



## **Repairing Standard Enforcement Order**

### **Ordered by the Private Rented Housing Committee**

prhp Ref: PRHP/EH47/175/11

Re : Property at 32 Bellalmond Crescent, East Whitburn, West Lothian , EH47 0JF  
("the Property")

Title No: WLN11943

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

Mari-Claire Ramsay, residing at 32 Bellalmond Crescent, East Whitburn, West Lothian ("the Tenant")

Olivia Hasan, residing at 9 Anderson Green, Livingston, West Lothian, EH54 8PW  
(represented by her agent, Najem Hasan, Scotplans Ltd, 9-14 Turnbull Way,  
Livingston, West Lothian, EH54 8RB ("the Landlord"))

#### **NOTICE TO Olivia Hasan, residing at 9 Anderson Green, Livingston, West Lothian, EH54 8PW ("the Landlord")**

Whereas in terms of their decision dated 28<sup>th</sup> December 2011, 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 & watertight (in terms of s..13(1)(a) of the Act) in respect that there are defects in the front door
- (b) The installations in the house for the supply of electricity are not in proper working order (in terms of section 13 (1)(c) of the Act).

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 repair the letter box on the front door of the property; Investigate & repair any defective seal on the weather bar and draught excluder on the front door of the property, and replace any defective weather bar, seals and draught excluders at the front door of the property.

(b) Investigate the mains electrical system within the property and repair any defects therein; thereafter to produce to the Private Rented Housing Panel, for submission to the committee, within 28 days of receipt of service of this notice, a certificate of electrical compliance from a qualified electrician, dated after today's date, to confirm the safe working order of the mains electrical system supply in the property.

(c) Repair & replace all damaged electrical light switches within the property.

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.

In witness whereof these presents, typewritten on this & the preceding page, are executed by Paul Doyle, solicitor, 24 Haddington Place, Edinburgh, chairperson of the Private Rented Housing Committee at Edinburgh on the Twenty Eighth day of December Two Thousand and Eleven before this witness:-

Paul Doyle  
Chairperson

Joseph Doyle witness

Joseph Doyle

Student  
of 24 Haddington Place  
Edinburgh  
EH7 4AF



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

prhp Ref: PRHP/EH47/175/11

Re : Property at 32 Bellalmond Crescent, East Whitburn, West Lothian , EH47 0JF ("the Property")

**The Parties:-**

**Mari-Claire Ramsay, residing at 32 Bellalmond Crescent, East Whitburn, West Lothian ("the Tenant")**

**Olivia Hasan, residing at 9 Anderson Green, Livingston, West Lothian, EH54 8PW (represented by her agent Najem Hasan, Scotplans Ltd, 9-14 Turnbull Way, Livingston, West Lothian, EH54 8RB ("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 by both the Landlord and the Tenant at the hearing, 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 17<sup>th</sup> October 2011 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 her 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 not wind & watertight (in terms of s.13(1)(a) of the Act) in respect that there are defects in the windows & doors
  - (b) The installations in the house for the supply of electricity are not in proper working order (in terms of section 13 (1)(c) of the Act).
  - (c) The installations in the house for the supply of space heating and heating water are not in proper working order (in terms of section 13(1)(c) of the Act).
3. By letter dated 26<sup>th</sup> October 2011 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 comprised the following members:

Mr Paul Doyle, Legal Member  
Mr Mike Links, Surveyor Member  
Ms Christine Anderson, Housing Panel Member.

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.
5. Following service of the Notice of Referral the Tenant (by letter dated 2<sup>nd</sup> November 2011), made written representations to the Committee. The Landlord (by email dated 10<sup>th</sup> November 2011), made written representations to the Committee.
6. The Private Rented Housing Committee inspected the Property on the morning of 15<sup>th</sup> December 2011. The Tenant and the Landlord were present during the inspection.
7. Following the inspection of the Property the Private Rented Housing Committee held a hearing at Livingston. The Tenant stated that she would like to come to the hearing but child care arrangements prevented her from attending. We delayed commencement of the hearing until 11.20am to make allowance for the Tenant. The clerk to the Tribunal told the Tenant in repeated telephone calls that we were prepared to wait until the Tenant arrived at the venue. The Tenant stated that she was content that we should proceed in her absence. The Landlord was represented by Najem Al Hasan, managing director of Scot Plans Limited, a company incorporated under the Companies Act and having a place of business at 9-14 Turnbull Way, Livingston West Lothian. Mr Hasan is the Landlord's husband. We took account of comments made by the Tenant during the inspection at 10am on 15<sup>th</sup> December 2011, as well as the Tenant's written application and written representations, which are reproduced in the documents before us.
8. The Tenant's position is that at the date of application the following defects existed in the property:
  - (a) All of the windows to the rear of the property were defective and let in wind and water.
  - (b) There are defects with the front and back doors which prevent the property from being wind and water tight.
  - (c) There is a defect with the central heating equipment so that the tenant is only able to switch heating on by manipulating a loose wire to make a connection with the hot water pump.
  - (d) A light switch in the hall is broken and secured by sellotape.
  - (e) The light switch in the rear bedroom is defective.

