



Repairing Standard Enforcement Order

Ordered by the Private Rented Housing Committee

prhp Ref: PRHP/AB11/37/13

Re : Flat 3, 70 Langstane Place, Aberdeen AB11 6EN (“the Property”)

Title No: ABN73769

The Parties:-

Allan Hardy, Flat 3, 70 Langstane Place, Aberdeen AB11 6EN (“the Tenant”)

Rachel Suzannah Gretton, Dunolly House, Taybridge Drive, Aberfeldy, Perthshire PH15 2BP (“the Landlord”) (care of her agents James and George Collie, Solicitors, 30 Bon Accord Street, Aberdeen AB11 6EL)

NOTICE TO

Rachel Suzannah Gretton (“the Landlord”)

Whereas in terms of their decision dated 15 July 2013, 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 house meets the repairing standard in that :-

- (a) the bedroom window area of the Property is not watertight;
- (b) the kitchen window area of the Property is not watertight;
- (c) the living room bay window area of the Property is not watertight;

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 instruct a person acting as an independent consultant with demonstrable experience in the identification of construction or maintenance defects in tenemental properties similar to that of which the Property forms part, to investigate the Property and the commonly owned parts of its tenement, including (but not limited to) the roof, including roof slater work, flashings, skew pointing, all chimney heads including their pointing, the Landlord's chimney pot, all gutters, all rhones (downpipes), all main or gable walls including their pointing, all drains and pipes, to identify the source or sources of water ingress into the Property at or above the said windows in the said three rooms and to report thereon;
- (b) to obtain from such person recommendations for all works necessary to make the said three window areas of the Property wind and watertight, and to carry out all such recommended works in so far as they fall to be carried out to the Property and the commonly owned parts of the tenement of which it forms part;
- (c) to carry out such works as are necessary to reinstate any part of the Property or common parts of the said tenement and making good.

The Private Rented Housing Committee order that the work specified in this Order must be carried out and completed within the period of three 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 15 July 2013 before this witness:-

D Bartos

A Veitch

witness

chairperson

ANDREW VEITCH name in full

C/O TERRA FIRMA CHAMBERS Address

PARLIAMENT HOUSE

EDINBURGH

EH1 1RF

DEPUTY ADVOCATES' CLERK 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/AB11/37/13

Re : Flat 3, 70 Langstane Place, Aberdeen AB11 6EN ("the Property")

Title No: ABN73769

The Parties:-

Allan Hardy, Flat 3, 70 Langstane Place, Aberdeen AB11 6EN ("the Tenant")

**Rachel Suzannah Gretton, Dunolly House, Taybridge Drive, Aberfeldy,
Perthshire PH15 2BP ("the Landlord") care of her agents James and George
Collie, Solicitors, 30 Bon Accord Street, Aberdeen AB11 6EL**

The Committee comprised:-

Mr David Bartos	- Chairperson
Mr Colin Hepburn	- Surveyor member
Mr Michael Scott	- Housing member

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)(a) in relation to the Property concerned, and taking account of the evidence led by the Landlord at the hearing, determined that the Landlord had failed to comply with the duty imposed by Section 14 (1)(b) of the Housing (Scotland) Act 2006.

Background:-

1. By application received on 4 March 2013, the Tenant applied to the Private Rented Housing Panel ("PRHP") for a determination that the Landlord had 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 owing to water leakage at the windows in the bedroom, kitchen and lounge the Property was not in a wind and watertight condition and or in all other respects not reasonably fit for

human habitation (section 13 (1)(a) of the 2006 Act). He also complained that the alcove above the bedroom window was damaged from water leakage at the window and was damp, and that the alcove above the kitchen window was cracked and damp and that wallpaper had come off due to water damage there. This was part of the complaint that the Property was not reasonably fit for human habitation. In his application the Tenant also complained that there were "splits" over the kitchen ceiling and down the wall in the kitchen. This was part of the same complaint as to fitness. His application related to the matters which had been raised in e-mails by him to the Landlord's agents dated 23 December 2012 and letter dated 22 February 2013.

