



## Repairing Standard Enforcement Order

### Ordered by the Private Rented Housing Committee

Re 285C Rosemount Place, Aberdeen, AB25 2YB being the subjects described in the Disposition by the executor of Graham Murdoch Calder in favour of Alexander James MacPherson and Ruth Isobel MacPherson recorded in the division of the General Register of Sasines for the County of Aberdeen on 5<sup>th</sup> July 1995 ('the Property')

#### The Parties:-

Ms Susan Hay residing formerly at 285C Rosemount Place, Aberdeen, AB25 2YB and now at 14C Short Loanings, Aberdeen, AB25 2TZ ('The Tenant')

Alexander MacPherson and Mrs Ruth MacPherson residing at Manse of Buchanan, Drymen, Glasgow, G63 0AQ ('The Landlords')

REF:PRHP/RP/15/0168

#### NOTICE TO

#### The said Alexander MacPherson and Mrs Ruth MacPherson

Whereas in terms of their decision dated 8<sup>th</sup> October 2015, the Private Rented Housing Committee determined that the Landlords have failed to comply with the duty imposed by Section 14 (1)(b) of the Housing (Scotland) Act 2006 and in particular the Landlords have failed to ensure that the installations in the Property for the supply of water, gas and electricity and for sanitation, space heating and heating water are in a reasonable state of repair and proper working order and that the fixtures and fittings and appliances provided by the Landlords under the Tenancy are in a reasonable state of repair and proper working order.

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 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 to:-

- (1) Replace the missing carpets or flooring in the kitchen and bathroom.
- (2) Repair or replace the cooker and washing machine.
- (3) Reinstate all broken and/ or loose kitchen unit doors and drawers to render the kitchen units in proper working order.
- (4) Provide a valid Gas Safety Certificate.
- (5) Provide a valid Electrical Installation Condition Report and a valid electrical PIR certificate confirming that the electrical installations in the Property (including the repaired or replaced cooker and washing machine) are in proper working order.

The Private Rented Housing Committee order that these works must be carried out and completed By 27<sup>th</sup> November 2015.

**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 are executed by Jacqui Taylor, Solicitor, Chairperson of the Private Rented Housing Committee at Irvine on 8<sup>th</sup> October 2015 before the undernoted witness:**

J Taylor

Signed..... Date 8 th October 2015

Chairperson  
K Byrne

.....witness: KEIRSTEN BYRNE, Paralegal, 65, High Street, Irvine



## Determination by Private Rented Housing Committee

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

Re 285C Rosemount Place, Aberdeen, AB25 2YB ('the Property')

#### The Parties:-

Ms Susan Hay residing formerly at 285C Rosemount Place, Aberdeen, AB25 2YB and now at 14C Short Loanings, Aberdeen, AB25 2TZ ('The Tenant')

Alexander MacPherson and Mrs Ruth MacPherson residing at Manse of Buchanan, Drymen, Glasgow, G63 0AQ ('The Landlords')

REF:PRHP/RP/15/0168

#### 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, determined that the Landlords have failed to comply with the duty imposed by Section 14 (1)(b) of the Act.

#### Background

1. By application dated 2<sup>nd</sup> June 2015 the Tenant applied to the Private Rented Housing Panel for a determination of whether the Landlords have 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 she considered that the Landlords have failed to comply with their duty to ensure that the Property meets the repairing standard. She advised that the Property is not wind and watertight and in all other respects reasonably fit for human habitation; any fixtures, fittings and appliances provided by the Landlords under the tenancy are not in a reasonable state of repair and proper working order and any furnishings provided by the Landlords under the tenancy are not capable of being used safely for the purpose for which they are designed.

