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**Notice of Variation No.4
of
a 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 Former Tenant”)

Rachel Suzannah Gretton, Flat 3, 70 Langstane Place, Aberdeen AB11 6EN (“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”)**

The Private Rented Housing Committee having determined on 30 January 2015 that the **Repairing Standard Enforcement Order** relative to the Property dated 15 July 2013 as varied by the **Notice of Variation** issued in March 2014; by the **Notice of Variation** dated 30 January and served on or about 9 February both 2015; and by the **Notice of Variation** dated 16 September and served on or about 23 September both 2015 should be further varied, the said **Repairing Standard Enforcement Order** is **hereby varied** in the following respects :-

1. the recommendations mentioned in part (b) of the Order being those numbered 1 to 6 and 8 on page 3 of the letter from Squire Associates to Hayley Mitchell of James & George Collie dated 29 August 2014 together with the works in part (c) of the 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.



**Decision (No.4) of Private Rented Housing Committee
under Section 25 (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 25(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 Former Tenant”)

Rachel Suzannah Gretton, Flat 3, 70 Langstane Place, Aberdeen AB11 6EN (“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 varied the Repairing Standard Enforcement Order dated 15 July 2013 in respect of the Landlord and the Property as varied in March 2014, January 2015 and September 2015 by providing that the recommendations mentioned in part (b) of the Order being those numbered 1 to 6 and 8 on page 3 of the letter from Squire Associates to Hayley Mitchell of James & George Collie dated 29 August 2014 together with the works in part (c) of the Order must be carried out and completed within the period of three months from the date of service of the notice of this variation. The Committee refused to vary or partially revoke the requirement to carry out said recommendations.

Background:-

1. The Committee issued a Repairing Standard Enforcement Order (“RSEO”) in respect of the Property dated 15 July 2013. In terms of the RSEO the work in the RSEO required to be completed by the end of 3 months from the date of service of the RSEO. The tenancy having terminated after the

making of the RSEO, the Committee was entitled to enforce the RSEO despite the termination of the tenant's interest.

2. In March 2014 the Committee served a Notice of Variation of the RSEO. It required the recommendations for work to be obtained by 6 months from the date of its service. The recommendations were obtained in a report forming a letter from Squire Associates, building surveyors to James & George Collie dated 29 August 2014. That report with its recommendations is referred to for its terms which are deemed to be incorporated herein. The Landlord thus complied with part (a) of the RSEO, as varied.
5. After investigating the length of time that the work might reasonably take, in February 2015 the Committee served a further Notice of Variation of the RSEO dated 30 January 2015. In terms of that Notice the Landlord was given 6 months to carry out the work.
6. By e-mail to PRHP dated 17 August 2015 the Landlord indicated that she had received confirmation from three of the six flat owners in the tenement that they wished to go ahead with the repairs.
7. By e-mail dated 29 August 2015 to the PRHP and forwarded to the Committee on 3 September, the Landlord lodged a quotation from Richard Irvin Energy Solutions for the carrying out of the work. This quotation has two options, namely options 1 and 2. Option 1 includes work to the stairwell floor and work to windows on landings not required by the RSEO. The works in Option 2 are required by the RSEO. The Landlord did not assist the Committee with an estimated timescale for the works.
8. The Committee decided that satisfactory progress in having the works carried out had been made and made a third Notice of Variation of the RSEO. It was dated 16 September 2015 and accompanied by a statement of reasons. It was served on the Landlord on or about Wednesday 23 September 2015 and required the works to be carried out within 4 months of the date of service.
9. In paragraph 11 of the Statement of Reasons which accompanied the third Notice of Variation the Landlord and her solicitors were reminded that if there was likely to be any unexpected delay preventing completion within 4 months the Committee would expect to be informed. In that event the Landlord was strongly encouraged to make an application to vary the 4 month time limit before its expiry with full reasons.
10. The Landlord did not inform the Committee of any delay that might prevent completion by 24 January 2016. For the avoidance of doubt no e-mail was received in October 2015 from the Landlord. By e-mail dated 13 January 2016 the Committee's clerk enquired with the Landlord about the current progress of the works having regard to a possible re-inspection. The Landlord replied with an e-mail dated 18 January 2016 stating "we have

decided to go ahead with the quote I previously forwarded to yourselves from Richard Irvine [sic].”.

