



**REPAIRING STANDARD ENFORCEMENT ORDER**

**BY THE**

**PRIVATE RENTED HOUSING COMMITTEE**

**Property**

**30 Bankhead Road, Waterside, Kirkintilloch, Glasgow G66 3LQ registered in the Land Register for Scotland under Title Number DMB 83389**

**The Parties**

**Eilidh Ashby, formerly residing at the property, per Ms K Foote, Environmental Health Officer, East Dunbartonshire Council, Southbank House, Kirkintilloch, G66 1XQ  
("The Tenant")**

**Gardiner Patterson, residing at 7, Birdland Avenue, Bo'ness EH51 9LX  
("The Landlord")**

**Caroline Kerr, 7 Birdland Avenue, Bo'ness, EH51 9LX  
("Registered Proprietor")**

**PRHP Reference: PRHP/G66/164/12**

**REPAIRING STANDARD ENFORCEMENT ORDER ('RSEO') AGAINST THE LANDLORD**

- 1. WHEREAS** in terms of their decision dated 22 November 2012 the Private Rented Housing Committee ('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 ('the Act') and in particular the property fails to meet the repairing standard as set out in section 13(1) of the Act.

2. The Committee now requires the landlord to carry out such work as is required to ensure the property meets the repairing standard and that any damage caused as a consequence of carrying out of any works in terms of this Order is also made good before the expiry of the Completion Date.

**THE ORDER**

3. In particular, and without prejudice to the foregoing generality, the Committee **HEREBY ORDERS** the landlord to carry out the following repairs ('the Works');-
  1. To obtain a report from a chartered surveyor or a suitably qualified damp and timber specialist who is accredited by an appropriate professional body and covered by adequate professional indemnity insurance to address the issues clearly evident to the Committee at the time of inspection, and which comprehensively covers the issues of rising and penetrating dampness in the Property and the adequacy of the works identified as having been carried out. The report should identify the works necessary to rectify these defects.
  2. To lodge a copy of the report and its recommendations with the office of the Private rented Housing Panel within a period of two weeks from the date of service of this Order.
  3. To carry out fully all works as are required to address the issues identified for the elimination of the damp and water penetration and resultant damage to the Property.
  4. To repair or replace the rainwater goods as necessary.

4. The Committee **HEREBY FURTHER ORDERS** that the Works specified in this Order must be carried out and completed before the expiry of the Completion Date of six weeks from the date of service of this Order.

**RIGHT OF APPEAL**

5. A landlord or tenant has the right to appeal this decision to the Sheriff by summary application within 21 days of being notified of that decision.

**EFFECT OF APPEAL**

6. In terms of section 63 of the Act, where such an appeal is made, the effect of the decision and of any order is suspended until the appeal is abandoned or finally determined by confirming the decision, the decision and any order will be treated as having effect from the day on which the appeal is abandoned or so determined.

**IN WITNESS WHEREOF** these presents typewritten consisting of this and the preceding two pages are subscribed as follows:

**D Preston**

.....  
Chairman

*23.11.12*  
.....

Date of Signing

*GLASGOW*  
.....

Place of Signing

**S Preston**

.....  
Witness

*SHEILA PRESTON*  
..... Name

*WESTBANK*  
..... Address

*DUNDEE ROAD*

*OSAN*  
.....



**PRIVATE RENTED HOUSING COMMITTEE**

**STATEMENT OF DECISION OF THE PRIVATE RENTED HOUSING  
COMMITTEE UNDER RULE 26(1)) OF THE PRIVATE RENTED HOUSING  
PANEL (APPLICATIONS AND DETERMINATIONS)(SCOTLAND)  
REGULATIONS 2007**

**In connection with**

**Property**

**30 Bankhead Road, Waterside, Kirkintilloch, Glasgow G66 3LQ**

**The Parties**

**Eilidh Ashby, formerly residing at the property, per Ms K Foote,  
Environmental Health Officer, East Dunbartonshire Council, Southbank  
House, Kirkintilloch, G66 1XQ  
("The Tenant")**

**Gardiner Patterson, residing at 7, Birdland Avenue, Bo'ness EH51 9LX  
("The Landlord")**

**Caroline Kerr, 7 Birdland Avenue, Bo'ness, EH51 9LX  
("Registered Proprietor")**

**PRHP Reference: PRHP/G66/164/12**

**Decision**

**The Committee, having made such enquiries as is 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, determined that  
the property fails to comply with the repairing standard as defined in  
Section 13 of the Housing (Scotland) Act 2006 (hereinafter referred to as  
"the Act").**

