



Repairing Standard Enforcement Order

Ordered by the Private Rented Housing Committee

prhp Ref: PRHP/G41/181/11

Re : Property at Top Flat, 5 Queen Square, Glasgow. ("the Property")

The Parties:-

Mr Jean-Charles & Mrs Celia Beauverger ("the Tenants")

GJR Properties Ltd, a company incorporated under the Companies Acts and having their registered office at 39 Moorfoot Way, Bearsden, Glasgow (represented by their Director, Gordon Robertson) ("the Landlord")

NOTICE TO

GJR Properties Ltd, a company incorporated under the Companies Acts and having their registered office at 39 Moorfoot Way, Bearsden, Glasgow("the Landlord")

Whereas in terms of their decision dated 27th January 2012, 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
- ((b) The windows, gutters & downpipes serving the property are in a reasonable state of repair & 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 to carry out such works as are necessary

- (i) To make the property both wind and watertight

and

- (ii) to repair and, if necessary, replace the gutter and down pipe to ensure that the gutter and down pipe are in proper working order and that they carry water away without overflow.

The Private Rented Housing Committee order that the works specified in this Order must be carried out and completed within the period of eight weeks 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.



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

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The Parties:-

Mr Jean-Charles & Mrs Celia Beauverger ("the Tenants")

GJR Properties Ltd, a company incorporated under the Companies Acts and having their registered office at 39 Moorfoot Way, Bearsden, Glasgow (represented by their Director, Gordon Robertson) ("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 Tenants 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 19/10/2011, the Tenants 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 Tenants stated that the Tenants considered that the Landlord had failed to comply with his duty to ensure that the house meets the repairing standard and in particular that the Landlord had failed to ensure that:-
 - (a) The property was wind & watertight
 - (b) The windows, gutters & downpipes serving the property were in a reasonable state of repair & in proper working order.

By letter dated 11/11/2011 the Tenants amended their application by withdrawing their complaint about the state of repair of the windows in the property

3. By letter dated 15/11/2011 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 was made up of the following members:-
 - Mr Paul Doyle, legal member
 - Mr Bruce Kingsley, surveyor member

Ms Susan Brown, housing committee 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 Tenants.
5. Following service of the Notice of Referral the Tenants made no further written representation to the Committee other than their original application dated 19/10/2011. The Landlord (by letter attached to the response dated 29/11/2011) made written representations to the Committee.
6. The Private Rented Housing Committee inspected the Property on the morning of 24/01/2012. Mr Jean-Charles Beauverger and the Landlord's representative were present during the inspection.
7. Following the inspection of the Property the Private Rented Housing Committee held a hearing at Glasgow and heard evidence from Mr Jean-Charles Beauverger for the Tenants, and from Mr Gordon Robertson, company director, for the Landlord. We also heard evidence from Ms Aileen Scott, proprietor of the garden flat in the building of which the property forms part.
8. The Tenants submitted that the house was not wind and water tight because the roof of the larger building of which the property forms part was in a poor state of repair. When the Tenants moved into the property in August 2010, they noticed that there was some staining from water ingress to ceilings within the property, and that, whenever it rained, water entered the property in the kitchen - filling a bucket placed to catch drips of water with up to three litres of water at a time; although no water entered the property in the remaining rooms, the staining on the ceilings in two bedrooms and the living room of the property worsened each time it rained. The Tenants explained that in March 2011 some roofing works were carried out, so that there was no water ingress between March 2011 and August 2011. However, since August 2011, each time it rained water entered the property. The Tenants were concerned that water was not just entering through holes in the roof, but that there were defects in the guttering and down pipes causing the guttering and down pipes to overflow. The Tenants believe that the defects to the gutter and down pipes may also be a source of water ingress.
9. The Landlord submitted that because the property occupied by the tenants was a top floor flat in a larger building containing two other flats (one flat on each level) any repairs necessary to the roof, guttering and down pipes were common repairs for which other proprietors shared an equal responsibility. The Landlord explained that the roof was not in perfect order when the landlord purchased the property in January 2007, that works have been carried out to repair defects in the roof since the property came into the Landlord's ownership, and that the Landlord is willing to pay the Landlord's share of the costs of necessary repairs to the roof, gutters, chimney heads, flashings (and other common parts).

Summary of the issues

10. The issues to be determined are whether or not the property is wind and water tight in terms of section 13(1) (a) of the Housing (Scotland) Act 2006, and whether or not the structure and exterior of the property (in particular the gutters and down pipes) are in a reasonable state of repair and in proper working order in terms of section 13 (1) (b) of the Housing (Scotland) Act 2006.