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 Landlord's agents by letter of the Panel's Clerk dated 13 April 2013 and entitled "Notice of Referral". The Committee comprised the persons stated above. The intimation of the Notice of Referral to the Landlord's agents 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 22 April 2013 and received by the Panel on 30 April 2013 that he did not wish to attend a hearing and enclosed further written representations. In these he claimed for the first time that there was a draught from a gap between the window sill in the bedroom and the wall beneath it which required to be blocked off. The Landlord's agents did not respond to the Panel on whether they wished to attend a hearing. By letter of 26 April 2013 they enclosed various items of correspondence and a copy invoice and submitted that they had acted and dealt with the issues timeously. An inspection of the Property and hearing at The Credo Centre, 14-20 John Street, Aberdeen AB25 1BT was fixed for 8 July 2013 at 11.40 a.m. and 2. 45 p.m. respectively. The date and times were intimated to the Tenant, and to the Landlord's letting agents by letter dated and sent on 17 June 2013. This included the correspondence and additional written submissions submitted by the other party. The Landlord's letting agents then forwarded a copy of the written submission and other correspondence to the Landlord.

The Inspection

6. The Committee inspected the Property on 8 July 2013 at 11.40 a.m. Neither Tenant nor Landlord were present. The Landlord's agents were not present. The Committee was shown around by Emma Gray who also lives in the Property. The weather was dry, bright and sunny. The inspection revealed that the Property is a flat on the second floor of a late 19th century granite tenement in the centre of Aberdeen about 50 metres to the south of Union Street. The Committee carefully inspected the matters which were the subject of complaint.

The Evidence

7. The evidence before the Committee consisted of:-
- The application form
 - Copy Lease Agreement between James and George Collie as agents for the Landlord and the Tenant dated 13 June 2012.
 - Copy e-mail from the Landlord's agents to Morag Benton dated 1 November 2012 and e-mail reply of the same date
 - Four copy e-mails between the Landlord's agents and Morag Benton dated 15 November 2012
 - Copy e-mail from the Landlord's agents to Morag Benton dated 19 November 2012 and e-mail reply of the same date
 - Copy e-mail from the Tenant to the Landlord's agents dated 23 December 2012
 - Copy e-mails from the Landlord's agents to Morag Benton and vice-versa both dated 27 December 2012
 - Copy e-mail from Morag Benton to the Landlord's agents dated 28 December 2012
 - Copy letter from the Tenant to the Landlord's agents dated 22 February 2013
 - Copy letter from the Landlord's agents to the Tenant dated 6 March 2013
 - Copy invoice from MTC Property Development Co (Aberdeen) Limited dated 15 March 2013
 - Registers Direct copy of Land Register title ABN73769
 - Copy letter from the Landlord's agents to the PRHP dated 26 April 2013
 - Written submission from the Tenant
 - The oral evidence of the Landlord

The Hearing

8. In the afternoon following the inspection the Committee held a hearing within the Credo Centre, 14-20 John Street, Aberdeen AB25 1BT. Only the Landlord herself appeared at the hearing. She pointed out that she had not received the notice of referral from the Panel, nor had she received a copy of the Tenant's application from her agents. The notice of referral enclosing the application had been sent to her former address at Union Grove which is where she was living in 2004 when she had acquired the Property. She had not resided at Union Grove since 2004.
9. She testified that she had last visited the Property in December 2011 when she had moved out of the Property. It had then been let to tenants. Her knowledge was therefore limited to that supplied to her by her agents, James & George Collie and in particular Alysha Purvis the leasing assistant there.
10. The Landlord said that she knew that in September 2012 the Tenant had requested that the window in the bedroom be replaced. This request would

have been made to the agents although it may also have been made by the Tenant in a conversation with her at the end of August 2012. She herself did not inspect the window and left it to her agents. As far as she was aware that window had been replaced at the end of 2012, but she said that she had received this information from her agents only through the e-mails copied to her with the Tenant's written submission on 22 June 2013. The only thing that made her aware that there was an ongoing problem with the window was that she was sent an invoice after the second lot of windows had been replaced in the living room and kitchen and she had been asked by the agents whether they should repair the room to deal with water damage. In December 2012 she had had no idea that there had been any leaks and thought that the installation had gone well. She had no view as to the cause of the leaks, commenting that her first tenant had not complained. Her agents had told her that a new contractor had been required to be brought in because the work of the first one was inadequate. She had not discussed the written representation from the Tenant as she had expected to do so when the agents appeared for the hearing, but she had been subsequently told that they would not appear because of an Aberdeen holiday on the date of the hearing.

