



## Repairing Standard Enforcement Order

Ordered by the Private Rented Housing Committee

prhp Ref: PRHP/RP/14/0239

Re : 66 (F1) East Claremont Street, Edinburgh EH4 4JR ("the Property")

**Title : ALL and WHOLE that dwellinghouse being the east half of the first floor or flat above the ground of the tenement known as and numbered sixty-six East Claremont Street (formerly seventeen East Claremont Terrace), Edinburgh comprising the subjects disposed by Douglas John Stewart and Fiona Maclean in favour of Colin James Walker dated seventeenth and twenty-fifth both days of November in the year Nineteen hundred and eighty-eight and recorded in the Division of the General Register of Sasines for the County of Midlothian on the sixteenth day of February in the year Nineteen hundred and eighty-nine; together also with (One) the fittings and fixtures therein and thereon; (Two) the whole parts privileges and pertinents thereof; and (Three) the proprietor's whole right title and interest present and future therein and thereto ("the Property")**

**The Parties:-**

**Natalie Skinner, 66 (F1) East Claremont Street, Edinburgh EH4 4JR ("the Former Tenant")**

**Colin James Walker, 144 Craiglea Drive, Edinburgh EH10 5PR ("the Landlord") care of his agents CMC Property Group Limited, 6B New Mart Road, Edinburgh EH14 1RL**

### **NOTICE TO**

**Colin Walker ("the Landlord")**

Whereas in terms of their decision dated 2 March 2015, 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 and in particular that the Landlord has failed to ensure that the house meets the repairing standard in that :-

- (a) the kitchen window area of the Property together with the wall to the left and right of the window suffers from dampness and renders the Property not reasonably fit for human habitation;

- (b) the window in the kitchen was not in a reasonable state of repair or in proper working order and not wind and watertight;
- (c) the lockable wardrobe in the rightmost rear bedroom was not capable of being used safely for the purpose for which it was designed;

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 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 instruct a person with demonstrable experience in the identification of construction defects in tenemental properties similar to the one of which the Property forms part, to investigate the penetrating dampness on the rear wall of the kitchen of the Property at and about the kitchen window;
- (b) to obtain from such person written recommendations for all works necessary to eliminate the dampness from the kitchen of the Property and to lodge said recommendations with the Private Rented Housing Panel;
- (c) to carry out all works, including those contained in said written recommendations necessary to eliminate the dampness in the kitchen of the Property and to make good;
- (d) to lodge with the Panel written documentation evidencing the carrying out of such works;
- (e) to refit, repair or replace the sash and case window in the said kitchen including its frame in so that it is proper working order and a reasonable state of repair and wind and water tight;
- (f) to ensure that the wardrobe with a defective locking mechanism situated in the rightmost rear bedroom of the Property can remain securely closed or to replace such a wardrobe with a wardrobe which can remain securely closed.

The Private Rented Housing Committee order that the works specified in this Order must be carried out and completed within the period of three months 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.

In witness whereof these presents typewritten on this and the preceding two pages are executed by David Bartos, Advocate, Parliament House, Parliament Square, Edinburgh EH1 1RF, Chairperson of the Private Rented Housing Committee at Edinburgh on 2 March 2015 before this witness:-

David Bartos

\_\_\_\_\_ witness  
chairperson

 Janet Kane  
\_\_\_\_\_

JANET KANE name in full

EUROPA BUILDING Address

450 ARGYLE ST.

GLASGOW

G2 8LH

PANEL CLERK Occupation



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

Statement of Reasons for Decision of the Private Rented Housing Committee

(Hereinafter referred to as "the Committee")

Under Section 24(1) of the Housing (Scotland) Act 2006

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**The Parties:-**

**Natalie Skinner, 66 (F1) East Claremont Street, Edinburgh EH4 4JR ("the Former Tenant")**

**Colin James Walker, 144 Craiglea Drive, Edinburgh EH10 5PR ("the Landlord") care of his agents CMC Property Group Limited, 6B New Mart Road, Edinburgh EH14 1RL**

**The Committee comprised:-**

Mr David Bartos	- Chairperson
Mr Ian Mowatt	- Surveyor member
Ms Sally Wainwright	- Housing member

**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 had failed to comply with the duty imposed by Section 14 (1)(b) of the Housing (Scotland) Act 2006.

