

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

**Re : Property at 78 Dean Street, Kilmarnock, KA3 1EL being the subjects registered in the Land Register of Scotland under title number AYR56961 ("the Property")**

**The Parties:-**

**Miss Lyndsay McKay, 78 Dean Street, Kilmarnock, KA3 1EL ("the Tenant")**

**Graeme Crombie Miller, Moyhall, 34 Alexandra Street, Kirkintilloch, Glasgow (represented by his agent , Clyde Lettings Limited, Ardgowan, Shore Road, Brodick, Isle of Arran, KA27 8AJ ("the Landlord"))**

**NOTICE TO**  
**Graeme Crombie Miller ("the Landlord")**

Whereas in terms of their decision dated 4th March 2008, 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:-

- (a) The house is wind and watertight and in all other 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 to carry out such works as are necessary to render the Property wind and water tight.

The Private Rented Housing Committee order that the works 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.

Signed..... **J Taylor** ..... Date..... **1/5/08** .....  
Chairperson

## **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 : Property at 78 Dean Street, Kilmarnock, KA3 1EL ("the Property")**

#### **The Parties:-**

**Miss Lyndsay McKay, 78 Dean Street, Kilmarnock, KA3 1EL ("the Tenant")**

**Graeme Crombie Miller, Moyhall, 34 Alexandra Street, Kirkintilloch, Glasgow (represented by his agent , Clyde Lettings Limited, Ardgowan, Shore Road, Brodick, isle of Arran, KA27 8AJ ("the Landlord"))**

#### **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 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 15<sup>th</sup> October 2007 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 house is wind and watertight and in all other respects reasonably fit for human habitation.
  - (b) Any fixtures, fittings and appliances provided by the landlord under the tenancy are in a reasonable state of repair and in proper working order.
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 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 written representations to the Committee by forwarding to them the following:-
  - (a) A copy of the lease of the Property.
  - (b) A copy of the email to her from the landlord's solicitors dated 19<sup>th</sup> October 2007, which stated *inter alia* '....the landlord was aware of the problems the tenant was

having with the roof and they had tradesmen estimate for the repair work. They advised that two velux windows need to be removed and the roof needs to be retiled. The work was instructed on 18<sup>th</sup> October 2007 and would take three days to complete. The landlord has arranged for a temporary repair to be carried out until the weather was suitable for the main works to commence.'

- (c) Email from the tenant to the clerk of the PRHP dated 22<sup>nd</sup> November which stated *inter alia* '...I sent the keys back to the letting agents on 29<sup>th</sup> October 2007 as I had been advised by Clyde Lettings that the repairs for the roof were to be carried out about a month ago this was while we were still living at the residence. The house was uninhabitable and unsafe for me to stay there any longer and to my knowledge the repairs still haven't been done.....'

6. Following service of the Notice of referral the Landlord made additional representations to the Committee:-

- (a) By letter dated 6<sup>th</sup> February 2008 which advised, *inter alia*:-

'We are advised that the tenant left the Property late November 2007 and has disappeared leaving a considerable amount of debt, both with the landlord, the council tax and personal loans....As a result of the vacation of the premises, our clients regard this matter as closed.'

- (b) By telephone call to the PRHP clerk they intimated that access would not be available to the committee on the morning of the scheduled inspection.

7. The Private Rented Housing Committee wrote to the landlord by letter dated 24<sup>th</sup> February 2008, restating the request for access to the Property to be made available to the Committee at 9.15am on 28<sup>th</sup> February 2008. The committee attended at the Property at 9.15am on 28<sup>th</sup> February 2008. The parties were not present and access was not available. The committee were able to view the exterior of both the front and rear of the Property. They viewed three slipped slates on the roof at the rear of the Property, close to the velux windows in the roof. One slate is sitting in the gutter.
8. Following the inspection of the Property the Private Rented Housing Committee held a hearing in Kilmarnock and heard from the Tenant. Neither the landlord nor their agents attended. The tenant submitted as follows:-

- The shower stopped working in August. On inspection she could see that two of the wires had fused together.
- The leak in the kitchen roof started in July. The leak was coming into the kitchen from close to the left hand side (as viewed from the rear) velux window. She had to move the fridge the leak was so bad. She showed the committee photographs of the damp wall underneath the window. Also a pail collecting the water.
- The landlord's contractor called at the Property in October and advised that a new roof was required and it would be an expensive job.
- Water leaked into the Property every time it rained. When you were in the bedroom upstairs you could hear the water dripping onto the kitchen floor

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

9. The issues to be determined are:-
- (a) Whether the slipped slates rendered the Property not wind and water tight or in other respects not fit for human habitation (Section 13(1)(a) of The Housing (Scotland) Act 2006.
- (b) Whether the shower is in a reasonable state of repair as required by section 13(1)(d) of The Housing (Scotland) Act 2006.

### Findings of fact

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

- The tenancy is a short assured tenancy.
- Notice to quit had not been served on the tenant and therefore the tenancy had not been lawfully determined, even although the tenant had vacated the property.
- The leak in the roof, described by the tenant, possibly emanated from the area of the roof where the slipped tiles observed by the committee were located.

### Reasons for the decision

11. The committee were satisfied from their sight of the slipped roof slates and the evidence of the tenant regarding the details of the water leak and the photographs produced by her that the property was not wind and watertight.
13. The committee were unable to make any determination regarding the shower as they were unable to gain access to the Property to view the shower.

### Decision

12. The Committee accordingly determined that the Landlord had failed to comply with the duty imposed by Section 14 (1)(b) of the Act.
13. The Committee proceeded to make a Repairing Standard Enforcement Order as required by section 24(1).
14. The decision of the Committee was unanimous.

### Right of Appeal

15. 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

16. 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 ..... **J Taylor** ..... Date..... *4<sup>th</sup> March 2008*  
Chairperson