



**A Repairing Standard Enforcement Order**  
**Ordered by the Private Rented Housing Committee**

prhp Ref: prhp/rp/14/0256

Re : Property at 51 Kinnessburn Road, St Andrews, KY16 8AD ("the Property")

Land Register No: FFE51044

**The Parties:-**

**Mr Thomas Lockyer, The Hills Farm, Downton Hall Estate, Middleton, Ludlow, SY8 3DY ("the Landlord") represented by Sara Chance, Middleton Court, Middleton, Ludlow, SY8 2DZ ("the Agent")**

**Miss Hannah Lafferty, formerly of 51 Kinnessburn Road, St Andrews ("the former Tenant")**

**NOTICE TO:- Mr Thomas Lockyer, The Hills Farm, Downton Hall Estate, Middleton, Ludlow, KY8 3DY ("the Landlord")**

Whereas in terms of their decision dated 13 May 2015, The Private Rented Housing Committee having 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 that the Landlord has failed to comply with the duty to ensure that:- the house is wind and water tight and in all other respects reasonably fit for human habitation, and that the structure and the exterior of the house (including drains, gutters and external pipes) are in a reasonable state of repair and in 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 house concerned meets the Repairing Standard and that any damage caused by the carrying out of any of the work in terms of this Order is made good.

In particular, the Private Rented Housing Committee requires the Landlord to take appropriate steps to eradicate the damp problem in the walls of the property in the following locations:

1. The damp in the wall between the living room and the kitchen.
2. The damp in the wall between the two main bedrooms

to ensure that the house is wind and water tight and in all other respects reasonably fit for human habitation, and that the structure and the exterior of the house (including drains, gutters and external pipes) are in a reasonable state of repair and in proper working order.

The Private Rented Housing Committee orders that the work should be carried out within a period of nine months from the date of service of this notice.

**A landlord or a tenant aggrieved by this 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 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 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 type written on this and the preceding page are executed by Judith V Lea, solicitor, Unit 3.5 The Granary Business Centre, Coal Road, Cupar, Fife, KY15 5YQ, chairperson of the Private Rented Housing Committee at Cupar on 13 May 2015 before this witness:-

R. GRAHAM

J. LEA

.... Witness

...

Chairman

Rachel Graham  
Unit 3.5, The Granary Business Centre  
Coal Road  
Cupar  
Fife



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

prhp Ref: prhp/rp/14/0256

Re : Property at 51 Kinnessburn Road, St Andrews, KY16 8AD ("the Property")

Land Register No: FFE51044

### The Parties:-

Mr Thomas Lockyer, The Hills Farm, Downton Hall Estate, Middleton, Ludlow, SY8 3DY ("the Landlord") represented by Sara Chance, Middleton Court, Middleton, Ludlow, SY8 2DZ ("the Agent")

Miss Hannah Lafferty, formerly of 51 Kinnessburn Road, St Andrews ("the former Tenant")

### Decision

The Committee, having made such enquiries as it saw fit for the purposes of determining whether the Landlord has failed to comply with the duty imposed by Section 14(1)(b) to ensure that the house is wind and water tight and in all other respects reasonably fit for human habitation, and that the structure and the exterior of the house (including drains, gutters and external pipes) are in a reasonable state of repair and in proper working order, and taking account of the written and oral submissions made by the agent on behalf of the Landlord, determined that the Landlord had failed to comply with the duty imposed by Section 14(1)(b) of the Act.

### Background

1. By application dated 2 October 2014 the former Tenant 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 Housing (Scotland) Act 2006 ("the Act").
2. The application by the Tenant stated that the Tenant considered that the Landlord had failed to comply with the duty to ensure that the house is wind and water tight and in all other respects reasonably fit for human habitation, and that the structure and the exterior of the house (including drains, gutters and external pipes) are in a reasonable state of repair and in proper working order.
3. The Private Rented Housing Committee then received confirmation from the Tenant that the tenancy of the house had been lawfully terminated and accordingly under Schedule 7(1) of the Act the Tenant is to be treated as having withdrawn the application under Section 22(1) of the Act.
4. The Vice President of the Private Rented Housing Panel then considered the application to decide whether the application should be determined or whether it should be abandoned all in terms of Schedule 2, Paragraph 7(2) of the Act.
5. Given the nature of the complaints within the application, the Vice President decided that the application should be determined on public interest grounds due to the nature of the alleged repairs which raised health and safety concerns for any future tenants/occupants.

