

Ref PRHP/RP/15/0228



**Private Rented Housing Committee**

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

**Re: 17 (3F3) Marionville Road, Edinburgh EH7 5TY (“the property”)**

**Title Number: MID43312**

**The Parties:-**

**Ms Whitney Stewart, formerly residing at 17 3F3 Marionville Road Edinburgh EH7 5TY (“the former tenant”)**

**HALION LIMITED, incorporated under the Companies Acts (Registered Number 223859, Registered Office at 2F1, 34 Arden Street, Edinburgh (“the Landlord”)**

**Committee members:-**

**Richard Mill (Chairman), Charles Reid Thomas (Surveyor Member) and Ann MacDonald (Housing Member)**

*Decision*

The committee, having made enquiries 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, determined that the Landlord has not complied with the duty imposed by Section 14(1)(b) of the Act in respect that the Property does not meet the Repairing Standard.

### *Background*

1. By way of application dated 10 August 2015, and received on 18 August 2015, the former tenant, Whitney Stewart, 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 Act in respect of the Property. The former tenant vacated the property and a Minute of Continuation was subsequently issued on 6 October 2015.
2. In the application the former tenant stated that the Landlord had failed to comply with their duty to ensure that the house meets the Repairing Standard in a number of respects. The relevant aspects of the Repairing Standard put at issue are those contained within Sections 13(1)(a), (b), (d) and (e) which are in the following terms:-
  - whether the house is wind and watertight and in all other respects reasonably fit for human habitation.
  - whether 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.
  - whether any fixtures, fittings and appliances provided by the Landlord under the tenancy are in a reasonable state of repair and in proper working order.
  - whether any furnishings provided by the Landlord under the tenancy are capable of being used safely for the purpose for which they are designed.
3. Notices of Referral were issued to parties on 14 October 2015.
4. Following the Notices of Referral being issued, notification was received from the former Tenant's representative that the tenancy had been lawfully terminated. The president proceeded to continue the application further and considered that the application should be determined on health and safety and public interest grounds due to the nature of the alleged repairs which are required which raise health and safety concerns for any future tenants and occupants.

### *Inspection*

5. The committee inspected the Property on 1 December 2015 at 10.00 am. The committee were invited into the Property by Mr Craig Wonnacott, Property Manager, from Messrs Orchard & Shipman, the Landlord's letting agent and representative.

### *Hearing*

6. Following the inspection of the Property the committee convened a Hearing at 11.00 am on 1 December 2015 at George House, 126 George Street, Edinburgh EH2 4HH. The only attendee was Mr Craig Wonnacott.

### *Summary of the issues*

7. The issues to be determined by the committee are whether or not the Property meets the Repairing Standard to the extent put at issue within the application, as at the date of the Hearing.

8. The matters complained of by the former Tenant were:-

- it was alleged that there were two leaks in the roof causing water ingress
- reference was made to a “collapsed chimney”
- the windows were alleged to be ill-fitting and draughty
- reference was made to dampness throughout the property
- it was stated that the bathroom cabinet was falling off the wall
- it was stated that a drawer in the kitchen unit is broken
- it was stated that the shower is leaking. There are cracked and missing tiles and the shower tray requires to be re-sealed

### *Findings in Fact*

9. The committee makes the following findings in fact:

- 9.1 The title to the subjects known as 17 (3F3) Marionville Road, Edinburgh EH7 5TY is held by the Landlord. Their interest is registered in the Land Register of Scotland under title number MID43312 on 20 June 2003.
- 9.2 The Property which is the subject of this application is a one bed roomed top floor traditional tenement property. The Property comprises of a lounge, kitchen, shower room and separate WC.
- 9.3 The former tenant entered into a Short Assured Tenancy with the Landlord on or about 26 June 2013 and took up occupation thereafter. They raised a number of complaints with the Landlord’s agents. Some remedial work was undertaken. Due to their continued complaints and concerns, they lodged the current application.

9.4 In relation to the matters complained of in the Application the committee's inspection revealed:-

- i. The windows in the Property are replacement uPVC single pane units. All of the windows within the Property are capable of being opened and closed. The window seals, though not new, are satisfactory.
- ii. There was no evidence of damp within the Property.
- iii. The sealant in the shower room around the tiles and shower tray has been replaced recently. A good seal was observed. It was a small area of approximately a couple of inches square where there were missing tiles. The area was at approximately head height and adjacent to the shower power unit. The small area of missing tiles is not an area which would be expected to sustain much water contact.
- iv. The front from one of the drawers in the kitchen units was detached from the drawer. The drawer front is available for re-fixing.
- v. There is a small glass shelf within the WC compartment of the Property. It is affixed to the wall by screws in raw plugs. The fixings have become loose. The shelf is capable of being re-fixed in place.
- vi. There was evidence of a small water leak from the flue area of the boiler which is situated within the hallway of the Property. The extent of water ingress was not significant, especially so in the context that for the previous 72 hours or thereby prior to the committee's inspection, there had been particularly inclement weather with almost persistent rain.
- vii. There was no evidence of any other water leaks within the Property.
- viii. A hardwired smoke detector was situated within the hallway of the Property.