11. The Committee asked the Landlord for a letter of acceptance of the quote from Richard Irvin, or other written confirmation that the contract has been placed with Richard Irvin together with an estimate from that firm on when the works might be expected to begin. By e-mail to the Committee’s clerk dated 9 February 2016 the Landlord stated that she had no written confirmation and the only confirmation that she had that the contract had been placed was oral confirmation from one of the other owners in the tenement a Mr Chris Curtis who had been involved in securing the works. She would attempt to obtain the written confirmation from him. No written confirmation was provided. Instead the Committee was provided with a letter from Mr Curtis dated 9 February 2015 on Richard Irvin notepaper. From this letter it was plain that contrary to the Landlord’s understanding no contract had been placed. It also indicated difficulties in obtaining co-operation of some of the owners in the tenement and that matters required to be progressed with Aberdeen City Council.
12. Again, with a view to obtaining some information as to when works might actually begin, the Committee sought from the Landlord full information of the steps taken by her or on her behalf with Aberdeen City Council, what remained to be done in that regard and when this was expected. The Committee also sought to find out what steps had been taken under the Tenements (Scotland) Act 2004 which makes provision for the arrangement of communal repairs such as those required by the RSEO. By e-mail of 16 March 2016 the Landlord advised the Committee that she had been advised by her solicitors that the Tenements (Scotland) Act would not be of assistance.
13. The Committee insisted on finding out full information of the situation with Aberdeen City Council. By e-mail to the Committee’s clerk dated 12 April 2016 the Landlord noted that she had been working “in tandem” with Mr Curtis and that at the end of 2015 he had “temporarily taken over completely liaising between the council, property owners and the contractors”.
14. She attached an e-mail to her from Mr Curtis dated 8 April 2016 which itself attached various e-mails passing between him and Aberdeen City Council. These e-mails included one from the Council to Mr Curtis dated 19 November 2015 refusing to fund the shares of owners who were not in agreement with the works. There was not any reply to this from Mr Curtis until 22 March 2016 to which the Council had replied on the same day to Mr Curtis enclosing the procedure to be followed before the Council could pay for those shares. The latter e-mail from the Council also noted that the quotation from Richard Irvin had not been attached as apparently sought by the Council. There was no evidence of any response by Mr Curtis to the Council since 22 March 2016.

Reasons for the decision

15. Section 25(2) and (3) of the Housing (Scotland) Act 2006 provide that where the Committee consider that the work required by the RSEO has not been completed during the period within which the RSEO required the work to be completed and the committee consider that satisfactory progress has been made in carrying out the work required, the Committee must vary the RSEO so as to further extend the period for completion or in any other manner they think fit.
16. It appears to the Committee that no real progress has been made since the last variation in September 2015. This may be due to Mr Curtis failing to keep the Landlord informed of the lack of progress with the Council and to the Landlord having been advised, erroneously, that the Tenements (Scotland) Act would not be of assistance. It is unsatisfactory that communications with the Council appear to have been broke off between November 2015 and March 2016. It remains unsatisfactory that there is no evidence that the Council's procedures have been followed after contact was re-established in March 2016. In these circumstance the Committee is not obliged to vary the RSEO.
17. That being the case the Committee has a discretion to under section 25(1) of the Act to vary the RSEO in such manner as they consider reasonable or where they consider the work required by the RSEO is no longer necessary, to revoke it.
18. The Committee have no reason to believe that the work in the RSEO, namely that numbered 1 to 6 and 8 on page 3 of the Squire Associates letter to James and George Collie dated 29 August 2014 is no longer necessary. In particular – for the avoidance of any doubt - the work in Option 2 of the Richard Irvin quotation dated 27 August 2015 remains necessary. No reasons have been given why it should no longer be required. Accordingly the Committee decided not to vary or partially revoke the RSEO.
19. The question for the Committee is whether they should vary the RSEO to fix another time limit and if so what time limit should be set in varying the RSEO.
20. The Committee is conscious that the RSEO was issued in July 2013 and that the matter has been outstanding for nearly 3 years. The Committee is very disappointed at the lack of progress since the last variation. It is also disappointed at not having been kept informed of progress and at no application for a variation having been made before 24 January 2016. In these circumstances the Committee would have been minded to refuse to make a further variation.
21. Nevertheless there are mitigating features which the Committee takes into account. There has been an apparent failure by Mr Curtis to keep the Landlord informed of his lack of progress with the Council and a misunderstanding of or miscommunication by Mr Curtis on whether the contract had in fact been entered into for the works. In addition she appears

to have been advised that the Tenements (Scotland) Act may not be of assistance when the contrary is the case. Finally the e-mail from Mr Curtis of 8 April appears to show an intention to open a maintenance account which would be a concrete step forward with regard to the works.

22. In the whole matter, the Committee takes the view that it would be reasonable to vary the RSEO further to allow the work to be carried out 3 months from the service of this fourth Notice of Variation forms a reasonable timescale for the carrying out of the outstanding works in the RSEO. These include Option 2.
23. The Committee observes, in passing, that the work in Option 1 of the quotation relating to the stairwell floor and the windows to landings is not necessary in terms of the RSEO.
24. The Landlord and her solicitors are reminded, once again, that she can apply to the Committee for variation of the time limit in this decision. It is for the Landlord to ensure compliance with the RSEO. She cannot delegate this duty to comply. Equally inappropriate advice does not exclude the duty to comply with the RSEO.
25. If there is likely to be any delay preventing completion within 3 months, the Committee expects an application to vary the 3 months to be made well before the expiry of the time limit with full reasons given and an alternative estimated time of completion. Failing such an application the Landlord cannot expect any further variation of the time limit.

Decision

26. In the exercise of its discretion the Committee varied the RSEO as set out above. The decision of the Committee was unanimous.

Rights of Appeal

27. 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.
28. 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

29. 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.

- 30. 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: 27 April 2016

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David Bartos, Chairperson