



## Repairing Standard Enforcement Order

Ordered by the Private Rented Housing Committee

PRHP Ref: PRHP/RP/15/0113

Property at: 12/1 Oxford Street, Edinburgh, EH8 9PJ

Title No: MID7992

### The Parties

Alexander Kiker, formerly residing at 12/1 Oxford Street, Edinburgh, EH8 9PJ ("the tenant")

and

Ms Gail Freedman, Libertus Estates Ltd, Unit 5 & 6 Bankhead Workspace, 10 Bankhead Terrace, Edinburgh, EH11 4DY ("the landlord")

**NOTICE TO** Ms Gail Freedman, Libertus Estates Ltd, Unit 5 & 6 Bankhead Workspace, 10 Bankhead Terrace, Edinburgh, EH11 4DY ("the landlord")

Whereas in terms of their decision dated 29 July 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 and in particular that the landlord has failed to ensure that:

- (a) The installations in the house for the supply of electricity, and for heating water are in a reasonable state of repair and in proper working order, in terms of Section 13(1)(c) of the 2006 Act.
- (b) The furnishings provided by the Landlord under the tenancy are capable of being used safely for the purpose for which they are designed in terms of Section 13(1)(e) of the 2006 Act.

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:-

- (i) Investigate the defect to the drainage system serving the kitchen and shower room and to carry out such repairs that are necessary to remedy that defect;
- (ii) Investigate the defects within the central heating system and repair or replace faulty radiators;

- (iii) Repair or replace the cold water tap and the supply of cold water so that there is an effective supply of cold water to the wash hand basin in the WC; and
- (iv) Produce receipted invoices for the electrical repairs carried out in the kitchen in May 2015 and to produce an up to date electrical safety compliance certificate.

The works specified in this Order must be carried out and completed within six 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.

In witness whereof these presents are executed by Paul Doyle, solicitor, 24 Haddington Place, Edinburgh, chairperson of the Private Rented Housing Committee at Edinburgh on 29 July 2015 before this witness:-

K BOETTCHER

witness

P DOYLE

chairman

KIRSTEN BOETTCHER  
Secretary  
24 Haddington Place  
Edinburgh



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

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**The Parties**

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and

Ms Gail Freedman, Libertus Estates Ltd, Unit 5 & 6 Bankhead Workspace, 10 Bankhead Terrace, Edinburgh, EH11 4DY ("the landlord")

**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) of the Housing (Scotland) Act 2006 in relation to the property concerned and taking account of all of the evidence available to the committee, determined that the landlord has failed to comply with the duty imposed by Section 14(1)(b) of the 2006 Act.

**Background**

- 1 By application dated 30 March 2015, the tenant applied to the Private Rented Housing Panel to determine whether or not the landlord had failed to comply with the duties imposed by Section 14(1)(b) of the Housing (Scotland) Act 2006 ("the 2006 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 house meets the repairing standard and in particular that the landlord has failed to ensure:
  - (a) that the house is wind and water tight, and in all other respects, reasonably fit for human habitation, in terms of Section 13(1)(a) of the 2006 Act;
  - (b) that the installations in the house for the supply for water, gas and electricity, and for sanitation, space heating and for heating water are in a reasonable state of repair and in proper working order, in terms of Section 13(1)(c) of the 2006 Act.

- (c) That the furnishings provided by the landlord under the tenancy are capable of being used safely for the purpose for which they were designed, in terms of Section 13(1)(e) of the 2006 Act.

3 By interlocutor of 27 April 2015, the president of the Private Rented Housing Panel intimated a decision to refer the application under Section 23(1) of the 2006 Act to a Private Rented Housing Committee. The Committee was made up of:

Paul Doyle	Chairperson
Susan Napier	Surveyor Member
Sally Wainwright	Housing Member

4 The Private Rented Housing Committee served notice of referral under and in terms of Schedule 2 Paragraph 1 of the 2006 Act on the landlord and the tenant. Following service of the notice of referral, neither party made any further representations to the committee.

5 The committee inspected the property at 10am on 21 July 2015. The landlord's daughter, Louise McKenzie, and John Forsyth of the landlord's letting agents were present. The tenant was neither present nor represented.

6 Following an inspection of the property, the Private Rented Housing Committee held a hearing at George House, George Street, Edinburgh. Ms Mckenzie & Mr Forsyth were both present on behalf of the landlord. The tenant was neither present nor represented.

