



**Repairing Standard Enforcement Order**

**Ordered by the Private Rented Housing Committee**

**Reference Number:- PRHP/RP/14/0195**

**Re: Property at 52 Nettlehill Drive, Uphall Station, Livingston, EH54 5PS, all as more particularly described in and registered in Land Certificate WLN15147 (hereinafter referred to as “the property”).**

The Parties:-

Miss Clayre Elder residing at 52 Nettlehill Drive, Uphall Station, Livingston (“the Tenant”)

And

Miss Kellie Anne Lees (also known as Ms Kellie-Ann Patricia Mary Lees) residing at 1 Marble Avenue, Dreghorn, Irvine, KA11 4BE and Mr. Thomas Eugeniuz Barr residing at 126 Carmondean Centre, Livingston EH54 8TD (“the Landlords”)

**NOTICE TO**

Miss Kellie Anne Lees (also known as Ms Kellie-Ann Patricia Mary Lees) residing at 1 Marble Avenue, Dreghorn, Irvine, KA11 4BE

And

Mr. Thomas Eugeniuz Barr, residing at 126 Carmondean Centre, Livingston EH 54 8TD

**(“the Landlords”)**

Whereas in terms of their decision dated 21 December 2014, the Private Rented Housing Committee determined that the Landlords have failed to comply with the duty imposed by Section 14 (1) (b) of the Housing (Scotland) Act 2006 (“the Act”) and in particular the Landlords have failed to ensure that: 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 and any fixtures, fittings and appliances provided by the landlords under the tenancy are in a reasonable state of repair and in proper working order.

The Private Rented Housing Committee now requires the Landlords 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 Landlords to carry out such works as are necessary to ensure that:-

- (a) All installations in the property for the supply of electricity are in a reasonable state of repair and in proper working order, in particular, the switchboard in the cupboard under the stairs; and
- (b) The locking mechanism of the back door is replaced so that the back door can be locked securely; and
- (c) The boiler is fully functioning so that it provides running hot water and central heating to the property; and
- (d) The ceiling in the dining area off the kitchen is stable and will not fall down; and
- (e) The bathroom floor is dried out; and
- (f) The shower rail in the bathroom works without falling down; and
- (g) The burglar alarm is in proper working order.
- (h) After all of the above necessary works have been carried out, the Landlords are required to produce to the Committee: a report prepared by a qualified electrician confirming that the switchboard is in a reasonable state of repair and in proper working order; a report by a suitably qualified tradesman confirming that the ceiling of the dining area is stable, will not fall down and is in a reasonable state of repair.

The Private Rented Housing Committee order that the works specified in this Order must be carried out and completed within the period of 21 days 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 an 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 an RSEO has effect in relations to the house. This is in terms of Section 28(5) of the Act.**

In witness whereof these presents type written on this page and the preceding page are executed by Patricia Anne Pryce, Chairperson of the Private Rented Housing Committee at **16 January 2015** before this witness:-

Patricia Pryce

Signed

Patricia Anne Pryce, Chairperson

A Campbell

Date

16<sup>th</sup> Jan 2015

Witness

16<sup>th</sup> January 2015





## 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

**Reference Number: PRHP/RP/14/0195**

**Re: Property at 52 Nettlehill Drive, Uphall Station, Livingston, EH54 5PS, all as more particularly described in and registered in Land Certificate WLN15147 (hereinafter referred to as "the property").**

The Parties:-

Miss Clayre Elder residing at 52 Nettlehill Drive, Uphall Station, Livingston ("the Tenant")

And

Miss Kellie Anne Lees (also known as Ms Kellie-Ann Patricia Mary Lees) residing at 1 Marble Avenue, Dreghorn, Irvine, KA11 4BE and Mr. Thomas Eugeniuz Barr residing at 126 Carmondean Centre, Livingston EH54 8TD ("the Landlords").

#### Decision

The Committee, having made such enquiries as it saw fit for the purpose of determining whether the Landlords have 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 account of the evidence submitted by both the Landlords and the Tenant, determined that the Landlords have failed to comply with the duty imposed by Section 14 (1) (b) of the Act.

