



## Repairing Standard Enforcement Order

### Ordered by the Private Rented Housing Committee

**Re: Flat 85, 15 Ibroxholm Oval, Glasgow, G51 2TY being part of the subjects registered in the Land Register of Scotland under Title Number GLA166850 ('the Property')**

**The Parties:-**

**Daryn Foster residing at flat 85, 15 Ibroxholm Oval, Glasgow, G51 2TY ('The Tenant')**

**Lowther Homes, Wheatley House, 25 Cochrane Street, Glasgow, G1 1HL ('The Landlord')**

**Case Ref No: PRHP/RP/16/0072**

**The Committee members were Jacqui Taylor (Chairperson) and George Campbell (Surveyor Member).**

#### NOTICE TO

**Lowther Homes, Wheatley House, 25 Cochrane Street, Glasgow, G1 1HL**

Whereas in terms of their decision dated 12<sup>th</sup> June 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 the Landlord has failed to ensure that the Property is wind and water tight and in all other respects reasonably fit for human habitation and that the structure and exterior of the Property (including drains, gutters and external pipes) are in a reasonable state of repair and 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 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 to:-

1. Obtain a report on the condition of the windows in the Property from a specialist windows contractor and/ or the window manufacturers advising on any remedial works required to render the windows wind and water tight and in proper working order.
2. The Private Rented Housing Committee order that the works necessary to render the windows wind and water tight and in proper working order as recommended by the said specialist windows contractor and/ or the window manufacturers must be carried out and completed by 30<sup>th</sup> September 2016.

**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: IN WITNESS WHEREOF these presents are executed by Jacqueline Carol Taylor, Chairperson of the PRHP at Irvine on 12<sup>th</sup> June 2016 in the presence of the undernoted witness:

**J Taylor**

Signed..... Date 12<sup>th</sup> June 2016

JACQUELINE CAROL TAYLOR, Chairperson

K Byrne

witness: KEIRSTEN BYRNE, 65, High Street, Irvine



## 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

Re: Flat 85, 15 Ibroxholm Oval, Glasgow, G51 2TY being part of the subjects registered in the Land Register of Scotland under Title Number GLA 166850 ('the Property')

The Parties:-

Daryn Foster residing at flat 85, 15 Ibroxholm Oval, Glasgow, G51 2TY ('The Tenant')

Lowther Homes limited, Wheatley House, 25 Cochrane Street, Glasgow, G1 1HL ('The Landlord')

Case Ref No: PRHP/RP/16/0072

#### 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) in relation to the Property, determined that the Landlord has failed to comply with the duty imposed by Section 14 (1)(b) of the Act.

#### Background

1. The Tenant applied to the Private Rented Housing Panel for a determination of whether the Landlords have 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 Tenant stated that he considered that the Landlord has failed to comply with their duty to ensure that the Property meets the repairing standard. He advised that the Property was not wind and watertight and in all other respects reasonably fit for human habitation; that the structure and exterior of the house (including drains, gutters and external pipes) are not in a reasonable state of repair and in proper working order and that the fixtures, fittings and appliances provided by the Landlord under the tenancy were not in a reasonable state of repair and in proper working order.

In particular the application stated that:-

*'The Landlords have failed to repair windows which are in a bad state of disrepair making the property unsuitable for habitation due to excessive heat loss, water ingress and road noise/ poor noise insulation. The Landlords have failed to act accordingly and are refusing to address seriousness of repairs and effect on the Tenant's health.'*

In terms of the work required the application stated that:-

*'The works required are the replacement of windows to ensure proper integration into the build.'*

3. The President of the Private Rented Housing Panel, having considered the application, comprising documents received between 22<sup>nd</sup> February 2016 and 30<sup>th</sup> March 2016, referred the application under Section 22 (1) of the Act to a Private Rented Housing Committee.

4. The Committee members were Jacqui Taylor (Chairperson) and George Campbell (Surveyor Member).
5. 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 Tenant, dated 22nd April 2016.
6. The Committee attended at the Property on 31st May 2016. The Tenant and his father, William Foster, were present. The Landlord was represented by Theo Forrest, Letting Agent and Moira Devlin, Letting Manager. The Property is a one bedroom flatted property located on the 18<sup>th</sup> floor of a block of high rise flats. The block had been refurbished approximately two and a half years ago. The Committee inspected the alleged defects and found as follows:-

(1) Window in the bedroom.

The bedroom window is a UPVC double glazed unit. The window is southfacing and the most exposed of the windows in the Property. The Tenant explained that the window is draughty and water leaks through the window frame onto the window sill. He also advised that he could hear a lot of road noise in the bedroom. He pushed the window into the frame and demonstrated that the road noise reduced when he did this. He explained that when it is windy rainwater is pushed inside the frame and trickles through the gaps and into the Property. He also showed the Committee that draught proofing insulation strips had been installed. He explained that there is gearing missing from the window which means that the window frame is not providing an adequate seal.

Theo Forrest opened the bedroom window and demonstrated that when he poured water into the drip tray the water correctly drained out of the vent holes.

(2) Window in the Kitchen.

The window in the kitchen is also a UPVC double glazed unit as is more secure than the bedroom window. The Tenant pointed out to the Committee that there is less road noise experienced in the kitchen than the bedroom.

