



## Repairing Standard Enforcement Order

### Ordered by the Private Rented Housing Committee

**Re: 52 Grant Street, Burghead, Elgin, IV30 5TX being part of the subjects described in and disposed by Disposition by Michael Ralph to Daniel John Ralph and Kathleen Stuart Ralph recorded GRS for the County of Elgin (now Moray) 2<sup>nd</sup> July 1992 ('The Property')**

**The Parties:**

**Mr Barry Farmer residing at 52 Grant Street, Burghead, Elgin, IV30 5TX ('The Tenant')**

**Daniel John Ralph and Kathleen Stuart Ralph residing at Cladach, Brander Street, Burghead, IV30 5UD ('The Landlords')**

**REF:PRHP/RP/16/0052**

**The Committee members were Helen Forbes (Chairperson) and Sara Hesp (Surveyor Member).**

#### **NOTICE TO the said Daniel John Ralph and Kathleen Stuart Ralph**

Whereas in terms of their decision dated 13<sup>th</sup> April 2016, the Private Rented Housing Committee determined that the Landlords have failed to comply with the duty imposed by Section 14 (1)(b) of the Housing (Scotland) Act 2006 and in particular the Landlords have failed to ensure that the Property is wind and watertight and in all other respects reasonably fit for human habitation.

The Private Rented Housing Committee now requires the Landlords to carry out such work as is necessary for the purposes of ensuring that the Property 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 Landlords to:-

1. Ensure that the outer storm doors at the front of the Property are wind and watertight.
2. Install satisfactory thermal insulation in the loft of the Property.

The Private Rented Housing Committee order that these works must be carried out and completed by the Landlords within a period of four weeks of the date of service upon them of this decision.

**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.

**Helen Forbes**

Signed..... Date 13<sup>th</sup> April 2016  
Chairperson Ishbel Wright

..... ..witness: ISHBEL WRIGHT, 20 ARDHOLM PLACE, INVERNESS



## Determination by Private Rented Housing Committee

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

**Re: 52 Grant Street, Burghead, Elgin, IV30 5TX being part of the subjects described in and disposed by Disposition by Michael Ralph to Daniel John Ralph and Kathleen Stuart Ralph recorded GRS for the County of Elgin (now Moray) 2<sup>nd</sup> July 1992 ('The Property')**

#### **The Parties:**

**Mr Barry Farmer residing at 52 Grant Street, Burghead, Elgin, IV30 5TX ('The Tenant')**

**Daniel John Ralph and Kathleen Stuart Ralph residing at Cladach, Brander Street, Burghead, IV30 5UD ('The Landlords')**

**REF:PRHP/RP/16/0052**

#### **Decision**

**The Committee, having made such enquiries as it saw fit for the purposes of determining whether the Landlords have complied with the duty imposed by Section 14 (1)(b) in relation to the Property, determined that the Landlords have failed to comply with the duty imposed by Section 14 (1)(b) of the Act.**

#### **Background**

1. By application received 10<sup>th</sup> February 2016 the Tenant applied to the Private Rented Housing Panel for a determination as to whether the Landlords have failed to comply with the duties imposed by Section 14(1)(b) of the Housing (Scotland) Act 2006 ("the Act").
2. The application by the Tenant stated that he considered that the Landlords have failed to comply with their duty to ensure that the Property meets the repairing standard. He advised that the Property is not wind and watertight and in all other respects reasonably fit for human habitation; and the structure and exterior of the Property (including drains, gutters and external pipes) are not in a reasonable state of repair and in proper working order.

In particular the application stated:-

- 2.1 Slates are missing from the roof above bedroom.
- 2.2 Wind in both front doors inner and outer.
- 2.3 Wind and rain in back door (floor wet).
- 2.4 Mould in bedroom and shower room (been painted over and mould has returned).
- 2.5 Gutters need clearing.
- 2.6 Garden fence fallen over.
- 2.7 No insulation (lack of heating).

3. The Tenant had notified the Landlords' agent, Cluny Estate Agents, of the alleged defects by email dated 18<sup>th</sup> December 2015. The email was acknowledged by Donna Ross of Cluny Estate Agents on the same date.
4. The President of the Private Rented Housing Panel, having considered the application, referred the application under Section 22 (1) of the Act to a Private Rented Housing Committee.
5. The Committee members were Helen Forbes (Chairperson) and Sara Hesp (Surveyor Member).
6. The Private Rented Housing Committee served Notice of Referral under and in terms of Schedule 2, Paragraph 1 of the Act upon the parties dated 25<sup>th</sup> February 2016.

