



**Repairing Standard Enforcement Order**  
**Ordered by the Private Rented Housing Committee**

prhp Ref: PRHP/EH47/197/11

Re : Property at 16 Main Street, Stoneyburn, Bathgate, West Lothian ("the Property")

Title No: WLN3114

The Parties:-

**Tony Trowbridge, residing at 74 Lackford Avenue, Totten, Southampton, Hants (represented by their agent, Ms P Mavor, of Mavor & Co, 16 Union Square, West Calder, EH55 8EY) ("the Landlord")**

**Richard Gilmour, residing at 16 Main Street, Stoneyburn, Bathgate, West Lothian ("the Tenant")**

**NOTICE TO Tony Trowbridge, residing at 74 Lackford Avenue, Totten, Southampton, Hants ("the Landlord")**

Whereas in terms of their decision dated 2<sup>nd</sup> March 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 (in terms of s.13(1)(a) of the Act) in respect that there are slipped, cracked and missing slates on the roof serving the property
- (b) The gutters and external pipes serving the property are in a reasonable state of repair, in terms of s.13(1)(b) 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 replace all cracked, slipped and missing roof slates
- (b) To clean out and repair where necessary the rhones, gutters and downpipes serving 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 six 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.**

such an appeal is made, the effect of the decision and of the order is suspended until the

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 type written on this and the preceding page(s) are executed by Paul Doyle, solicitor, 24 Haddington Place, Edinburgh, chairperson of the Private Rented Housing Committee at Edinburgh on 2<sup>nd</sup> March 2012 before this witness:-

**J McCutcheon** \_\_\_\_\_ witness

**P Doyle** \_\_\_\_\_ chairman

Julie McCutcheon, Secretary,

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**

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Title No: WLN3114

The Parties:-

Tony Trowbridge, residing at 74 Lackford Avenue, Totten, Southampton, Hants (represented by their agent, Ms P Mavor, of Mavor & Co, 16 Union Square, West Calder, EH55 8EY) ("the Landlord")

Richard Gilmour, residing at 16 Main Street, Stoneyburn, Bathgate, West Lothian ("the Tenant")

**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 09/11/2011 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 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 is wind & watertight (in terms of s.13(1)(a) of the Act) in respect that the roof is defective because there are missing, slipped & cracked slates, and the roof is "nail sick".
  - (b) The gutters, rhones and downpipes serving the property are not in a reasonable state of repair, and regularly overflow (in terms of section 13 (1)(b) of the Act).
  - (c) Water ingress has caused a gas supply pipe to rust.
3. By letter dated 13/12/2011 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 Kingsley Bruce, Surveyor Member  
Mr Scott Campbell, 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 28<sup>th</sup> November 2011), made written representations to the Committee. The Landlord decided not to make written representations to the Committee.

6. The Private Rented Housing Committee inspected the Property on the morning of 20<sup>th</sup> February 2012. The Tenant and the Landlord's agent were present during the inspection.

7. Following the inspection of the Property, the Private Rented Housing Committee held a hearing at Livingston and heard from both the Tenant, the landlord's agent, and David Hume, an employee of the landlord's agent. The Landlord was represented by Ms P Mavor, of Mavor & Co, 16 Union Square, West Calder. The Tenant represented himself.

8. The Tenant submitted that soon after moving into the property he noticed patches of damp and black mould in the lounge, the two bedrooms and a cupboard. It is the Tenant's position that the dampness and black mould is caused by the poor state of the roof serving the larger subjects of which the property forms part. It is the Tenant's position that slates fall from the roof regularly and that water leaks through the roof. In addition the gutters, rhones and downpipes are blocked causing the gutters to overflow and water to cascade down the exterior of the downpipes and the external wall of the property. The Tenant is concerned that the water ingress has caused the gas supply pipe to rust.

9. The Landlord concedes that there are damp spots and black mould on the interior walls of the living room and two bedrooms, and that the roof is in a poor state of repair. The Landlord is willing to carry out any repairs which are necessary.

### **Summary of the issues**

10. The issues to be determined are:

(a) Whether the house is wind and water tight and in all other respects reasonably fit for human habitation in terms of section 13(1)(a) of the 2006 Act.

(b) Whether the structure and exterior of the house (including the drains, gutters and external pipes) are in a reasonable state of repair and in proper working order in terms of section 13(1)(b) of the 2006 Act.

## **Findings in fact**

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

(a) On 16<sup>th</sup> June 2010 the Tenant agreed to rent the property from the Landlord. Messrs Mayor and Company Limited, property letting and estate agents of West Calder, West Lothian, acted on behalf of the Landlord. A short assured tenancy was entered into between the Landlord and the Tenant.

(b) The property forms a first floor flatted dwellinghouse, which part of a two storey building which was once a hotel and is now divided into flatted dwellinghouses. In or about August 2010, approximately two months after taking entry, the Tenant noticed damp staining and mould in the master bedroom, situated to the front of the property. The Tenant tried to treat the outbreak of mould by applying an "anti-damp" paint. However, within two months, further areas of damp and mould occurred in each of the bedrooms in the property and in the living room in the property.

(c) The Appellant reported the outbreak of damp and mould to the Landlord's agents, who inspected the interior of the property and reported to the Landlord. All parties believe the source of the damp patches and mould (on each of the internal walls within the two bedrooms and the livingroom in the property) to be caused by water ingress from the roof.

(d) The property has the benefit of double glazing. Each of the sealed double glazing units has a "trickle" vent each of which were closed time at time of inspection.

(e) The property has the benefit of gas fired central heating.

(f) The Landlord has a valid gas safety certificate for the property. The next inspection for gas safety certificate is due on 4<sup>th</sup> March 2012.

