



Repairing Standard Enforcement Order

Ordered by the Private Rented Housing Committee

Case Reference Number: PRHP/RP/15/0120

Re : 229 Colliston Avenue, Glenrothes KY7 4PW ("the Property")

Title : FFE104158

The Parties:-

Katherine Horsburgh, 328 Cluny Road, Glenrothes KY7 4QY ("the Former Tenant") care of her agent Brenda Bain, Frontline Fife, 34 Commercial Road, Leven, Fife KY8 4LD

Elaine Catherine Hossack, 54 Coronation Road, Aberdeen AB14 0RN ("the Landlord") care of her agents To Lettings, 16 North Street, Glenrothes KY7 5NA

NOTICE TO

Elaine Catherine Hossack ("the Landlord")

Whereas in terms of their decision dated 30 June 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 the Property meets the repairing standard in that :-

- (a) the living room, and both bedrooms suffer from water penetration and dampness;
- (b) the bathroom suffers from condensation dampness;
- (c) the patio door frame suffers from water ingress;
- (d) the electrical system is not in a reasonable state of repair;
- (e) a step on the staircase from the patio decking to the garden is broken;
- (f) the gate leading from the garden to the public area to the rear of the Property is incapable of secure closure due to a rotten fence post;
- (g) the sliding doors of the garage in the back garden of the Property have come off their rails
- (h) the garage has a leaking roof

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:-

- (1) to instruct a person with demonstrable specialist experience in the identification of the causes of dampness to investigate the penetrating dampness and water ingress at the rear wall of the Property including where it adjoins the living rooms and the two bedrooms of the Property;
- (2) to obtain from such person written recommendations for all works necessary to eliminate any dampness, water ingress or other causes of dampness from the living room and both bedrooms of the Property and to lodge said recommendations with the Committee;
- (3) to carry out all works, including those contained in said written recommendations necessary to eliminate any cause of dampness including water ingress and to make good, including the installation of all window facings and curtain rails of the bedrooms;
- (4) to install an electric extractor fan in the bathroom and kitchen
- (5) to inspect and if necessary repair or replace the door leading from the living room to the outside patio of the Property;
- (6) to carry out remedial action required to deal with observations 1 to 4 in part K of the Electrical Installation Condition Report for the Property from R.B. Grant dated 18 June 2015 and to obtain from a National Inspection Council or Electrical Installation Contracting (NICEIC) or Select registered electrician a report confirming that no further remedial action is required;
- (7) to repair or replace the lowest step on the wooden staircase leading from the patio decking to the remainder of the garden of the Property;
- (8) to replace the wooden fence post forming part of the rear fence of the said garden and adjoining the wooden gate, and if necessary part of said fence, and to install an effective latch securing the gate to the fence post;
- (9) to repair and re-install the door to the garage of the Property and if necessary to repair the garage to allow the door to be brought into proper working order;
- (10) to repair the roof of the said garage to remove the source of water ingress;
- (11) to lodge with the Committee written documentation evidencing the carrying out of all of the above works together with the further report on the electrical installation.

The Private Rented Housing Committee order that the works specified in this Order must be carried out and completed within the period of 2 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 page(s) are executed by David Bartos, Advocate, Parliament House, Parliament Square, Edinburgh EH1 1RF, Chairperson of the Private Rented Housing Committee at Edinburgh on 30 June 2015 before this witness:-

D Bartos

E Potter

witness

chairperson

E Potter

name in full

Parliament House Address

Edinburgh EH1 1RF

Advocates 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:-

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Elaine Catherine Hossack, 54 Coronation Road, Aberdeen AB14 0RN ("the Landlord") care of her agents To Lettings, 16 North Street, Glenrothes KY7 5NA

The Committee comprised:-

Mr David Bartos - Chairperson
Mr David Godfrey - Surveyor member
Mrs Christine Anderson - 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 1 April 2015 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) there was significant black mould in the Property;
- (2) there was water penetration on the wall of the living room;
- (3) there was a leak into the living room at the back door onto the patio and the door frame was full of water;
- (4) the bathroom door did not close;
- (5) the bathroom lacked an extractor fan;
- (6) the lights under the kitchen units required repair or replacement;
- (7) there was a broken extractor fan in the kitchen which required repair or replacement;
- (8) the living room light bulbs blew when it rained
- (9) use of the light switch in the living room caused an electric shock to the user;
- (10) there was an unsecure step at the patio;
- (11) the lock on the back garden gate was broken
- (12) the sliding door on the garage did not sit on its runners
- (13) the garage had a roof leak.

