



## Repairing Standard Enforcement Order

Ordered by the Private Rented Housing Committee

PRHP Ref: PRHP/RP/16/0020

Property at: 81/5 (2f2) Kirk Brae, Edinburgh EH16 6JJ

Title No: MID14672

### The Parties

Ms Lizette Venter, residing at 81/5 (2f2) Kirk Brae, Edinburgh EH16 6JJ  
("the tenant")

and

Samantha Humphreys, residing at 4/19 Lochend Road, Edinburgh, EH6 8BR  
("the landlord")

**NOTICE TO** Samantha Humphreys, residing at 4/19 Lochend Road, Edinburgh, EH6 8BR ("the landlord")

Whereas in terms of their decision dated 4<sup>th</sup> April 2016, 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 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) 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, in terms of Section 13(1)(b) of the 2006 Act;
- (c) The installations in the house for the supply of water, gas, and electricity and for sanitation, space heating and heating water are in a reasonable state of repair and in proper working order, in terms of Section 13(1)(c) of the 2006 Act;
- (d) Any fixtures, fittings and appliances provided by the landlord under the tenancy are in a reasonable state of repair and in proper working order; and
- (e) Any 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 to:-

(i) Instruct an Electrical Installation Condition Report (EICR) and Portable Appliance Test (PAT) on the entire electrical installation of the property and all electrical appliances and equipment supplied by the landlord to be carried out by a suitably qualified and registered SELECT or NICEIC electrical contractor. Carry out works to rectify any identified issues in these reports and provide the PRHP with a report from a suitably qualified and registered SELECT or NICEIC electrical contractor confirming the works are completed.

(ii) Replace the gas central heating boiler and thereafter provide the PRHP with a Gas Safety Record from a suitably qualified, and Gas Safe registered heating engineer on the safety of the gas central heating boiler and all other gas appliances in the property, &, if necessary, carry out any further repairs or replacement to ensure that all gas appliances are safe to use.

(iii) Complete the dry rot eradication works in the hall, the linen cupboard, the main bathroom, the adjacent bedroom and any other area within the property affected by dry rot, and thereafter make good all floor coverings and decoration.

(iv) Secure the bedroom carpet by fitting a threshold bar at the entrance to the en-suite bathroom.

(v) Repair or replace the main bathroom window to ensure it is wind and water tight and in proper working order

All within 4 weeks of the date of service of service of this order

**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 6 April 2016 before Emma Doyle, 24 Haddington Place, Edinburgh.

E Doyle

P Doyle

witness

chairman



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

**PRHP Ref:** PRHP/RP/16/0020

**Property at:** 81/5 (2f2) Kirk Brae, Edinburgh EH16 6JJ

**Title No:** MID14672

**The Parties**

Ms Lizette Venter, residing at 81/5 (2f2) Kirk Brae, Edinburgh EH16 6JJ  
("the tenant")

and

Samantha Humphreys, residing at 4/19 Lochend Road, Edinburgh, EH6 8BR  
("the landlord")

**Decision**

The Committee, having made such enquiries as it thought 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, received on 20 January 2016, 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 her duty to ensure that the house meets the repairing standard and, in particular, that the landlord had failed to ensure that:
  - (a) 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) 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, in terms of Section 13(1)(b) of the 2006 Act;
- (c) The installations in the house for the supply of water, gas, and electricity and for sanitation, space heating and heating water are in a reasonable state of repair and in proper working order, in terms of Section 13(1)(c) of the 2006 Act; and
- (d) The fixtures, fittings and appliances provided by the landlord under the tenancy are in a reasonable state of repair and in proper working order, in terms of Section 13(1)(d) of the 2006 Act;
- (e) Any 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;

3 By interlocutor dated 11 February 2016, 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     |
| Carol Jones | Surveyor Member |

4 The Private Rented Housing Panel served notice of referral under and in terms of Schedule 2 Paragraph 1 of the 2006 Act on the landlord and the tenant on 18 February 2016. Following service of referral, neither party made any further written representations to the Private Rented Housing Panel. On 22 March 2016 the landlord asked for an adjournment of the inspection and hearing fixed for 31<sup>st</sup> March 2016. When that request was refused, the landlord lodged 109 pages of documentary evidence on 30 March 2016 for the committee's consideration.

