



Repairing Standard Enforcement Order

Ordered by the Private Rented Housing Committee

prhp Ref: Prhp/G84/225/11

Re : Property at Flat 1/1, 23 East Princes Street, Helensburgh G84 7DE ("the Property")

Title No: DMB78679

The Parties:-

John (also known as Ian) C. Bailey, Flat 1/1, 23 East Princes Street, Helensburgh G84 7DE ("the Tenant")

**Mrs Doreen-Ann Flatman and Adrian Flatman, 21B West Montrose Street, Helensburgh G84 9PF ("the Landlords"),
(care of their agents Raeburn Hope, 77 Sinclair Street, Helensburgh G84 8TG)**

NOTICE TO Mrs Doreen-Ann Flatman and Adrian Flatman ("the Landlords")

Whereas in terms of their decision dated 30 March 2012, the Private Rented Housing Committee determined that the Landlords have failed to comply with the duty imposed by Section 14 (1)(a) of the Housing (Scotland) Act 2006 and in particular that the Landlords have failed to ensure that the Property meets the repairing standard in that :-

the bay window area of the front living room of the Property is not wind and watertight;

the Private Rented Housing Committee now requires the Landlords to carry out such work as is necessary for the purposes of ensuring that the Property 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 Landlords:-

- (a) to instruct a person acting as an independent consultant, with demonstrable experience in the identification of construction defects in tenemental properties similar to that of which the Property forms part,

to investigate the stringer course and window cill situated immediately above the front, street-facing living room bay window of the Property (on the outer façade of the tenement) for sources of water ingress into the Property at or about said window, with said investigation to include a close examination of all views and aspects of the stonework, stonework joints and pointing in the area of the stringer course and stone cill above it, using scaffolding for access if necessary, and if the source of ingress is not immediately identifiable to include testing with water;

- (b) to obtain from such person recommendations for all works necessary to make the bay window area of the Property wind and watertight, and to carry out all such recommended works;
- (c) to carry out such works as are necessary to reinstate any part of the Property including the front façade and making good.

The Private Rented Housing Committee order that the works specified in this Order must be carried out and completed within the period of two 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 the appeal is abandoned or so determined.

In witness whereof these presents typewritten on this and the preceding page(s) are executed by David Bartos, Advocate, Parliament House, Parliament Square, Edinburgh EH1 1RF, Chairperson of the Private Rented Housing Committee at Edinburgh on 30 March 2012 before this witness:-

D Bartos

witness

L Galloway

chairperson

LUCY MAY GALLOWAY name in full

7 WHITEDALES Address

EDINBURGH

EH10 7JQ

SOLICITOR Occupation



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

Statement of Reasons for Decision of the Private Rented Housing Committee

(Hereinafter referred to as "the Committee")

Under Section 24(1) of the Housing (Scotland) Act 2006

Case Reference Number: Prhp /G84/225/11

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**Mrs Doreen-Ann Flatman and Adrian Flatman, 21B West Montrose Street, Helensburgh G84 9PF ("the Landlords"),
(care of their agents Raeburn Hope, 77 Sinclair Street, Helensburgh G84 8TG)**

The Committee comprised:-

Mr David Bartos	- Chairperson
Mr Kingsley Bruce	- Surveyor member
Mr Christopher Harvey	- Housing member

Decision

The Committee, having made such enquiries as it saw fit for the purposes of determining whether the Landlords have complied with the duty imposed by Section 14 (1)(b) in relation to the Property concerned, and taking account of the evidence led by the Tenant and the Landlords at the hearing, determined that the Landlords have failed to comply with the duty imposed by Section 14 (1)(b) of the Housing (Scotland) Act 2006.

Background:-

1. By application received on 21 December 2011, the Tenant applied to the Private Rented Housing Panel ("PRHP") for a determination that the Landlords failed to comply with the duty to ensure that the Property met the repairing standard in section 13 of the Housing (Scotland) Act 2006.