The application related to the matters which had been raised on behalf of the Former Tenant by Brenda Bain, Housing Advisor of Frontline Five to the Landlord's agents dated 4 March 2015 which was copied to the Landlord herself.

3. 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 Stenton Jubilee Centre, Dunrobin Road, Glenrothes KY7 4SH was fixed for 22 June 2015 at 10.00 a.m. and 11.00 a.m. respectively. The parties were invited to make written submissions to the Panel's office by 20 May 2015.
4. This was all intimated to the Former Tenant by letter of the Panel's Clerk dated 21 April 2015 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 included a copy of the Former Tenant's application to the Panel.
5. Following intimation of the Notice of Referral, Inspection and Hearing the Landlord's agents sent an e-mail to the Panel dated 19 May 2015. This set out various works which had been carried out together with quotations for further works. Given the terms of complaints (8) and (9) above the Committee required independent clarification of whether the electrical system of the Property was in proper working order and in a reasonable state of repair. It also required clarification as to whether the works carried out together with the works being contemplated would deal with all of the other complaints. Accordingly the Committee issued a Direction dated 4 June 2015 to the parties requiring the Landlord to produce a domestic electrical installation condition report, documentary evidence showing that all works mentioned in the Landlord's agents' e-mail had been carried out

and confirmation from the Former Tenant whether she still insisted on her application.

6. The Landlord's agents' said e-mail also disclosed that the Former Tenant was due to leave the Property on 25 June 2015 and the Direction sought confirmation from the Tenant on whether the lease was to terminate.
7. The Former Tenant's representative intimated by means of a letter to the Panel dated 15 June 2015 that while the electrical system had been inspected no work had been carried out to it, the bathroom door remained unrepaired and the patio door was not secure. In addition confirmation was given that the tenancy would terminate on 25 June 2015. By e-mail to the Panel dated 19 June 2015 the Landlord's agents provided an Electrical Installation Condition Report with an estimate for electrical repairs and invoices for the planing of the bathroom door to enable it to close and a new electrical light pendant in the living room.

The Inspection

8. The Committee inspected the Property on 22 June 2015 at 10.00 a.m. Ms Pauline To from the Landlord's agents was present at the beginning of the inspection. The Former Tenant was present together with her co-tenant Gregor Ayling.
9. The weather was overcast with a drizzle of rain. The inspection revealed that the Property is a terraced house from the 1970s in the Pitteuchar area of Glenrothes. The Committee carefully inspected the matters which were the subject of complaint.

The Evidence

10. The evidence before the Committee consisted of:-
 - The application form
 - Copy letter from Brenda Bain of Frontline Fife to the Landlord's agents dated 4 March 2015
 - Copy letter from the Landlord to Brenda Bain dated 8 March 2015
 - Copy letter from the Landlord to Pauline To of her agents To Letting dated 8 March 2015
 - Copy rental agreement between the Former Tenant and Mr Ayling as tenants and the Landlord's agent on her behalf
 - E-mail from To Letting to PRHP dated 19 May 2015
 - Copy quotes (2 No.) from MD General Builders to Ashley of To Letting dated 23 April 2015
 - Copy invoice from Paul Steele to To Letting dated 30 March 2015
 - Copy invoice from A Hannah Joinery to To Letting dated 20 May 2015

- Copy invoice from MD General Builders to Ashley of To Letting dated 23 April 2015
- Electrical Condition Installation Report from R.B. Grant dated 18 June 2015 with estimate from R.B. Grant of the same date
- Copy letter from Frontline Fife to PRHP dated 15 June 2015
- Registers Direct copy of Land Register title sheet for FFE104158 dated 21 May 2015
- The oral evidence of the Former Tenant
- The oral evidence of Mr Ayling.
- The oral evidence of Ms To.

