



REPAIRING STANDARD ENFORCEMENT ORDER
Ordered by the Private Rented Housing Committee

RE: Property at Flat 7, 97 Buccleuch Street, Edinburgh, EH8 9NG, as more particularly described in the Disposition in favour of Nicola Ann Dumughn dated 26 April 1990 and recorded in the Division of the General Register of Sasine applicable to the County of Midlothian on 17 May 1990

The Parties:

Mr James Garforth, residing at the House ("the Tenant")

and

**Mrs Nicola Foster, c/o DJ Alexander, 52-54 Dundas Street, Edinburgh EH3 6QZ
("the Landlord")**

PRHP REFERENCE PRHP/RP/16/0142

NOTICE TO

Mrs Nicola Foster, the Landlord

WHEREAS in terms of their decision dated 9 June 2016 the 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 the House meets the repairing standard in that:

"(a) the house is wind and water tight and in all other respects reasonably fit for human habitation..."

The Committee now requires the landlord to carry out such work as is necessary for the purposes of ensuring that the House 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 Committee requires the Landlord to carry out such works as are necessary to repair the damage caused to the ceiling and rear cupboard within the Tenant's bedroom within the House and in particular to:

1. Carry out the works as described in the email dated 21 April 2016 from Mr Roger Woods of Create Builders to Ms Louise Bevis of DJ Alexander

property managers relating to repairs to the ceiling fabric and cupboard within the Tenant's bedroom within the House.

The Committee order that the works specified in this Order must be carried out and completed within four weeks of the date of service of this Notice and for written proof of having done so to be supplied to the Private Rented Housing Panel.

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 the decision.

Where such an appeal is made, the effect of the decision and 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 typewritten on this and the preceding page are signed by Maurice O'Carroll, Chairperson of the Private Rented Housing Committee at Edinburgh on the 9th day of June Two Thousand and Sixteen in the presence of the undernoted witness:

M. O'CARROLL

Chairperson
A. VEITCH

Witness:

Full name: Andrew Veitch
Occupation: Advocates Clerk
Address: Advocates Library
Parliament House
Edinburgh EH1 1RF



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

In connection with

Property at Flat 7, 97 Buccleuch Street, Edinburgh, EH8 9NG ("the House")

The parties:

Mr James Garforth, residing at the House ("the Tenant")

and

Mrs Nicola Foster, c/o DJ Alexander, 52-54 Dundas Street, Edinburgh EH3 6QZ
("the Landlord")

Committee:

Mr Maurice O'Carroll (Chairman)
Mr Ian Murning (Surveyor Member)

PRHP/RP/16/0142

DECISION

The Committee having made such enquiries as are 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 ("the Act") in relation to the House, and having taken account of the evidence of the written documentation attached to the application and submitted by the parties and its inspection of the House, has made the following decision:

It has determined that the Landlord has failed to comply with the duty imposed by section 14(1)(b) of the Act.

The decision was unanimous.

Background

By application received on or about 8 April 2016 (the "Application") the Tenant applied to the Private Rented Housing Panel ("PRHP") for a determination of whether the Landlord had failed to comply with the duties imposed by section 14(1)(b) of the Act.

The Application stated that the Tenant considered that the Landlords had failed to comply with the duty to ensure that the House meets the repairing standard and in particular that the Landlords had failed to ensure compliance with the following paragraphs of section 13(1) of the Act:

*"(a) the house is wind and water tight and in all other respects reasonably fit for human habitation;
(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..."*

The Tenant provided formal notification of the works required in order to bring the house up to the Repairing Standard by email dated 8 February 2016 and again by email dated 5 April 2016.

By letter dated 3 May 2016, the President of the PRHP intimated a decision to refer the application under section 23(1) of the Act to a Private Rented Housing Committee (hereinafter referred to as "the Committee"). That decision followed upon a Minute of Decision to refer made by the President on 8 April 2016.

The Committee comprised the following members:

Maurice O'Carroll, Chairperson
Mr Ian Murning, Surveyor Member

The Committee inspected the House at 10.00am on 9 June 2016. The Tenant was present at the inspection and afforded entry. The landlord's representative, Claire Gregor from DJ Alexander letting agents was present on behalf of the Landlord.

Following the inspection, the Committee held a hearing at George House, 129 George Street, Edinburgh. The Tenant did not attend the hearing, although Ms Gregor for the Landlord did so. The Committee considered the written evidence submitted by the parties, the additional evidence at the hearing and the inspection which it had carried out.

Summary of the Issue

The issue to be determined is whether the House meets the repairing standard as laid down in section 13(1)(a) and (b) of the Act, and therefore whether the Landlord has complied with the duty imposed by section 14 (1)(b).

Evidence at the hearing

At the hearing Ms Gregor outlined the history of the situation regarding the House as also contained within submissions on behalf of the Landlord sent to PRHP on 23 May 2016.

DJ Alexander took over management of the House in November 2015. On 5 December 2015, a complaint from the Tenant was received regarding water ingress into his bedroom within the House. On 27 December 2015, a further complaint was received from the Tenant as part of the ceiling within the bedroom had collapsed as a result of heavy water ingress at that time.

On 5 January 2016, temporary repairs were carried out to the external roof of the tenement block. On 8 January 2016, an internal temporary internal repair was carried out, consisting of a plywood patch over the hole which had appeared in the Tenant's bedroom.

On 4 February 2016, further repairs were instructed. On 29 April 2016, the Tenant again complained regarding further leaks within the House into his bedroom. It was explained by Ms Gregor that the initial repairs had not been fully effective. Matters were further delayed by reason of: an insurance claim having been made at the same time, this being a communal repair requiring the input of all tenement proprietors; and the bad weather being experienced at the relevant time which was also over the festive period.