Findings of fact

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

(a) GJR Properties Limited (Company No: SC253158), is a company incorporated under the Companies Acts, having their registered office at 39 Moorfoot Way, Bearsden, Glasgow. Gordon Robertson is a director of GJR Properties Limited.

(b) On 1st December 2006 GJR Properties Ltd purchased the top floor flat, 5 Queens Square, Glasgow ("the property"). Title to the property was recorded in the name of GJR Properties Limited under title no: GLA913

(c) On 19 October 2010, J Beauverger and Celia Beauverger-Venchiarutti ("the Tenants") entered in to a Lease with GJR Properties Limited (the Landlord) and a short assured tenancy was created. The tenants have occupied the property since then.

(d) The property is a top floor flat containing one bedroom and a living room to the front (north side) of the property, and one bedroom and a kitchen to the rear (south side) of the property. There is a trap door in the hallway which provides access to the roof void of the larger building of which the property falls part.

(e) On taking entry to the property, the Tenants noted water staining on the ceilings in the living room, front and rear bedrooms and kitchen. Soon after taking entry to the property, the Tenants noticed that, when it rained, water dripped from an area where the external kitchen wall met the ceiling in the kitchen. The tenants put down a bucket to catch the drips of water entering the property and reported water ingress to the Landlords.

(f) In November 2010 the Landlords instructed roofing contractors to inspect the roof of the property. In December 2010 roof repairs were carried out by "Horizon Roof Solutions". In March 2011 a further roof repair was carried out by a friend of Aileen Scott, the proprietor of the garden flat at 5 Queen Square, Glasgow.

(g) Between March 2011 and August 2011 the Tenants were not troubled by water ingress. However since August 2011, whenever there is a significant rainstorm, water enters the kitchen of the property and drips into a bucket, placed below the point of entry by the Tenants.

(h) The Landlords concede that the roof is in a poor state of repair. It is within the Landlords' knowledge that buckets and tarpaulins are strategically placed in the roof void of the property; those buckets and tarpaulins were placed there by a previous heritable proprietor of the property. There have been previous discussions between the Landlords and the proprietors of the ground and garden flats within the larger building served by the roof about the need for an entire refurbishment and replacement of the roof.

(i) From the roof void the defects to the roof are evident. Daylight can be seen in places where there are slipped, cracked and missing slates. The gutter on the rear elevation to the property is defective; there is no overlap between the gutter and the roof. Slipped slates have blocked the down pipes so that during rain storms the down pipes and gutters on the rear elevation overflow, causing water to cascade down the stone exterior of the rear elevation of the property.

(j) On 7th and 8th December 2011, Glasgow was affected by severe storms. During those storms there was significant water ingress to the property. The roof, gutter and down pipe failed to prevent water from entering the property. Damage was caused both to the property which is the subject matter of this application and to the larger building of which that property forms part by water ingress caused by the storms in December 2011.

(k) On 3rd January 2012 Glasgow was affected by high winds and heavy rain. The roof and gutter of the property which is the subject of this application failed to prevent water from entering the property. Further damage was caused to the larger building, of which the property forms part by water ingress.

(l) Because of the defects in the roof at 5 Queens Square, Glasgow, the property is not wind and water tight, so that the property does not comply with the repairing standard set out in section 13(1)(a) of the Housing Scotland Act 2006.

(m) The gutters and down pipes serving the rear of the property are defective and regularly overflow, causing water ingress to the property. The property does not therefore comply with section 13(1) (b) of the Housing Scotland Act 2006.

Reasons for the decision

12. (a) The Committee inspected the property at 10am on 25th January 2012, in the presence of J Beauverger, one of the Tenants, and the Landlords' representative, Mr Gordon Robertson. Mr Beauverger asked us to note the water staining on ceilings and showed us the point in the kitchen where he said that water was entering the property. He also showed us the bucket which he told us he placed below that spot in the kitchen to catch dripping water during rainstorms. The surveyor member of the committee went into the roof void and inspected the roof void. All committee members made their own observations of the exterior of the property from front and rear aspects.

(b) A hearing was scheduled to commence at 11.15 am at the offices of PRHP in West Campbell Street, Glasgow. The Landlords' representative was waiting for the hearing to commence at 11.15 am. By 11.35am, neither of the Tenants had arrived. We decided to start the hearing. During the introductory remarks, the Tenant arrived, accompanied by Aileen Scott, the proprietor of the garden flat within the larger building at 5 Queens Square, Glasgow. We started the hearing afresh.