The Hearing

11. At the conclusion of the inspection the Committee held the hearing within Stenton Jubilee Centre, Dunrobin Road, Glenrothes KY7 4SH at the time fixed. The Former Tenant and Mr Ayling attended and gave evidence. Ms Pauline To from the Landlord's agents attended and gave evidence. Both parties made submissions.
12. The Former Tenant said that the main reason for their departure from the Property was the mould in the bedrooms and the living room. In the living room the wallpaper changed colour depending on the extent of the rain. When it was raining heavily the outer wall seemed to be wetter. The builder had replaced only part of the plasterwork. There had also been water penetration from above the sliding door to the patio.
13. During their stay water had come into the first bedroom when there was heavy rain. Water had come from the left side of the window. Water penetration had been intermittent. The door of the bathroom could not be closed. It had to remain ajar during showering. This affected privacy of the person having the shower. The window of the bathroom was open during showering and afterwards. Mould developed on the ceiling of the bathroom. When she and her co-tenant had moved in the ceiling of the bathroom had been clean apart from some corrosion to the light fittings.
14. At some point they had to move to sleep in the living room. They tried to contact the landlord's former agents. The landlord had come in and given anti-fungal paint but this had been ineffective. All of the bedrooms had been affected by mould. The backs of the wooden doors to the first floor cupboards had been affected by mould.
15. Mr Ayling said that since replastering in May a bit of water had still come in. The Former Tenant said that water had still come in on the left side of the window in the first bedroom. She was unsure if the difficulty causing the mould and water penetration in that room had been solved.
16. The Former Tenant confirmed that the bathroom door had been repaired and there was no longer an issue as to its closure. She confirmed that

there was no issue over the lighting in the kitchen or the cooker hood. There was no extractor fan in the kitchen as such.

17. So far as the back door was concerned when she pulled or pushed it one could hear water slushing back and forth. The former agents of the landlord had got someone to look into this but they could not find the cause of the leak "into" the door.
18. The electric shocks to the person who switched on the lights in the living room had occurred when they had moved in and recurred again during the winter months. The light bulbs in the living room had exploded three times leaving shattered glass. The electric pendant holding the bulbs had broken. The electrician who replaced it had put the shocks down to the damaged fixture. The electrician who had carried out the inspection in the week before the hearing had been asked to look into the cause of the shocks but could make no suggestion other than possibly the faulty light fitting.
19. The Former Tenant said that she had reported the step on the patio to the former agents last summer. Mr Ayling said that someone had come out to look but nothing had been done. The difficulty with the garden gate had been reported last year but nothing had been done. She did not go into the garden frequently due to work commitments away from the house. She was unaware of when the garage door had stopped working. However they had been working in April 2015 when she had stored a fire kit in the garage. She speculated that someone had entered the garden and damaged the door while trying to break into the garage.
20. The Former Tenant said that she had visited the Landlord's agents a few times before anyone from the agents came out to look at the mould.
21. Ms To observed that the previous agents of the Landlord had not dealt with the issue of mould. She had been taken aback by the amount of mould in the bedrooms when she first inspected the Property. After her visit she had gone to the Landlord and she had supplied a dehumidifier.
22. Ms To said that the door of the garage had been in order when the Former Tenant had moved in and that the Landlord aimed to remove the garage entirely from the garden. The Landlord had not yet seen the electricity installation condition report but was not going to re-let at this stage.
23. Neither party chose to exercise their right of cross-examination which was explained to them.