2. In his application the Tenant complained that the landlord had failed to meet the repairing standard in that the Property was not wind and watertight and in all other respects reasonably fit for human habitation (section 13 (1)(a) of the 2006 Act). His application related to the matters which he had raised in his complaint to the Landlords' agents Raeburn Hope made on 25th November and in his e-mails to them of 28th November and 1st and 4th December all 2011 and his registered post letter to the first named Landlord received by her on 13th December 2011.
3. The President of the Private Rented Housing Panel decided under section 23 of the 2006 Act to refer the application to a Private Rented Housing Committee. That decision was intimated to the Tenant and to the first named Landlord by letter of the Panel's Clerk dated 23 January 2012 and entitled "Notice of Referral". The Committee comprised the persons stated above. The intimation of the Notice of Referral to the first named Landlord included a copy of the Tenant's application to the Panel.
5. Following intimation of the Notice of Referral, the Tenant intimated by means of a form dated 25 January 2012 and received by the Panel on 30 January 2012 that he wished to attend a hearing. On the form he indicated that he had a video of water coming into the Property. The first named Landlord intimated by means of a form dated 30 January 2012 and received by the Panel on 31 January 2012 that she wished to attend a hearing. An inspection of the Property and hearing at Churchhill Community Centre, Churchhill Square, Helensburgh was fixed for 19 March 2012 at 10. 00 a.m. and 11 a.m. respectively. The date and times were intimated to the Tenant and to the first named Landlord by letter dated and sent on 27 February 2012. The Landlords' agents had also sent a letter dated 16 January 2012 to the Panel with a written submission on the reasons why they submitted that the first named Landlord had not failed to meet her duty under section 14 of the 2006 Act.
6. Prior to the inspection and hearing the Committee investigated the ownership of the Property. They discovered that the title to the property had been held since 18 May 2006 in the names of both Landlords. By an e-mail of the Panel's clerk dated 14 March 2012 the Committee requested the first named Landlord's agents to confirm whether the first named Landlord acted as agent for the second named Landlord or whether they as agents acted for the second named Landlord in addition to the first named Landlord. By e-mail of 14 March 2012 the agents replied to the Committee stating that they acted for both Landlords and that both Landlords would be in attendance at the inspection and hearing.

The Inspection

7. The Committee inspected the Property on 19 March 2012 at 10 a.m. The Tenant was present. Both Landlords and their agent Dianne Richardson of Raeburn Hope were present. The inspection revealed that the Property is a flat on the first floor of four storey tenement of flats built in the late 19th

century. The weather at the time of the inspection was dry. Prior to carrying out their internal inspection the Committee asked the Tenant whether he wished to rely upon the video that he had mentioned in his response form. The Tenant indicated that he did and that it was on a laptop computer. The Committee asked the Landlords' agent whether she had any objection to the video being viewed in silence prior to the inspection in order to provide further information to the Committee prior to the inspection taking place. The Landlords' agent had no objection. It was indicated to those present that they would have an opportunity to see the video again at the hearing at which time questions could be asked about it. The video was played and viewed in silence. The Committee carefully inspected the bay window and surrounds in the front living room of the Property. This room faces onto East Princes Street in a south west direction. The bay window comprises three windows. Each window has two double glazed UPVC panels each of which can be opened with a handle. The panels in the right window have been partially sealed by the tenant. Above the bay window is wooden facing which holds a curtain rail. Readings were taken with an electronic moisture meter which did not reveal any significant damp.

The Evidence

8. The evidence before the Committee consisted of:-

- The application form
- Copy account from 1 Ardencaple Drive, Helensburgh dated 11 December 2010
- Copy e-mails from the Tenant to Raeburn Hope dated 28 November, 1 and 4 December all 2011
- Copy letter from Raeburn Hope to the Tenant dated 30 November 2011
- Copy undated letter from the Tenant to the first named Landlord
- Copy tenancy agreement dated 11 September 2009
- Registers Direct copy of Land Register title DMB78679
- Copy letter from EBS Construction to the first named Landlord at The John Dobbie Trust dated 14 December 2011
- Copy letter from the Tenant to PRHP undated received on 30 December 2011
- Copy fax from Raeburn Hope to Crawfords dated 19 December 2011 with enclosed list of "Water Ingress Names and Numbers"
- Copy quotation from Abba Sealants Ltd to The John Dobbie Trust dated 10 February 2011 and invoice from Abba Sealants Ltd to The John Dobbie Trust dated 25 February 2011
- Copy letter from Raeburn Hope to PRHP dated 16 January 2012 (in relation to factual statements)
- The oral evidence of the Tenant
- The oral evidence of Dianne Richardson