In particular the application stated:-

*2.1 There is a leak in the bathroom which is contributing to dampness and mould within the Property and is potentially affecting the neighbour who lives below the rented Property. Previously Ms Hay was forced to leave the Property in May 2014 due to flooding.*

*2.2 There are missing carpets which have not yet been replaced by the Landlord.*

*2.3 The cooker and washing machine do not function reliably and, as stated by Ms Hay, often do not work at all.*



*2.4 Within the kitchen there are cupboard doors that are not securely attached.  
There are windows within the Property which are not wind and water tight at this time, resulting in draft, increasing heating costs, dampness and mould.*

*2.5 The boiler must be certified for safety.*

*2.6 Electrical furnishings must be certified for safety.*

3. The President of the Private Rented Housing Panel, having considered the application, referred the application under Section 22 (1) of the Act to a Private Rented Housing Committee.

4. The Committee members were Jacqui Taylor (Chairperson), Ian Mowatt (Surveyor Member).

5. The Tenant provided the Committee with evidence that she had notified the Landlords of the alleged defects detailed in the application.

She provided a copy of the letter dated 29<sup>th</sup> May 2014 from Calum Ogden, (Housing Adviser for Shelter Scotland and representative of the Tenant) notifying the Landlords of a number of the alleged defects. That letter referred to a mandate signed by the Tenant permitting Shelter Scotland to send the letter on her behalf. The mandate signed by the Tenant was dated 25<sup>th</sup> May 2015, therefore it is assumed that the date of the letter from Calum Ogden was in fact 29<sup>th</sup> May 2015. The alleged defects listed in the letter were:

- Leak in the bathroom.
- Missing carpets.
- The cooker and washing machine not functioning reliably.
- The windows requiring repair and
- Issues of dampness and mould.

The Tenant also provided a copy of a cheque made payable to the Landlords dated 28<sup>th</sup> November 2014. On the back of the cheque she had written:

'I have had to call S.W.E.S as there are electrical faults (again) also the guarantee for the central heating has now expired.'

Also, the Tenant provided a copy of the letter from Shelter to the Landlords dated 9<sup>th</sup> July 2015 providing further notification of the alleged defects. The email specifically stated:

'Joinery work on the kitchen cupboards and reattach'.

The Committee were satisfied that the Landlords had been given the required notification of the alleged defects.

6. The Private Rented Housing Committee served Notice of Referral under and in terms of Schedule 2, Paragraph 1 of the Act upon the parties dated 14<sup>th</sup> August 2015.

7. The Committee attended at the Property on 29<sup>th</sup> September 2015. The Property is a second floor flat in a four storey traditional granite tenement, which dates from circa 1900. There are shops on the ground floor of the tenement building. The accommodation comprises living room, one bedroom, kitchen and bathroom. The Tenant no longer resided in the Property and explained that she would be returning the keys to the Landlords shortly.

The Tenant and her representative Hamish Mackenzie, a housing adviser with Shelter were present at the inspection.

The Landlords were not present at the inspection and were not represented.

The Committee inspected the alleged defects and found as follows:-

7.1 There is a leak in the bathroom which is contributing to dampness and mould within the Property and is potentially affecting the neighbour who lives below the rented Property. Previously Ms Hay was forced to leave the Property in May 2014 due to flooding.

The floorboards in the bathroom and kitchen had been partly replaced. The Tenant advised that specialist works had been carried out to the Property in May 2014 and the floorboards had been replaced at that time. The floorboards in the bathroom and kitchen were exposed. Areas of staining were noted next to the bath and in the kitchen at the bottom of the internal wall between the kitchen and bathroom. The surveyor member of the Committee tested the stained areas with a damp meter and confirmed that the areas were dry.

7.2 There are missing carpets which have not yet been replaced by the Landlord.

There was no floor coverings in the bathroom and kitchen and the floor boards were exposed in both rooms, as previously stated.

7.3 The cooker and washing machine do not function reliably and, as stated by Ms Hay, often do not work at all.

The Tenant advised that the washing machine is faulty as it stops mid cycle. Also she explained that she did not use all the rings on the top of the cooker as some of them sparked. The Committee saw that one of the rings on the top of the cooker was bent. The Tenant also explained that she used the oven but it often over heated.