5 The Committee inspected the property at 1.30pm on 31<sup>st</sup> March 2016. The tenant was present and was unrepresented. The landlord was not present, but was represented by her agent, Paul Klasinski of Pink Property Services, 26 London Road, Edinburgh EH7 5AY.

6. Following inspection of the property, the Private Rented Housing Committee held a hearing at 3pm in George House, George St, Edinburgh. The tenant was present and was unrepresented. The landlord was not present, but was represented by her agent, Paul Klasinski.

7 The tenant's position is that there are defects in the kitchen because the kitchen worktops are damaged, the fridge does not work, & the drains are blocked. The tenant complains that the central heating boiler is dangerous, so that the house has neither hot water nor space heating. The shower in the en-suite bathroom leaks, the fan is out of order and there are leaks at the main bathroom window.

The tenant complains that the house is riddled with damp and with dry rot highlighting mushrooms growing in the en-suite, main bathroom and hall and damp spreading into her daughter's bedroom from the bathroom. She also complains that there are defects in the electrical system so the lights regularly fuse, that there is a problem with seals to the toilet cisterns and a carpet needs replaced. Since submitting the application some works have been carried out, but the tenant complains that dry rot has been found throughout the property.

- 8 The landlord's position is that the tenant has exaggerated her claim & that all necessary works are being carried out.

### **Summary of Issues**

- 9 The issues to be determined are whether or not the house complies with the repairing standard set out at Sections 13 and 14 of the 2006 Act.

### **Findings in Fact**

10 (a) The landlord is the heritable proprietor of the property which is the subject matter of this application. On 14 August 2010 she let the property to the tenant.

(b) The property is a first floor flatted dwelling house within a large 19<sup>th</sup>-century Listed building which had, until the middle of the 20<sup>th</sup> century, been used as a school (St Hilda's). It is located in the Liberton district of Edinburgh around 3 miles south-east of the city centre. The larger building of which this property forms part was converted into flatted dwelling houses in the mid 1940s. It is a 2 and 3-storey plus attic building constructed of sandstone with a slated mansard roof. The property is entered from a common passage and stair. The front door provides access to a central hallway which, in turn, provides access to each of the rooms. There are three bedrooms (one of which has an en-suite bathroom) a main central bathroom with a window overlooking a light well, a kitchen and a living room. The property has mostly timber sash and case windows, some UPVC replacement windows and provision for gas central heating.

(c) Since the application was submitted, the landlord has replaced the fridge. The kitchen now has a working fridge. The drains have been unblocked, and now clear properly, and repairs have been carried out to the wooden work surface in the kitchen where holes have been filled and surfaces sanded and oiled. The en-suite bathroom has been replaced entirely and now benefits from a white three-piece shower suite, a slate tiled floor, fully tiled walls and a renewed extractor fan. In March 2016 the landlord installed a new electricity consumer box and renewed the lighting in the Hall of the property.

(d) Although the flooring of the en-suite bathroom has been replaced, there is no threshold bar between the new slate tiled floor and the carpet in the master bedroom. The bedroom carpet rises where it meets the entrance to the en-suite bathroom and is not secured. The carpet in the master bedroom is filthy.

(e) In the summer of 2015, the tenant complained to the landlord that a leak in the bathroom window was causing mushrooms to grow and dampness to spread throughout the property. The proprietors of the property immediately below this

property (81/2 Kirk brae, Edinburgh) were concerned that dry rot was affecting the larger building, their own flatted property & the property which is the subject matter of this application. In November 2015 the proprietors of the neighbouring ground floor property instructed Wise Property Care Ltd to inspect the property. Their inspection disclosed that this property is an affected by dry rot.

(f) Between 22<sup>nd</sup> February 2016 and the date of inspection some works have been carried out to this property including external common repairs to eradicate the source of water penetration which was contributing to the outbreak of dry rot. Proprietors of the flat directly below this property have carried out dry rot eradication work, which led to the renewal of joists in the hall & bathroom of this property and some sections of floorboards have been renewed in the hall and main bathroom. The source of the dry rot was water ingress from external downpipes in the light well outside the bathroom of this property, and also a leaking pipe in the centre of the hall floor of this property, which has been leaking for a long time.