The Committee consisted of:-

Patricia Anne Pryce	-	Chairperson
Donald Marshall	-	Surveyor member

#### Background

1. By application dated 12 August 2014, the Tenant applied to the Private Rented Housing Panel for a determination as to whether the Landlords have failed to comply with the duties imposed by Section 14 (1) (b) of the Act.
2. The application by the Tenant stated that the Tenant considered that the Landlords had failed to comply with their duty to ensure that the property meets the repairing standard and the Tenant brought forward the following breaches:-

That the electrics within the property are faulty and require to be replaced or maintained. The Tenant maintains that she does not have constant and full use of electricity throughout the property and, in particular, there are problems with the sockets in the hallway which constantly trip. The Tenant maintains that the flue pipe in the kitchen requires to be lifted as it does not adequately vent any carbon monoxide out of the property as it dips down in the centre at present. The Tenant maintains that she needs new tiles in the bathroom together with new flooring in the bathroom as the bathroom floor is sodden due to constant leaking from the bath. The constant leaking from the bath has caused water to come through into the ceiling of the dining area located below the bathroom causing damage to this ceiling. The Tenant maintains that she needs a new locking mechanism in the back door of the property as it does not lock due to present locking mechanism being faulty. The Tenant maintains that the burglar alarm has never worked throughout her tenancy of the property. The Tenant maintains that the shower curtain does not fit properly and falls down. The Tenant maintains that the boiler is not working and that, subsequently, there is no hot water or central heating in the property. The Tenant considers that the Landlords are in breach of their duties under the Housing (Scotland) Act 2006 in relation to the repairing standard and in particular the Landlords have failed to ensure:-

- (i) The structure of the house (including drains, gutters and external pipes) are in a reasonable state of repair and in proper working order,
  - (ii) 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,
  - (iii) Any fixtures, fittings and appliances provided by the landlords under the tenancy are in a reasonable state of repair and in proper working order.
3. By letter dated 3 October 2014 the President of the Private Rented Housing Panel intimated a decision to refer the application under Section 22(1) of the Act to a Private Rented Housing Committee.
  4. On 28 November 2014, the Private Rented Housing Committee wrote to both the Landlords and the Tenant to advise that the Private Rented Housing Committee intended to inspect the property on 19 December 2014 at 10 am. The letter further confirmed that a Hearing had been arranged in relation to the application, which Hearing would be held in the Mercure Livingston Hotel, Almondview, Livingston, EH54 6QB commencing at 11 am.
  5. While the Private Rented Housing Committee wrote to both Landlords and invited them both to the inspection and Hearing, it should be noted that the Tenancy Agreement produced by the Tenant to the Private Rented Housing Committee bore only to be between the Tenant and the first named Landlord, namely, Ms Kellie Anne Lees. There was no mention of the second named Landlord, namely, Mr. Thomas Eugeniuz Barr. Furthermore, the Tenant was clear that from her point of view she did not know who he was and that her Landlord was Ms Lees. However, an extract of the Land Register Land Certificate WLN15147 revealed that the Landlords are joint owners of the property. Accordingly, this decision by the Private Rented Housing Committee is in respect of the Landlords, albeit all of the

correspondence received by the Private Rented Housing Committee from the Landlords was in fact from the first named Landlord, Ms Lees.

6. By email sent at 5.04 pm on 4 December 2014 by the Landlords to the Committee and received by the Committee on 5 December 2014, the Landlords requested a postponement of the Hearing stating that Ms Lees now had a work commitment which prevented her from attending the inspection and Hearing on 19 December 2014. The Committee considered this request and agreed on 10 December 2014 that, given that some of the complaints raised by the Tenant could potentially have serious safety concerns together with the fact that the Landlords have been fully consulted in relation to the date of the inspection and Hearing, it was in the public interest that both the inspection and the Hearing take place on 19 December 2014 as planned. The Landlords and Tenant were advised by of the Committee's decision by email of 12 December 2014.

### **The Inspection**

7. On 19 December 2014, the Committee attended at the property for the purposes of inspection of the property. The Tenant was present at the inspection.

