



**REPAIRING STANDARD ENFORCEMENT ORDER**  
Ordered by the Private Rented Housing Committee

**RE: Property at Flat 3/Left, 242 Clepington Road, Dundee DD3 8BJ more particularly described in Land Certificate Title number ANG 38332 (hereinafter referred to as “the House”)**

**The Parties:**

**Mei Li, Flat 3/Left, 242 Clepington Road, Dundee DD3 8BJ (hereinafter “the Tenant”)**

**Elton Beckett, 5a Meeting House Road, Killutagh Farms, Ballinderry, Lisburn, County Antrim, Northern Ireland BT28 2NN (hereinafter “the Landlord”)**

**PRHP REFERENCE PRHP/RP/14/0257**

**NOTICE TO ELTON BECKETT**

**WHEREAS** in terms of their decision dated 19 January 2015 the 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 that the Landlord has failed to ensure that the House meets the repairing standard in that:

*“(a) the house is wind and water tight and in all other respects reasonably fit for human habitation...”*

The Committee now requires the landlord to carry out such work as is necessary for the purposes of ensuring that the House 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 Committee requires the Landlord:

To replace the missing bedroom cupboard ceiling and to carry out any necessary roof repairs such that the House is rendered wind and watertight.

The Committee order that the works specified in this Order must be carried out and completed within 28 days from the date of service of this Notice.

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 the decision.

Where such an appeal is made, the effect of the decision and 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 page are signed by John Miller McHugh, Chairperson of the Private Rented Housing Committee at Edinburgh on the Nineteenth day of January Two Thousand and Fifteen in the presence of the undernoted witness:

John McHugh

Chairperson

Gillian McHugh

Witness

GILLIAN MCHUGH

Witness Address

3 RANBY STAGES, EDINBURGH



**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**

**In connection with**

**Flat 3/Left, 242 Clepington Road, Dundee DD3 8BJ (hereinafter referred to as  
“the House”)**

**Mei Li, Flat 3/Left, 242 Clepington Road, Dundee DD3 8BJ (hereinafter  
referred to as “the Tenant”)**

**Elton Beckett, 5a Meeting House Road, Killlutagh Farms, Ballinderry, Lisburn,  
County Antrim, Northern Ireland BT28 2NN (hereinafter referred to as “the  
Landlord”)**

**PRHP REFERENCE PRHP/RP/14/0257**

**DECISION**

The Committee, having made such enquiries as are fit for the purposes of determining whether the Landlord has complied with the duty imposed by section 14(1)(b) of the Housing (Scotland) Act 2006 (hereinafter “the Act”) in relation to the House, taking account of the written documentation attached to the application and submitted by the parties, determined that the Landlord had failed to comply with the duty imposed by section 14(1)(b) of the Act.

**Background**

By application dated 27 October 2014 (hereinafter “the Application”), the Tenant applied to the Private Rented Housing Panel (hereinafter “the PRHP”) for a determination of whether the Landlord had failed to comply with the duties imposed by section 14(1)(b) of the Act.

The Application stated that the Tenant considered that the Landlord had failed to comply with the duty to ensure that the House meets the repairing standard and in particular that the Landlord had failed to ensure compliance with the following paragraphs of section 13(1) of the Act:

*“(a) the house is wind and water tight and in all other respects reasonably fit for human habitation,...*  
*(c) 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,...*  
*(d) any fixtures, fittings and appliances provided by the landlord under the tenancy are in a reasonable state of repair and in proper working order...”*

The Tenant complained of the following defects in the House: the shower was not working properly; a crack in a bedroom cupboard ceiling where water leaks in and peeling wallpaper.

By letter of 21 November 2014, the President of the PRHP intimated a decision to refer the application under section 23(1) of the Act to a Private Rented Housing Committee (hereinafter referred to as “the Committee”).

The Committee comprised the following members:

John McHugh, Chairperson  
Sally Wainwright, Housing Member  
Geraldine Wooley, Surveyor Member

The Committee served Notice of Referral in terms of Paragraph 1 of Schedule 2 to the Act upon the Landlord and the Tenant.

The Committee inspected the House on 15 January 2015. The Tenant was present. The Landlord was neither present nor represented.

Following the inspection, the Committee held a hearing at the Kirkton Community Centre, Dewart Avenue, Dundee. The Tenant did not attend, having confirmed at the inspection that it was not her intention to do so. The Landlord was neither present nor represented.

### **Submissions at the Hearing**

There being no attendance by the parties, the Committee considered only their written representations and the information obtained at the inspection.

The Landlord’s representations had been confined to a request for a continuation of the date of the inspection and hearing date. By emails of 5 and 12 January 2015, the Landlord had requested a ten week continuation on the grounds that he

had not received the notice of referral dated 21 November 2014 and had only become aware of the application on 31 December 2014.