(g) The landlord has instructed Kuritol Preservation Ltd to carry out dry rot eradication works within this property. The works were to start on 11 February 2016. The works did not start then because the landlord had not made provision for decanting the tenant, and the property cannot be occupied whilst dry rot eradication works are carried out because of the nature of those works and because of the size and layout of the property. On 22<sup>nd</sup> February 2016 the tenant made her own arrangements for alternative accommodation. At the date of inspection, the main dry rot eradication works have not started.

(h) Dry rot affects the central hallway, the bathroom, one bedroom and the linen cupboard of this property. This house cannot be safely occupied until the dry rot is successfully treated and eradicated.

(i) The central heating boiler is in the kitchen. On 5<sup>th</sup> February 2016, a British Gas engineer inspected the boiler and found that the pump housing was leaking, the boiler was off the wall and that there was limited clearance. On 9<sup>th</sup> February 2016, a British Gas engineer returned to work on the boiler and replaced the printed circuit board. That British Gas engineer found that the gas valve and timer are water damaged, and that the front panel was broken and obsolete. The British Gas engineer placed an "*at risk*" notice on the boiler and advised that the boiler should be replaced.

(j) British gas deem that the boiler is "*at risk*" when they believe that the boiler has one or more recognised defects and, if it is continued to be used, may constitute a danger to life or property. British Gas guidance is therefore that an appliance which has been identified as "*at risk*" should not be used until sufficient work has been carried out to correct all the faults identified. At the date of inspection, the "*at risk*" notice was still attached to the boiler. The boiler is switched off and is not safe to use.

(k) The tenant has applied for, and been granted, assistance for the landlord with the cost of installation of a replacement boiler however no gas safety engineer was prepared to install a new boiler until the electrical consumer unit had been replaced in the property.

(l) Since the tenant moved out of the property on 22 February 2016, the external sill to the bathroom window has been repaired, however there is still a large crack and signs of rot in the frame and timber surround of that window.

(m) This property suffers from dry rot infestation in at least the Hall, the bathroom, the linen cupboard and in one bedroom. This house is not therefore reasonably fit for habitation. The landlord manifestly fails to meet the repairing standard set out in section 13(1)(a) of the 2006 Act.

(n) On the facts as the committee finds them to be, the use of the central heating boiler constitutes a threat to life and property. The central heating boiler has been turned off since the start of February 2016 and cannot safely be used. The absence of a safe, working, central heating boiler removes the provision of space heating and hot water. The landlord falls foul of section 13(1)(c) of the 2006 Act.

(o) The carpet in the main bedroom of the property is filthy - in part because of the works which had been carried out. It is not secured at the entrance to the en-suite bathroom. The carpeting is furnishing provided by the landlord. The absence of a threshold bar creates a significant tripping risk. The absence of a threshold bar prevents the landlord from fulfilling the requirements of section 13(1)(e) of the 2006 Act. Common sense indicates the dry rot eradication work is necessary throughout this property. The bedroom carpet is already filthy. The dry rot eradication work is not likely to improve the state of that carpet. The landlord will want to consider replacing that carpet.

(p) The window in the main bathroom is defective. It has cracks in the timber frame and surround and is showing signs of significant rot. This element of the property does not comply with section 13 (1) (a) or (b) of the 2006 Act.

(q) The committee therefore finds that a repairing standard enforcement order is necessary and will issue a repairing standard enforcement order requiring the landlord to

(i) Instruct an Electrical Installation Condition Report (EICR) and Portable Appliance Test (PAT) on the entire electrical installation of the property and all electrical appliances and equipment supplied by the landlord to be carried out by a suitably qualified and registered SELECT or NICEIC electrical contractor. Carry out works to rectify any identified issues in these reports and provide the PRHP with a report from a suitably qualified and registered SELECT or NICEIC electrical contractor confirming the works are completed.

(ii) Replace the gas central heating boiler and thereafter provide the PRHP with a Gas Safety Record from a suitably qualified, and Gas Safe registered heating engineer on the safety of the gas central heating boiler and all other gas appliances in the property, &, if necessary, carry out any further repairs or replacement to ensure that all gas appliances are safe to use.