(3) Windows in the Living Room and Bathroom

The windows in the living room and bathroom are also UPVC double glazed units. The Tenant explained that these windows are draughty. However the Committee did not witness any draughts at the inspection as it was not particularly windy outside.

Photographs were taken during the inspection and are attached as a Schedule to this report.

7. Following the inspection of the Property the Private Rented Housing Committee held a hearing at Wellington House, 134- 136 Wellington Street, Glasgow, G2 2XL.

The Tenant, his father William Foster, Theo Forrest and Moira Devlin attended the hearing.

In relation to the matters detailed in the Tenant's application the parties advised as follows:

The Tenant explained that he has been a tenant of the Property since April 2014. He first became aware of problems with the windows in the autumn of 2014. All the windows in the Property, other than the kitchen window were cold, draughty and did not prevent him hearing road noise. He had regular contact with the Landlord through their hotline repairs telephone number. During the winter of 2015 City Builders inspected the windows and explained that they could not carry out any remedial works. They recommended to the Landlord that they contact a specialist windows contractor. Thereafter some remedial works were carried out to the windows. Thermal insulation tape was attached to the frame of the bedroom window and additional gearing was installed in the lounge window. He showed the Committee some videos he had on his lap top from December 2015 when it was particularly windy. The videos showed that the windows were draughty and water was leaking onto the internal window sills.

Theo Forrest, the Landlord's representative, explained that the contractors Waites installed the windows at the time of the refurbishment of the Property in 2014. Shortly after the refurbishment of the Property had been completed Waites stopped operating in Scotland. Accordingly when the problems were experienced in relation to the windows in this Property Capital Builders were instructed. They inserted an additional drainage channel in the window frames but recommended that the Landlord instruct specialist contractors. In December 2015 he made contact with Clyde valley Windows. They installed external grey vent covers and advised that additional gearing was required. They installed additional gearing to the lounge window. Theo Forrest was surprised to learn from the Tenant that additional gearing had not been installed to the bedroom window. He confirmed that the Landlord would have the required gearing installed in the bedroom window. The Tenant confirmed that he was happy to provide access and Theo Forrest agreed to be present in the Property when the repairs were being carried out.

William Foster, the Tenant's father asked Theo Forrest if the original window manufacturer had been consulted regarding the difficulties with the windows. Theo Forrest explained that they had not consulted the original window manufacturer.

8. Following the hearing the Landlord provided the Committee with a copy of the lease between The Glasgow Housing Association Limited and Lowther Homes Limited dated 31<sup>st</sup> July 2015 and 3<sup>rd</sup> August 2015 of the subjects which includes the property Flat 85, 15 Ibroxholm Oval, Glasgow, G51 2TY.

### **Summary of the issues**

The issues to be determined are:-

9.1 The Property is not wind and watertight and in all other respects reasonably fit for human habitation (Section 13(1)(a) of The Housing (Scotland) Act 2006).

Whether the condition of the windows result in the Property not being wind and water tight and in all other respects reasonably fit for human habitation.

9.2 The structure and exterior of the house (including drains, gutters and external pipes) are not in a reasonable state of repair and in proper working order (Section 13(1)(b) of The Housing (Scotland) Act 2006) and the fixtures, fittings and appliances provided by the Landlords under the tenancy are not in a reasonable state of repair and in proper working order order (Section 13(1)(d) of The Housing (Scotland) Act 2006).

In the case of *Hastie v City of Edinburgh District Council* Sheriff Court Reports 30<sup>th</sup> October 1980 Sheriff Ireland determined that although the windows could not be said to be part of the structure of a house they could be said to be part of the exterior of the house. Consequently the matter to be determined is whether the condition of the windows (which form part of the exterior of the Property) results in the Property not being in a reasonable state of repair and proper working order as required by section 13(1)(b) of the Housing (Scotland) Act 2006. Section 13(1)(d) does not apply to the condition of the windows.

### **Findings of fact**

10. The Committee accepted the Tenant's video evidence and found that the windows in the Property are draughty and there is water ingress in windy conditions. They also found that the Bedroom window does not have a sufficiently tight fit with the frame resulting in the Property not being wind and watertight and the windows not being in a reasonable state of repair and proper working order.

However the Committee did not consider the level of road noise in the Property to be sufficiently high to be a breach of the Repairing Standard.

**Decision**

11. The Committee accordingly determined that the Landlord had failed to comply with the duties imposed by Sections 13 (1)(a) and 13(1)(b) of the Act, as stated.
12. The Committee proceeded to make a Repairing Standard Enforcement Order as required by section 24(1).
13. The decision of the Committee was unanimous.

**Right of Appeal**

14. 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**

15. 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.

**J Taylor**

Signed ..... Date 12<sup>th</sup> June 2016  
Chairperson

Photographs taken at Flat 85, 15 Ibroxholm Oval, Glasgow G51 2TY on 31 May 2016  
(PRHP/RP/16/0072)



01 - Front elevation  
(Flat 85 is 18th floor, front corner)



02 - Bedroom LHS



03 - External drain outlet & cover



04 - Internal drains slots enlarged



05 - Bedroom window (south facing)



06 - Bedroom LHS showing water damage



07 - Bedroom RHS showing water damage



07 – Kitchen (east facing)



08 – Kitchen LHS



09 – Kitchen RHS



10 – Living room



11 – Living room LHS



12 – Living room RHS



13 – Bathroom



14 – Mains smoke alarm (Living room)



15 – Mains smoke alarm (Hall)