## **Background**

1. By application dated 1 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 she 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:-
  - The house is wind and watertight and in all other respects reasonably fit for human habitation.
  - 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 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.
  - The house has satisfactory provision for detecting fires and for giving warning in the event of fire or suspected fire.
3. In particular the Tenant complained that:
  - 3.1. There is significant dampness in the kitchen and main bedroom and dampness in other rooms.
  - 3.2. The drains outside the property are blocked.
  - 3.3. The gutters do not flow towards downpipe at back of the house.
  - 3.4. There is no heating in the kitchen and bathroom.
  - 3.5. There is only one battery operated smoke alarm which does not work.
4. By Notice of Referral dated 3 October 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 ("the Committee).

The Committee comprised the following members:

Mr. David M Preston, Legal Member  
Mr. Kingsley Bruce, Surveyor Member  
Mr. Scott Campbell, Housing Member

5. The Committee served Notification of Inspection and Hearing dated 1 November 2012 under and in terms of Schedule 2, Paragraph 1 of the Act upon both the Landlord and the Tenant advising that an Inspection and Hearing would take place on 22 November 2012.
6. On 3 October 2012, a Direction was issued in terms of Schedule 2 Paragraphs 2(1) and 3(1)(b) of the Act and Regulation 14 of the Private Rented Housing Panel (Applications and Determinations)(Scotland)

Regulations 2007, requiring the Landlord to provide a report from a chartered surveyor or from a suitably qualified damp specialist on the dampness reported at the Property. The report was directed to "...comprehensively cover the reported rising dampness, penetrating dampness, roof and drains together with recommendations for necessary repair..." Such a report should have been lodged with the Private Rented Housing Panel no later than midday on 29 October 2012. No such report was lodged by the Landlord in implement of the Direction, although a letter dated 15 November from Stuart McAlpine was produced to the Committee at the inspection. The Committee was concerned that the letter contained neither an indication of registration of Mr McAlpine with a professional body, nor any cover by professional indemnity insurance, which would have enabled the Committee to assess the suitability of the report in accordance with the terms of the Direction.

7. By the letter of representation dated 16 November 2012 from Karen Foote, who had been acting on behalf of the Tenant at the time of the application, the Private Rented Housing Panel was advised that the Tenant was leaving or had already left the Property. Accordingly the Tenant is treated as having withdrawn the application in terms of Schedule 2 Paragraph 7(1) of the Housing (Scotland) Act 2006, and the Committee therefore considered whether said application should be determined or whether it should be abandoned, in terms of Schedule 2 Paragraph 7(3) of the said Act. Within the application the Tenant alleged that repairs were required to be carried out to the Property which, if substantiated, are likely to raise health and safety issues for occupants. Given the nature of these allegations which involve issues relating to dampness in the kitchen, main bedroom and other rooms, blocked exterior drains and gutters, inadequate heating in the kitchen and bathroom and inadequate and/or faulty smoke detectors, the Committee had considered that the application should be determined on public interest grounds due to the nature of the alleged repairs which raise health/ safety concerns for any future tenants. Accordingly, the Committee had decided to continue to determine the application.
8. At the time the Parties entered into the lease of the property and at the date of the application the Landlord was represented by Coda Estates Limited, 4a Heath Avenue, Lenzie, but by undated letter received by Private Rented Housing Panel on 22 October 2012, Coda Estates advised that as of 17 October 2012, they no longer managed the Property and that the Landlord had taken back all responsibility for the Property from that date.
9. The Committee inspected the Property on the morning of 22 November 2012. Notwithstanding the information that Coda Estates no longer managed the property, Mr Darren Miller of Coda Estates was in attendance. Mr Miller gave the Committee access to the property and he sought to make representations on behalf of the Landlord. He stressed that he was attending as a courtesy to the Committee, but clearly had detailed knowledge of the situation. Notwithstanding the information

regarding the status of Coda Estates, the Committee was concerned to note that the Property continues to be advertised by them on their website for let. The Landlord was not present.

10. Following the inspection of the Property the Committee held a hearing at the offices of Private Rented Housing Panel at which there was no attendance or representation by or on behalf of the Landlord.
11. The written and documentary evidence considered by the Committee comprised:
  - Application dated 1 September 2012
  - Copy notes by Tenants dated 17 October 2011 – June 2012
  - Copy correspondence between the Tenant or her agent and Coda Estates Ltd lodged with the application
  - Written representations by the Tenant's representative dated 9 October 2012
  - Written representations from the Landlord's agent received on 22 October 2012 with attached document
  - Letter from Kingston Property Preservation dated 5 November 2012, handed to the Committee at the inspection.