Findings of Fact

24. Having considered all the evidence, including their inspection, the Committee found the following facts to be established:-

- (a) The Property is a mid terrace house in a 1970s development in the Pitteuchar area of Glenrothes. It comprises a living room and kitchen on the ground floor and two bedrooms and a bathroom on the first floor. At the rear there is a patio formed from wooden decking to which access is taken through a sliding door from the living room. From the decking there is a set of wooden steps leading down into the remainder of the garden. In the garden there is a low metal walled and roofed garage. It has a two-panelled metal sliding door facing the house and decking. At the rear of the garage there is a high wooden garden fence in which there is a wooden gate leading out of the garden.
- (b) On or about 26 November 2014 the Former Tenant and her co-tenant Gregor Ayling and the Landlord entered into a lease of the Property for 6 months expiring on 25 May 2015. In clause 32 of the lease the parties agreed that if the tenants failed to give written notice to the Landlord's agents by at least one calendar month prior to that expiry date, the tenancy would continue on a rolling month to month basis until terminated by the tenants or Landlord.
- (c) No such notice was given. The date of entry was 25 November 2014. The tenancy continued for a further month beyond 25 May 2015. It was terminated on 25 June 2015.
- (d) The living room is at the rear of the Property. It has UPVC double-glazed windows and a UPVC double-glazed sliding patio door leading to the patio.
- (e) When the back door is slid, on occasion water can be heard from within the frame of the moveable unit. The door lock is secure. On the outside of the door a piece of patio door frame in the lower left corner had become detached.
- (f) In the room there were signs of mould in the lowest approximately 15 cm of the outside wall between the windows and the door and in the left corner adjacent to the door. The wall had wallpaper. At the time of inspection there was no dampness disclosed in the wall. With heavier rain the wall becomes damp. The colour of the wallpaper changes.
- (g) There is a new electrical pendant hanging from the ceiling in the living room. It was installed in March 2015. There had been incidents of shocks to users of the electric switch in the living room. These had taken place in the autumn of 2014 shortly after the tenants had moved in. On three occasions the light bulbs in the living room had exploded on being switched on. They left shattered glass and damaged the then electrical pendant to which they were attached. The cause of these events is unclear. The light bulbs in the living room are functioning. There has been no explosion since the replacement of the pendant. There has been no shock since the replacement.

- (h) The electrical installation of the Property is as set out in the Electrical Installation Condition Report of R.B. Grant, electrical contractors dated 18 June 2015 addressed to the Landlord's agents. Urgent remedial action is required to deal with the matters set out in part K of the Report.
- (i) In the kitchen the lights below the kitchen units are now functioning. The cooker has a hood above it with an air circulation mechanism. It does not take the air from the kitchen but releases it back. It is functioning. Cooking and washing in the kitchen gives rise to moist air. This contributes to condensation within the Property.
- (j) In the northmost (first right) bedroom on the first floor the outside wall has been replastered on the inside to the left of the windows. It has not been re-papered or painted. The windows are of a UPVC double glazed type originally with large wooden facings. The wooden facings have been partially removed.
- (k) In the southmost (second right) bedroom on the first floor the outside wall has been replastered on the inside. It has not been re-papered or painted. The windows are of a UPVC double glazed type originally with large wooden facings. The wooden facings have been partly removed. At inspection they and the wooden curtain rail on them were lying in the room on the floor. There were signs of mould on the wooden door into the bedroom which had been scrubbed.
- (l) In both bedrooms former mouldy plasterwork on the walls had been removed and replaced and sealed with anti-fungal "paint" on or about 20 May 2015. Even after this work water still penetrated into the first bedroom when there was heavy rain. This had occurred intermittently during the course of the tenancy. The left side of the window in the first bedroom also had water coming into the room.
- (m) As a result of the mould and damp on the walls the tenants had been forced to sleep in the living room. Eventually due to ongoing problems with water ingress they had left the Property on 15 June 2015.
- (n) The bathroom includes a toilet, a bath with a shower unit over it and a wash basin. It has a double-glazed window to the front of the Property. There is no extractor fan in the bathroom. It has a wooden door. At the time of the application the door could not be closed. At maximum closure it remained ajar. Repair work involving the planing of the door on or about 15 June resulted in the door being operational. There are signs of mould on the back of the door.
- (o) The ceiling of the bathroom is comprised of plastic sheets with small grooves between them. At the time of inspection there was widespread mould on them and at the join between them and the bathroom walls. There was staining on the light fitting in the bathroom.