**Background:-**

1. By application received on or about 13 October 2014, the Former Tenant applied to the Private Rented Housing Panel ("PRHP") for a determination that the Landlord had failed to comply with the duty to ensure that the Property met the repairing standard in section 13 of the Housing (Scotland) Act 2006.
2. In her application the Former Tenant complained that the Landlord had failed to meet the repairing standard in the following respects:
  - (1) the kitchen had two leaks and the ceiling had collapsed because of them;
  - (2) there was damp and mould in the Property including the kitchen;
  - (3) there was damp and mould in the Property including the bathroom;
  - (4) in the bathroom the tiles were falling off and part of the flooring had risen;
  - (5) no windows in the Property were wind and watertight;
  - (6) most of the furniture in the flat was broken or did "not work" including two wardrobes the doors of which do not open and do not allow for the hanging of clothes.

With the exception of items (5) and (6), the application related to the matters which had been raised on behalf of all of the tenants at the Property by Christopher Marsden in his e-mails to the Landlord's former agents IME Property Group dated 30 June 2014 and to the Landlord's current agents dated 24 September 2014.

3. Mr Marsden intimated item (5) and the difficulty with hanging clothes under item (6) to the Landlord's agents by e-mail of 20 October 2014 and copied his intimation to the Former Tenant.
4. The President of the Private Rented Housing Panel decided under section 23 of the 2006 Act to refer the application to a Private Rented Housing Committee. An inspection of the Property and hearing at George House, 126 George Street, Edinburgh EH2 4HH was fixed for 11 February 2015 at 11.00 a.m. and 12. 30 p.m. respectively. The parties were invited to make written submissions to the Panel's office by 21 January 2015.
5. This was all intimated to the Former Tenant by letter of the Panel's Clerk dated 22 December 2014 and entitled "Notice of Referral and Inspection/Hearing". The Committee comprised the persons stated above. The intimation of the Notice of Referral and Inspection/Hearing to the Landlord's agents was to the address given in the application, namely "12 Home Street, Edinburgh EH3 9LY". It included a copy of the Former Tenant's application to the Panel.
6. Following intimation of the Notice of Referral, Inspection and Hearing the Former Tenant intimated by means of an e-mail to the Panel dated 2 January 2015 that while the repairs had not been completed she and her

co-tenants had agreed with the Landlord's agents to terminate the tenancy. She sought withdrawal of her application. By e-mail to the Panel dated 5 January 2015 the Landlord's agents confirmed that the tenancy had been terminated as at 1 January 2015. They also stated that between the date of the application and 22 December 2014 the Former Tenant and her co-tenants had been forced to leave the Property and had not paid rent for November or December. The Landlord's agents accepted that the Property had been unihabitable from mid-October 2014 onwards and that the Landlord would not be claiming for the unpaid rent. They sought confirmation from the Committee on whether the application would be continued.

7. The Committee considered whether the application should be abandoned or whether despite the lawful termination of the tenancy, it should be continued. On 17 January 2015 the Committee decided that given the nature of the allegations and the potential effect on future tenants were the allegations substantiated, consideration of the application should be continued. This decision, contained in a Minute signed on the date of continuation, was to have been intimated to the Landlord or his agents. Unfortunately, it was not noticed that the Landlord's agents had moved address to 6B New Mart Road, Edinburgh. The intimation of the Minute to the address in the application was unsuccessful.
8. However the Landlord's agents had been made aware of the inspection and hearing and arranged for a tradesman, Mark Sinclair to be present for the inspection. No written submissions were made by either party.
9. The Committee noticed that the Former Tenant had only lodged a draft lease with the Panel when she lodged her application. It also noticed that while the application had named the Landlord's agents as her landlord, the draft lease named the Landlord as the landlord. Furthermore the exact location of the flat on the first floor of No.66 was unclear. In these circumstances the Committee made a Direction on the Landlord dated 17 January 2015 requiring clarification of these matters and production of a copy title deed evidencing the landlord's ownership. Unfortunately for the reasons already set out, the intimation of this Direction was also unsuccessful.