11. She was unaware of the cause of any of the leaking at the kitchen window or in the living room. She had simply been phoned and informed of flooding. So she contacted her agents and her insurers. Some thought that the cause was pointing, some said the windows. Her agents had advised that the cause was the windows and so she authorised their replacement. She had spoken to MTC, the company that installed the windows and they had said that there was no problem with the windows which they had replaced with new windows. She confirmed that the invoice from MTC in the papers was for the kitchen and living room windows. She had received one comment through her agents that a firm AB Contractors had said that the walls and pointings were at fault. However Alysha had said that this was incorrect and she had gone with that view. AB had put in the bedroom window. Some work had been done to the roofing in the past but she had received a report from her agents at the end of May 2013 to the effect that the flat was in good condition except for vegetation in the communal guttering.
12. She had asked her agents 4 times about the extent of internal damage but had not received any answer until receiving the quotations for costs of repainting.
13. The Committee had no difficulty in finding the Landlord's evidence credible and reliable as far as it went.

Findings of Fact

14. Having considered all the evidence, including their inspection, the Committee found the following facts to be established:-

- (a) In June 2012 the Tenant entered into a lease of the Property from the Landlord. The Tenant continues to occupy the Property under the Lease dated 13 June 2013. The term of the Lease is 10 July 2013.
- (b) The Property is a second floor flat in a granite tenement from the second half of the 19th century in the centre of Aberdeen about 50 metres to the south of Union Street. It comprises a hallway, a bedroom, living room in the corner of the tenement, kitchen and bathroom. It has UPVC double glazing throughout.
- (c) On or about 23 November 2012 a new double glazed UPVC tilt and turn window was installed into the bedroom of the Property. This was installed by AB Contracts. It is still in the Property. It has new wooden fascia on both sides. There is mastic sealant down the left side of the fascia adjoining the wall of the alcove.
- (d) During December 2012 the Tenant experienced water leaking into the bedroom from above the window aperture and from the fascia (described as a frame), which were above the recently installed window. Water had been running down the walls. He also experienced leaks through the "wood" of the windows then forming the bay window of the living room and in the kitchen above the window then in place where its wooden frame had a large crack through which the water had come. This was notified to the Landlord's agents by e-mail of 23 December 2012.
- (e) By e-mail of 28 December 2012 Morag Benton of AB Contracts informed the Landlord's agents that following an inspection their view was that the water ingress originated from higher up than the bedroom window and was coming from the window or window cill in the third floor of the tenement. They also suggested that the pointing might be in need of repair.
- (f) The Landlord's agents then took the steps set out in their letter to the Tenant of 6 March 2013 and eventually instructed MTC Property Development Co (Aberdeen) Ltd to replace the windows in the living room and kitchen including some of the wooden fascia surrounding them. This was carried out by 15 March 2013. Within the kitchen there is now a tilt and turn UPVC double glazed window surrounded by wooden fascia. That which is vertical was replaced by MTC. In the alcove (alcove) surrounding the window, adjoining the wooden fascia in the top right corner, the wallpaper has peeled off indicative of a previous leak. There is no indication of dampness in that area. Within the living room in the corner of the room and tenement there is a bay window with three double glazed UPVC tilt and turn units. Above the window units there is a white plain plaster coving. The white paint of the coving shows significant water staining above the left window unit extending to the middle unit. The right-most unit has a vertical wooden fascia within the bay the outer or right edge of is bordered by a white decorative

beading extending vertically to the coving. The top of this edging has broken off exposing bare wall with signs of water ingress.