7.4 Within the kitchen there are cupboard doors that are not securely attached.

A number of doors, facings and drawers of the kitchen units were loose and not secure.

7.5 There are windows within the Property which are not wind and water tight at this time, resulting in draft, increasing heating costs, dampness and mould.

There was no evidence of defects to the windows causing leaks or draughts at the inspection.



7.6 The boiler must be certified for safety.

The Tenant explained that a new combi boiler had been installed in 2013 but she had not been provided with a gas safety certificate.

7.7 Electrical furnishings must be certified for safety.

The Tenant advised that she had had a number of electric shocks from the electric fire in the lounge and had not received an electrical safety certificate for the electrical installations in the Property from the Landlords.

Photographs were taken during the inspection and are attached as a Schedule to this report.

8. Following the inspection of the Property the Private Rented Housing Committee held a hearing in Rosemount Community Centre, Belgrave Terrace, Aberdeen. The Tenant and her representative Hamish Mackenzie attended the hearing. The Landlords were not present at the hearing and were not represented.

The Tenant and her representative advised as follows:

8.1 There is a leak in the bathroom which is contributing to dampness and mould within the Property and is potentially affecting the neighbour who lives below the rented Property. Previously Ms Hay was forced to leave the Property in May 2014 due to flooding.

The Tenant explained that the wooden floor boards were newly installed in May 2014 after Peter Cox carried out the specialist treatment works. The areas of dampness appeared after that time.

8.2 There are missing carpets which have not yet been replaced by the Landlord.

The Tenant explained that the Landlords had provided a form of underlay and carpets in the bathroom and kitchen at the commencement of the tenancy. These were disposed of at the time the specialist works were being carried out. She had replaced the carpets in the lounge, bedroom and hall and the Landlords had reimbursed the cost. She had not arranged for the carpets in the bathroom and kitchen to be replaced at that time due to the areas of dampness appearing.

8.3 The cooker and washing machine do not function reliably and, as stated by Ms Hay, often do not work at all.

The Tenant explained that the washing machine does not work properly as it does not go through a full cycle.

She also explained that the cooker does not work properly. One of the rings is bent, she has witnessed sparks from the rings and the oven sometimes overheats. Whenever she uses the oven she has to keep a close eye on it to check that the food is not burning.

She also explained that water comes from the fridge freezer and the tumble drier does not work properly. She acknowledged that these items are not detailed in the application.

8.4 Within the kitchen there are cupboard doors that are not securely attached.

The Tenant explained that the kitchen units had been broken for over two years.

8.5 There are windows within the Property which are not wind and water tight at this time, resulting in draft, increasing heating costs, dampness and mould.

The Tenant explained that seal of the kitchen window unit is defective as it leaks. When it is raining she has to place a towel on the window sill to collect the water. She also explained that the windows in the bedroom and living room are draughty.

8.6 The boiler must be certified for safety.

The Tenant explained that the central heating boiler had been installed in August 2013. It was now out with the guarantee period and she had not received a gas safety certificate.

8.7 Electrical furnishings must be certified for safety.

The Tenant advised that she was concerned that she had not been provided with an electrical safety certificate and was concerned that she had experienced an electric shock from the electric shower in the lounge, the lights in the Property regularly trip in the kitchen and bathroom and the electrical appliances seem to have faults, as she has mentioned previously.

The Tenant also confirmed that a battery operated smoke alarm had been installed in the hall by the contractors who had installed that central heating boiler.

## **9. Summary of the issues.**

The issues to be determined are:

9.1 The Property is not wind and watertight and in all other respects reasonably fit for human habitation (Section 13(1)(a) of The Housing (Scotland) Act 2006).

Whether the condition of the damp stains in the bathroom and kitchen and the condition of the windows in the Property results in the Property not being wind and water tight and in all other respects reasonably fit for human habitation.