(g) The roof serving the larger building of which the property forms part is in a poor state of repair. There are cracked, slipped and missing slates which require repair. On the balance of probabilities, it is likely that there is a modest amount of water ingress through the gaps created by the defects in the roof slates - but that is not the source of the major damp staining and mould on the interior wall surfaces of the property.

(h) The primary cause the damp staining and mould on the interior walls of the property is condensation. The condensation within the property has been materially contributed to by the lack of adequate ventilation, despite the existence of "trickle" vents to windows which were closed at time of inspection and which the tenant admitted were kept closed. There were indications of condensation on the inside surface of windows at time of inspection.

(i) The gutters and downpipes serving the larger building of which the property forms part are choked and cannot cope adequately with rainfall. Even light rain causes the gutters to overflow and water to cascade down the exterior of the downpipes and down the outside wall of the property.

(j) Surface rust is evident on the gas supply pipe situated within the cupboard (off the hall) in the property which appeared to be the result of condensation within this area.

## **Reasons for the decision**

12. (a) The Committee dealt with this case on the morning of 20<sup>th</sup> February 2012. At 10am on that day, the Committee carried out an inspection of the property and the exterior of the larger building of which the property was part. The Tenant was present during the inspection and showed Committee members around the property, drawing particular attention to the interior face of the exterior walls in the livingroom and two bedrooms of the property. The Landlord's representative, Ms Pat Mavor, of Mavor & Co, and David Hume, an employee of Mavor & Co, were also present at the inspection. Immediately after the inspection the Committee heard evidence from the Tenant, Ms Mavor and Mr Hume at a hearing held in the Howden Centre, Livingston.

(b) In his evidence the Tenant told the Committee that he first viewed the property two months before moving in (in or about April 2010). Approximately two months after moving in, (August 2010) the Tenant noticed staining on the walls, which he took to be damp and mould. After trying to treat one outbreak of damp and mould in the main bedroom of the property himself, unsuccessfully, he contacted the Landlord's agents. The Tenant explained that two roofing contractors have examined the roof, and one contractor has carried out a number of small repairs. The Tenant's impression was that the roof had failed and required to be entirely overhauled. The Tenant explained that the Landlord had shown willingness to carry out works, and that other internal works on the property had been carried out timeously.

(c) Ms Mavor, for the Landlord, told us that the Landlord was willing to carry out repairs to the property, and that the property was inspected once every three months by her letting agency; a note of any works that were required was passed to the Landlord after such inspection. Ms Mavor confirmed that towards the end of 2010, a roofing company had carried out repairs to the roof and had cleaned the gutters and downpipes. A further inspection by the same roofing contractor had been carried out in November 2011. Having said that, Ms Mavor candidly agreed that there is a problem with the slates on the roof and that a greater amount of work is required to the roof gutters and downpipes.

(d) David Hume is employed by the letting agent, Mavor & Co, and organises property inspections for the properties factored by his employer. He told us that he had been involved in at least the last two quarterly inspections of the property which is the subject matter of this application. He associated himself with the evidence of Ms Mavor.

(e) It is common ground between the Landlord and the Tenant's agent that the gutters and downpipes are choked and do not carry away rainwater adequately. It is a matter of concession (and we could see for ourselves at the inspection on a damp February morning) that rainwater cascades down the outside of the downpipe. The weight of evidence, our own observations and the Landlord's concession indicate that the rhones, gutters and downpipes require maintenance & clearing, and may require repair. We accordingly make as part of our repairing standard enforcement order an order that the rhones, gutters and downpipes should be inspected and cleared.

(f) It is common ground (and was evident from our inspection of the larger property) that there are some defects in the roof of the larger subjects of which this property forms part. However our inspection draws us to the conclusion that the Tenant overemphasises the significance of the defects in the fabric of the roof. It was clear from our inspection that there are slipped, cracked and missing slates. It is equally clear from our inspection that the roof is old. Our inspection of the property indicated

that although there may be water ingress caused by slipped, cracked and missing slates, there were no signs of water leakage, into the property, coming from the roof. The surveyor member of the Committee took damp readings on the interior face of walls and found that although damp readings registered where there were visible patches of damp, the majority of the area of the internal wall space was dry. Such findings are not consistent with leakage from the roof.

(g) It is clear that the integrity of the roof is compromised where slates have been damaged or are missing. In that respect we cannot find that the roof is wind and water tight, and accordingly make a repairing standard enforcement order for the overhaul and repair of the cracked, slipped, missing slates.

(h) It is clear that the internal walls in most of the rooms in this property have damp staining and black mould. Our findings indicate that the source of the damp staining and black mould is primarily condensation, caused in part by inadequate ventilation within the property. The unchallenged evidence placed before us is that the "trickle" vents on each of the double glazed units are closed most of the time. It is reasonably likely that opening the "trickle" vents will assist in providing ventilation to help reduce condensation.

(i) The Appellant drew our attention to the gas supply pipe situated in the internal cupboard accessed from the hall of the property. The gas supply pipe bears signs of mild corrosion, but that is a surface flaw and does not affect the integrity of the pipe. The Tenant's agents showed us a current gas safety certificate valid until 4<sup>th</sup> March 2012.

(j) Our findings indicate that this property does not meet the repairing standards set out in section 13 of the 2006 Act, but the defects are less serious than the Landlord or Tenant may have anticipated. The roof of this property requires attention. The drains, gutters and downpipes require maintenance and perhaps repair, but the physical signs that alerted parties to potential defects are not entirely caused by a matter which engages section 13 of the 2006 Act. The Landlord and Tenant may well want to work together to address the condensation which has caused staining on the interior face of walls within this 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)

16. 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.

Signed... **P Doyle** .....Date 2<sup>nd</sup> March 2012  
Chairperson