



## Repairing Standard Enforcement Order

Ordered by the Private Rented Housing Committee

prhp Ref: PRHP/DD4/160/12

Re: Property at G/L 22 Morgan Street, Stobswell, Dundee ("the Property")

Title No: ANG23058

The Parties:-

FLATS4U LIMITED, 7a City Quay, Camperdown Street, Dundee, DD1 3JA ("the Landlord")

GILLIAN FORDYCE formerly G/L 22 Morgan Street, Stobswell, Dundee and now 1/R 22 Morgan Street, Dundee ("the Tenant")

### NOTICE TO FLATS 4 U LIMITED ("the Landlord")

Whereas in terms of their decision dated 5 February 2013, 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 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 works as are necessary to eradicate the damp penetration into the Property and thereafter to carry out such works of internal repair and redecoration as are required to bring the Property up to the repairing standard; and
- (b) To carry out such works of repair or replacement to the windows of the Property to ensure that they are properly wind and watertight, capable of being opened and closed properly and otherwise meet 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 6 months 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/...

which the appeal is abandoned or so determined.

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 5 February 2013 before this witness:-

**L Johnston**

\_\_\_\_\_ witness

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

**E Miller**

\_\_\_\_\_ Chairman



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

prhp Ref: PRHP/DD4/160/12

Re: Property at G/L 22 Morgan Street, Stobswell, Dundee ("the Property")

### The Parties:-

GILLIAN FORDYCE formerly G/L 22 Morgan Street, Stobswell, Dundee and now 1/R 22 Morgan Street, Dundee ("the Tenant")

FLATS 4 U LIMITED, 7a City Quay, Camperdown Street, Dundee, DD1 3JA ("the Landlord")

### Decision

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

### Background

1. By application dated 4 September 2012 the Tenant applied to the Private Rented Housing Panel for a determination of whether the Landlord 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 Landlord had failed to comply with its duty to ensure that the house meets the repairing standard and in particular that the Landlord 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;
3. By letter dated 29 September 2012 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 Landlord and the Tenant. Subsequent to the issue of the Notice of Referral, the Tenant withdrew her application as the Landlord had relocated her to a different property within the block. On 12 November 2012 a Committee (then consisting of Eileen Devanney, Chairperson and Robert Buchan, Surveyor Member) considered whether or not the application should continue to be determined by the Committee or whether it should be abandoned, all in terms of Schedule 2 paragraph 7(3) of the Act. The original application from the Tenant raised issues of dampness and rot and therefore that Committee determined that a Committee would continue with the application on the basis this was justified on public interest grounds due to the health and safety concerns regarding the Property and future tenants.

5. Following service of the Notice of Referral the Tenant made no further written representation to the Committee other than their original application. The Landlord made no written representation to the Committee.
6. The Private Rented Housing Committee (comprising Mr E K Miller, Chairman and Legal Member, Mrs G Wooley, Surveyor Member and Mr J Blackwood, Housing Member) inspected the Property on the morning of 25 January 2013. Ms Terri Simpson from the Landlord was present along with one of the company's contractors.
7. Due to heavy snowfall ongoing during the course of the inspection (and forecast throughout the day) it was agreed that, to allow the safe travel of all present, a separate hearing would be dispensed with. The Landlord was satisfied they had outlined their position during the course of the inspection and that a Hearing was not required. The Tenant had withdrawn her application and so would not have been present at the Hearing in any event.
8. There was no submission from the Tenant other than her original application.
9. The Landlord submitted that they accepted that there were damp issues within the Property, particularly the rear bedroom. They had treated the wall on a couple of occasions but this had been unsuccessful. In the end they had relocated the Tenant to a different property within the block. The Landlord was of the view that some communal works were probably required to the exterior of the Property in order to address the fundamental cause of the damp penetration. The Landlord indicated that they did not have sufficient funds at the present time to carry out any works and were currently in negotiation with their bank regarding their facilities. Accordingly the Landlord had simply stripped the Property of its furnishings and was not intending to re-let at the present time.

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

10. The issues to be determined are:-
  - (1) whether or not the Property is properly wind and watertight and free of damp; and
  - (2) whether the windows at the Property were wind and watertight and otherwise met the repairing standard.

#### **Findings of fact**

11. The Committee found the following facts to be established:-
  - There was damp penetration into the Property, particularly on the gable wall of the rear bedroom. Accordingly the Property did not meet the repairing standard for this reason alone.
  - The windows at the Property were dated and were not capable of being opened and closed properly. Accordingly some works would require to be done to bring these up to the repairing standard.

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

12. The Committee based its decision primarily on the evidence obtained during the course of its inspection of the Property. Damp meter readings were taken along the gable wall of the rear bedroom of the Property. This was showing very high meter readings and it was apparent that water was penetrating into the Property through the exterior gable wall. Accordingly, the Committee was satisfied that the Landlord would require to carry out repair works to the exterior of the Property to ensure that the cause of the damp penetration was eradicated. Further works would then require to be carried out to the

interior of the Property along with redecoration, as appropriate, to ensure that the Property was brought back up to the repairing standard.

The Committee then inspected the windows at the Property. These were dated and, in particular, the lounge and kitchen windows did not appear to be capable of being opened and closed properly. The Landlord would be required to carry out such works of repair or replacement as were necessary to bring the windows up to the appropriate standard and being capable of being opened and closed properly.

The Committee considered the length of time that the RSEO should be imposed for. The Committee appreciated the Landlord's honesty in disclosing their financial position. The Committee was satisfied that the Landlord was aware of its responsibilities and would not re-let the Property in the interim until such time as the works were carried out. Accordingly the Committee was satisfied that it would be appropriate to give a longer period than usual to allow the Landlord to try and address the financial position with their bank and carry out the necessary works. In the circumstances the Committee was of the view that 6 months would be appropriate.

#### **Decision**

13. The Committee accordingly determined that the Landlord 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 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**

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 **E Miller** ..... Date 5/2/13 .....  
Chairperson