9.2 That the fixtures, fittings and appliances provided by the Landlord under the tenancy were not in a reasonable state of repair and in proper working order (Section 13(1)(d) of The Housing (Scotland) Act 2006).

Whether the kitchen units; the floor coverings in the bathroom and kitchen; the boiler; the electrical installations; the cooker and the washing machine are in a reasonable state of repair and in proper working order.

## 10. Findings of fact

The Committee determined:

- 10.1 The Property is not wind and watertight and in all other respects reasonably fit for human habitation (Section 13(1)(a) of The Housing (Scotland) Act 2006).

The areas of staining in the kitchen and bathroom were not damp and there was no evidence at the inspection of the windows throughout the Property leaking or being draughty. Therefore the Committee determined that their condition does not result in the Property not being wind and water tight and in all other respects reasonably fit for human habitation.

- 10.2 That the fixtures, fittings and appliances provided by the Landlord under the tenancy were not in a reasonable state of repair and in proper working order (Section 13(1)(d) of The Housing (Scotland) Act 2006).

Without having sight of the gas safety certificate and electrical installation condition report the Committee were unable to determine if the boiler and electrical installations were in a reasonable state of repair and proper working order.

The Committee accepted the evidence of the Tenant to the effect that the cooker and washing machine were not in proper working order and consequently determined that they were not in a reasonable state of repair and proper working order.

The Committee determined that the broken kitchen units were not in a reasonable state of repair and proper working order.

The Committee accepted the evidence of the Tenant that the Landlords had provided carpets in the kitchen and bathroom at the commencement of the tenancy. They noted that the lease referred to carpets specified in the inventory, although no inventory had been produced. Therefore the Committee determined that the absence of the carpets in the kitchen and bathroom results in the floor coverings in these rooms not being in a reasonable state of repair and proper working order.



## **11. Decision**

The Committee accordingly determined that the Landlords have failed to comply with the duties imposed by Section 14(1(b), of the Act, as stated.

The Committee proceeded to make a Repairing Standard Enforcement Order as required by section 24(1).

12. The decision of the Committee was unanimous.

13. The Committee noted that the smoke alarm in the Property does not comply with the regulations. Whilst this matter was not part of the application and therefore cannot form part of the Repairing Standard Enforcement Order the Committee wish to draw this fact to the attention of the Landlords who should ensure that a compliant smoke alarm system is installed in the Property.

## **Right of Appeal**

**14. 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**

15. 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.

J Taylor

Signed .....

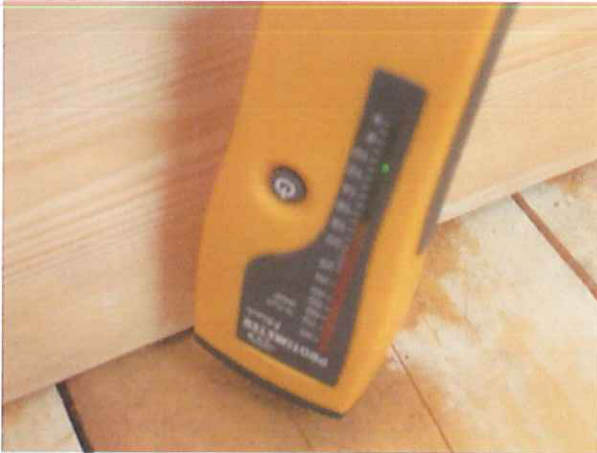
..... Date 8<sup>th</sup> October 2015

Chairperson

## Schedule Of Photographs 285c Rosemount Place Aberdeen

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J Taylor



1: Damp meter/dry damp stain kitchen floor



2: Damp meter/dry damp stain bathroom floor



3: Missing bathroom floor covering

## Schedule Of Photographs 285c Rosemount Place Aberdeen

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4: Missing kitchen floor covering



5: Defective kitchen units



6: Defective kitchen units



## Schedule Of Photographs 285c Rosemount Place Aberdeen

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7: Window unit



8: Central heating boiler