(iii) Complete the dry rot eradication works in the hall, the linen cupboard, the main bathroom, the adjacent bedroom and any other area within the property affected by dry rot, and thereafter make good all floor coverings and decoration.

(iv) Secure the bedroom carpet by fitting a threshold bar at the entrance to the en-suite bathroom.

(v) Repair or replace the main bathroom window to ensure it is wind and water tight and in proper working order

(r) The committee require the works to be carried out within four weeks because the landlord has had notice that these works are required since at least November 2015, and has been in correspondence with the dry rot preservation company since then.

### **Reasons for Decision**

12 (a) Committee members inspected this property at 1.30pm on 31<sup>st</sup> March 2016. It was a clear, dry but overcast spring afternoon. The surveyor member of the Committee took several photographs which form the Schedule attached to this decision.

(b) Committee members were met at the property by the tenant and by Mr Paul Klasinski from Pink property services, the landlord's agent. The tenant welcomed committee members into the property and facilitated inspection of the property

(c) After the inspection, a hearing took place at George House, George Street Edinburgh, shortly after 3pm. The tenant was present and was unrepresented the landlord was absent, but was represented by Mr Klasinski. Committee members asked both the tenant and the landlord's representative questions. The committee then reserved their determination.

(d) It was clear from the inspection (and a reflection of the even-handed approach taken to this application by the tenant) that some of the works complained about have been carried out. The tenant noted with surprise during the inspection that some works have been carried out to the bathroom window. The tenant volunteered (during the inspection) that the fridge has been replaced, that the kitchen sink has been unblocked, there is no longer an issue with the seals to the toilet cisterns and the en-suite bathroom has been entirely replaced.

(e) What is beyond dispute is that the central heating boiler has been inspected by British Gas, who categorised it as "at risk". It is equally beyond dispute that the central heating boiler was turned off in early February 2016. A strange feature of this case is that the landlord thinks that the central heating boiler can now be used even though it has been designated as "at risk" and the landlord and tenant had joined forces in securing funding for a replacement boiler.

(f) The committee have the benefit of an email from British Gas to the tenant dated 22 February 2016. That e-mail sets out the history of inspection and condemnation of the boiler. This is not a complicated issue. It is glaringly obvious that the boiler is past its useful life and cannot be safely used. The boiler is an installation provided by the landlord for space heating & for provision of hot water. It does not work. The landlord



cannot fulfil the requirements of section 13 (1) (c) and 13(1)(d) of the 2006 Act. A repairing standard enforcement order is necessary.

(g) The weight of reliable and uncontested evidence indicates that this property is adversely affected by an outbreak of dry rot. The dry rot affects the bathroom, the hall, the linen cupboard and one bedroom in this property. It affects the very core of the layout of the property. It is common ground that dry rot eradication work is necessary and despite the passage of time has not yet started to any extent within this property. The nature of dry rot and the location of the infestation indicates that this is a property which is not reasonably fit for habitation. The landlord manifestly fails to meet the repairing standard set out in section 13(1)(a) of the 2006 Act. A repairing standard enforcement order must be made.

(h) It is common ground that the landlord replaced the electricity consumer box at the start of March 2016. Committee members could see that the property now benefits from a new consumer box. Mr Klasinski told committee members that the landlord has an electrical installation compliance certificate and PAT testing certificates, but had not been able to bring them to the hearing. A repairing standard enforcement order is necessary to secure production of a satisfactory up-to-date electrical installation compliance report and PAT report to satisfy section 13(1)(c) of the 2006 Act.

(i) The landlord has invested in a new en-suite bathroom, but has neglected to fix a threshold bar to secure the bathroom carpet as it meets the door to the en-suite bathroom. The bathroom carpet is turned up at that point & creates a tripping risk. The committee is concerned about the safety of the tenant and makes a repairing standard enforcement order requiring a threshold bar to secure the carpet and remove the tripping risk and satisfy section 13(1)(e) of the 2006 Act. Before securing that carpet, the landlord will want to consider the benefit of replacing that carpet and securing renewed and refreshed floor covering.

(j) The window in the main bathroom is clearly not fit for purpose. There is evidence of rot and the timber is splitting leaving a large gap at the right side of the frame. Work is required to repair or replace this window to satisfy sections 13(1)(a) and 13(1)(b) of the 2006 Act.

