



## **Repairing Standard Enforcement Order**

**Ordered by the Private Rented Housing Committee**

**Reference Number:- PRHP/RP/15/0333**

**Re: Property at 97 Earlsark Avenue, Newlands, Glasgow, G43 2HD all as more particularly described in and registered in Land Certificate GLA155282 (hereinafter referred to as “the property”)**

### **The Parties:-**

**Mr Joseph McAlpine (“the Tenant”)**

**Mr Graeme John Brownlie and Mrs Claire Holroyd or Brownlie, 19 Aytoun Crescent, Burnisland, KY3 9HS (“the Landlords”)**

### **NOTICE TO**

**Mr Graeme John Brownlie and Mrs Claire Holroyd or Brownlie, 19 Aytoun Crescent, Burnisland, KY3 9HS (“the Landlords”)**

**Whereas in terms of their decision dated 11 November 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 (“the Act”) and in particular the Landlord has failed to ensure that: the house is wind and watertight and in all other respects fit for human habitation.**

**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:-**

1. To instruct an RICS registered building surveyor to carry out a survey and report on the condition of the roof of the property and to complete any and all repairs to the roof identified and recommended by the said report.

The Private Rented Housing Committee order that the works specified in this Order must be carried out and completed within the period of 28 days 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.

**Please note that in terms of Section 28(1) of the Act, a landlord who, without reasonable excuse, fails to comply with an 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 an RSEO has effect in relations to the house. This is in terms of Section 28(5) of the Act.**

In witness whereof these presents type written on this page and the preceding page are executed by Patricia Anne Pryce, Chairperson of the Private Rented Housing Committee at Glasgow on 15 March 2016 before this witness:-

P Pryce

Signed

Date 15<sup>th</sup> March 2016

Patricia Anne Pryce, Chairperson

N Pryce

**Witness**

**Name** NICHOLAS PRYCE

**Address** 55 BLYTHWOOD ST, GLASGOW

**Occupation** ACCOUNTANT



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

**Reference Number: PRHP/RP/15/0333**

**Re: Property at 97 Earlsark Avenue, Newlands, Glasgow, G43 2HD ("the  
Property ")**

**The Parties:-**

**Mr Joseph McAlpine ("the Tenant")**

**Mr Graeme John Brownlie and Mrs Claire Holroyd or Brownlie, 19 Aytoun  
Crescent, Burntisland, KY3 9HS ("the Landlords")**

**Decision**

The Committee, having made such enquiries as it saw fit for the purpose of determining whether the Landlords have complied with the duty imposed by Section 14 (1) (b) of the Housing (Scotland) Act 2006 ("the Act") in relation to the property concerned and, taking account of the evidence submitted on behalf of the Landlords and the application by Tenant, determined that the Landlords have failed to comply with the duty imposed by Section 14 (1) (b) of the Act.

**The Committee consisted of:-**

<b>Patricia Anne Pryce</b>	<b>-</b>	<b>Chairperson</b>
<b>Andrew Taylor</b>	<b>-</b>	<b>Surveyor Member</b>

**Background**

1. By application comprising of all documents received between 3 December 2015 and 22 January 2016, from the Tenant, the Tenant applied to the Private Rented Housing Panel for a determination as to whether the Landlord had failed to comply with the duties imposed by Section 14 (1) (b) of the 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 property meets the repairing standard and the Tenant brought forward the following breaches:-**

**That there was water coming in through the roof for nine weeks after the Tenant moved into the property on or about September 2015 rendering one of the three bedrooms of the property unusable.**

**That the roof and the chimney were unsafe.**

**The Tenant considers that the Landlord is in breach of his duties under the Housing (Scotland) Act 2006 in relation to the repairing standard and in particular the Landlord has failed to ensure:-**

- (i) The house is wind and watertight and in all other respects reasonably fit for human habitation.**
- (ii) The structure and exterior of the house (including drains, gutters and external pipes) are in a reasonable state of repair and in proper working order.**

**3. By Minute dated 25 January 2016 the President of the Private Rented Housing Panel intimated a decision to refer the application under Section 23(1) of the Act to a Private Rented Housing Committee.**

**4. On 5 February 2016, the Private Rented Housing Committee ("the Committee") wrote to the Landlords and to the Landlords' letting agents, Clyde Property Residential Letting, to advise that the Committee intended to inspect the property on 14 March 2016 at 13.30 hours. The letter further confirmed that a Hearing had been arranged in relation to the application, which Hearing would be held in Wellington House, 134-136 Wellington Street, Glasgow, G2 2XL commencing at 14.30 hours. Finally, the letter confirmed that any written submissions had to be received by the Committee by 26 February 2016.**