The Hearing

9. At the conclusion of the inspection the Committee held a hearing within the Churchhill Community Centre. The Tenant appeared at the hearing. Both Landlords were represented by Dianne Richardson of Raeburn Hope, solicitors and agents. Both Landlords were present. They are married. They did not give evidence. Mrs Richardson explained that the lease had originally been granted by the first named Landlord as the title position had not been clear. The lease had then tacitly relocated since then both owners were party to the lease. The second named Landlord consented to the lease and his instructions were that the lease be treated as if granted by both him and his wife. She confirmed that both of her clients considered themselves to be the joint Landlords and that the second named Landlord was content that any intimations which were made in connection with the tenancy or the application to the PRHP to the first named Landlord should be treated as having been made to both Landlords.
10. The Tenant was content with this approach to the case. The Tenant put forward his evidence and played the video on his laptop computer. The Tenant stated that before November 2011 the water had just been coming in through the seals of the windows of the bay window in the front livingroom. All three panels of windows in the bay had been affected. In or around December 2010 he had complained of water ingress to Mrs Richardson. That was not his first complaint. He took issue with what was said on this in the Raeburn Hope letter of 16th January 2012 to the PRHP. He had made many verbal complaints to Dianne Richardson or someone in her department. Her reaction he described as slow. A handyman had been sent to deal with the leak. He adjusted the window. The Tenant confirmed that the work described in the account sent to Raeburn Hope dated 11 December 2010 had been done by the handyman. This was to no avail. He complained several times. It was not so bad before November 2011. He accepted that further sealing was carried out in February 2011 and the gutters were cleaned in October 2011. In November 2011 the window area suffered heavy water coming in. He accepted that he called at Raeburn Hope's office on Friday 25 November and advised of water ingress. He wrote an e-mail to Raeburn Hope dated 28 November 2011 advising of the difficulties which was his first written complaint. He then received the letter of 30th November 2011 from Raeburn Hope and replied with an e-mail to them of 1st December 2011. The Tenant confirmed that a further visit of the handyman on or about 30th November had not resolved the problem as in the Tenant's view adjustment of the windows could not affect the problem.
11. On 8th December 2011 he took the video which the Committee and the parties observed at the hearing. The video was taken during heavy rainfall and strong wind. It showed water pouring from the window soffit, internally to the right or westmost window down onto the cill. Following this he sent the undated registered post letter to the first named Landlord. With the reference to water pouring in like an open tap. Mrs Richardson indicated that the undated letter had been received on 13th December 2011. Since November 2011 there had been 5 or 6 incidents similar to that in the video.

The video was pretty typical of these incidents. Two builders had come in 2012. He said to them that just above the window on the outside there was a heavy lintel projecting out from the wall which was sloping back at an angle and that he thought that the water was coming in at that place. Other flats have had the same problem. The builders had said that was probably the cause. But he had heard nothing back from either Crawfords, the builders in question, or Raeburn Hope or the Landlords. If the glass of the windows did not get wet, there would be no lintel leak as he described it. It depended on the wind direction. Other flats had experienced the same problem. There had been no improvement in water penetration following the ABBA sealing repairs of February 2011.

12. The Tenant also stated that water still comes in through the seals in each of the three windows, when it rains mostly when the wind is blowing against them.
13. Ms Richardson gave evidence that Raeburn Hope had sent persons out to deal with the issue of leaks. She accepted that water did come into the Property at times. She maintained that all repairs had been logged and actioned. Repair sheets were gone through on a yearly basis. Raeburn Hope were managing agents for the whole building comprising of two tenements being Numbers 21 and 23. The Landlords had arranged for EBS to provide the report which had been lodged. EBS' consultant was due to look at the property again on 21 March 2012. Ms Richardson confirmed that Raeburn Hope had sent out a letter dated 19th December 2011 to all tenants of the building with an emergency number for the firm's period of closure over the Christmas and New Year period.
14. The Committee had no reason to doubt the credibility of the Tenant or Mrs Richardson. Whilst the Tenant and Raeburn Hope in their letter of 16th January 2012 disagreed over whether the Tenant made his first complaint in December 2010, that is something which related to leaks of window seals which is not something that the current application seeks to have remedied and therefore not something that the Committee requires to decide. The current application seeks to have work done to the exterior of the property and relates to the type of leak recorded on the video.

