



## Repairing Standard Enforcement Order

### Ordered by the Private Rented Housing Committee

prhp Ref: PRHPRP/16/0081

Property at 37 Robertson Buildings, Barrack Street, Perth, PH1 5RE ("the house")

**Title No: PTH3366**

#### **The Parties:-**

Mohammed Sarwar and Mohammed Asif Sarwar both residing at 33 Clepington Road, Dundee and Akhtar Noor Muhammed residing at 127 Pitkerro Road, Dundee all as Partners and Trustees of the Firm of P K Properties having a place of business at 33 Clepington Road, Dundee and represented by their agents A&S Properties, 1 County Place, Perth, PH2 8EE ("the Landlords")

Miss Megan Cassell, formerly residing at 37 Robertson Buildings, Barrack Street, Perth, PH1 5RE ("the Tenant")

#### **NOTICE TO MOHAMMED SARWAR, MOHAMMED ASIF SARWAR and AKHTAR NOOR MUHAMMED as Partners and Trustees of the Firm of P K Properties ("the Landlords")**

Whereas in terms of their decision dated *4/7* July 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 ("The Act") and in particular that the landlord has failed to ensure that the property is:-

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

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:-

- (a) to carry out such repair works as are necessary to rectify the ingress of water into the Property and to render it properly wind and watertight and otherwise meeting the repairing standard.
- (b) To carry out such works of repair or replacement to the front lounge window to render it properly wind and watertight and compliant with the repairing standard.

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 a 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 a RSEO has effect in relation to the house. This is in terms of Section 28(5) of the Act.**

In witness whereof these presents type written on this and the preceding page are executed by Ewan Kenneth Miller, Solicitor, Whitehall House, 33 Yeaman Shore, Dundee, DD1 4BJ, Chairperson of the Private Rented Housing Committee at Dundee on 4th July 2016 before this witness:-

Lindsay Johnston

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witness

Ewan Miller

Chairman

Lindsay Johnston  
Secretary  
Thorntons Law LLP  
Whitehall House  
33 Yeaman Shore  
Dundee  
DD1 4BJ



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

prhp Ref: PRHP/RP/16/0081

Property at 37 Robertson Buildings, Barrack Street, Perth, PH1 5RE ("the Property")

The Parties:-

Miss Megan Cassell, formerly residing at 37 Robertson Buildings, Barrack Street, Perth, PH1 5RE ("the Tenant")

Mohammed Sarwar and Mohammed Asif Sarwar both residing at 33 Clepington Road, Dundee and Akhtar Noor Muhammed residing at 127 Pitkerro Road, Dundee all as Partners and Trustees of the Firm of P K Properties having a place of business at 33 Clepington Road, Dundee and represented by their agents A&S Properties, 1 County Place, Perth, PH2 8EE ("the Landlords")

### Decision

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

### Background

1. By application received 26 February 2016, the Tenant applied to the Private Rented Housing Panel for a determination of whether the Landlords had 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 the Tenant considered that the Landlords had failed to comply with his duty to ensure that the house meets the repairing standard and in particular that the Landlords had failed to ensure that:-
  - (a) The Property is wind and watertight and in all other respects reasonably fit for human habitation;
  - (b) The structure of and exterior of the Property (including drains, gutters and external pipes) are in a reasonable state of repair and in proper working order;
  - (c) The installations in the Property 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;
3. By letter dated 26 April 2016 the President of the Private Rented Housing Panel intimated a decision to refer the application under Section 22 (1) of the Act to a Private Rented Housing Committee.
4. The Private Rented Housing Committee served Notice of Referral under and in terms of Schedule 2, Paragraph 1 of the Act upon both the Landlords and the Tenant.
5. Following service of the Notice of Referral the Tenant made no further written representation to the Committee other than her original application other than providing some pictorial and video evidence of the water penetration. The Landlords, via their

agents, submitted that the works had been carried out and provided some information such as an electrical installation condition report and gas safety certificate.

Prior to the Hearing, it came to the attention of the Committee that the Tenant had removed from the Property and the tenancy was at an end. In terms of Schedule 2 Paragraph 7 of the Act the Committee can, if it so elects, continue to determine the case notwithstanding the termination of the tenancy. Whilst the Landlords had provided some relevant safety certificates, they predated the information from the Tenant regarding the leak. After some discussion the Committee determined to exercise its powers to continue with the case to ensure there were no ongoing health and safety issues.