At the inspection on 19 December 2014, the Committee noted the following points:-

- (a) The back door situated within the dining area off the kitchen does not and cannot be locked. The locking mechanism inside the door itself has shorn in half and cannot be locked.
- (b) There is obvious dampness in the ceiling of the dining area which is situated below the bathroom and it is clear that the dampness is caused by running water. The ceiling is crumbling in places.
- (c) There is only one bracket supporting the flue pipe in the kitchen causing the pipe to dip in the middle.
- (d) There are polystyrene tiles on the ceiling of the kitchen.
- (e) The central heating boiler which is located in a cupboard within the living room of the property is not functioning and flashes the code "F1" on it.
- (f) The burglar alarm in the property does not work.
- (g) The final rail at the bottom of the stairs is broken and comes away from the bannister.
- (h) The floor in the bathroom is soaking as a result of faulty piping under the bath which has now been replaced.
- (i) The shower rail supporting the shower curtain is of the spring loaded type and falls down and fell down at the time of inspection.
- (j) The bathroom tiles had been fixed.
- (k) There is a socket located in the downstairs hall of the house which the Tenant complained trips constantly.
- (l) In the cupboard under the stairs, there is a switchboard for the electricity supply for the property and one of the fuses within this is broken and falls off easily when touched.

### **The Hearing**

8. The Tenant and her friend, Mrs. Beverly Henderson, attended at the Hearing. The Landlords did not attend the Hearing. However, the Landlords had submitted written representations to the Committee to be considered dated 7 October 2014 together with various enclosures contained therein together with further written representations dated 16 December 2014 together with various enclosures contained thereon. The Committee decided to allow the written representations of the Landlords of 16 December 2014 to be received for consideration despite the fact that these were received late as it was the view of the Committee that it was in the interests of justice that these be allowed as the Landlords could not attend the Hearing and the representations assisted in providing clarification as regards the up to date situation surrounding certain repairs which had been carried out by the Landlords in advance of the Hearing. The Tenant did not object to these further representations being considered by the Committee. The Landlords confirmed in an email of 4 December 2014 requesting a postponement of the Hearing that the Tenant had been issued with notification of termination of her lease.

At the Hearing, the Tenant gave evidence to the Committee. She confirmed that the bathroom tiles had now been fixed by the Landlords and that the garden fence had been fixed. It was also confirmed by the Tenant that the structure of the house was in a reasonable state of repair and in working order.

However, the Tenant was clear that she had not received any paperwork from the Landlords regarding the boiler. She confirmed that she had not received a copy of the gas safety certificate from her Landlords. The Committee noted that the Landlords had provided to the Committee in their representations of 7 October 2014 a copy of the gas safety certificate relative to the property which was dated 28 January 2012 and wherein it stated that the next inspection was due on or before 28 January 2013. The Landlords did not provide a more recent gas safety certificate to the Committee.

The Tenant gave evidence that there have been, to her knowledge, no further inspections of the property in terms of gas safety since the date of the gas safety certificate lodged by the Landlords. The Tenant advised that there had been someone out to look at the boiler over a year ago as she had complained to the Landlords that the boiler was making noises and the boiler was fixed at that time. The Tenant advised that when she had requested a copy of the gas safety certificate from the Landlords, the Landlords had advised her that it was not necessary for the Tenant to have a copy of this document. The Tenant confirmed that there is not, to her knowledge, an annual inspection of the boiler.

The Tenant gave evidence in relation to the faulty electrics. She advised that she had complained about this to the Landlords and that the Landlords had sent out someone to look at this. In the Landlords' representations to the Committee, the Landlords advised that the switchboard located in the cupboard under the stairs had been completely renewed. The Tenant advised in evidence that it was only one fuse on the switchboard that had been replaced and that it was still faulty which, in turn, caused the sockets in the hall of the property to trip when Tenant was hoovering.

The Tenant advised in evidence that when the Scottish Gas engineer came out to the property in the summer of 2013, he confirmed to the Tenant that the flue pipe in the kitchen required a second bracket as this would lift the pipe, allowing for proper clearance of carbon



monoxide gas from the boiler in the property. The Tenant advised that there may have been a visit in January 2014 in accordance with the documentation which the Landlords had produced to the Committee but that she could not remember this, nor the name of the company.

The Tenant confirmed that she had been concerned about the boiler for some time and that it finally stopped working on 23 October 2014. She advised that there had been no hot water or central heating in the property since that date. She advised that she is very concerned for the wellbeing of her children as they are aged 10 years and 7 years respectively. When she bathes her children, she requires to heat water in the kettle and then cool down the bath water using the cold tap. The Tenant confirmed that one of her children suffers from chronic lung disease and she is concerned about the cold house having a detrimental effect on his health.