Findings of Fact

15. Having considered all the evidence, including their inspection, the Committee found the following facts to be established:-
 - (a) In September 2009 the Tenant entered into a lease of the Property from the first named Landlord. The second named Landlord has consented to the lease. The lease is comprised in a tenancy agreement dated 11 September 2009 between the Tenant and the first named Landlord. The date of entry was on 11 September 2009. The term of the lease was from 11 September 2009 to 19 March 2010 and thereafter until terminated upon either four weeks' notice by the Tenant or eight weeks' notice by the Landlords. The Landlords have been and

are represented by Raeburn Hope. The lease has tacitly relocated. It has not been terminated. The Tenant continues to occupy the Property under the Lease.

- (b) The Property is a flat on the first floor of four storey red sandstone tenement of flats built in the late 19th century. The Property has a living room with a bay window which faces onto East Princes Street in a south west direction. The bay window comprises three windows being a central window and windows to the left and right. Each window has two double glazed UPVC panels each of which can be opened with a handle. The panels in the right window have been partially sealed. Above the bay window is wooden facing supporting a curtain rail. No significant damp was detected upon testing with an electronic moisture meter on the date of inspection. On the front façade of the tenement, above the bay window is a sandstone stringer course which is a decorative feature and which projects out from the façade. The stonework was in a reasonable condition.
- (c) During 2010 the Tenant notified the Landlord's agents of leaks on the bay window at the seals. Raeburn Hope arranged for a handyman Mr Orr to carry out sealing of the cills with silicone. This he did in about December 2010. The also arranged for ABBA Sealants Ltd to carry out sealing work around all of the windows of the tenement in about February 2010. This work was carried out at that time.
- (d) On or shortly before 25 November 2011 the bay window area suffered heavy water coming in, following heavy and prolonged wind and rain. The Tenant called at Raeburn Hope's office on Friday 25 November 2011 and advised of water ingress. He wrote an e-mail to Raeburn Hope dated 28 November 2011 advising of the difficulties which was his first written complaint. He then received the letter of 30th November 2011 from Raeburn Hope and replied with an e-mail to them of 1st December 2011. A further visit by Mr Orr on or about 30th November 2011 did not resolve the problem. On or about 8th December 2011 there was heavy rainfall/strong wind. During this rainfall water began to penetrate into the Property at the right or westmost window at the soffit and facing internally running down onto the cill. This type of incident has been repeated on 5 or 6 occasions since.
- (e) Two persons from the builders Crawfords, came to the Property in January or February 2012 to investigate further. The Tenant advised them that the cause of the ingress might be linked to the stringer course on the façade, described by the Tenant as a "lintel". The builders agreed that this was probably the case. No further contact was made by either the builders or Raeburn Hope with the Tenant. The Landlords have arranged for builders EBS Construction to look at the Property on 21st March 2012. The Landlords have not carried out any of the work to the façade being complained of to the Committee.

(f) At the date of inspection there was no sign of water ingress or damp inside the bay window, when weather conditions were generally dry. There was no smell of damp in the Property. An external inspection of the Property revealed that to the right hand or east side of the stone stringer course above the bay window localised delamination or minor damage to stone finishes had occurred. No immediate defect was visible whilst standing at ground level to front. Construction details were however noted. It appeared that the source of leaks of the type experienced on 8th December 2011 is likely to be water penetration at the string course on the façade of the building, or possibly the cill of the bay window of the flat on the second floor immediately above the string course. Further investigation is required to determine the exact cause.