7 The tenant's position is that the windows in the property do not fit properly, that there is a fault in the drains causing backflow of waste water into the shower; that the cold water tap in the WC does not work; that there are defects in the central heating, and that the bed are damaged beyond repair.

8 The landlord's position is that she could not repair any defects in the property because the tenant refused to allow her tradesmen into the property to carry out repairs.

### **Summary of Issues**

9 The issues to be determined are:

- (a) is the house wind and water tight, and in all other respects reasonably fit for human habitation; and
- (b) are the installations in the house for the supply of water, gas and electricity and for sanitation, space heating and for heating water in a reasonable state of repair and in proper working order.
- (c) Are the furnishings provided by the landlord under the tenancy are capable of being used safely for the purpose for which they were designed, in terms of Section 13(1)(e) of the 2006 Act?

## Findings in Fact

10 (a) On 6 January 2015, the landlord agreed to let to the tenant the property which is the subject matter of this application. Although the lease was due to end on 5 July 2015, the tenants remained in the property until 13 July 2015, when they vacated the property. The tenancy agreement signed by the parties was a short assured tenancy within the meaning of Section 32 of the Housing (Scotland) Act 1988. The landlord's obligations contained in that tenancy agreement are consistent with the landlord's obligations in terms of Section 14 of the Housing (Scotland) Act 2006.

(b) The property is a first floor flatted dwellinghouse entering by a common passage and stair in a stone built tenement. Entry to the common passage is gained by an entryphone system. One flight of stairs leads to the front door of the property. The front door opens into a central hallway which provides access to each of the rooms. The property has two bedrooms (one to the front of the property and one to the rear of the property), an internal shower room, a separate internal WC, a kitchen/living room to the rear and cupboard space off the hallway and in the kitchen/living room.

(c) The property has three windows, one to the front and two to the rear. They are each single glazed, sash and case windows. The windows are weathered and worn but they open and close properly and although they are in need of overhauling and painting, they do not permit excessive draughts.

(d) The furniture throughout the property is badly worn and past its useful life. The three piece suite in the living room has large holes in the ragged upholstery. There is a double bed in the rear bedroom and a double bed in the front bedroom. The double bed in the front bedroom is tired but not damaged. The mattress is worn and would benefit from replacement. The double bed in the rear bedroom is damaged. There are missing slats and there are a number of slats which are not fixed in place properly. There are also a number of slats which are secured solely with packaging tape. The landlord rented this property to the tenant as a furnished property. The beds are part of the furnishings provided by the landlord. The damage to the bed in the rear bedroom is so significant that it is not capable of being used safely for the purpose for which it has been designed.

(e) The entryphone providing access to the common passage and stair is in working order.

(f) The WC has a white two piece sanitary suite. The small wash hand basin has two taps (one for hot water and one for cold water). The cold water tap does not work. When the tap is turned to the "on" position, no water flows from it.

(g) The property benefits from gas fired central heating. There are radiators in each of the rooms in the property. The radiator in the shower room does not work. The radiator in the hallway does not work. The thermostat has fallen off the radiator in the hallway. The radiator in the rear bedroom did not work.

(h) When water is run into the kitchen sink it does not drain away properly, but instead, after pouring from the kitchen sink, it re-emerges in the shower and fills the

shower tray. It carries with it waste which had drained from the kitchen. The wash-hand basin in the WC drained into the shower tray. The drainage from both the kitchen sink and the shower is compromised to such an extent that water and waste do not drain properly. There is a backflow causing water and waste to re-emerge in the kitchen sink, the shower tray in the adjacent shower room and (probably) in the dishwasher in the kitchen.

(i) Generally, the interior of the property has seen better days. The decoration is old and tired. The property is now empty. It is the landlord's intention to refurbish the property within the next month. The landlord has already obtained quotes for *inter alia* plumbing work, joinery work and decoration.

(j) Although the sash and case windows are old and require overhauling and redecoration, the property is wind and water tight and in all other respects, reasonably fit for human habitation.

(k) The installations in the property for the supply of water and sanitation are not in proper working order because there is an obvious fault in the drains serving the kitchen and shower room; there is also an obvious fault in the central heating system. The property does not meet the requirements of Section 13(1)(c) of the 2006 Act.