The Tenant advised that the boiler flashes the code "F1" and has done so since 23 October 2014. She has tried to reset the boiler and attempted this at the inspection, to no avail. The Tenant advised that she looked up this code online and that it apparently means that the boiler needs to be drained. The Tenant confirmed that she has advised the Landlords that there have been issues with the boiler and of the outcome of her researches online and that the Landlords have advised her to bleed the radiators and adjust the pressure in the boiler but the Tenant does not wish to do this as she is apprehensive that she could cause damage to the boiler. The Tenant advised that she is simply not qualified to drain a boiler and would not know where to begin. The Tenant advised that she does not have any instructions for the boiler.

In the Landlords' representations to the Committee of 16 December 2014, the Landlords advise that they have attempted to make arrangements with the Tenant to arrange for access to the property for both the Landlords and a Scottish Gas boiler inspector but that the Tenant has been obstructive and refuses to make herself available for such an inspection.

In response to this, the Tenant gave evidence that she advised the Landlords that she has to attend hospital for treatment three times per week for phototherapy and often more than that to receive further treatment for other health problems. The Tenant accepted that she had advised the Landlords that December was a busy month but that she would have made herself available. However, the Tenant advised that the Landlords were often difficult about making arrangements for inspections and visits and often chopped and changed the dates to suit the Landlords.

The Tenant accepted in her evidence that since her application had been made to the PRHP, the bathroom tiles had now been fixed. Furthermore, she confirmed that the leak under the bath had finally been fixed on 9 December 2014 and that she was no longer experiencing water running down onto the ceiling of the dining area below.

The Tenant advised that she wanted the floor boards in the bathroom replaced as they were sodden due to the constant leakage from the bath which had remained unresolved for a number of months until 9 December 2014. She was concerned that the plumber had told her that the joists in the floor were becoming swollen due to the constant flooding.

The Tenant advised that she had required to redecorate the dining area of the property on three occasions due to the water running down from the bath up above. The Tenant was clear that the dampness was caused by running water coming from the bathroom above. The Tenant advised that her tumble dryer had never been used in the dining area and that it was located within the shed in the garden where it is used as there is an electricity supply within the shed. The Tenant advised that it could not be the tumble dryer which caused the dampness in the dining area.

In relation to the back door lock, the Tenant advised that this had broken around six months ago. She advised that she had called out a locksmith as, having advised her Landlords immediately of the problem, around one week later, the Landlords had still not sent out a locksmith. The locksmith advised that the locking mechanism itself in the door is not working and needs to be replaced. He advised the Tenant that it was nothing to do with her key breaking in the lock and that this was inevitable as the mechanism in the door itself was broken.

The Tenant advised that the Landlords have always stated that the lock breaking was the Tenant's responsibility and that it was for the Tenant to have this fixed. The Landlords' representations to the Committee make clear that this is indeed their view.

The Tenant advised that she has, for the last six months, placed wardrobes against the back door at night time to try to make the back door secure as the Landlords have refused to have the back door fixed.

The Tenant advised that the burglar alarm of the property has never worked. The Landlords have confirmed this in their representations to the Committee dated 7 October 2014 but the Landlords thereafter suggest in their representations to the Committee of 16 December 2014 that the alarm may need batteries changed. The Tenant advised that she had tried new batteries but that the alarm had still not worked.

The Tenant then advised the Committee that although she had signed a tenancy agreement which refers to a schedule which constitutes an inventory, she had never seen, received or signed an inventory for the property.

The Tenant advised that the shower curtain still did not work and referred Committee to the fact that it had in fact fallen down during the inspection by Committee. She advised that as soon as water starts to run on the curtain, it just falls down.

The Tenant gave evidence to the effect that when she first moved into the property there were no smoke alarms. She asked the Fire Service to come out to the property and they installed two smoke alarms for her. During their inspection of the property, the Fire Service advised the Tenant that the polystyrene tiles on the ceiling of the kitchen were a fire hazard and that they should be removed. The Tenant advised that she raised this with the Landlords. The Landlords make it clear in correspondence with the Tenant which was produced by both parties to the Committee that they have had these tiles checked and that they are fine.