When the Former Tenant and her co-tenant moved in the ceiling and walls were clear apart from some staining on the light fitting.

- (p) The Former Tenant had kept the window open while she showered.
- (q) There are five steps leading down from the wooden decking to the ground in the garden. The lowest of these has split in two parallel to its tread. Stepping on the outer part of the tread or on the nosing causes the nosing of the step to break away from the staircase.
- (r) The rear fence has a wooden gate. Viewed from the garden the left post of the fence to which the catch for the latch is attached has rotted at ground level. It and the fence to which it is attached leans away from the garden towards the outside. As a result the bolt from the latch on the gate is unable to close and the gate is left permanently open.
- (s) The garage has a two-panelled sliding metal door. Under its arrangement to open it the left panel has to be slid left along rails to the top and bottom of the panel. The right panel has to be operated similarly. At inspection the right panel had been taken out and was in the garage leaning against the wall. The left panel was in its rails at the foot but not at the top. It could not be closed properly.
- (t) The roof of the garage comprised metal sheeting screwed to the frame of the garage. One of the sheets had slid revealing daylight through a hole. Rain had entered the garage through this.
- (u) The facts spoken to by the Former Tenant and Mr Ayling in so far as consistent with the above.

Continuation with application

- 25. The Committee having found that the lease had come to an end shortly after the hearing, required to decide whether it should abandon consideration of the application or continue to determine the application (Housing (Scotland) Act 2006, sched.2 para. 7(3)).
- 26. Given the nature of the application and in particular the serious issues of dampness and safety that it raised, the Committee considered that the public interest required that the matters in the application should be dealt with in order to ensure that the Property meets the repairing standard set out in section 13(1) of the 2006 Act before it is capable of being let in the future. Accordingly the Committee exercised its power under paragraph 7(3)(b)(i) of schedule 2 to the 2006 Act to continue to determine the application.

Reasons for Decision

27. The Committee had no reason to doubt the evidence of the Former Tenant or Mr Ayling. They spoke in a clear and helpful manner and answered questions without prevarication or evasion. While their recollection of dates was not wholly accurate, given the amount of the complaints and the developing situation this is entirely understandable. The Committee accepts their evidence as credible and reliable.
28. The Committee had no difficulty with the evidence of Ms To. However she was handicapped by her lack of familiarity with the Property. It was in essence not inconsistent with that of the other two witnesses but to the extent that it might be the Committee would prefer that of the other two witnesses due to their greater familiarity with the Property.
29. The Committee required to decide whether in respect of the complaints the Property failed to meet any aspect of the repairing standard in section 13 of the Act.
30. The duty of the 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.
31. Complaint (1) was that there was damp and mould in the Property. Complaint (2) and part of complaint (3) was that the living room was not watertight. Complaint (5) related to the bathroom lacking an extractor fan. The Committee required to consider whether the condition of the living room, the bedrooms, and the bathroom in these respects was such that the Property 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.
32. 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).
33. On the basis of their findings in fact in relation to the living room, bedrooms and the bathroom the Committee were in no doubt that at least for the period up to the building work, including plasterwork in May 2015 the Property had not been watertight and had not been fit to be used with reasonable comfort. The more difficult question was whether that was still the case. While the work did involve the pointing of some brickwork in the rear of the Property, and no damp was found on the day of the inspection, the evidence of both the Former Tenant and Mr Ayling as to ongoing difficulties tended to show that all causes of the dampness and water penetration had not been identified and dealt with. When to this was added

the condensation causing mould in the lounge, bathroom and landing cupboards which could not be attributed to tenants not using the Property in a proper manner, the Committee was not persuaded that the Property had been made watertight and fit to be used with reasonable comfort. Accordingly the Property was not reasonably fit for human habitation and the repairing standard in section 13(1)(a) had been breached.