*Reasons for the Decision*

10. The committee determined the Application having regard to the bundle of papers (which had been made available in advance to parties), their inspection, together with the evidence of those in attendance at the Hearing.
11. The committee was only able to formally consider the Tenant's complaints which formed part of the intimated application. The

committee was also under an obligation to consider the former Tenant's complaints as at the time of the Hearing on 1 December 2015.

12. The committee was satisfied having regard to all of the available evidence that there was sufficient information and material upon which to reach a fair determination of the reference.
13. The committee generally formed the impression, based upon their inspection and the information provided by the Landlord's representative, that the Property was being maintained to a reasonable standard but that certain items had arisen throughout the duration of the last let. The committee concluded that all of the Tenant's complaints had been taken seriously and investigated appropriately.
14. Mr Wonnacott advised that the small patch of missing tiles, the detached kitchen drawer front and the loose shelf in the bathroom have all been noted as requiring attention and the minor amount of remedial work required to rectify these issues will be undertaken in early course. The Tenant who made the application has vacated the Property. The Property has been empty for a couple of months. The Landlord is in no rush to re-let the Property and may not, as a matter-of-fact, re-let the Property. The committee were of the view that these issues were not of sufficient gravity to warrant any enforcement action to be taken by way of the making of any Repairing Standard Enforcement Order. That would be disproportionate.
15. The Tenant had complained about dampness and mould within the Property. The evidence from Mr Wonnacott was that excess moisture had been caused by the method of the former Tenant's drying clothes. Given the committee's observations at the inspection this evidence was accepted. The committee concluded that the Property did not suffer from any damp problem.
16. Based upon the inspection of the Property, the committee were satisfied that the windows of the Property are in a reasonable state of repair.
17. The only matter which caused the committee some concern was the small leak from the boiler flue. The leak is not significant given the very wet weather prior to the committee's inspection and the small amount of water ingress observed. Mr Wonnacott advised that a roofing contractor employed by the landlord had already carried out work on the roof over recent months.
18. The committee were keen to avoid making a Repairing Standard Enforcement Order if possible. It was proposed to Mr Wonnacott that if roofing contractors were instructed to investigate and repair the defective roof area around the boiler flue which was likely to be a minimal item of work and evidence this within a relatively short

timescale, that the committee would not make any Repairing Standard Enforcement Order. Mr Wonnacott indicated that he was confident that the Landlord would be keen to remedy the difficulty and proceed accordingly. A period of 14 days from the date of the Hearing was allowed to enable such evidence to be produced.

19. Regrettably despite numerous attempts to engage the letting agent thereafter no such documentation demonstrating that relevant roof repairs had been undertaken were provided. The committee allowed considerable leeway taking into account the festive holiday period but on the basis that no such relevant information had been provided by Friday 15 January 2016, concluded that no such work had been given effect to and as such the leaking roof around the boiler flue was still active. Such an outstanding issue is a breach of section 13(1)(a) of the Act. It is upon that basis that the Repairing Standard Enforcement Order is issued.

*Decision*

20. The Property does not meet the Repairing Standard. The Landlord has not complied with their duty imposed by Section 14(1)(b) of the Housing (Scotland) Act 2006. A Repairing Standard Enforcement Order is necessary and is issued here contemporaneously herewith.

*Right of Appeal*

21. 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 of the Act*

22. Where such an appeal is made, the effect of the decision and of any order made, 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 date on which the appeal is abandoned or so determined.

**M Murray**

witness

**R Mill**

\_\_\_\_\_  
chairman

Margaret Johnstone Murray  
21 Stafford Street  
Edinburgh  
EH3 7BJ

Legal Secretary



## Repairing Standard Enforcement Order

Ordered by the Private Rented Housing Committee

prhp Ref: PRHP/RP/15/0228

Re: Property at 17 (3F3) Marionville Road, Edinburgh EH7 5TY ("the Property")

Title No: MID43312

The Parties:-

Ms Whitney Stewart residing formerly at Flat 3F3 Marionville Road, Edinburgh EH7 5TY ("the Tenant")

HALION LIMITED, incorporated under the Companies Acts (Registered Number 223859, Registered Office at 2F1, 34 Arden Street, Edinburgh ("the Landlord"))

### NOTICE TO HALION LIMITED ("the Landlord")

Whereas in terms of their decision of even date, 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 meets the Repairing Standard in respect of:-

**Section 13(1)(a):** the house is wind and watertight and in all other respects reasonably fit for human habitation.

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 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 roofing contractor to inspect the whole roof above the Property, with particular reference to the area around the boiler flue, and to report on and carry out necessary works required to eradicate any water ingress and to make the Property wind and watertight.

The Private Rented Housing Committee requires that the works specified in this Order must be carried out and completed within 3 weeks from the date of service of this Notice.

**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 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(s) are executed by Richard Mill, Solicitor, chairperson of the Private Rented Housing Committee at Edinburgh on the Nineteenth day of January Two Thousand and Sixteen before this witness:-

**M Murray**

witness

**R Mill**

chairman

Margaret Johnstone Murray  
21 Stafford Street  
Edinburgh  
EH3 7BJ

Legal Secretary