At the hearing, Ms Gregor stated that the roof repairs had been fully effective and that water ingress had ceased. This had been confirmed by the Committee at the inspection. She further explained that internal remedial works had been instructed in order to repair the damage to the ceiling within the Tenant's bedroom and to the cupboard to the rear of the bedroom. Those works had been instructed to commence on 13 June 2016 as vouched by an email from the contractor, Roger Woods, at a company called Create Builders. The works were estimated to require 10 days to complete. By fortunate coincidence, the Tenant was due to leave for a two week vacation on 10 June 2016 so that it could be expected that all of the necessary repairs would be completed upon his return.

Finally, Ms Gregor provided the Committee with a copy of a letter addressed to the Tenant dated 9 June 2016 which undertook to provide compensation of £200 to him in recognition of all of the inconvenience and discomfort he had experienced.

Findings in Fact

The Committee made the following findings in fact:

The Landlord and the Tenant entered into a short assured tenancy agreement in respect of the House on or about 17 July 2015 when the Tenant took occupation.

The tenancy agreement was for one calendar year and the Tenant was still in occupation at the date of the hearing.

The Landlord was recorded on the Lease as being Mrs Nicola Foster. The lease was signed on her behalf by her then property agent, epm. By the time of the hearing, the property agent had changed to DJ Alexander as designated above.

The registered owner of the House is the Landlord by virtue of a disposition in her favour (under her maiden name of Nicola Ann Dumughn) recorded in the General Register of Sasines applicable to the County of Midlothian on 17 May 1990.

The provisions of Chapter 4 of Part I of the Act apply to the tenancy.

The inspection on 9 June 2016 revealed:

The House is a four bedroom double upper attic flat in a four storey traditional Edinburgh tenement.

On entry through the main door there is a hallway which gives access to a small bedroom to the left, the Tenant's bedroom, the kitchen to the House and the shared bathroom. A short internal staircase provides access to two further bedrooms upstairs. Each bedroom and the hallway/landings were fitted with mains operated smoke alarms. There was also a heat detector and carbon monoxide alarm in the kitchen, all of which were inter-connected.

The temporary plywood patch to the ceiling, approximately 1 metre square, in the Tenant's bedroom was still in place. There were cracks visible to the sides of the plywood on the ceiling showing clear signs of past water ingress.

The cupboard to the rear of the Tenant's bedroom showed evidence of water ingress. The cupboard and the ceiling near the patch were all tested with a damp meter reader with a negative result. Although weather conditions had been very favourable for a number of days prior to the inspection, the Committee was satisfied that the source of the leak had been identified and addressed.

This conclusion was further supported by evidence of new slates having been fitted to the roof as seen from the main upper bedroom. The remainder of the tiles on the tenement roof were all in good condition.

Photographs taken at the time of the inspection are appended to this decision.

Decision of the Committee and reasons

The Committee was satisfied that the source of the water ingress had been addressed. However, in order to make the House "in all other respects reasonably fit for human habitation" in terms of s 13(1)(a) of the 2006 Act, the Committee considered that the ceiling required to be repaired and remedial works carried out to rectify the damage in the closet to the rear of the bedroom caused by water ingress.

The specification of works to be carried out by Create Builders commencing 13 June 2016 was provided by Ms Gregor and referred to as "Appendix 5" in correspondence submitted to PRHP.

The Committee was satisfied that the works there specified were sufficient if carried out to bring the House up to the Repairing Standard. It has therefore based the Repairing Standard Enforcement Order on that specification.

In light of the weakening of the ceiling which was caused by the water ingress, and in light of the falling of plasterwork during December 2015, the Committee was concerned to ensure the health and safety of the Tenant. Accordingly, while the Committee approved of the proposed works which were due to start very shortly after the inspection, it wished to be in a position to re-inspect those works once completed in order to satisfy itself that they had been carried out satisfactorily.

The Committee commends the undertaking on the part of the Landlord to compensate the Tenant for the inconvenience which he has encountered as a result of the water damage which has occurred. The Committee agreed that £200 was an appropriate amount.

In light of the outcome of its inspection, the Committee, considering the terms of the Act and the requirements thereof, determined that the Landlord had failed to comply with the duty imposed by section 14(1)(b) of the Act.

The Committee was therefore of the view that it was necessary for it to make a Repairing Standard Enforcement Order in terms of section 24(2) of the Act. The Order is provided by way of a separate document.

The decision of the Committee was unanimous.

Right of Appeal

Section 64 of the Act provides a right of appeal to a landlord or tenant aggrieved by a decision of a private rented housing committee. An appeal may be made to the Sheriff within 21 days of the Landlord or Tenant being informed of the decision.

Where such an appeal is made, the effect of the decision and 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.

M. O'CARROLL

Maurice O'Carroll
Chairperson
Date: 9 June 2016

Flat 7, 97 Buccleuch Street Edinburgh EH8 9NG

Photos from inspection

PRHP/RP/16/0142

9th June 2016

Surveyor Ian H Murning TD

09/06/2016

1

Communal front door 97 Buccleuch Street



24/05/2016

2

Front elevation



24/05/2016

3

Front elevation close up



24/05/2016

4

Ceiling showing temporary plywood panel



24/05/2016

5

Ceiling showing cracks adjacent plywood



24/05/2016

6

Cupboard showing ceiling



24/05/2016

7

Cupboard showing ceiling close up



24/05/2016

8

Cupboard showing carpeted floor



24/05/2016

9

Roof showing new slates



24/05/2016

10

Roof showing undamaged slates



24/05/2016

11

Consumer and alarm units



24/05/2016

12