 24 (1). The Repairing Standard Enforcement Order has a time limit of 6 weeks from the date of service of the Order for the landlord to carry out works necessary to ensure that the property meets the repairing standard.
82. The decision of the committee was unanimous.

### **Right of Appeal**

83. 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.
84. 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 determined.

# Sweeney

Chair

At Glasgow on 30<sup>th</sup> November 2016

**SCHEDULE OF PHOTOGRAPHS:**

**WOODEND LODGE, WARDSHILL, GARTOCHARN, ALEXANDRIA, G83 8SB**

**PRHP/RP/16/0290**

**DATE: 14 NOVEMBER 2016**