6. The Private Rented Housing Committee (comprising Mr E K Miller, Chairman and Legal Member and Mr D Godfrey, Surveyor Member) inspected the Property on the morning of 18 May 2016. The Tenant was not present having vacated the Property. The Landlords were not present but were represented by their agents Afzal and Sani Mohammed of A&S Properties.
7. Following the inspection of the Property the Private Rented Housing Committee held a hearing at Caledonia House, Greenmarket, Dundee. Neither party were present or represented.
8. The Tenant submitted as follows:-
  - a. There was an ongoing issue in relation to water ingress into the bathroom and ceiling light. Whilst some works had been carried out, they did not appear to have been effective and water was still penetrating.
  - b. That there were gaps in the windows.
  - c. That the boiler was continually breaking down.
9. The Landlord's agent submitted that:-
  - a. whilst they accepted there had been a leak in the ceiling, works had now been carried out and this had been resolved.
  - b. Some of the windows had been replaced and the Landlords were of the view that these were now compliant.
  - c. The boiler had a current gas safety certificate and had had works carried out to it.

#### **Summary of the issues**

10. The issues to be determined were:-
  - (1) Whether there was water ingress occurring into the bathroom sufficient to render it a breach of the repairing standard.
  - (2) Whether the windows met the repairing standard.
  - (3) Whether the boiler was in proper working order and met the repairing standard.

#### **Findings of fact**

11. The Committee found the following facts to be established:-
  1. There was a large damp patch in the bathroom ceiling and it was apparent that water ingress was still occurring.

2. Most of the windows had been replaced but there was one window in the lounge that did not meet the repairing standard.
3. The boiler appeared to be in proper working order and compliant with the repairing standard.

#### **Reasons for the decision**

12. The Committee based its decision primarily on the evidence obtained during the course of the inspection. The Committee inspected the windows at the Property. New replacement windows had been installed in the bedroom and kitchen. These were all in proper working order and compliant with the repairing standard. The lounge window was more dated. The seals around the edges of this were inadequate, particularly on the leftmost pane. The Landlords would require to carry out such works as were necessary to render the lounge window properly wind and watertight and compliant with the repairing standard.

The Committee inspected the bathroom ceiling. There was a large damp patch which was visible to the naked eye. Damp meter readings confirmed that high levels of moisture were present. The Committee was not of the view that this was an area that was simply drying out following a repair but rather that there was ongoing water penetration into the Property that required to be addressed.

The Landlord exhibited a current and valid gas safety certificate in relation to the boiler, which appeared to be in proper working order on the day. Accordingly the Committee was satisfied that there was no breach in this regard.

The Committee had indicated to the Landlords' agents that if pictorial evidence was provided in relation to the further repairs carried out and appropriate invoices produced prior to this Decision being issued then that may be sufficient. The Landlord's agent undertook to do so at the inspection. However, for whatever reason, the Landlords' agent subsequently did not provide any such documentation. Accordingly the Committee felt obliged to issue an RSEO to address the two remaining issues.

The Committee considered a period of time for the Landlords to carry out the works and determined that 28 days would be sufficient.

A Schedule of Photos taken on the day of the inspection is attached for information purposes.

#### **Decision**

13. The Committee accordingly determined that the Landlords had failed to comply with the duty imposed by Section 14 (1)(b) of the Act.
14. The Committee proceeded to make a Repairing Standard Enforcement Order as required by section 24(1). (Delete if not appropriate).
15. The decision of the Committee was unanimous.

#### **Right of Appeal**

16. **A Landlords 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**

17. 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.

Signed ..... **Ewan Miller** ..... Date..... *1/7/16* .....

Chairperson



**PRHP REF: PRHP/RP/16/0081**

**37 ROBERTSON BUILDINGS, BARRACK STREET, PERTH PH1 5RE**

**18<sup>TH</sup> MAY 2016**

**Front elevation**



**Rear elevation**



**Bathroom window**



**Replacement window in Kitchen**





**Damp staining on Bathroom ceiling**



**Central heating boiler**



Loose seal at Lounge window



Replacement window in Bedroom



**New consumer unit**



**David Godfrey MRICS**

**18<sup>th</sup> May 2016**