

## **Repairing Standard Enforcement Order**

**Ordered by the Private Rented Housing Committee**

**Reference Number:- PRHP/RP/14/0299**

**Re: Property at Flat 6/9, 220 Wallace Street, Glasgow, G5 8AL, all as more particularly described in and registered in Land Certificate GLA181398 (hereinafter referred to as "the property").**

**The Parties:-**

**Miss Anna Marin ("the Tenant")**

**Mr Preston Hawes, residing at 12 Cooperwood Lodge, 28 Bycullah Road, Enfield, EH2 8DH ("the Landlord")**

### **NOTICE TO**

**Mr Preston Hawes, residing at 12 Cooperwood Lodge, 28 Bycullah Road, Enfield, EH2 8DH ("the Landlord")**

Whereas in terms of their decision dated 4 May 2015, 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 the Landlord has failed to ensure that: the house is wind and watertight and in all other aspects 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 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:-

- (a) To carry out works to prevent water ingress and to ensure that the house is reasonably fit for human habitation.

The Private Rented Housing Committee order that the works specified in this Order must be carried out and completed within the period of 12 weeks 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 Glasgow 14<sup>th</sup> May 2015 before this witness:-

Signed **P Pryce**  
Patricia Anne Pryce, Chairperson

Date

*14th May 2015*

Witness, Luke McGuire

**L McGuire**

450 Argyle Street, Glasgow, G2 8LH



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

**Reference Number: PRHP/RP/14/0299**

**Re: Property at Flat 6/9, 220 Wallace Street, Glasgow, G5 8AL, all as more particularly described in and registered in Land Certificate GLA181398 (hereinafter referred to as "the property").**

**The Parties:-**

**Miss Anna Marin ("the Tenant")**

**Mr Preston Hawes, residing at 12 Cooperwood Lodge, 28 Bycullah Road, Enfield, EH2 8DH ("the Landlord")**

**Decision**

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

The Committee consisted of:-

Patricia Anne Pryce	-	Chairperson
Alex Carmichael	-	Surveyor Member

**Background**

1. By application dated 25 December 2014, the Tenant applied to the Private Rented Housing Panel for a determination as to whether the Landlord had 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 Landlord had failed to comply with his duty to ensure that the property meets the repairing standard and the Tenant brought forward the following breach:-

That there was a hole in the ceiling of the Tenant's bedroom in the property which had existed since before the commencement of the Tenant's tenancy and which the Tenant had been assured would be fixed and through this hole water escaped into the Tenant's bedroom from the roof above during wet weather.

The Tenant considers that the Landlord is in breach of his duties under the Housing (Scotland) Act 2006 in relation to the repairing standard and in particular the Landlord has failed to ensure:-

- (i) The house is wind and watertight and in all other respects reasonably fit for human habitation.
3. By letter dated 9 February 2015 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. This letter was sent to the Tenant, the Landlord and the Landlord's Agents, Zone Letting.
  4. On 2 April 2015, the Private Rented Housing Committee (PRHC) wrote to the Landlord and to the Landlord's Agent, Zone Letting, and to the Tenant to advise that the Private Rented Housing Committee intended to inspect the property on 27 April 2015 at 12 noon. The letter further confirmed that a Hearing had been arranged in relation to the application, which Hearing would be held in the Office of the PRHP, Europa Building, 450 Argyle Street, Glasgow, G2 8LH commencing at 13:00. On 23 April 2015 the PRHC wrote to the both parties and Zone Letting to advise them that the inspection and hearing would both still take place on 27 April 2015 but that the time for the inspection and hearing had been changed to 9 am and 10 am respectively.
  5. By email of 20 January 2015, the Tenant intimated further documentation to the Committee which consisted of email correspondence between the Landlord's Agents, Zone Letting, and the Tenant demonstrating that the Landlord and his Agents were fully aware of the Tenant's complaint in relation to the hole in the ceiling of her bedroom within the property. This correspondence also contained two black and white photographs which the Tenant had taken of the hole in the ceiling.
  6. By email of 22 February 2015, the Tenant further handwritten representations to the Committee.
  7. By email of 12 March 2015, the Landlord's Agents, Zone Letting, Gary Towey, Director of Zone Letting, advised that they had constantly tried to resolve this issue with the factors of the building but that they had been unsuccessful in gaining access to the roof of the building to carry out the necessary repairs. Within this email, Mr Towey explained that the Landlord was very keen to get this matter resolved as the Landlord was considerably out of pocket due to the Tenant withholding her rent or a portion thereof.
  8. The Tenant, who is an Italian national, requested the use of an interpreter which was provided by the Administration of the PRHP in the form of Miss Stefania Ricci who attended both the inspection and the hearing.