(c) We heard oral evidence from Mr Beauverger and from Ms Scott, who both spoke in support of the application. We then heard evidence from Mr Robertson on behalf of the Landlord. Mr Robertson had made written representations on 29th November 2011. He identified the written submissions as his own and adopted the written representations as the basis of his evidence, before answering supplementary questions from committee members.

(d) The evidence of Mr Beauverger was that on taking entry to the property he noted staining on the ceilings. Soon after taking entry, he discovered that during heavier rainstorms, particularly during rainstorms accompanied by wind, water entered the property and he would have to place buckets under the drip of water in the kitchen to prevent further damage. He stated that he had complained to his Landlord, and various works had been carried out, but those works had not remedied the difficulties. Ms Scott associated herself with Mr Beauverger's evidence and explained that the common passage way outside her own property (at garden level) had suffered damage because of water ingress. Ms Scott spoke of water cascading down

the exterior of the down pipe to the rear of the property and running down the exterior stone work to the rear of the property, pooling outside the rear door to the common stair serving the property. Ms Scott told us that in March 2011 one of her own friends had carried out roofing repairs but had explained to her that the roof required to be replaced because of its age. Their evidence was that running repairs to the roof were no longer sufficient to maintain the roofs integrity.

(e) Having listened to evidence of Mr Beauverger and Ms Scott, Mr Robertson candidly admitted that the roof required to be fully upgraded. In his own words the roof was "*knackered*" and required to be "*totally overhauled*". When asked to specify what work he believed was necessary, he told us that the existing slates needed to be removed; the entire roof needed to be re-slatted; that the chimneys required to be removed and reinstated, and that the gutters were defective and needed to be removed and reinstated. Mr Robertson explained that since the Landlord had owned the property there had been difficulties with the roof, and in his written representation he stated that the landlords, "*are fully aware that the roof is not the best, mainly due to historic repairs...*".

(f) Mr Robertson told us that although the landlord had been aware of the poor state of the roof serving the property, an entire overhaul of the roof, gutters, down pipes had not been carried out because it had taken a long time to organise all of the proprietors of the building served by the roof, gutters and down pipes, & to obtain quotations for the necessary work. Mr Robertson told us that quotations from roofing contractors had now been requested, & two roofing contractors were to inspect the property with a view to providing quotes for an entire overhaul of the roof, gutters and down pipes the following day. Mr Robertson's opinion was that any water damage to the property was not caused by defects in the fabric of the roof, but was in fact caused by a defect in the gutter from which (he freely conceded) during rainstorms water overflowed.

(g) The clear concession from all parties is that there is a defect in the gutter, which is causing water to overflow and enter the property. We find that we can place reliance on the concessions made by Mr Robertson. We found that Mr Beauverger and Ms Scott were reliable witnesses who gave evidence consistent with staining and damage which we saw ourselves when we inspected the property on the morning of 25th January 2011. The clear and consistent evidence is that there has been water ingress to this property since the landlord became the heritable proprietor in 2007.

(h) Our own observations indicate that there are slipped, cracked and missing slates & that the roof suffers to a significant degree from nail fatigue. We saw for ourselves that there are gaps in the roof where daylight is clearly visible. We have to resolve the question of whether or not the property is wind and watertight. The clear evidence is that when there is a combination of wind and rain, water enters this property. The property is not therefore wind and watertight.

(i) The second question which we have to answer is whether or not the gutters and down pipes fixed to the exterior of the property are in a reasonable state of repair and in proper working order. All parties are agreed that the gutter is not in proper working order, and that the gutter overflows with water which finds its way in to the interior of the property. The weight of evidence indicates that the down pipe is blocked and the blockage causes the down pipe to over flow during rainstorms. The only finding in fact that we can make on the basis of that consistent evidence, particularly in the light of the concessions made by Mr Robertson for the landlords, is that the gutters and down pipes are not in proper working order.

(j) The Committee therefore make a repairing standard enforcement order, requiring the landlord to carry out such works as necessary to:

- (i) To make the property both wind and watertight within 8 weeks of the date hereof and
- (ii) to repair and, if necessary, replace the gutter and down pipe to ensure that the gutter and down pipe are in proper working order and that they carry water away without overflow.

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..... **27/05/2012**