## **Decision**

13 The committee accordingly determined that the landlord has failed to comply with the duty imposed by Section 14(1)(b) of the Act.

14. The decision of the Committee was unanimous.

## **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 Doyle

Signed..... Date 6/4/2016  
Chairperson 

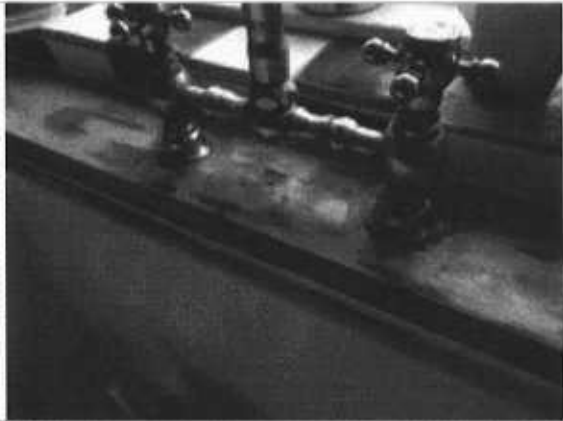


Schedule of photographs taken during the inspection of 81/5 Kirk Brae, Edinburgh  
EH16 6JJ  
by the Private Rented Housing Committee on the 31 March 2016.

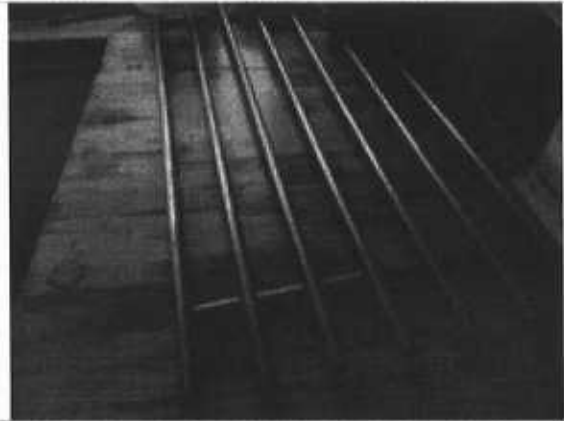
Reference Number : PRHP/RP/16/0020



External view - Front elevation of property



Kitchen - sink and worktop



Kitchen - worktop



Hall floor and wall adjoining linen cupboard



Linen cupboard in Hall



Main Bathroom



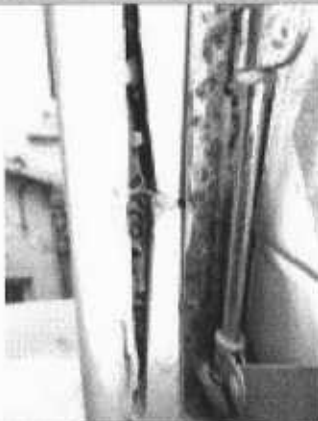
Hall/Linen cupboard



Main Bathroom - window onto light well



Main Bathroom - wall above window



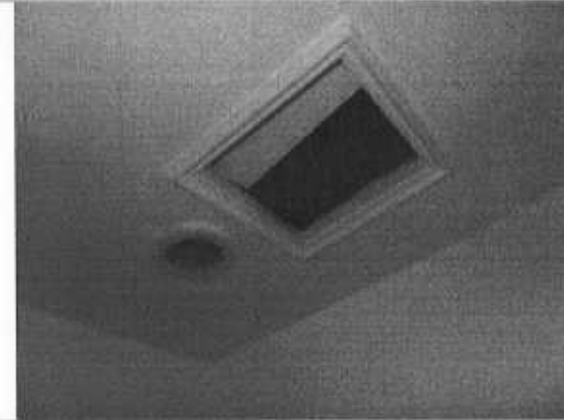
Main Bathroom - window - right side



Main Bathroom - window frame at base



En-suite Bathroom



En-suite Bathroom - showing extractor fan and hatch



Master bedroom - showing carpet adjoining en-suite



Master bedroom - Carpet



Kitchen - Boiler



Kitchen - Boiler showing warning notice



Hall - New consumer unit