### **The Inspection**

10. The Committee inspected the Property on 11 February 2015 at 11.00 a.m. Mr Mark Sinclair from the Landlord's agents was present. Neither the Former Tenant nor any of her co-tenants was present. By coincidence the Landlord himself was also present having arranged to meet other tradesmen. He indicated to the Committee that he had been unaware of the inspection and hearing. The nature of the inspection and hearing was explained to him. He accompanied the Committee in their inspection. At the end of the inspection he indicated that he would be unable to attend at the hearing due to his prior arrangement. The Committee gave the Landlord the opportunity to object to the hearing and seek a postponement

of it. The Landlord confirmed to the Committee that despite the lack of notice he had no objection to it going ahead.

11. The weather was dry and overcast. The inspection revealed that the Property is a flat on the first floor of a late 19<sup>th</sup> century sandstone tenement on the south-east side of East Claremont Street in the Bellevue district of Edinburgh. The Committee carefully inspected the matters which were the subject of complaint.

### **The Evidence**

12. The evidence before the Committee consisted of:-

- The application form
- Copy e-mails from Mr Marsden to the Landlord's former agents dated 30 June and 2 July 2014 and to the Landlord's agents dated 24 September, 2 October (2 No.) and 20 October all 2014
- Copy e-mails from the Landlord's agents to Mr Marsden dated 24 September (2 No.), and 2 October (3 No.) all 2014
- Copy draft tenancy agreement between the Former Tenant, Mr Hewat, Mr Marsden, Mr Newman as tenants and the Landlord
- Copy photographs of the floor (2 No.), the ceiling and of the step adjoining the shower unit all in the bathroom
- Copy photographs of a hole in the kitchen ceiling (3 No.) and of buckets, a ladder and debris on the kitchen floor
- Copy e-mail from the PRHP to the Former Tenant dated 20 October 2014
- Registers Direct copy of Sasine Register search sheet number 4535

### **The Hearing**

13. At the conclusion of the inspection the Committee held the hearing within George House, 126 George Street, Edinburgh. Neither party nor any representative attended the hearing. As indicated at the inspection the Landlord had agreed to the hearing going ahead in his absence.

### **Findings of Fact**

14. Having considered all the evidence, including their inspection, the Committee found the following facts to be established:-
  - (a) The Property is a first floor flat in a 19<sup>th</sup> century sandstone tenement on the south-east side of East Claremont Street in the Bellevue area of Edinburgh. It comprises a hallway, lounge (facing the front), kitchen, four bedrooms with two facing the front and two facing the rear and a bathroom. It has central heating with the boiler in the kitchen.

