



## Repairing Standard Enforcement Order

Ordered by the Private Rented Housing Committee

**prhp Ref:** PRHP/KY7/27/09

**Re:** Property at 32 Carleton Crescent, Woodside, Glenrothes, Fife, KY7 5AN ("the Property")

**Title No:** ALL and WHOLE the semi-detached property known as and forming 32 Carleton Crescent, Woodside, Glenrothes, Fife, KY7 5AN being the subjects registered in the Land Register of Scotland under Title Number FFE57993

### The Parties:-

**DUNCAN BRUCE GEMMILL and DEBBIE ANNE GEMMILL** residing at 14 Patenier Street, Ashby, Perth, 6065 Western Australia ("the Landlords")

**KAREN BAIRDEN** residing at 32 Carleton Crescent, Woodside, Glenrothes, Fife, KY7 5AN (represented by her father, Mr Ken Nicoll) ("the Tenant")

### **NOTICE TO DUNCAN BRUCE GEMMILL and DEBBIE ANNE GEMMILL ("the Landlords")**

Whereas in terms of their decision dated 26 June 2009, 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 the property is wind and watertight and in all respects reasonably fit for human habitation; 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 or replace the windows in the three upstairs windows to ensure that (1) the central hopper windows open and shut smoothly and are properly wind and watertight ; and (2) that the catches and handles on the side portions of the three upstairs bedroom windows are repaired or replaced as appropriate and that the side portions of the windows shut properly and are wind and watertight.

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 type written on this and the preceding page are executed by Ewan Kenneth Miller, Solicitor, Whitehall House, 33 Yeaman Shore, Dundee, DD1 4BJ, Chairperson of the Private Rented Housing Committee at Dundee on 26 June 2009 before this witness:-

**L Johnston** witness

**E Miller**

Chairman

LINDSAY JOHNSTON name in full

Whitehall House Address

33 Yeaman Shore

Dundee DD1 4BJ

Legal Secretary Occupation



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

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Re: Property at 32 Carleton Crescent, Woodside, Glenrothes, Fife, KY7 5AN ("the Property")

### The Parties:-

**KAREN BAIRDEN** residing at 32 Carleton Crescent, Woodside, Glenrothes, Fife, KY7 5AN (represented by her father, Mr Ken Nicoll) ("the Tenant")

**DUNCAN BRUCE GEMMILL** and **DEBBIE ANNE GEMMILL** residing at 14 Patenier Street, Ashby, Perth, 6065 Western Australia ("the Landlords")

### 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 8 March 2009 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) all the electric sockets in the Property were properly installed;
  - (b) the lights in the kitchen and bathroom functioned properly;
  - (c) in the downstairs bathroom the toilet cistern was properly attached to the wall and the toilet pan attached to the floor and that both were in proper working order; and
  - (d) the windows in the upstairs bedrooms were both wind and watertight and capable of opening and closing properly.
3. By letter dated 15 April 2009 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.
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 made no further written representation to the Committee other than their original application dated 8 March 2009. The Landlord (via email on 29 April 2009), made written representations to the Committee.

6. The Private Rented Housing Committee (comprising Mr E K Miller, Chairman and Legal Member; Mr D Godfrey, Surveyor Member and Mr A Mackay, Housing Member accompanied by Mr R Shea, Clerk to the Committee) inspected the Property on the morning of 18 June 2009. The Tenant and her father were present during the inspection. The Landlords were not present during the inspection.
7. Following the inspection of the Property the Private Rented Housing Committee held a hearing at Rothes Halls, Glenrothes and heard from the Tenant's father. The Landlords were not present nor represented.
8. The Tenant submitted as follows:-

The Tenant accepted that since the date of the application, works had been carried out by the Landlords and the items listed in paragraph 2(a), (b) and (c) of this Decision had been dealt with satisfactorily. Accordingly, the only items outstanding were the three bedroom windows which did not close properly. The Tenant's father submitted that in his view it was clear that the central hopper windows in each of the three bedrooms did not shut properly and were broken. The Tenant's father submitted that his daughter was not looking for a never ending list of repairs to be carried out but merely some repairs that were required. They were happy to do minor repairs and maintenance on an ongoing basis themselves but felt that having windows that were unable to shut was not acceptable.

At the Hearing, the Tenant's father indicated to the Committee that since the inspection earlier that morning, a tradesman for the Landlords had arrived to inspect the windows and to see if these could be repaired. He was unable to confirm whether the tradesman was able to do this at this visit or not.

9. The landlords submitted as follows:-

The Landlords written submission via email indicated that the top window in the back bedroom was found to be open and was difficult to close. Their written submission stated that the Tenant's father had failed to provide any explanation for this. The written submission also stated that the Tenant had inspected the Property prior to signing the Tenancy Agreement and was happy with the state of the Property.

#### **Summary of the issues**

10. The issue to be determined by the Committee is whether the windows in the Property are properly wind and watertight and in proper working order.

#### **Findings of fact**

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

- That none of the central upper windows in the upstairs bedrooms open and shut properly and were, in fact, difficult to move at all.
- That on the side windows in each bedroom there were catches or handles missing that meant the windows were not shut as tightly as they ought to be.
- That the rubber seals around the windows in the upper bedrooms were becoming perished and coming away from the frame. Whilst not sufficient to breach the repairing standard they would benefit from replacement.

**Reasons for the decision**

- 12. The Committee reached its decision based on the evidence obtained by the Committee at the inspection on 18 June 2009. The Committee inspected each of the central hopper windows in each of the bedrooms. All three were found to be defective and were unable to be moved, being jammed open at the date of the inspection. The Committee also noted that various catches and handles were missing on the side windows and this prevented them from closing properly. The Committee also noted during its inspection of the windows that the seals were beginning to perish and come away and would benefit from replacement (although not being strictly required for compliance with the repairing standard).

The Committee also checked the items complained of and described in paragraphs 2(a), (b) and (c) of this Decision and found that the necessary items of repair or replacement had been carried out. The Tenant accepted this.

**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.

**E Miller**

Signed ..... Date.....  
Chairperson