### **The Inspection**

9. On 27 April 2015, the Committee attended at the property for the purposes of inspection of the property. The Tenant was present at the inspection along with Miss Ricci, the interpreter, and Mr Gary Towey of Zone Letting.

At the inspection on 27 April 2015, the Committee noted the following points:-

- (a) The subjects comprise a three apartment flat situated on the sixth floor of a seven storey multi flatted property which we estimate to be in the region of around 8/10 years old or thereby.

- (b) The subjects comprise all on one level: Entrance Hallway, Lounge, Bedroom 1 with en suite shower room, Bedroom 2, Kitchen and Bathroom.
- (c) The hole in the ceiling still exists and temporary remedial works by way of the introduction of an internal pipe drainage system were noted.

### **The Hearing**

10. The Tenant attended the hearing along with the interpreter, Miss Ricci, and Mr Gary Towey, Director of Zone Letting, who confirmed that he was in attendance at the hearing to represent the interests of the Landlord. The Landlord was not personally present at the hearing.

The Tenant confirmed that she was born and raised in Italy and that she arrived in Scotland on 1 September 2014. The Tenant advised that she is a student at Glasgow Caledonian University where she is studying for a Masters in Social Business and Micro Finance. She confirmed that she shares the flat with the other tenant who is Rhonwyn Smith who is also a student.

The Tenant advised that although the tenancy agreement began on the 1 September 2014, she did not move into the property until 15 September 2014. She confirmed that she has resided there ever since. She advised that her flatmate, Rhonwyn Smith, had inspected the property before the commencement of the tenancy agreement and that the Letting Agent, Zone Letting, had assured Miss Smith that the hole in the ceiling of the bedroom which the Tenant was due to occupy would be fixed. As at the date of the hearing, the hole has still not been fixed. The factors for the building, MXM Property Solutions Limited (hereinafter referred to as "MXM"), attempted a temporary repair of the hole which consists of a sheet of plywood being secured across the hole with a tube leading down into a bucket on the bedroom floor directly underneath to catch the water.

The Tenant advised that when she first moved into the property, there was no water coming in although it was windy in her bedroom with the wind emanating from the hole in the ceiling. The Tenant advised that on or about the 15 November 2014 she was sleeping in her bed when she was awoken by water dropping onto her face. The water was coming from the hole in the ceiling. The Tenant stated that she had to move her bed out of the way and put a bucket under the hole to catch the water. The Tenant advised that this upset her greatly as she was fearful that the ceiling would fall down on her. The Tenant advised that she reported the leak by email of 17 November 2014 to Zone Letting and she advised that the windy, wet and humid conditions were making her unwell. The Tenant advised that someone from MXM, the factors, came to look at the hole and leak but nothing was done to fix it. The Tenant confirmed that she stopped paying rent in January 2015 to try and force the repairs to be carried out.