- (g) The Landlord owns the roof, chimney heads (but not chimney cans or pots), main and gable walls, rones, gutters, main drains, soil and water pipes of the tenement in common with the owner of the restaurant on the ground floor and five other flatted dwellinghouses in the tenement. She owns all other parts which are common or may be common to the owners of the dwellinghouses of the tenement in common with those owners entering by the common entrance door passage and stair at 70 Langstane Place. She owns the chimney pot (or can) serving the Property outright.

Reasons for Decision

15. The Committee required to decide whether the Property was wind and watertight in terms of section 13(1)(a) of the 2006 Act. "Wind and watertight" means wind and watertight against ordinary attacks of the elements and not exceptional encroachments of water due to other causes. Ordinary attacks of the elements include heavy fall of snow and heavy rain.
16. It was accepted by the Landlord that the Property had leaked water and had required works in order to make it wind and watertight. The position of the Landlord as expressed on her behalf by her agents in their letter of 26 April 2013 was that the work required to make the Property watertight had been done. That work involved the replacement of the windows in the living room and kitchen and the re-sealing of the window in the bedroom with new fascia. The Tenant contends by contrast that the leaks came through the "frames" rather than the windows and on that basis the work has not made the Property watertight. By "frames" he appears to mean the wooden fascia that surrounds the windows in their ingos (or alcoves).
17. The question for the Committee was whether following the work which had been carried out, the Property was watertight? The Committee noted that AB Contractors had suggested that the cause of the leaks had been something other than the window units themselves. The Committee observed that the water had leaked in from the ceilings of the ingoes or the wooden fascia or coving above the windows in question. The guttering of the tenement appeared to be choked with weeds. One of the chimney pots of the tenement was uncovered. There were weeds growing around it. The Committee was not able to identify the precise cause of water ingress. However it was able to conclude that water had not entered the Property through any flaw in the window units themselves or their surrounding fittings. In these circumstances since the installation of the units and their fascia were the only work that the Landlord had done, and in the exercise of their expertise, the Committee inferred and concluded that the Property was still not watertight and did not meet the repairing standard in section 13 (1) (a) of the 2006 Act.

18. The Committee noticed that the guttering above the bedroom window appeared choked. It also wondered whether further water ingress might not occur at the skew pointing, chimney heads or chimney pots. These were possible areas of water ingress. However as the Committee was not able to identify the cause and therefore the nature of the remedial works to be carried out at this stage, it proceeded to make an order requiring the investigation of the roof, flashings, skew pointing, chimney heads, including its pointing, the Landlord's chimney pot or can, the main or gable walls, including their pointing, all gutters, rones (downpipes), drains and pipes and other common parts of the tenement as well as the Property itself to allow identification of the cause of the water ingress at each of the three windows.
19. The investigation should be carried out by a person with demonstrable experience in the identification of construction or other maintenance defects in tenemental properties similar to that at 70 Langstane Place. The work recommended by this expert should then be carried out. The Committee considered the time limit for the works. Given that scaffolding might be required and there would have to be time for the investigations themselves, while taking account of the interests of the Tenant, the Committee concluded that a time limit of 3 months was appropriate.
20. The Landlords have been aware of the lack of watertightness from the Tenant's various letters in 2012 and 2013. No work to deal with any of the said breach of repairing standard which had the effect of remedying the breach was carried out within a reasonable time of the Landlord being aware that work was required to remedy said breach. The complaint concerning the draught from below the window sill in the bedroom was not made in the application nor was notice given to the Landlord or her agents before the application was made of the work required to be done to deal with that matter as required by section 22(3) of the 2006 Act. In these circumstances the Committee do not have power to consider that complaint.

Decision

21. The Committee determined that the Landlord had failed to comply with the duty imposed by section 14 (1) (b), 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: 15 July
2013.....

David Bartos, Chairperson

A Veitch

Signature of Witness... Date..15.7.13

Name of witness: ANDREW VEITCH

Address: C/O TERRA FIRMA CHAMBERS
PARLIAMENT HOUSE
EDINBURGH, EH1 1RF

Occupation of witness: DEPUTY ADVOCATES' CLERK