7. Stephen Beck of Cluny Estate Agents sent an email to the PRHP dated 18<sup>th</sup> March 2016 enclosing representations in the following terms:

*My intention is to show that my landlords reacted speedily and correctly to the tenants requests and what he states as damp is actually condensation mostly caused by his actions.*

*52 Grant Street is a small 1 bedroom ground floor traditional slate and stone Property. My landlords, Mr & Mrs Ralph, live in Burghead and own a number of properties in the village. They are very conscientious landlords and are well known in the area as they are the local undertakers, joiners and stone masons.*

*We have managed the Property since 29/9/06 and in all that time there has not been a problem with damp, mould or condensation. Mr Farmer was actually friends with our previous Tenant Ms Evans and it was her who showed the Property to Mr Farmer. I would suggest that as they were friends and that she had lived in the house for 6 months, she would hardly allow him to move into a Property that had damp issues and was sub standard.*

*Below is a transcript from Mrs Ralph.*

*Tenant contacted us on 14/12 by txt ref draught coming under doors.*

*No hot water.*

*Mould in bedroom.*

*Water dripping on to floor in bathroom. Guttering requiring clearing and 2 missing slates.*

*Advised him that we would attend to and assess/rectify problems. Supply freestanding heater for bedroom. He suggested that we carry out/attend to these problems whilst he was away for a week from 20/12/2015. My husband arranged to go to the flat prior to his going on holiday to make an assessment. He was advised by Tenant this was ok and just to waken his bed mate and make himself known to him (his words) On this visit he applied draught strip around outer doors, and decided to attend to other matters whilst Tenant was away, and the bedroom would be unoccupied.*

*On the 19/12/2015 my husband and our painting contractor inspected the premises. Our painting contractor Mr Stewart with experience of fifty years and Dan with similar years of experience were agreed in their decision that there was no dampness in the bedroom merely mildew caused by condensation due to lack of ventilation. It was perfectly obvious that the small single persons bedroom was accommodating two people and whilst the bedroom had modern double glazed Windows both with opening sashes it was obvious these had not been opened. And further to this point the trickle vents on the casement heads were firmly closed. Mr Stewart removed the mildew by simply wiping it with a cloth. But in an effort to freshen the room I asked Mr Stewart to paint the bedroom and leave the windows open.*

*I do uphold the tenants complaint about the bathroom fan failure, and on investigation discovered that a bird had nested in the ventilator pipe, which was rectified on that same day.*

*Ref to the tenants complaint about having no hot water, the Tenant had failed to switch on the immersion heater.*

*We were not aware that the mildew problem had returned until Our agent, Cluny carried out an inspection on 23/02/2016 the day before the registered letters arrived. Giving us no opportunity to re-assess the situation. We are the landlords of several properties and take pride in the condition of the accommodation we provide, and respond to complaints as soon as possible and try to maintain a good relationship with our tenants.*

*Regards,  
Katie*

*I hope that the above shows that Mr and Mrs Ralph reacted in a correct and timely manner to the tenants requests and that the damp described is actually condensation caused by the*

*Tenant not allowing the correct airflow. I can confirm that all repairs have either been completed or are in the process and that myself and Mrs Ralph will be attending the inspection of the Property on 8/4/16.*

*Regards*

*Stephen Beck B.Sc (Econ) Hons*

9. The Committee attended at the Property on 8<sup>th</sup> April 2016. It was a dry, bright day. The Property forms part of a stone built house constructed pre-1900. There is a slate pitched roof. The accommodation is on the ground floor of the two-storey building and comprises combined living room and kitchen, one bedroom, hallway and shower-room. The Property has electric storage heaters – one in the hall and one in the living room. The Tenant was present at the inspection. The Landlord, Mrs Ralph, and her representative, Stephen Beck of Cluny Estate Agents, were present.

The Committee inspected the alleged defects and found as follows:-

9.1 Slates are missing from the roof above bedroom

There was one slate missing from the roof to the rear of the Property, above the bedroom.

9.2 Wind in both front doors inner and outer

Draught-proofing strips had been applied around the edges of both doors. There was a significant gap at the bottom of the outer timber storm doors. The letter box cover on the inside of the storm door was missing. The inner timber front door with glass panel appeared to be well-fitting.

9.3 Wind and rain in back door (floor wet)

Draught-proofing strips had been applied around the edges of the timber back door. There was a threshold strip in place at the bottom of the door. There was no evidence of wind or water entering the Property. There was no staining of the floor inside the Property or any marks to suggest water had previously entered the Property under the back door.