- (b) On or about 13 June 2014 the Former Tenant and her co-tenants including Christopher Marsden and the Landlord entered into a lease of the Property until mid 2015. By 30 June 2014 the Former Tenant and her co-tenants had taken entry to the Property.
- (c) The lease was terminated on or about 1 January 2015.
- (d) The kitchen is at the rear of the tenement. It has a single sash and case window. The paint is peeling off the window frame and the outside sill. The frame and outside sill are in danger of rot. The window is operational. It is loose and badly fitting. On the right side of the window there is a narrow gap between the vertical screwed-on batons of the window and the wall adjoining it. Clear daylight can be seen through this gap.
- (e) On the outside wall of the kitchen, below the level of the window there is considerable damp penetration in the plasterwork. The dampness extends below the level of the window in the ingo to the left of the window and on the outside wall from the ingo into the corner of the kitchen at that point. There is a damp stain on the plasterwork on the outside wall at that point. Considerable dampness also extends in the plasterwork from below the window to the ingo to the right of the window. High damp meter readings were seen in all areas of dampness. There was no mould visible.
- (f) There is no longer a hole in the ceiling in the kitchen. Where the photographs produced to the Committee showed a hole, there is now freshly painted plasterwork. There is a damp stain at the join between this newly painted ceiling and the outside wall above the window.
- (g) The bathroom includes a toilet, a shower unit and a wash basin. Above the wash basin there are two newly fitted white splashback tiles. These are fitted securely. There is a wooden step between the floor of the bathroom and the floor of the shower. On a photograph produced to the Committee the step is shown as having a tile peeling off it. There are no tiles on the step. The step comprises new white painted chipboard. The bathroom has been freshly painted. There is no sign of mould or damp in the bathroom.
- (h) In the first rear bedroom on the right from the entrance, there is a sash and case window. It is operable and in reasonable condition for its age. Part of the vertical baton is warped but the window remains wind and watertight. This double bedroom has two wardrobes. The lock and key mechanism in the door does not work. Specifically the key does not turn the bolt to allow the door to lock. It cannot be otherwise closed securely. If shut it is liable to open. There is another double wardrobe. It operates satisfactorily.
- (i) In the second rear bedroom on the right from the entrance, there is a sash and case window. It is operable and in reasonable condition for



its age. Part of the vertical baton is warped but the window remains wind and watertight.

- (j) In the first front bedroom to the left of the kitchen and storage cupboards, there is a double sash and case window. It is operable and in reasonable condition for its age. It is wind and watertight. This bedroom has a chest of 4 drawers. It has a wardrobe. Both operate satisfactorily.
- (k) In the second front bedroom, between the first front bedroom and the lounge, there is a sash and case window. It is operable and in reasonable condition for its age. It is wind and watertight. This bedroom has a chest of 3 drawers. It has a wardrobe. It has a writing desk with a drawer for a computer keyboard. All items of furniture operate satisfactorily.
- (l) In the lounge there are two sash and case windows. They are operable and in reasonable condition for their age. They are wind and watertight. The lounge has a number of sofas. They appeared entirely satisfactory.

### Reasons for Decision

- 15. The duty of a landlord to ensure that during a tenancy a house meets the repairing standard in section 13 of the Housing (Scotland) Act 2006 applies only where the landlord becomes aware that work requires to be carried out for the purposes of complying with the repairing standard (2006 Act, s.14(3)). In addition no application can be made to the Panel unless the tenant has notified the landlord that work requires to be carried out for the purpose of making the house meet the repairing standard (s.22(3) of the 2006 Act). This is reflected in instructions to tenants at part 4b of the application form and in Note 1 on that form.
- 16. Turning to complaint (1) the Committee found the factual position as stated above. The leaks in the ceiling have been repaired. In respect of this complaint the Property met the repairing standard in section 13(1)(a) and 13(1)(d) of the 2006 Act. Accordingly this complaint was rejected.
- 17. Complaint (2) was that there was damp and mould in the Property. The Committee distinguished between the situation in the kitchen and that in the bathroom. With regard to the kitchen the factual situation in connection with this matter was as described above. The Committee required to consider whether the dampness in the kitchen was such that the flat could not be described as watertight or reasonably fit for human habitation, that being the repairing standard in section 13(1)(a) of the 2006 Act. In order for a dwellinghouse to be reasonably fit for human habitation it must be fit to be used in safety and with reasonable comfort (**Summers v. Salford Corporation** [1942] A.C. 283, 289 per Lord Atkin).