#### **Summary of issues**

12. The issue to be determined was whether the property meets the repairing standard as laid down in Section 13 of the Act and whether the Landlord had complied with the duty imposed by Section 14(1)(b).

#### **Findings in Fact**

13. The Committee finds the following facts to be established:-
  - 13.1. On 13 October 2011 the parties entered a Short Assured Tenancy of the Property for a period of one year from 17 October 2011. The provisions in Chapter 4 of the Act apply.
  - 13.2. The tenant had notified the Landlord through his agents of the required works to the property as required by the Act.
  - 13.3. Although in terms of the Lease, the Landlord is stated to be Gardiner Paterson, the Registered Proprietor of the Property is Caroline Kerr, as designed above.
  - 13.4. The property is a semi-detached one storey cottage situated in Bankhead Road, Kirkintilloch.
  - 13.5. At the time of the inspection the weather was torrential rain. The inspection revealed:

- The house is not wind and watertight nor in all other respects reasonably fit for human habitation.
- The structure and exterior of the house (including drains, gutters and external pipes) are neither in a reasonable state of repair nor in proper working order.

14. In relation to the issue of adequate smoke detectors, while the Tenant had included this on the application form, the Committee noted that the smoke detector in the hallway was a mains operated unit on which a green light was displayed. The Committee concluded that it was therefore in order although it did not carry out any test.

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

15. In relation to the complaint of dampness, the Committee found indications of issues with water penetration particularly to each gable wall, affecting the living room and the bedroom at the southeast end of the Property and over the kitchen which would appear to be the result of roof defects. Some external repairs were reported as having been carried out and this appeared to be the case from the inspection. The Committee was not in a position to comment on the adequacy or effectiveness of the repairs. The resultant internal damage to plasterwork and surfaces in the kitchen, living room and bedrooms was apparent at the inspection.

16. In addition, rising and/or penetrating dampness was evident along the rear elevation of the property affecting the living room, both bedrooms and the passage between the kitchen and the bathroom as well as on a portion of the party wall between the Property and Number 32, Bankhead Road at the southeast of the Property. Allied to this, flooring was found to be affected by damp at various points along the rear wall and skirtings and floor boards were affected by rot. The Committee consider that it is consequently reasonable to assume that the joist ends at the rear of the property will be similarly affected.

17. It was noted that the ground level to the rear of the Property is substantially higher than the floor levels.

18. The Committee noted the terms of the Direction dated 3 October 2012 had not been implemented by the Landlord. The terms of the Report dated 15 November 2012 were noted but the Committee was unable to reach the conclusions stated in the report. High levels of dampness were detected in various locations throughout the Property and while some of the issues relating to water ingress may have been addressed by the work carried out to the roof and gables, there was clear evidence of on-going issues of structural dampness and water penetration.

19. Accordingly while some work had been carried out, the Committee found that not all areas of concern had been addressed and that further



investigations require to be carried out and recommendations implemented in an effort to ensure that the repairing standard is met and the house made reasonable for human habitation.

20. The Committee found that there were issues with the rainwater goods at the kitchen end of the Property.
21. The Committee saw no evidence of an immediate indication of on-going issues with the drains. It was apparent that there may have been issues with external drains in the past but it could not identify any current defect. Accordingly the Committee made no order in this regard.
22. With regard to the issue of adequacy of heating in the kitchen and bathroom, while these were evidently cold areas, the Committee could not conclude that a lack of fixed heating in these areas would constitute a failure to meet the repairing standard.
23. As detailed above, the Committee found that the smoke detector was hard wired and appeared to be adequate. No order is made in this regard.
24. The Committee gave careful consideration to a reasonable timescale within which the work should be completed. It considered that a report from a chartered surveyor or from a suitably qualified registered damp specialist carrying full professional indemnity insurance on all dampness reported at the Property could readily be obtained and lodged with the Committee within a period of two weeks. It further considered that any recommendations made in such a report could readily be implemented within a further period of four weeks from then.

### **Decision**

25. The Committee accordingly determined that the Landlord had failed to comply with the duty imposed by Section 14 (1)(b) of the Act.
26. The Committee proceeded to make a Repairing Standard Enforcement Order as required by section 24(1).
27. The decision of the Committee was unanimous.

### **Right of Appeal**

**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**

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.

D Preston  
 Chairman

Date..22.11.12