9.4 Mould in bedroom and shower room (been painted over and mould has returned)

There was no visible evidence of mould in the bedroom or the shower room. The surveyor member tested the affected walls with a damp meter. The meter readings were not indicative of a problem with damp. All readings were green or amber, with the exception of one area in the rear corner of the bedroom, where the reading was red. There was condensation on the toilet cistern. There was an extractor fan in the shower room that stayed on while the light was on, and for ten minutes after the light was switched off. The extractor fan exited through the back wall to the outside.

9.5 Gutters need clearing.

There were signs of weeds growing in the gutter at the front of the Property. The gutter to the rear of the Property appeared to be clean.

9.6 Garden fence fallen over.

The garden fence was no longer falling over.

9.7 No insulation (lack of heating).

The surveyor member inspected the loft using a ladder. There was no thermal insulation in the loft. The lack of heating had not been notified to the Landlord so the heating was not discussed or examined.

Photographs were taken during the inspection and are attached as a Schedule to this report.

10. Following the inspection of the Property, the Private Rented Housing Committee held a hearing in the Lossiemouth Sports & Community Centre, Coularbank Road, Lossimouth, IV31 6JW.

The Tenant attended. The Landlord, Mrs Ralph, and her representative, Stephen Beck of Cluny Estate Agents, were present.

The Committee explained that as the lack of heating had not been intimated to the Landlords they could not consider this further.

In respect of the matters in the application the Tenant and Landlord advised as follows:

10.1 Slates are missing from the roof above bedroom

The Tenant stated that he noticed a slate was missing from the roof. The Landlord stated that she had this looked at by someone and she understood that there was only a corner of a slate missing. She stated that she can have this fixed.

10.2 Wind in both front doors inner and outer

The Tenant stated that there were gaps in the front storm doors. There had been a significant draught coming into the Property through the gaps around the front door. There is also a draught from the letterbox. The Tenant stated that he has to put a jumper under the gap on the inner door to prevent draughts. The Landlord had applied draught-proofing around the door. The situation had improved, but the living room was still very cold. Due to the draughts around both doors, there continues to be significant heat loss in the living room by the end of the day. The Landlord said that she was not aware of the problem with the letterbox, but she felt that her husband had addressed all the other problems by applying draught-proofing.

10.3 Wind and rain in back door (floor wet)

The Tenant said that draught-proofing had been applied around the outside of the door but daylight could still be seen down the sides of the door. There is often a puddle of water at the back door and there is evidence of mould at the bottom of the door. There has been a slight improvement since the draught-proofing was applied but it is still an issue. The Landlord said that her husband applied draught-proofing and she thought the problem was now solved.

10.4 Mould in bedroom and shower room (been painted over and mould has returned)

Parties agreed that mould had developed in the back wall of the bedroom in December 2015. A decorator was called in by the Landlords and he told them the damp was caused by condensation. He washed down the walls and used a specialised paint to decorate the room. The Tenant was away for a period of a month and there was no heating in the house. When he returned, there was evidence of mould again. The Landlord and her representative stated that they were not informed of this and it was only during a routine inspection in February 2016 that they became aware that there was mould on the wall. The mould was wiped off the wall. The Landlord's representative stated that he felt the mould was due to condensation rather than damp. Both parties confirmed that the mould had returned again more recently and it was wiped off by the Landlord the weekend before the Hearing. The Tenant stated that he had been opening the window and the window vents. This was disputed by the Landlord who stated that the windows and vents were often found to be closed.

Parties agreed that mould had developed on the lower left wall of the shower room, around the sink and cistern, in December 2015. It was treated in the same way and at the same time as the bedroom, as narrated above. The mould had returned recently and was wiped off by the Landlord the weekend before the Hearing. The Landlord stated that there was a bird's nest in the pipe leading from the fan. This had caused a problem in terms of ventilation. It was removed in December 2015.

The Tenant confirmed that, in relation to the moisture on the cistern, he had a shower the morning of the inspection; however, when the weather is cold, the cistern is constantly covered in moisture.

#### 10.5 Gutters need clearing

The parties agreed that the back gutter had been cleaned and there was no longer a problem. The Landlord and her representative stated that the front gutter was the responsibility of the house next door, which extends upstairs above the Property. The Landlord and her representative stated that the Landlords have no responsibility for the roof or gutter of the neighbouring Property.