**5. On 18 February 2016, the Committee issued a Notice of Direction in terms of Schedule 2 Paragraphs 2(1) and 3(1)(b) of the Housing (Scotland) Act 2006 and Regulation 14 of the Private rented Housing Panel (Applications and Determinations)(Scotland) Regulations 2007, which Notice required the Landlords to provide to the Committee all documents the Landlords had obtained from all and any contractors detailing repairs required to the roof of the Property together with any quotations or estimates in respect of said repairs together with all documents the Landlords had obtained from all and any contractors detailing repairs required to the chimney of the Property together with any quotations or estimates in respect of said repairs. By email dated**

19 February and emailed to the Committee on 23 February, both 2016, the Landlords requested a postponement of the Inspection and Hearing as the Tenant had given notice to quit the property and as the Landlords presently resided in Luxembourg. The Committee considered this request and refused same as the Landlords had letting agents acting on their behalf and the Landlords had also confirmed to the Committee that they had family members residing in Scotland who would be prepared to attend the Inspection and Hearing on behalf of the Landlords.

6. By email dated 25 February 2016, the Landlords requested the Committee to grant an extension to the Landlords to submit written representations after the deadline of 26 February 2016. The Committee considered this request and granted an extension of time to 5 pm on 2 March 2016 to allow the Landlords further time to submit their written representations, which written representations were received by the Committee on 2 March 2016.

7. On 1 March 2016, the Committee received an email from the Tenant advising that he wished to withdraw his application as the Landlords had now completed the repairs to the property and that water ingress was no longer an issue with the property and that he and his family were vacating the property on 25 March 2016 and therefore they were no longer involved parties. By Minute of Continuation under Schedule 2 Paragraph 7(3) of the Housing (Scotland) Act 2006 dated 3 March 2016, the Committee decided to continue to determine the application on public interest grounds to ensure that any repairs carried out and those which may remain, are carried out to a satisfactory standard, given that the application had complained about water ingress from the roof and structural problems with the chimney, both of which could raise health and safety issues.

### **The Inspection**

8. On 14 March 2016, the Committee attended at the property for the purposes of inspection of the property. The Tenant, his wife and two of his children were present at the inspection as the Tenant provided access to the Committee. The Landlords' representatives, Mr Scott Brownlie (brother of the Landlord, Graeme Brownlie) and Mr Gardner Brownlie (father of the Landlord, Graeme Brownlie) also attended at the inspection on behalf of the Landlords.

At the inspection on 14 March 2016, the Committee noted the following points:-

- (a) The property comprises a three bedroomed mid-terrace red sandstone villa constructed over two storeys which is estimated to be in the region of 110 years old or thereby.
- (b) The accommodation comprises an entrance hallway, lounge and dining kitchen with fitted units on the ground floor. On the half landing on the stairway to the first floor there is located the bathroom. On the first floor of the property there are three bedrooms.
- (c) The property has garden ground to both the front and the rear of the property.
- (d) The roof of the property is of slate construction. The roof, on both elevations, appeared uneven to the naked eye and slates were either missing or had slipped out of place. Of particular note were the area on the front elevation between the chimney and bay window, where the slates clearly undulate, and the bay window roof itself. Additionally, previously undertaken repairs at the chimney flashing appear suspect.
- (e) The ceiling in the bathroom had clear staining on it from water ingress.
- (f) There was a large bubble in the ceiling of the bedroom located at the rear of the property, which bubble would appear to have been caused by water ingress.
- (g) There was bubbling of the wall paper visible in the main bay windowed bedroom which was located at the front of the property, also apparently caused by water ingress.
- (h) There was staining from water ingress down the length of the diagonal in the ceiling of the smaller bedroom located at the front of the property, which was the bedroom which the Tenant had advised in his application was unusable due to constant water ingress. The Tenant confirmed at the inspection that water ingress still occurred in this room when it rained. The Landlords' representatives could not confirm or deny whether or not water ingress continued to be a problem in this room.

The surveyor member of the Committee took several photographs which form the Schedule attached to this decision.

### **The Hearing**

9. Mr Scott Brownlie and Mr Gardner Brownlie both attended the hearing and confirmed that they were representing the Landlords. The Landlords did not attend the hearing personally as they presently reside in Luxembourg.



The Committee asked the Landlords' representatives for clarification of the date contained in Paragraph 4.2.1 of the Landlords' written representations. They could not provide such clarification. Mr Scott Brownlie offered to telephone his brother, the Landlord Mr Graeme Brownlie, to seek this clarification. The Committee allowed a short recess of the hearing for this purpose.

After the recess, the hearing recommenced. Mr Scott Brownlie confirmed that the date contained within the said paragraph should state February 2016 and not 2015 as contained in the representation which had been submitted. In short, Mr Brownlie confirmed that the works to remedy the issues in relation to the leaking lead flashings on the roof were completed in February 2016.

Mr Scott Brownlie advised that his brother, Mr Graeme Brownlie the Landlord, had engaged an agent to act on his behalf in relation to the property, namely, Clyde Residential Letting. He offered in evidence that his brother believed that he had done due diligence as a landlord and that he had engaged with the relevant qualified contractors to get repairs done.