(l) Some of the furnishings provided by the landlord are broken. The bed in the rear bedroom is damaged and beyond its useful life so that it is no longer capable of being used safely. The property does not meet the requirements of Section 13(1)(e) of the 2006 Act.

(m) A schedule of photographs taken during the inspection is annexed hereto.

### **Reasons for Decision**

11 (a) Committee members inspected this property at 10am on 21 July 2015. It was a clear, dry but overcast summer morning. The tenant had vacated the property on 13 July 2015 and was neither present nor represented. The landlord was represented by her daughter, Louise McKenzie, and John Forsyth from the letting agents, Murray and Currie Ltd. Ms McKenzie and Mr Forsyth invited committee members into the property and allowed committee members to inspect the property.

(b) Committee members tested the entryphone system. Two committee members remained within the property. The third committee members returned to street level and used the entryphone system to gain entry to the property. The entryphone works. There is no defect with the entryphone system.

(c) The property is on the first floor of a stone built tenement. The property has one bedroom to the front with a window overlooking Oxford Street and one bedroom and a kitchen/living room to the rear with windows overlooking the back green (and beyond). Each of the windows is a single glazed traditional sash and case window. Committee members inspected the windows and could see that at some point in the past, draught excluders had been placed around the windows. The windows open and close without difficulty. Committee members inspected the windows, both closed and open, and could not see that there were any significant or unusual gaps in the

window frame. There are parts of each of the window frames which are weathered and worn and which would benefit from maintenance but the windows do not permit unusual or significant draughts. Committee members therefore come to the conclusion that the house is wind and water tight and in all other respects, reasonably fit for human habitation, so that the requirements of Section 13(1)(a) of the 2006 Act are met.

(d) The tenant complains that the furnishings are no longer capable of being used safely. The tenant specifically states that the bed in the rear bedroom is missing slats and a support leg.

(e) Committee members inspected the beds in the front and rear bedrooms. Each of the beds are of some age. They are of identical design. They are both metal frame beds with wooden slats lying across the frame to support a mattress. Committee members lifted the mattresses on each of the beds. The bed in the front room did not bear signs of damage (although it is old and worn). The slats across the bedframe are all present and in the correct place. The bed is not damaged.

(f) The bed in the rear bedroom has missing slats. Most of the remaining slats are secured using brown packaging tape. The bed is clearly damaged and is of an age where it is probably not worth repairing. The slats are necessary to support the mattress and, in turn, the occupant of the bed. Committee members draw the conclusion that the bed is no longer capable of being used safely for the purpose for which it is designed.

(g) Committee members noticed that the other furnishings in the property were damaged. There is a three piece suite in the living room of the property. The upholstery is broken, cracked and worn. There are areas where there are significant holes in the upholstery. Committee members were told by Ms McKenzie and by Mr Forsyth that it is the landlord's intention to empty the property and to dispose of all of the furniture. Committee members therefore make a repairing standard enforcement order for the replacement of the damaged bed in the rear bedroom. However, in light of the fact that the only pieces of furniture complained about by the tenant were the beds, combined with the undertaking which is given by Ms McKenzie on behalf of the landlord that the furniture is to be removed from the property and replaced with new furniture, the committee decided to make a repairing standard enforcement order for the replacement of the one item of furniture complained about by the tenant only.

(h) Committee members inspected the WC, which is entered from the hallway of the property. Committee members turned the taps on the wash hand basin within the WC. It was obvious that no water ran from the cold water tap. The tenant specifically states that the cold water tap does not work. What is said by the tenant is borne out by the observations of committee members. There is clearly a defect in the installation for the supply of water to the property.

(i) Ms McKenzie volunteered that there was a difficulty with the drains serving both the kitchen and the shower room and that when the tap was run in the kitchen, water which cleared from the kitchen sink would re-emerge in the shower tray in the adjacent shower room. Mr Forsyth for the letting agents demonstrated by turning on

the tap in the kitchen. Committee members could see the water re-emerging in the shower tray. They could also see what appeared to be old coffee grounds and other kitchen waste which had re-emerged in the shower tray. There is clearly a problem with the drainage. When committee members were watching the demonstration of the defect in the drainage, each committee member was aware of a pungent odour emanating from the drain. The only conclusion that committee members could reach is that there is a defect in the drain which serves the kitchen and the shower room. The drainage serves part of the installations in the kitchen for the supply of water and for sanitation. The defects in the drainage serving the kitchen and the shower room and the defect in the cold water tap in the WC indicate that a repairing standard enforcement order is necessary because the requirements of Section 13(1)(c) of the 2006 Act are not met.