#### 10.6 Garden fence fallen over

The parties were agreed that the fence had been repaired and was no longer an issue.

#### 10.7 No insulation (lack of heating)

The parties were agreed that there was no insulation in the loft of the Property. The Landlord's representative provided the Committee with the Energy Performance Certificate for the property, dated 7<sup>th</sup> January 2014.

### **13. Summary of the issues**

The issues to be determined are:

#### 13.1 The Property is not wind and watertight and in all other respects reasonably fit for human habitation (Section 13(1)(a) of The Housing (Scotland) Act 2006).

Whether the missing slate on the roof results in the Property not being wind and watertight and in all other respects reasonably fit for human habitation.

Whether the two front doors and the back door are wind and water tight, and whether the lack of insulation results in the Property not being reasonably fit for human habitation.

Whether the problems with mould in the bedroom and shower room results in the Property not being reasonably fit for human habitation.

#### 13.2 The structure and exterior of the Property (including drains, gutters and external pipes) are not in a reasonable state of repair and proper working order (Section 13(1)(b) of The Housing (Scotland) Act 2006).

Whether the guttering is in a reasonable state of repair and proper working order.

Whether the fence is in a reasonable state of repair and proper working order.

### **14. Findings in fact**

The Committee determined that:

#### 14.1 The Property is not wind and watertight and in all other respects reasonably fit for human habitation (Section 13(1)(a) of The Housing (Scotland) Act 2006).

There is no evidence that the one missing slate on the roof affects the Property materially or allows wind or water to enter the property.

The back door is wind and watertight and there was no evidence of water ingress at the time of inspection.

The inner front door is wind and watertight and there was no evidence to the contrary at the time of inspection.

The outer front storm door is NOT wind and watertight due to the gap between the floor and the bottom of the door, and the missing letter box cover.

There was no material evidence of damp within the property. The problems with mould in the bedroom and shower room appear to be due to condensation.

The lack of insulation in the loft of the property results in the house being below the tolerable standard and therefore NOT reasonably fit for human habitation.

14.2 The structure and exterior of the Property (including drains, gutters and external pipes) are not in a reasonable state of repair and proper working order (Section 13(1)(b) of The Housing (Scotland) Act 2006).

The front gutter forms common property with the adjacent property. Although there was some evidence of weeds in the front gutter, this did not appear to be adversely affecting any part of the premises or anything in the premises which the Tenant is entitled to use, at this time. The Landlords are recommended to arrange with the proprietor of the adjacent property to clean out the gutters in order to avoid any problems developing.

The gutter at the rear was in a reasonable state of repair and proper working order.

The fence was in a reasonable state of repair.

## **15. Decision**

The Committee accordingly determined that the Landlords have failed to comply with the duties imposed by Section 14(1)(b), of the Act, as stated.

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

16. The decision of the Committee was unanimous.

## **Right of Appeal**

**17. 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**

18. 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.

Helen Forbes

Signed .... Date 13<sup>th</sup> April 2016  
Chairperson



PRHP/RP/16/0052: Schedule of photographs taken during the inspection of 52 Grant Street, Burghead, Elgin, IV30 5TX on 8 April 2016



Front elevation



Rear elevation





PRHP/RP/16/0052: Schedule of photographs taken during the inspection of 52 Grant Street, Burghead, Elgin, IV30 5TX on 8 April 2016

**Exterior**



Back door



Roof above bedroom



Rear garden fence



Front gutter



PRHP/RP/16/0052: Schedule of photographs taken during the inspection of 52 Grant Street, Burghead, Elgin, IV30 5TX on 8 April 2016

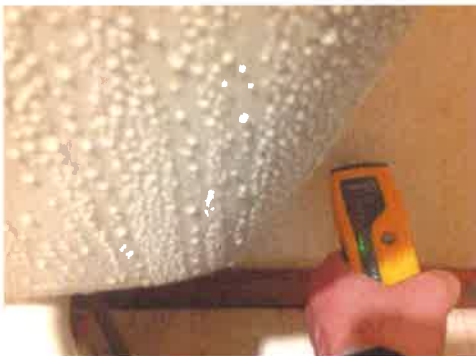
**Interior**



Front door – daylight showing through gap at bottom



Bathroom



Bathroom – damp meter reading



Bedroom



Bedroom – damp meter readings



PRHP/RP/16/0052: Schedule of photographs taken during the inspection of 52 Grant Street, Burghead, Elgin, IV30 5TX on 8 April 2016



Roof space