The Tenant confirmed that the last drops of water to fall from the hole were in February 2015 but that the water is being absorbed by the plywood which was placed over the hole and the water goes down the tube into the bucket. The Tenant advised that the water is still penetrating the wood and making her bedroom very humid. She advised that she needed to leave the heater on in her bedroom through the night as her room can get very cold. She

stated that she wants to be able to use the room normally as previously there had been a desk in her room where she worked but she has had to move her furniture to avoid the leak and can no longer have the desk in her room. The Tenant confirmed that she felt that the humidity in the room was affecting her health.

The Tenant advised that the Landlord had done nothing to attempt to repair the hole. The temporary repair had been carried out by the factors.

Mr Gary Towey then gave evidence on behalf of the Landlord. He confirmed that he had been a Director of Zoneletting Glasgow Limited for over ten years. He further confirmed that he was representing the Landlord at the hearing.

Mr Towey very helpfully conceded that he accepted in full the evidence given by the Tenant. He advised that what she had said was entirely accurate.

Mr Towey explained that he had been the Landlord's agent since 2007 and that his company, Zoneletting Glasgow Limited, managed somewhere in the region of eighty properties within the development at 220 Wallace Street.

Mr Towey accepted that the hole had been in existence within the Tenant's bedroom ceiling since before the tenancy agreement commenced on 1 September 2014. He advised that the hole in the ceiling was made by the factors, MXM, in an attempt to investigate the cause of a leak in the ceiling. Mr Towey advised that he personally had been aware of at least five properties within this same building with leaking problems but that MXM had advised that there are around twelve properties which suffer from water ingress problems in this development. Mr Towey referred to the email of 26 February 2015 which had been sent by MXM to Zone Letting wherein MXM states that it is of the view that the issue which is causing the leak into the Tenant's bedroom emanates from a common repair. Mr Towey advised that MXM's position is that once all of the money for the repairs is received from the various owners, only then will the work be carried out in order to fix the problem which is causing the leak in the property.

Mr Towey's position on behalf of the Landlord was that the Landlord had done all he could to get this issue resolved and that there was nothing more he could do and that it was the fault of the factors that the necessary repairs were not being carried out to the property situated above the property which is the subject of the hearing. He explained that the property above incorporated part of the roof of the building and had a terrace attached to it. He believed that there may be a drainage issue emanating from the property above and that perhaps there had been a failure of the flat roof membrane or gutter. In short, Mr Towey accepted that the water ingress was probably caused by an issue which amounted to a common repair.

The Committee referred Mr Towey to the Deed of Conditions which appears as Entry Number 5 of the Burdens Writs within the title deeds for the property. This is the Deed of Conditions registered 1 April 2004 by Barratt Homes Limited. At Clause 2.1, it is stated within the said Deed that

"2.1 The Proprietor of each flat shall have and enjoy a heritable and irredeemable right of access and egress ....over and across the Development Common Parts so far as necessary for the enjoyment of the Flat belonging to such Proprietor...

2.2 The Proprietor of each Flat and each Commercial Unit shall have a heritable and irredeemable right of access to and over each and every part of the Development so far as necessary for the purpose of inspection, maintenance, repair, cleaning, redecoration, alteration and renewal of the buildings and others forming part of the Development and including without prejudice to that generality the Development Common Parts."

The Committee also referred Mr Towey to Clause 1 of the said Deed wherein it states that that the definition of "common parts" also includes "...balconies, roof terraces and roofs of the said buildings....".

When questioned, Mr Towey confirmed that the Landlord had not taken legal advice regarding the repair and the options open to him in terms of taking action to have the repair carried out or even gaining access to these common parts to try and ascertain the cause of the water ingress.

Mr Towey advised that he could take the wood panel away from the ceiling and re-plaster the ceiling but that this would not resolve the leak and that the water would leak again in due course. In essence, Mr Towey advised that he was of the opinion that the Landlord would need access either to the property above or to the common flat roof in order to effect the necessary repair to the roof and/or the terrace in order to stop the leak of water once and for all.