The Committee carefully considered the Landlord's application. The Committee had regard to the prejudice which may have been caused to the Tenant had the Landlord's application been granted. The Committee noted that there was postal evidence that the Landlord's agent had received the notice sent to it by recorded delivery. No explanation was proffered by the Landlord as to why his agent had apparently not brought the matter to his attention. The Committee had regard to the terms of Regulation 13 of the Private Rented Housing Panel (Applications and Determinations)(Scotland) Regulations 2007 and to the general law of agency and determined that service upon the agent should be treated as equivalent to service upon the Landlord. The Committee was also aware of evidence that the notice of referral had been posted by recorded delivery direct to the Landlord although there was no evidence of actual delivery to him.

### **Summary of the Issues**

The issue to be determined is whether the House meets the repairing standard as laid down in section 13 of the Act and whether the Landlord has complied with the duty imposed by section 14(1)(b).

### **Findings in Fact**

The Committee confined their inspection to the items of complaint detailed within the Tenant's Application.

The Committee made the following findings in fact:

The House is a top floor flat in a traditional tenement block.

The Landlord and Tenant entered into a tenancy agreement in respect of the House dated 3 October 2014.

The Landlord is the registered owner of the House.

The Tenant has been in occupation of the House since approximately four years before the beginning of the tenancy agreement (the Tenant having previously been a tenant under a series of back to back short assured tenancies). She remains in occupation.

The provisions of Chapter 4 of Part I of the Act apply to the tenancy.

The Tenant notified the Landlord of the defects in the House which are now the subject of the Application by emails of 23 and 30 September 2014.

The inspection on 15 January 2015 revealed:

The shower appears to be in working order.

In the rear bedroom cupboard the ceiling has been removed and the underside of the roof is exposed. A wasp's nest is present.

The kitchen and bathroom are both in poor decorative order with peeling wallpaper.

There is no evidence of a mains powered smoke or heat detector in the House. There is only a battery powered smoke detector which had been removed by the Tenant as it required a replacement battery.

## **Reasons for the Decision**

### *Shower*

The Committee members assisted the Tenant with the operation of the shower. After some adjustment of its controls it appeared to be functioning as designed and was providing hot water. There was no evidence of a breach of the repairing standard.

### *Rear Bedroom Cupboard Ceiling*

The Tenant advised that the ceiling had been cracked and that there had been water ingress. She advised that the Landlord's workmen had removed the ceiling five days previously, saying that they would return shortly to carry out roof repairs and to reinstate the ceiling. She had heard nothing since. There was evidence of water ingress and a wasp's nest could be seen on the underside of the roof. The removal of the ceiling meant that strong draughts were able to enter the cupboard and the adjacent bedroom which is used by the Tenant's daughter.

### *Wallpaper in the bathroom and kitchen*

The kitchen wallpaper was peeling off and there were a number of holes in the wall. In the bathroom there was peeling wallpaper on the ceiling and paint on the walls was also peeling. Although redecoration of both rooms is highly desirable, their existing condition, while understandably unattractive to the Tenant, did not appear to be sufficiently significant to constitute a breach of the repairing standard.

## **The Repairing Standard**

The Committee consider that the defects in relation to the rear bedroom cupboard ceiling constitute breaches of the repairing standard.

## **Observations**

### *Fire Detection*

No mains powered smoke alarms or heat detectors were present. The Committee strongly advised the Tenant to replace the battery in the existing smoke alarm immediately.

The Application did not include any complaint in relation to the existing fire detection measures. If it had done, the Committee would have had no hesitation in making an Order in this regard. It would be open to the Tenant immediately to present a fresh application in relation to this matter.

The Committee recommend in the strongest terms that the Landlord immediately informs himself as to the current statutory requirements for fire detection and that the required hard wired detectors are fitted as a matter of urgency. The current situation is potentially dangerous.

### *Wasps nest*

Removal of the wasps nest during the ceiling works would be sensible and may prevent future difficulties.

## **Repairing Standard Enforcement Order**

Having decided to make a Repairing Standard Enforcement Order, the Committee considered the length of time which should be provided for compliance.

The Committee elected to impose a period of 28 days having regard to the nature of the defects identified.

## **Decision**

The Committee, considering the terms of section 13(3) of the Act, determined that the Landlord had 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(2) of the Act.

The decision of the Committee was unanimous.

## **Right of Appeal**

Section 64 of the Act provides a right of appeal to a landlord or tenant aggrieved by a decision of a private rented housing committee. An appeal may be made to the Sheriff within 21 days of the Landlord or Tenant being informed of the decision.



Where such an appeal is made, the effect of the decision and 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.

John McHugh

John M McHugh  
Chairperson

Date: 19 January 2015