



## **REPAIRING STANDARD ENFORCEMENT ORDER**

### **THE PROPERTY**

**125, Blarmore Avenue, Inverness IV3 8QT, being ground, 60 on plan, part of (I) 11.09 acres, outlined in red on plan annexed to Feu Disposition by Hugh MacRae and Company (Builders) Ltd in favour of Barratt Developments (Aberdeen) Ltd, dated 10 February and recorded in the General Register of Sasines applicable to the County of Inverness on 29 March both in the year 1978 and (II) 9.273 acres, outlined in red on the plan annexed to the Feu Disposition by Hugh MacRae and Company (Builders) Ltd in favour of Barratt Developments (Aberdeen) Ltd, dated 27 March and recorded in the said division of the General Register of Sasines on 28 June both in the year 1978 (hereinafter referred to as "the property")**

### **The Parties**

**Mrs Ada Katrina MacKenzie, residing at the property, per Alan Rooney, Citizens Advice Bureau, 103, Academy Street, Inverness IV1 1LX (hereinafter referred to as "the tenant")**

**and**

**The Accountant in Bankruptcy, c/o Wylie & Bisset LLP, 168 Bath Street, Glasgow G2 4TP, as trustee on the sequestrated estate of Jean Forbes McDonald residing at 11 Kings View Terrace, Inverness IV3 TS, per Harper Macleod LLP, The Ca'd'oro, 45 Gordon Street, Glasgow G1 3PE**

**(hereinafter referred to as "the Landlord")**

**PRHP Reference: PRHP/RP/15/0326**

**Committee Members – David Preston (chairperson) and Sara Hesp (Surveyor Member)**

1. **WHEREAS** in terms of their decision dated 11 March 2016 the Private Rented Housing Committee ('the Committee') determined that the landlord had failed to comply with the duty imposed by section 14(1)(b) of the Housing (Scotland) Act 2006 ('the Act') and in particular the property failed to meet the repairing standard as set out in section 13(1) of the Act.
2. The Committee now requires the Landlord to carry out such work as is required to ensure the property meets the Repairing Standard and that any damage caused as a consequence of carrying out of any works in terms of this Order is also made good before the expiry of the Completion Date.

### **THE ORDER**

3. In particular, and without prejudice to the foregoing generality, the Committee **HEREBY ORDERS** the Landlord to carry out the following repairs ('the Works');-
  - i. Lodge with PRHP a satisfactory Electrical Installation Condition Report (EICR) completed by a suitably competent person accredited by NICEIC or SELECT.
  - ii. Repair the warm air heating unit.
  - iii. Lodge with PRHP a satisfactory Gas Safe Certificate.
  - iv. In accordance with the recommendations contained in BS5839 Part 6, install smoke alarm and fire detectors and heat detectors that meet the standard as set by building regulations and the revised Domestic Technical Handbook guidance on the requirements for smoke alarms, details of which are available on the PRHP website at [www.prhpscotland.gov.uk](http://www.prhpscotland.gov.uk).
4. The Committee **HEREBY FURTHER ORDERS** that the Works specified in this Order must be carried out within **THREE WEEKS** from the date of service of this Order.

### **Right of Appeal**

A landlord or tenant has the right to appeal this decision to the Sheriff by summary application within 21 days of being notified of that decision.

**Effect of Appeal**

In terms of section 63 of the Act, where such an appeal is made, the effect of the decision and of any order is suspended until the appeal is abandoned or finally determined by confirming the decision, the decision and any 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 2 preceding pages are subscribed as follows:

David Preston

Martin Minton

CHAIRMAN

WITNESS

Glasgow.