6. The President of the Private Rented Housing Panel accordingly intimated a decision to refer the application under Section 23(1) of the Act to a Private Rented Housing Committee.
7. 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.
8. The Private Rented Housing Committee, comprising Judith Lea, Chairman and Legal Member; Geraldine Wooley, Surveyor Member; and Susan Shone, Housing Member, inspected the Property on 6 May 2015. The Landlord's new agent, Sara Chance, gave the Committee access to the property and was present at the inspection to represent the Landlord.
9. Following the inspection of the property, the Private Rented Housing Committee held a hearing at St Andrews Town Hall, Queens Gardens, St Andrews. The Tenant was not present or represented. The Landlord was not present but was represented by his new agent, Sara Chance. Two members of staff from Rollos Lettings, the previous agent were also in attendance as members of the public but took no part in the proceedings.
10. Sara Chance, on behalf of the Landlords lodged documentation with the Committee, including a report from the preservation company dated 21 July 2014 and various invoices from builders in respect of work done to try and sort out the damp problem at the property. Ms Chance explained that in 2011 David Donaldson Ltd carried out roof works to the property. It was felt at this time that the problem was coming from the two chimney stacks. They re-felted round these chimney stacks. The problem however came back and in 2013 Stewart Niven & Son removed the two chimney stacks and carried out a lot of additional work on the roof. This work was carried out because tenants had been due to move in to the property in autumn 2013 but had said that the property was too damp for them to move in to. This led to a lot of work being done on the roof. In March 2014 the preservation company fitted louvre ventilators as a means of inspecting the roof from the underside and when they came back and inspected in July 2014 there were no obvious signs of any water ingress. After the former Tenant moved in there were further complaints and Niven & Sons went back in September/October 2014 to the property and put cowlings on the chimney covers but did not charge extra for this work.
11. In May 2014 the Landlord's mother took over and the preservation company did redecoration. They recommended that dehumidifiers were put in to assist the plaster in the drying out process. This was done. When the former Tenant moved in in July 2014 they complained about a number of things which were sorted out quickly but also complained about damp. The former Tenant did not feel that the issues were addressed properly and there was a problem with communication between the Landlord and Rollos. On 8<sup>th</sup> of October the former Tenant terminated the lease and left the property.
12. Ms Chance emphasised that the Landlord was conscientious and had done everything to try and sort the problems out. Because the Landlord lived some distance away they required a local agent to manage the property but there had been problems with this. Ms Chance emphasised that there had been no negligence by the Landlord. She outlined the unfortunate personal circumstances of the Landlord and explained that because the property had not really had Tenants in it for the last 2 years they had lost their income stream. The Landlord had instructed respectable contractors to try and sort the problem with the roof but there were still ongoing problems. Ms Chance explained that the Landlord now intended to sell the flat but was to obtain quotes with regard to what further repairs required to be done.
13. Ms Chance confirmed, in answer to a question from the Committee, that when she had last been at the flat in November 2014 the areas of damp were larger and there had been more of a damp smell in the property. It seemed to have improved considerably between then and now despite being unoccupied.

14. The Committee noted that although the former Tenant had originally had a number of issues with the flat, the only matters that had been complained about to the Private Rented Housing Committee were the water ingress and damp in the walls and ceiling. It was clear from inspection and from the damp meter readings taken that there was still a problem with damp in the walls of the property. This however appeared to be only in the area between the living room and the kitchen and in another area o between the two main bedrooms. These areas seemed to correlate to the location of the chimney stacks on the roof above the flat. The Committee inspected the flat roof and the former chimney stacks. It was clear that a lot of work had been done to the roof and in particular to the areas where the previous chimney stacks had been. The Committee noted that the Landlord had instructed two reputable roofing contractors to try and sort out the problems. The Committee considered that the Landlord had taken all reasonable steps to try and sort out the problem.
15. Unfortunately however the current state of the property, with damp readings of 53% - 54% on both the affected walls is unacceptable and is a breach of Section 13(1)(a) & (b) of the Repairing Standard. The Committee could not ascertain whether or not there was an ongoing leak. Although the walls still had a high damp meter reading the Committee would have expected, if there was an ongoing leak (especially considering the amount of rain there had been over the last few days and considering that the property has been empty over the winter) that the smell of damp and the condition of the walls in respect of mould etc would have been worse. Although there were damp patches there was no evidence of mould and there was not a particularly strong smell of damp in the property. It accordingly may well be that the work carried out in October 2014 has stopped the ongoing water ingress and the plaster is still in the process of drying out.

#### **Decision**

16. In the circumstances the Committee considered that it was appropriate to make a Repairing Standard Enforcement Order as the property does not currently meet the Repairing Standard, but would suggest that the Landlord monitor the damp over the next 3 months, perhaps installing a dehumidifier to help any drying out process. At the end of this 3 month period it should be clear whether or not there is an ongoing problem with water ingress. At this stage if further work is required it can be undertaken. The Committee accordingly allowed a period of 9 months for the Landlord to rectify any ongoing problems. The Committee considered that this was a reasonable timescale given the steps already undertaken by the Landlord and given that the property is not currently let.
17. The Committee would however point out that in terms of the legislation it is an offence to re-let the property while a Repairing Standard Enforcement Order is in force. The imposition of the Order will not however prevent sale of the property. The order will be a burden on the title deeds of the property.
18. The Committee proceeded to make a Repairing Standard Enforcement Order as required by Section 24(1).
19. The Decision of the Committee was unanimous.

#### **Right of Appeal**

20. **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**

21. 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. LEA

Signed .....  
Chairperson

..... Date 13 May 2015