Mr Gardner Brownlie advised that he did not understand why the hearing was taking place as the Tenant had issued his notice of intention to quit the property and that the Landlords had responded timeously to all matters including the repairs. The Committee reminded Mr Brownlie that a Minute of Continuation had been issued by the Committee in respect of the application which the Committee was entitled to do.

The Committee then sought clarification from the representatives regarding the invoice dated 11 January 2016 issued to the Landlords by Messrs Archd. McCorquodale & Sons Ltd, Roofing and Building Contractors, and the letters written by the same company issued to the Landlords and dated 26 January and 16 February, both 2016, respectively. In particular, the Committee wished to discover what works had been carried out in terms of the description of works required according to the terms of the two letters by Messrs Archd. McCorquodale & Sons Ltd. The Landlords' representatives advised that they could not provide such clarification but that they would like once again to have a short recess of the hearing to phone the Landlords to seek clarification. Once again, the Committee agreed to a short recess for this purpose.

After the recess, the hearing recommenced. Mr Scott Brownlie confirmed that he had been able to speak with his brother, the Landlord, who had provided him with a full explanation of events. Mr Brownlie

advised that after the invoice dated 11 January 2016 had been issued for the works carried out prior to that date, the Tenant had complained once again about water ingress to the property. As a result, the Landlords engaged the services of Messrs Archd. McCorquodale & Sons Ltd once again and the works as described in the letters of 26 January and 16 February, both 2016, were carried out by these contractors at the price quoted within the letters.

Mr Scott Brownlie advised that he wished the Committee to note that his brother, Mr Graeme Brownlie, the Landlord, was a man of good character and integrity and who sent his apologies for being unable to attend the hearing.

Mr Gardner Brownlie confirmed that he had nothing further to add.

Both of the Landlords' representatives were honest and straightforward when giving their evidence. They were clear when they could not answer a question raised by the Committee and the Committee was content to allow them the opportunity to seek clarity from the Landlords by way of the telephone.

However, at the inspection which took place on an unusually dry, sunny and warm day, the Tenant was clear that water ingress remained a problem in the property when it rained. The Landlords' representatives could offer not contrary evidence on this point. They simply did not know other than that the Landlords had engaged the services of roofing contractors on more than one occasion in the preceding six months.

Given all of the circumstances, the Committee is satisfied that the property is not wind and watertight and in all other respects reasonably fit for human habitation as a result of water ingress emanating from the roof.

## **Decision**

10. The Committee accordingly determines that the Landlords have 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 (1) of the Act.

11. The decision of the Committee was unanimous.



12. The Private Rented Housing Committee require the Landlords to carry out such works as are necessary to ensure that the property meets the Repairing Standard.

13. The Committee considered that it would be reasonable to allow a period of 28 days from the date of the RSEO to carry out these works.

### **Reasons for Decision**

14. The Committee considers that the Landlords have had sufficient time to carry out the outstanding repairs.

The Committee considers that the Landlords have failed in their duty under Section 14(1)(b) of the Act and have not complied with the repairing standard in terms of Sections 13 (1) (a) of that Act.

### **Observations**

The Committee notes that the Landlords reside in Luxembourg and that they have engaged the services of an agent to manage the property during their absence from Scotland. The Committee further notes that the Landlords have made more than one attempt to have roofing contractors carry out works in order to resolve the issue of water ingress at the property. The Committee is not without sympathy towards the Landlords' position, however, it remains that the property fails to meet the repairing standard due to the continuing problems with water ingress at the property. The signs of water ingress at the property are extensive and self-evident.

### **Right of Appeal**

15. 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**

16. 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 Pryce

**Signed**

**Date 15 March 2016**

**Patricia Anne Pryce**

A handwritten signature in black ink, consisting of a series of loops and a long horizontal stroke at the end, positioned to the right of the printed name.



97 Earlsparke Avenue, Newlands, Glasgow, G43 2HD  
PRHP/RP/15/0333  
Schedule of Photographs - Inspection Date 14/03/2016  
Weather – Clear, dry and sunny



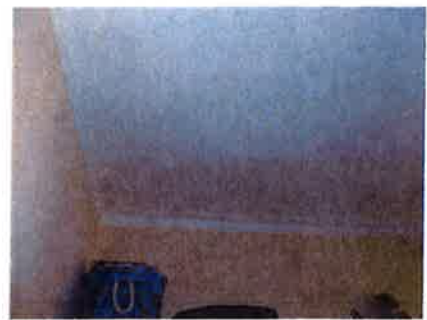
1. The property



2. Bathroom ceiling



3. Bathroom ceiling



4. Rear bedroom ceiling



5. Small bedroom ceiling



6. Small bedroom ceiling



7. Small bedroom ceiling



8. Main bedroom ceiling



9. Main bedroom ceiling



10. Rear elevation



11. Detail – bay window and chimney





12. Detail - roof adjacent chimney and bay window