PLACE OF SIGNING

MARTIN MACDONALD MINTON

FULL NAME OF WITNESS

11 March 2016.

DATE OF SIGNING

THE EXCHANGE

ADDRESS

142 ST VINCENT STREET

GLASGOW G2 5LA



## **DETERMINATION & STATEMENT OF REASONS**

**Issued by the Private Rented Housing Committee in terms of Section 24 and Paragraph 6(2)(b) of Schedule 2 of the Housing (Scotland) Act 2006**

### **THE PROPERTY**

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### **The Parties**

**Mrs Ada Katrina MacKenzie, residing at the property, per Alan Rooney, Citizens Advice Bureau, 103, Academy Street, Inverness IV1 1LX (hereinafter referred to as "the tenant")**

**and**

**The Accountant in Bankruptcy, c/o Wylie & Bisset LLP, 168 Bath Street, Glasgow G2 4TP, as trustee on the sequestrated estate of Jean Forbes McDonald residing at 11 Kings View Terrace, Inverness IV3 TS, per Harper Macleod LLP, The Ca'd'oro, 45 Gordon Street, Glasgow G1 3PE (hereinafter referred to as "the landlord")**

**PRHP Reference: PRHP/RP/15/0326**

**Committee Members – David Preston (Chairperson) and Sara Hesp (Surveyor Member)**

## **Decision**

**The Committee, having made such enquiries as are fit for the purposes of determining whether the landlord had complied with the duty imposed by section 14 (1) (b) of the Housing (Scotland) Act 2006 (hereinafter referred to as “the Act”) in relation to the property, and taking account of the representations by the parties, determined that the landlord had failed to comply with that duty and that the Property accordingly failed to meet the repairing standard as defined in section 13 of the Act.**

## **Background**

1. The tenant sought a determination of whether the landlord had failed to comply with the duties imposed on her by section 14 (1) (b) of the Act.
2. The tenant complained that the landlord had failed to meet the repairing standard in respect that the installations in the house for the supply of water, gas and electricity and for sanitation, space heating and heating water were not in a reasonable state of repair and in proper working order.
3. In particular she complained that: the boiler and heating unit had been condemned; there were inadequate smoke detectors, heat detectors and carbon monoxide detectors throughout the property; the electric meter did not conform to current standards; and the earth wire required to be installed from the outside meter to the kitchen taps.
4. Along with the application, the tenant submitted; correspondence from Wylie & Bisset LLP and from the Accountant in bankruptcy; and copy Deliverance from the Sheriff Court at Inverness dated 22 April 2015 in respect of the sequestration of the estate belonging to Jean Forbes MacDonald;
5. The title to property stands in the name of William Alexander MacDonald and Jean Forbes MacDonald. William Alexander MacDonald is now deceased and Jean Forbes MacDonald is his Widow. In view of the terms of the Deliverance, the property is vested in the Accountancy in Bankruptcy.

## **Inspection**

6. The Committee inspected the property on the afternoon of 8 March 2016. The tenant was present throughout the inspection along with her adviser, Mr Rooney. There was no representation or attendance by on behalf of the landlord.
7. The inspection revealed that the property was a detached bungalow of traditional

brick and tile construction built c1980.

8. The Committee had regard to the complaints raised by the applicants and found as follows:
  - a. The heating system was controlled by a gas warm air unit which had been disabled. A warning label. Reference is made to the photograph on the schedule attached hereto.
  - b. The gas supply had been disconnected.
  - c. There was a battery operated smoke detector in the hall and carbon monoxide detector in the vestibule which the committee was advised had been provided and installed by the tenant.
  - d. The electric meter and consumer unit were located in an external box and the fuse box was located in a cupboard off a bedroom.
9. Photographs of the property and of the issues raised are attached hereto.

**Hearing:**

10. A hearing took place at The Spectrum Centre, 1 Margaret Street, Inverness IV1 1LS. The tenant and Mr Rooney attended the hearing and the tenant provided oral evidence.
11. The Committee had before it:
  - a. the application;
  - b. the copy correspondence referred to above with Wylie & Bisset and the Accountancy in Bankruptcy;
  - c. a copy of an undated, pro forma tenancy Agreement;
  - d. copy correspondence between the tenant and: Wylie & Bisset; Jean Forbes MacDonald; the Royal Bank of Scotland; South Forest Macintosh, solicitors; and the Housing Department, Highland Council;
  - e. Warning Advice Notice Report dated 15 October 2015 in respect of the warm air unit; and
  - f. copy invoices from Highland Heating;
  - g. representations on behalf of the Accountant and Bankruptcy from Harper Macleod LLP dated 8 February 2016
12. The tenant advised that she had lived in the property as tenant since 2010. Over the years she had experienced problems with the heating system and had arranged for its repair on a number of occasions. On such occasions she had been in the habit of paying for the repairs herself and deducting the money from the rent which she paid.