18. On the basis of their findings in fact in relation to the damp in the kitchen, including the damp stain near the ceiling, the Committee concluded that the Property was not watertight and was not fit to be used with reasonable comfort. Accordingly the Property was not reasonably fit for human habitation and the repairing standard had been breached.
19. Complaint (3) related to damp in the bathroom. Complaint (4) related to the tiles and flooring in the bathroom. The findings of the Committee were as stated above. The tiles had been repaired. The flooring complaint appeared to relate to the step between the floor and the shower. That had been repaired. In respect of these complaints the Property met the repairing standard in section 13(1)(a) and 13(1)(d) of the 2006 Act. Accordingly these complaints were rejected.
20. Complaint (5) related to all of the windows in the Property not being wind and watertight. The findings of the Committee were as stated above. On the basis of the findings in paragraph 14 (d) above, it found that the window in the kitchen was not wind and watertight. In respect of that window alone the Property does not meet the repairing standard in section 13(1)(a) of the 2006 Act. The Landlord's attention is drawn to the need for the defects identified in the findings to be remedied while allowing the kitchen window to continue to be operable. In other respects the complaint was rejected.
21. Complaint (6) related to the furniture. The Committee considered that the defective locking mechanism on the wardrobe with the lock and key in the first rear bedroom rendered the door prone to open and strike a user. Under section 13 (1) (e) the landlord requires to ensure that at all times during a tenancy any furnishings provided by the landlord under the tenancy are capable of being used safely for the purpose for which they are designed. In that respect there was a breach of the repairing standard in section 13 (1) (e) of the 2006 Act. In all other respects the complaint was rejected.
22. The work requiring to be carried out to deal with the dampness in the kitchen was intimated to the Landlord's agents in September 2014. His agents were aware that the Property had become uninhabitable in October 2014 due to dampness. The work in respect of the windows was intimated in October 2014 and in relation to the malfunctioning wardrobe together with the application in December 2014. The Landlord has had a reasonable time to carry out the work necessary to deal with the breaches of repairing standard. Accordingly the Committee made the decision set out above.
23. The Committee considered the terms of the Repairing Standard Enforcement Order which requires to be made. It was not in a position, having regard to its inspection, to identify the precise cause of the dampness in the kitchen as set out in the findings above. The Committee therefore proceeded to make an Order requiring the investigation of the wall at, above, and in particular to the left of the kitchen window to allow

identification of the cause of the dampness and the carrying out of remedial works. The order also provided for work to bring the window and wardrobe up to the repairing standard.

- 24. The Landlord is reminded that it is a criminal offence for him to enter into a tenancy or other occupancy arrangement in relation to the Property while a Repairing Standard Enforcement Order has effect in relation to the Property.

**Decision**

- 25. The Committee determined that the Landlord had failed to comply with the duty imposed by section 14 (1) (b), of the Act in relation to the failure of the Property to meet the repairing standard in relation to the damp in the kitchen as stated above.
- 26. The Committee proceeded to make a Repairing Standard Enforcement Order as required by section 24 (2). The decision of the Committee was unanimous.

**Rights of Appeal**

- 27. A landlord or Former Tenant aggrieved by this decision of the Committee may appeal to the Sheriff by summary application within 21 days of being notified of that decision.
- 28. Unless the lease or tenancy between the parties has been brought to an end, the appropriate respondent in such appeal proceedings is the other party to the proceedings and not the Committee which made the decision.

**Effects of Section 63 of the 2006 Act**

- 29. Where such an appeal is made, the effect of this decision and of any Order made in consequence of it is suspended until the appeal is abandoned or finally determined.
- 30. Where the appeal is abandoned or finally determined by confirming the decision, the decision and the Order made in consequence of it are to be treated as having effect from the day on which the appeal is abandoned or so determined.

Signed .. **David Bartos** .....Date: 2 March 2015  
 David Bartos, Chairperson

Signature of Witness... { **Janet Kane** .....Date: 2/3/2015

Name of witness:

JANET KANE

Address:

EUROPA BUILDING,  
450 ARGYLE STREET  
GLASGOW G2 8LH.

Occupation of witness:

PANEL CLERK