(j) The property benefits from a central heating system. Each room has a radiator. Ms McKenzie and Mr Forsyth switched the central heating system on for committee members to test. Two radiators in the property heated up. On inspection, committee members found that the radiator in the hallway does not have a thermostat and although committee members waited for several minutes and noted that some radiators warmed, the radiator serving the shower room did not warm up and clearly is not working.

(k) The central heating system is an installation for space heating. The requirements of Section 13(1)(c) of the 2006 Act are not met.

(l) The tenant complained that when the dishwasher was used, the taps in the kitchen would give off an electric shock. Committee members could see that each of the electrical appliances had been PAT tested (in May 2015) but could not tell whether or not all items had been properly earthed and whether or not there was still an electric shock coming from the taps.

(m) A hearing took place within George House, George Street, Edinburgh at 11.30am. The tenant was neither present nor represented. The landlord's daughter, Louise McKenzie gave evidence on behalf of the landlord. She was supported in her evidence by John Forsyth, the letting agent from Messrs Murray and Currie. Both Ms McKenzie and Mr Forsyth candidly conceded that there was a problem with the drain serving the kitchen and shower room, that the radiator in the shower room does not work and the cold water tap in the WC does not work. Both Ms McKenzie and Mr Forsyth referred committee members to a schedule of works which the landlord plans to carry out within the property and the estimates which have been obtained for remedial works to the property. Committee members were told by both Ms McKenzie and Mr Forsyth that the works would commence 7-10 days after the date of the hearing.

(n) The consistent evidence from both Ms McKenzie and Mr Forsyth was that attempts had been made to have tradesmen inspect the various known problems within the property and that those tradesmen had been denied access to the property. They both confirmed that gas safety and electrical safety inspections have been carried, but neither could produce either the gas safety certificate or the



electrical compliance certificate to committee members because they had not thought to bring them to the hearing.

(o) The weight of reliable evidence indicates that there is a defect in the drain serving the kitchen and shower room. It is not clear what works are required, but it is clear that investigations must be carried out so that the problem causing backflow can be identified and remedied. It is clear that the central heating radiator in the shower room does not work. It is a matter of concession that the cold water tap in the WC does not work.

(p) Committee members were concerned that the tenant complained that electric shocks issued from the kitchen tap. The oral evidence from Mr Forsyth confirmed that at the time the tenant complained of electric shocks from the kitchen tap, his complaint was well founded. The only realistic conclusion that committee members can come to is that the taps in the kitchen have been known to deliver electric shocks within the last few months. Committee members cannot be satisfied that remedial works have been carried out and are effective. Committee members therefore require, as part of the Repairing Standard Enforcement Order, production of receipted invoices for the works carried out to earth the electrical installation and to eliminate the risk of electric shock from kitchen appliances, together with the most recent electrical safety compliance certificate.

(q) Taking account of the committee members' findings at inspection, & full account of the oral and documentary evidence presented, committee members can only come to the conclusion that the landlord has not complied with the duties imposed by Section 14(1)(b) of the 2006 Act. The committee therefore makes a repairing standard enforcement order requiring the landlord to:

- (i) Investigate the defect to the drainage system serving the kitchen and shower room and to carry out such repairs that are necessary to remedy that defect;
- (ii) Investigate the defects within the central heating system and repair or replace faulty radiators;
- (iii) Repair or replace the cold water tap and the supply of cold water so that there is an effective supply of cold water to the wash hand basin in the WC; and
- (iv) Produce receipted invoices for the electrical repairs carried out in the kitchen in May 2015 and to produce an up to date electrical safety compliance certificate.

All within six weeks of the RSEO.

### **Decision**

12 The Committee accordingly determined that the Landlord has failed to comply with the duty imposed by Section 14 (1)(b) of the Act.

13 The Committee proceeded to make a Repairing Standard Enforcement Order as required by section 24(1).

14 The decision of the Committee was unanimous.

**Right of Appeal**

**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**

15 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.

P DOYLE

Signed.....

..... Date..... 29/7/2015 .....

Chairperson