In relation to the Landlords' contention that the Tenant had hot water when the plumber attended the property on 9 December 2014, the Tenant advised that the hot water had been produced by her by using the kettle to heat it.

The Tenant accepted that trying to arrange mutually convenient dates for visits and inspections with the Landlords could prove difficult as the Landlords worked and the Tenant had to attend regular hospital appointments for both herself and her younger son. However, she advised that the Landlords had not visited the property since August 2014 which was confirmed by the written representation of the Landlords. The Tenant advised that she remains willing to allow the Landlords access to the property. She does not accept that she has been uncooperative in attempts by the Landlords gain access to the property for the Landlords and any workmen. The Tenant advises that the Landlords expect the Tenant to be available as the Tenant does not work. The Tenant advises that she is of the opinion that the Landlords fail to take account the Tenant requires to attend hospital frequently, as does her younger son. The Tenant has made the Landlords aware of this.

#### **Discussion on Evidence**

9. The Committee is satisfied on the evidence that the Landlords have failed to meet the repairing standard in respect of the property. The Landlords accept that the back door has remained insecure for six months but simply do not accept responsibility for this. The Landlords also accept that there have been difficulties with water leaking in the bathroom which have now been resolved by the visit of the plumber sent by the Landlord on 9 December 2014. It was apparent to the Committee at inspection that the boiler was not functioning and was flashing "F1", nor could it be reset by the Tenant. It was also obvious to the Committee that the dampness in the dining area off the kitchen was not due to the use of a tumble dryer but instead due to water which had emanated from the bathroom above and run down the walls of the dining area. It was clear to the Committee that the floor in the bathroom was sodden and will require substantial drying out having been subjected to a leaking pipe under the bath for some time. It was also apparent to the Committee that the shower rail which has been installed is inadequate and which actually fell down during the inspection by the Committee. In relation to the electrics, once again it was clear to the Committee that, contrary to the claim by the Landlords in their written representations that the switchboard had been renewed, only one of the fuses had been replaced and that it was broken. The Committee had no difficulty in accepting the evidence of the Tenant. The Tenant came across as being credible and as being understandably concerned about the wellbeing and safety of her family.

The Landlords appear to suggest that the Tenant has been uncooperative and that this has prevented the Landlords from carrying out inspections and having appropriate remedial works carried out. The Committee do not accept the Landlords' evidence in this respect. The Committee heard evidence from the Tenant in this respect and the Tenant appeared to be both credible and reliable. Furthermore, as revealed by the Landlords' correspondence produced to the Committee, the Landlords refused to consider the possibility that the shower curtain fitted was not fit for purpose. The Landlords also refused to accept responsibility for fixing the back door and have required her Tenant to remain in a property which is insecure.

### Decision

10. The Committee accordingly determines that the Landlords have failed to comply with the duty imposed by Section 14 (1) (b) of the Act. The Committee proceeded to make a Repairing Standard Enforcement Order as required by Section 24 (1) of the Act.
11. The decision of the Committee was unanimous.
12. The Private Rented Housing Committee require the Landlords to carry out such works as are necessary to ensure that all electrics in the property are in proper working order, in particular that the switchboard is fixed or replaced, to ensure that the boiler is in working properly to produce hot water and heating to the property, to ensure that the ceiling in the dining area is stable and will not fall down, to ensure that the bathroom floor is properly dried out, to ensure that the shower rail is replaced with a shower rail which is adequate and does not fall down, to ensure that the burglar alarm is fixed and in good working order and to ensure that the back door is fixed so that it locks securely.
13. The Committee considered that it would be reasonable to allow a period of 21 days from the date of the RSEO to carry out these works.

### Observations

14. At the times of the inspection, the Committee noted the polystyrene tiles on the ceiling of the kitchen. While this did not form part of the Tenant's application, the Committee is of the view that these tiles are a potential fire hazard to the Tenant, especially as they are located within the kitchen.  
The Committee is concerned for the safety of the Tenant and her family. The Committee would urge the Landlords to have these tiles removed from the kitchen ceiling as a matter of urgency.

### Right of Appeal

15. 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

16. 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.

**Patricia Pryce**

Signed

Patricia Anne Pryce, Chairperson

**A Campbell**

WITNESS

Date

16<sup>th</sup> July 2015

16<sup>th</sup> January 2015