At the inspection, the Tenant conceded that new UPVC windows have been installed in each of the three rooms to the rear of the property, so that there was, at the date of inspection and hearing, no defect with the windows to the rear of the property.

9. On behalf of the Landlord it was submitted that there were no defects in the property and, if there were any defects, the Landlord was both willing and able to remedy those defects. It was explained that the Landlord has a significant portfolio of let properties and has arrangements for the systematic maintenance of each of those properties. We were told that the Landlord takes pride in the quality of properties offered and is careful to maintain all of the properties, including the property which is the subject of this application. It was submitted for the Landlord that there had been a difficult relationship between the Landlord and Tenant, and that the complaint made by the Tenant was, in part, vexatious. The Landlord complained that the Tenant had been obstructive and had refused access to the property for maintenance and repairs.

### **Summary of the issues**

10. The issues to be determined are whether or not the property is wind and water tight and fit for human habitation in terms of section 13(1)(a) of the Act, and whether or not the installations in the house for the supply of electricity, space heating and heating water are in a reasonable state of repair and in proper working order, in terms of section 13(1)(c) of the Act.

### **Findings of fact**

11 The Committee finds the following facts to be established:-

(a) The tenancy is a short assured tenancy in terms of the Housing (Scotland) Act 1988. The Tenant is the applicant, the Landlord is the respondent. The tenancy commenced on 1<sup>st</sup> January 2011 and was due to expire on 1<sup>st</sup> January 2013, however the Landlord has served a notice to quit on the Tenant. Clause 7 of the Lease between the parties to this hearing places obligations on the Landlord to maintain and repair the property. Those obligations are consistent with the Housing (Scotland) Act 2006.

(b) In the week ending 9<sup>th</sup> December 2011, tradesmen, employed by Scot Plans Limited, acting on the instructions of the Landlord, entered the property and removed the existing windows to the rear of the property (the windows for bedroom, bathroom and kitchen) and replaced them with UPVC window units. The windows were properly installed and correctly sealed. The Tenant is now satisfied that there are no defects with the windows to the rear of the property.

(c) In the week ending 9<sup>th</sup> December 2011, the Landlord's tradesmen attempted to gain access to the property to inspect the front and rear doors and the central heating system. On Tuesday 13<sup>th</sup> December 2011, Mark Wilson, a plumber employed by Scotia Construction Limited, on the instructions of the Landlord, tested the heating system within the property and found no defect in the system, after thorough testing.

(d) The cabling connecting the central heating system to the electricity supply is in good working order; none of the cabling is loose.

(e) On Tuesday 13<sup>th</sup> December 2011, Lee McGonnell, a joiner employed by Scotia Construction Limited, inspected the front and rear doors within the property and found no defects in either.

(f) The covering to the letter box fitted to the front door of the property has fallen off, and, at the time of inspection, was lying on a step to the exterior of the property. Although the inside of the letter box is fitted with an insulating brush, the insulating brush is insufficient to prevent wind from blowing through the exposed letter box.

(g) At shoulder height, adjacent to the internal front door in the hallway of the property, there is an electric light switch. The plastic fascia of that light switch has been smashed and is held in place by sellotape.

(h) In the rear facing bedroom of the property, there is a light switch at shoulder height. When the light switch is operated, the central light within the rear facing bedroom does not immediately turn on. A fizzing, or sizzling, sound can be heard which creates (at least) the impression of electricity arcing to make a connection.

(i) The Tenant no longer complains about the quality or efficiency of the back door to the property and did not direct committee members to the back door of the property during the inspection of the property on 15<sup>th</sup> December 2011.

### **Reasons for the decision**

12. (a) Although the Tenant was unable to provide oral evidence at the hearing in this case on 15<sup>th</sup> December 2011, we heard evidence from the Landlord's representative, Najam Al Hasan on behalf of the Landlord. We also heard evidence from Mark Wilson, a plumber employed by Scot Plans Limited and Lee McGonnell, a joiner employed by Scotia Construction Limited (one of the group of companies in which Mr Hasan has an interest). Each of the witnesses answered questions from committee members.

(b) We took Mr Hasan to the terms of the application and asked him specifically about the 4 complaints enumerated on the second page of the application dated 17<sup>th</sup> October 2011. We took Mr Hasan to the Tenant's letters of 12<sup>th</sup> September 2011 and 3<sup>rd</sup> October 2011 and invited his comments.

(c) Mr Hasan explained to us that, in the week ending 9<sup>th</sup> December 2011, new UPVC window units were installed in each of windows to the rear of the property. It was apparent to us from our inspection that new UPVC windows had been installed. We noted that the Tenant told us during the inspection that the installation of new UPVC windows had remedied the difficulty about which she complained.