34. Complaint (3) related in part to a leak into the living room which has already been dealt with. It also related to the UPVC door frame of the sliding patio door as having water within it. The Committee was unable to verify this for itself. However it accepts the evidence from the Former Tenant. It was also noted that the facing to the edge of the door frame had become loose. In these circumstances the Property was not watertight in terms of the repairing standard in section 13(1)(a) or in any event the exterior of the house was not in this respect in a reasonable state of repair in terms of section 13(1)(b) of the 2006 Act. In respect of this element of complaint (3) the Property was in breach of the repairing standard in section 13(1)(a) and 13(1)(b) of the 2006 Act.
35. Complaints (8) and (9) related to the electrical lighting system in the living room of the Property. It was accepted by the Former Tenant that since the installation of the new electrical pendant in March there had been no further instances of exploding light bulbs or electric shocks. However the cause of the electric shocks remained unknown. Given that the Committee was not in a position to comment on the detailed condition of the electrical system of the Property it instructed the obtaining of the Electrical Installation Condition Report. This disclosed that in respect of four matters set out in part K of the Report, the system was potentially dangerous and urgent remedial action was required. The overall assessment of the system in the Property was said in the Report to be "unsatisfactory". In these circumstances the Committee is compelled to find that the electrical system for the Property was not in a reasonable state of repair and therefore in breach of the repairing standard in section 13(1)(c) of the 2006 Act. The Landlord's attention is drawn to the estimate by her contractors R.B. Grant for the carrying out of repairs which should remedy the deficiencies identified.
36. Complaint (10) related to the unsecure wooden step leading down from the patio to the garden. The question is whether either as part of the structure and exterior of the Property (2006 Act, s.13(1)(b)), or as a fixture provided by the Landlord under the tenancy the step was not in a reasonable state of repair and in proper working order (2006 Act, s.13(1)(d)). In determining whether the standard under section 13(1)(b) is met the Committee must have regard to -
 - (a) the age, character and prospective life of the Property (including, given the definition of "house" in s.194(1) of the Act, any structure which is capable of being enjoyed as part of the living accommodation), and
 - (b) the locality in which the Property is situated (2006 Act s.13(3)).

37. There was also a question whether the condition of the step prevented the Property from being reasonably fit for human habitation in the sense described above (2006 Act, s.13(1)(a)).
38. Having regard to the character of the step set out in the findings of fact and its role in allowing movement between the house and its garden the Committee took the view that it was a safety hazard and self-evidently not in a reasonable state of repair. Nothing about the age, character and prospective life of the decking or the locality of the Property was material in reaching this conclusion. For this reason the step fell below the repairing standard in section 13(1)(b) and (d) of the 2006 Act.
39. Given that the unsafe step clearly prevented safe passage between the garden and the house it rendered the Property as a whole not reasonably fit for human habitation and in breach of the repairing standard in section 13(1)(a) of the 2006 Act.
40. Complaint (11) was that the gate in the rear fence of the back garden was not secure and thus not in a reasonable state of repair and in proper working order (2006 Act, s.13(1)(b)) or as a fixture provided by the Landlord under the tenancy the step was not in a reasonable state of repair and in proper working order (2006 Act, s.13(1)(d)). The factors to be taken into account under section 13(1)(b) have already been mentioned in relation to the step.
41. This wooden gate has a latch the bolt of which cannot reach its intended catch on the fence post adjacent to that holding the gate. The reason is that the fence post with the catch has rotted at ground level and as a result leaned outwards with the weight of the fence which it was designed to support. Having regard to the character of the gate and its role in securing the entry into the garden from the publicly accessible area behind the garden the Committee took the view that the gate and its latch were not in proper working order. For this reason they fell below the repairing standard in section 13(1)(b) and 13(1)(d) of the 2006 Act. To that extent complaint (11) is therefore upheld.
42. Complaint (12) was that the sliding door on the garage did not sit on its runners and so was not in a reasonable state of repair and in proper working order (2006 Act, s.13(1)(b)) or as a fixture provided by the Landlord under the tenancy was not in a reasonable state of repair and in proper working order (2006 Act, s.13(1)(d)). The factors to be taken into account under section 13(1)(b) have already been mentioned in relation to the step.
43. It was suggested by Ms To that the garage door had been in proper working order at the time of commencement of the tenancy. The submission was made for the Landlord that if the tenant has broken the door, they should bear the responsibility of fixing it. That accords with