Reasons for Decision

16. The Committee required to decide whether the Property was wind and watertight and in all other respects reasonably fit for human habitation in terms of section 13 (1) (a) of the 2006 Act. "Wind and watertight" means wind and watertight against what might be called the ordinary attacks of the elements and not against exceptional encroachments of water due to other causes" (**Wolfson v. Forrester** 1910 S.C. 675, 680). An example of where a sudden melt of an extraordinary fall of snow which leaked into a property was found to breach the wind and watertight obligation of a landlord was **Reid v. Baird** (1876) 4 R 234. The Committee invited the Tenant and Mrs Richardson to comment on both cases which they were given an opportunity to examine. Neither had any comment.
17. It was accepted for the Landlords that the Property did leak water on occasion and that there was a continuing problem. The issue for the Committee was whether the leaks were caused by the ordinary attacks of the elements or were exceptional encroachments of water due to other causes. It is true that on or about 25th November 2011 there was heavy and prolonged wind and rain. If that were an isolated incident there might be more to be said for the watertightness having been lost through an extraordinary attack of the elements. However the Committee took the view that the frequency of the rain and wind which caused subsequent leaks was such that it fell within the category of ordinary attacks of the elements. Each leak, or the leaks taken as a whole since November 2011 could not be seen as having been an exceptional encroachment of water due to extraordinary attacks of the elements or other causes. There was no evidence to suggest that the water leaks had been caused by extraordinary events which were not likely to recur. For all these reasons the Committee concluded that the Property could not be said to be wind and watertight at the front bay window. The Committee concluded that in this respect the Property did not meet the repairing standard in section 13 (1) (a) of the 2006 Act.
18. The Landlord's agents have been aware of the defect from at least 25th November 2011. No work to deal with the said breach of repairing

standard was carried out within a reasonable time of the Landlord being aware that work was required to remedy said breaches.

19. The Committee considered the terms of the Repairing Standard Enforcement Order to be made. It was not in a position, having regard to the evidence before it, including that from the inspection, to identify the precise cause of the water ingress. The Committee considered the terms of the letter from EBS Construction. It did not appear that the author had at the time of the letter, inspected the Property. This cast doubt on the reliability of the views expressed therein. The letter suggested that the water ingress was caused by water percolating through the entire thickness of the stone masonry at certain times of the year and recommended the application of aluminium sterate [*sic*] to the surface of the stone masonry once it was dry. The Committee in its inspection noted that the stonework was in reasonable condition. There was nothing to indicate that water ingress was being caused through percolation through the whole thickness of the masonry. In addition the more likely cause of water ingress appeared to be the stringer course and cill above it. Indeed EBS Construction said that "we expect that it is the second floor lintels that are the problem" albeit without further explanation. For all of these reasons the Committee took the view that the Order should not require the application or reapplication of aluminium stearate.
20. The Committee therefore proceeded to make an Order requiring the investigation of the façade above the Property's bay window to allow identification of the cause. The Committee considered the time limit for the works. The Tenant was keen for work to be carried out as soon as possible. Mrs Robertson noted that the Landlords might require to obtain the permission of the Council in order to put up scaffolding. The Committee also took account of the need for investigation works to be carried out before remedial works. In the circumstances balancing the interests of the Tenant and the Landlords the Committee concluded that a time limit of 2 months was appropriate.

Decision

21. The Committee determined that the Landlord had failed to comply with the duty imposed by section 14 (1) (a), of the Act in relation to the failure of the Property to meet the repairing standard as stated above.
22. The Committee proceeded to make a Repairing Standard Enforcement Order as required by section 24 (2). The decision of the Committee was unanimous.

Rights of Appeal

23. A landlord or tenant aggrieved by this decision of the Committee may appeal to the Sheriff by summary application within 21 days of being notified of that decision.

24. Unless the lease or tenancy between the parties has been brought to an end, the appropriate respondent in such appeal proceedings is the other party to the proceedings and not the Committee which made the decision.

Effects of Section 63 of the 2006 Act

25. Where such an appeal is made, the effect of this decision and of any Order made in consequence of it is suspended until the appeal is abandoned or finally determined.
26. Where the appeal is abandoned or finally determined by confirming the decision, the decision and the Order made in consequence of it are to be treated as having effect from the day on which the appeal is abandoned or so determined.

D Bartos

Signed Date: 30 March
2012.....

David Bartos, Chairperson

Signature of Witness: **L. Galloway** Date... 30 March 2013.

Name, address and occupation of the witness (please print):-

LUCY MAY GALLOWAY

7 WHITE DALES

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