(d) We noted that the Tenant chose not to show us the back door of the property, and that the Tenant had not complained to committee members about any defect with the back door of the property. Mr Hasan's evidence was that there was no defect with the back door. We asked Mr McGonnell, when he separately gave his evidence about a visit that Mr McGonnell had made to the property on 13<sup>th</sup> December 2011, about the condition of the back door. Mr McGonnell told us in clear and straight forward terms that he had inspected the back door of the property and the area surrounding the back door just days before the inspection by committee members, and found no defects in the back door, nor did he find any evidence of water ingress in the internal area adjacent to the back door. We therefore find that the windows and back door of the property comply with the repairing standard set out at section 13(1)(a) of the 2006 Act.

(e) Mr Hassan told us that there had been difficulties in communication with the Tenant, but notwithstanding those difficulties, his persistence had secured access for tradesmen on 13<sup>th</sup> December 2011. One of those tradesmen was Mark Wilson, a

plumber employed by Scotia Construction Limited. Mr Wilson had been present during the inspection and gave evidence to us at the hearing. Mr Wilson told us (in clear and straight forward terms) that on 13<sup>th</sup> December 2011 he spent half an hour testing the heating system within the property, and that the tests carried out by him included checking the working order of the plumbing system and the electrical connections. Mr Wilson was satisfied that there were no defects in the central heating system. From our inspection, we could not find any defects in the central heating system. We noted that the property was warm; there were no signs of loose connections in or around the boiler and water pump, and that when the Tenant switched the system on and off, the system responded immediately. We note that Mr Wilson has 15 years experience as a plumber. We were impressed with his ability to answer all questions without hesitation. We noted that he maintained eye contact throughout his evidence. We have no difficulty in finding him to be a credible and reliable witness, and, placing reliance both on our own observations at the inspection together with the evidence placed before us (which includes documentary evidence confirming that a gas safety certificate was obtained in January 2011) we can only come to the conclusion that there are no defects with the space heating and water heating system in the property. The space heating and water heating systems are in a reasonable state of repair and in proper working order, so that they comply with section 13 (1)(c) of the 2006 Act.

(f) At the inspection of the property, our attention was drawn to the front door of the property. It was clear for parties and the committee to see, that the flap to the letter box had become disconnected and was lying on a step to the exterior of the property. Although the inside of the letter box is fitted with an insulating brush, the insulating brush is insufficient to prevent wind from blowing through the exposed letter box. The Tenant complained that water leaked in through the front door during rainstorms, and although there was no clear evidence of water ingress on the flooring adjacent to the front door, what could be seen from visual inspection was that the insulating seal and the weather bar were both worn. Although both Mr Hasan and Mr McGonnell gave evidence that there was nothing wrong with the front door, their evidence relied heavily on the absence of signs of water staining to the interior flooring adjacent to the door. Both witnesses conceded that the letter box flap was detached. Neither witness challenged the committee's observation that there were signs of wear to the weather bar and the insulation attached thereto.

(g) The absence of the letter box flap means the front door of this property is not wind and water tight in terms of section 13(1) (a) of the 2006 Act. The committee must make a repairing standard enforcement order ordaining the Landlord to repair the letter box and recommend that whilst those works are carried out, checks are made to ensure that there is an effective seal on the weather bar and draught excluder on the front door of the property and replace any defective weather bar, seals and draught excluders at the front door of the property.

(h) It was obvious from inspection that the light switch in the hall (adjacent to the interior front door) is broken. A visual inspection clearly shows that the plastic face of the light switch is broken. Mr Hasan had no difficulty in conceding that the light switch was broken, and complained that it was a repair which could be affected at a cost of less than £3 - but the Landlord had not been allowed access to either inspect, repair, or replace. Whilst we note Mr Hasan's complaint, it is obvious to the committee and to the parties that there is a defect with the face of the light switch in the hall, which requires to be repaired.

(i) The greatest area of dispute in this case relates to the quality of the electricity supply to the bedroom to the rear of this property. At inspection, it appeared to

committee members that the light switch in the bedroom to the rear did not connect immediately, and a hissing or sizzling sound could be heard when the light switch was manipulated. When this was put to Mr Hasan, Mr Hasan suggested that it may be the light bulb (a low energy bulb) which was sizzling because it was nearing the end of its life. The committee's attention was not drawn to the light bulb during the inspection, despite the fact the Mr Hasan was present. The impression gathered by committee members was that the sizzling sound came from the light switch in the bedroom to the rear of the property. It was clear to committee members that the first time the light switch in the rear of the property was manipulated, the light did not come on. The only realistic conclusion to draw is that there is a defect which merits investigation in the electrical system within the property.

(j) The committee found that there were defects with the light switch in the hall of this property and a problem with the electrical control to the main light in the bedroom to the rear of the property. We are not therefore satisfied that the installation in the property for the supply of electricity is in a reasonable state of repair, nor that it is in proper working order - so that the electrical circuit within the property cannot comply with the repairing standards set by section 13 (1) (c) of the Act. The committee therefore made a repairing standard enforcement order, requiring the Landlord to investigate the mains electrical system within the property and repair any defects therein; thereafter to produce a certificate of electrical compliance prepared by a qualified electrician, dated after today's date, to confirm the safe working order of the mains electrical system supply in the property.

#### **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).

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.... **Paul Doyle**  
Chairperson

.. Date..... 28/12/2011 .....