She explained that Mr MacDonald had been happy to accept this arrangement.

13. The tenant also advised that she had obtained a battery operated smoke detector which she had fitted in the property as well as carbon monoxide detector which she fitted in the vestibule adjacent to the cupboard containing the warm air unit. After fitting the detector it warned her of the presence of carbon monoxide. Accordingly she contacted Highland Heating who attended on 15 October 2015 and on examination of the unit they issued the Warning/Advice Notice Report and disconnected the unit. They also disconnected the gas meter.
14. The tenant advised that she had contacted the Housing Department at the Council who had attended and had advised that electricity supply was faulty in a number of respects. The inspector was concerned about the adequacy of the electric meter and fuse box and was concerned that there was no earth wire from the consumer unit to the water pipes.
15. The tenant advised that there had been a gas cooker at the property. She had obtained and installed an electric cooker since the gas cooker would no longer work.
16. The tenant said that on the advice of Mr Rooney, she had, in line with her previous arrangements with Mr and Mrs MacDonald, withheld the rent in anticipation of being able to have the heating unit repaired or replaced. She had deposited the withheld rent in a separate account.
17. The tenant also advised that she had been served with a Notice to Quit and had obtained legal advice from a solicitor who was representing her in the court proceedings.
18. The Committee had regard to the letter from Harper Macleod dated 8 February 2016 which indicated that their client had not adopted any lease between the debtor and the tenant and had not accepted rental monies and accordingly, the submitted that as the client was not the landlord he did not required to comply with any obligations as required in the tenancy agreement.

### **Decision and Reasons**

19. The Committee considered its observations at the inspection as well as the documents submitted to it and the oral evidence provided by the tenant.
20. The Committee was of the view that the tenant was entitled to the protection afforded by the Housing (Scotland) Act 2006, notwithstanding the sequestration of the landlord and considered that the Accountant in Bankruptcy, being vest (?) in the property was responsible, qua trustee, to fulfil the obligations of the landlord in terms of the Act. The Committee was satisfied, on the evidence before it, that there was a lease in existence in respect of the property under which the tenant was unlawful

occupation of the property.

21. The Committee determined that the landlord had failed to comply with the duty to ensure that the property meets the repairing standard at all times during the tenancy.
22. Accordingly the Committee determined to issue a Repairing Standard Enforcement Order

### **Right of Appeal**

A landlord or tenant has the right to appeal this decision to the Sheriff by summary application within 21 days of being notified of that decision.

### **Effect of Appeal**

In terms of section 63 of the Act, where such an appeal is made, the effect of the decision and of any order is suspended until the appeal is abandoned or finally determined by confirming the decision, the decision and any order will be treated as having effect from the day on which the appeal is abandoned or so determined.

11-Mar-16

David Preston

X

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CHAIRMAN

Signed by: DAVID MICHAEL PRESTON





Schedule of photographs taken during the inspection of 125 Blarmore Avenue,  
Inverness IV3 3QT on 8 March 2016



Front elevation

**Interior**



Warm air heating unit



Schedule of photographs taken during the inspection of 125 Blarmore Avenue,  
Inverness IV3 3QT on 8 March 2016



Immersion heater and hot water cylinder tank



Inner hallway – battery operated smoke detector



Schedule of photographs taken during the inspection of 125 Blarmore Avenue,  
Inverness IV3 3QT on 8 March 2016

### Outside



Meter cupboard – electric pre-payment meter