section 16(1)(b) of the 2006 Act which provides that a landlord's duty under section 14(1) to ensure that a house meets the repairing standard does not require the landlord to carry out work to meet that standard if the tenant is liable for that work by reason of tenant's breach of a duty to use the house in a proper manner.

44. Notwithstanding Ms To's submission - made without advance notice at the hearing - the starting point is whether the garage door met the repairing standard noted above. In the light of the findings in fact based on their inspection the Committee are in no doubt that the repairing standard in section 13(1)(b) or (d) was not met.
45. In this case there was a duty on the tenants in clause 4(1) of the Terms and Conditions of the lease to "keep the Premises and contents . . . in good order and condition". On one reading this is not a duty to use the Property in a proper manner. If so there is no question of a duty on the tenant to use the Property in a proper manner arising at all. On another reading clause 4(1) might possibly be seen as a duty to take reasonable care to keep the Property in good order and condition. However even if that is the correct interpretation of clause 4(1) the Committee are not persuaded that the Former Tenant or her co-tenant have breached clause 4(1). There was no evidence that they had broken the garage door. Accordingly section 16(1)(b) does not excuse the Landlord from remedying the breach of repairing standard in respect of the garage door.
46. Complaint (13) was that the garage had a leak and was not watertight (2006 Act, s.13(1)(a)). On the findings of fact of the Committee, it was clear that this complaint was justified. The aperture in the roof of the garage through which water had leaked was clearly visible. Accordingly this complaint was upheld.
47. It was accepted by the Former Tenant that complaints (4) and (6) to (9) had already been dealt with since the written complaint on 4 March 2015. In these circumstances these complaints are refused.
48. The need to carry out work to deal with the complaints and breaches of repairing standard that have been upheld was intimated to the Landlord's agents in early March 2015. The Landlord has had a reasonable time to carry out the work necessary to deal with the breaches of repairing standard. Accordingly the Committee make the decision set out above.
49. The Committee considered the terms of the Repairing Standard Enforcement Order which requires to be made. They are not in a position, having regard to their inspection, to identify the precise cause of the mould and water ingress as set out in the findings above. The Committee therefore proceed to make an Order requiring the specialist investigation of the wall at the rear of the Property to allow identification of the causes and the carrying out of remedial works. The Order also requires the carrying out of repairs to deal with the other complaints that have been upheld.

50. The Landlord's representative indicated at the hearing that the Landlord intended to remove the garage. Whether the Landlord wishes to do this in the future and let the Property without a garage in the garden is a matter for her. However at this stage the Committee requires to take the Property as it was let to the Former Tenant and there is no doubt that the garage was part of the leased subjects. Accordingly the Order deals with work to the garage.
51. The Landlord is reminded that it is a criminal offence for her 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

52. The Committee determine 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.
53. The Committee proceed to make a Repairing Standard Enforcement Order as required by section 24 (2). The decision of the Committee is unanimous.

Rights of Appeal

54. A landlord aggrieved by this decision of the Committee may appeal to the Sheriff by summary application within 21 days of being notified of that decision.
55. 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

56. 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.
57. 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.

D Bartos

Signed
David Bartos, Chairperson

.....Date: 30 June 2015

E Potter

Signature of Witness.

.....Date: 30/6/15.

Name of witness: E Potter

Address: Parliament House
Edinburgh EH1 1RF

Occupation of witness: Advocates Clerk