Mr Towey confirmed that his company had been liaising with MXM for some time in an attempt to get the repairs carried out but that MXM had made it clear to him that they would not instruct the repairs until they had ingathered all of the money from the owners in the building.

Mr Towey advised that there had been an extensive history of problems with factors within this development and that they were now onto their fourth factor since June or July 2014.

Mr Towey confirmed that the water ingress in the property had been a problem before the commencement of the tenancy with the Tenant and that the Landlord had chosen to let out the property.

Mr Towey helpfully confirmed that the Developer has had no interest in the development since on or about 2009.

By way of explanation, Mr Towey advised that the factor appointed before MXM had stated that there may be an ongoing NHBCC claim in respect of defects in the property but Mr Towey accepted that there was nothing in writing to substantiate this claim.

In essence, Mr Towey advised that the Landlord was more than happy to carry out an internal repair for what it was worth. He accepted that this would not resolve the water ingress problem as access to the roof and the terrace of the property above would be

required for an effective repair to be carried out. He also advised that he would be happy to offer alternative accommodation to the Tenant.

Mr Towey stated that in light of the hearing today he would proceed to advise the Landlord to go and see his solicitor with a view to obtaining access to the roof and terrace above to try and effect the necessary repair. Up until the hearing today he had thought that the factor would carry out the necessary repair although he accepted that the Tenant had experienced the wind in her room since the beginning of the tenancy and the escape of water since November 2014, that the factor had been aware of this since November 2014 and that no repair had been instructed by the factor on behalf of the owners.

Mr Towey advised that he would try and see about getting access to the roof and try and carry out an internal repair this week. He also advised that he would happily cancel the Tenant's tenancy agreement and not hold her to this.

#### **Discussion on Evidence**

11. The Committee is satisfied on the evidence that the Landlord has failed to meet the repairing standard in respect of the property. At the time of inspection, a temporary repair had been carried out by the placing of a plank of wood over the hole in the ceiling of the bedroom occupied by the Tenant. This did not prevent water ingress nor did it render the property wind and watertight. It was of assistance to the Committee that the parties were credible and in agreement when giving their evidence. The parties did not attempt to embellish their evidence in any way and gave their evidence in a straightforward manner. This was helpful to the Committee.

Given all of the circumstance, the Committee is satisfied that the property is not wind and watertight.

#### **Decision**

12. The Committee accordingly determines that the Landlord has 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.
13. The decision of the Committee was unanimous.
14. The Private Rented Housing Committee require the Landlord to carry out such works as are necessary to ensure that the property is wind and watertight to meet the Repairing Standard.
15. The Committee considered that it would be reasonable to allow a period of 12 weeks from the date of the RSEO to carry out these works.



### Reasons for Decision

16. The Committee did not have access to the property located above at the time of inspection, however, it considered that the most likely source of the water ingress in the property emanated from the terrace or roof of the property above. The parties agreed that this was the most likely source of the water which was leaking into the Tenant's bedroom.

Mr Towey seemed to suggest that by reporting the repairs to the factor, the Landlord had discharged his repairing standard obligation. However, the Tenant's contract of let is with the Landlord and not the factor. The Landlord has a duty to ensure that repairs for which he is responsible in common with others are carried out within a reasonable time of him becoming aware of the work being required. The Landlord's title gives him rights of access for these repairs to be carried out. Mr Towey admitted that the Landlord had not done anything to pursue this right of access for the purpose of properly identifying and carrying out these repairs. Approximately seven months have elapsed since the Tenant first wrote to the Landlord's Agent to advise of the hole in the ceiling. The Committee considers that the Landlord has had reasonable time to exercise his right of access to the common parts in order to establish what repairs are necessary and to carry out these repairs and that the Landlord has failed in his duty under Section 14(1)(b) of the Act and has not complied with the repairing standard in terms of Section 13(1)(b) of that Act.

### Right of Appeal

1. 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

2. 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.

Signed

**P Pryce**

Patricia Anne Pryce

Date

14th May 2015