



## Repairing Standard Enforcement Order

Ordered by the Private Rented Housing Committee

prhp Ref: PRHP/RP/16/0059

Re: Property at 15B Walker Lane, Torry, Aberdeen, AB11 8BW

Title No: KNC19131

**The Parties:-**

**MS IZABELA BORKIEWICZ, 15B Walker Lane, Torry, Aberdeen, AB11 8BW ("the Tenant")**

**MR GRANT WALKER, 15 Tormentil Crescent, Balmedie, Aberdeenshire AB23 8SY and MR CHRISTOPHER CLARK, 11 Tormentil Crescent, Balmedie, Aberdeenshire AB23 8SY ("the Landlords")**

**NOTICE TO MR GRANT WALKER AND MR CHRISTOPHER CLARK ("the Landlords")**

Whereas in terms of their decision dated 5 May 2016, 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 that the Landlords have failed to ensure that:-

The Property is wind and watertight and in all other respects reasonably fit for human habitation;

the Private Rented Housing Committee now requires the Landlords 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 complete the works of refurbishment to the bathroom by the installation of suitable flooring, sufficient to render it compliant with the repairing standard.

The Private Rented Housing Committee order that the works specified in this Order must be carried out and completed within the period of 3 weeks 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 are executed by Gillian Coutts Buchanan, Solicitor, Whitehall House, 33 Yeaman Shore, Dundee, DD1 4BJ, Chairperson of the Private Rented Housing Committee at Dundee on 5 May 2016 before this witness:-

J. LYNCH

G BUCHANAN

witness

Chairman

Ms Jennifer Lynch  
Secretary  
Thorntons Law LLP  
Whitehall House  
33 Yeaman Shore  
Dundee DD1 4BJ



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

**prhp Ref: PRHP/RP/16/0059**

**Re : Property at 15B Walker Lane, Torry, Aberdeen, AB11 8BW  
Land Register Title No. KNC19131 ("the Property")**

### **The Parties:-**

**Ms Izabela Borkiewicz, 15B Walker Lane, Torry, Aberdeen, AB11 8BW (represented by her agent, Ms Anna Dudeu, Golden Eagle Scotland Limited, 15A Huntly Street, Aberdeen, AB10 1TY) ("the Tenant")**

**Mr Grant Walker, 15 Tormentil Crescent, Balmedie, Aberdeenshire AB23 8SY and Mr Christopher Clark, 11 Tormentil Crescent, Balmedie, Aberdeenshire AB23 8SY ("the Landlords")**

### **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 house concerned, and taking account of the evidence led by the Landlords at the hearing (the Tenant having previously sought to withdraw her application and the Committee having determined to continue the application by Minute of Continuation dated 12 April 2016), determined that the Landlords had failed to comply with the duty imposed by Section 14(1)(b) of the Act. The committee therefore issues a Repairing Standard Enforcement Order.**

### **Background**

1. By application received on 12 February 2016 the Tenant applied to the Private Rented Housing Panel for a determination of whether the Landlords 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 Landlords had failed to comply with their duty to ensure that the house meets the repairing standard and in particular that the Landlords had failed to ensure that:-
  - (a) The Property is wind and watertight and in all respects reasonably fit for human habitation.
  - (b) Any furnishings provided by the Landlords under the tenancy are capable of being used safely for the purposes for which they are designed.
3. By letter dated 17 February 2016 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 Landlords and the Tenant.
5. Following service of the Notice of Referral the Tenant made no further written representation to the Committee other than her original application received on 12 February 2016. The Landlords (by undated letter received on 8 April 2016), made written representations to the Committee.

6. The Private Rented Housing Committee (comprising Miss G. Buchanan, Chairperson and Legal Member, and Mr M. Andrew, Surveyor Member) inspected the Property on the morning of 27 April 2016. Photographs were taken and a Schedule of Photographs is attached. The Tenant and the Landlords were present during the inspection. The Tenant was represented by Ms Anna Dudeu.
7. Following the inspection of the Property the Private Rented Housing Committee held a hearing at Credo Centre, 14-20 John Street, Aberdeen and heard from the Landlords. The Tenant did not attend and was not represented.
8. In terms of her application, the Tenant submitted as follows:-
  - (a) That work required to be carried out to the flooring in the kitchen, bathroom and living room.
  - (b) That there was mould in the whole flat which required treated.
  - (c) That the walls of the whole flat required painted.
  - (d) That the lock on the balcony required fixed.
  - (e) That the sofa supplied was wet and mouldy because of flooding.

At the inspection, the Tenant confirmed that the lock on the balcony had been fixed and that the sofa was dry and clean. The Tenant also confirmed that there were no issues affecting the bedroom.

9. The Landlords submitted as follows:-
  - (a) That there was no work required to the kitchen and living room flooring.
  - (b) That the vinyl flooring in the bathroom had been removed in around August 2015 due to being wet as a consequence of an earlier flood that had affected the flat. The Landlords had purchased new vinyl flooring for the bathroom in July 2015 but they/their fitters had been unable to obtain access to fit the flooring.
  - (c) That any mould in the flat was caused due to poor ventilation by the Tenant particularly in the kitchen, living room and bathroom.
  - (d) That in the bathroom the extractor fan was not being used.
  - (e) That the flat was not affected by damp.
  - (f) That the bathroom had been freshly painted and that no other painterwork was required.
  - (g) That the lock on the balcony had previously been repaired.
  - (h) That the sofa in the kitchen was not wet or mouldy.
  - (i) That the Tenant is not living in the flat which is believed to be occupied by her son.

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

10. The issues to be determined are:-
  - (a) Whether work was required to the flooring in the kitchen.
  - (b) Whether work was required to the flooring in the living room.

- (c) Whether work was required to the flooring in the bathroom.
- (d) Whether the flat was mouldy and, if so the cause of the mould.
- (e) Whether the walls of the flat required painted.
- (f) Whether the lock on the balcony required fixed.
- (g) Whether the sofa supplied by the Landlords was wet and mouldy.
- (h) Whether the property was wind and watertight.
- (i) Whether the property was in all respects reasonably fit for human habitation.
- (j) Whether the sofa was capable of being used safely and for the purpose for which it was designed.

### **Findings of fact**

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

- (a) That the only defect in the kitchen flooring is a very small gap between two of the laminated floor boards.
- (b) That there are no defects in the living room flooring.
- (c) That there is no flooring in the bathroom.
- (d) That there is some mould in the kitchen on the rear wall behind the sofa and near the floor.
- (e) That there is some mould in the living room on the wall adjacent to the balcony doors behind a small cabinet next to the television unit.
- (f) That the mould in the kitchen and living room is caused by poor ventilation by the Tenant.
- (g) That the flat was not affected by damp.
- (h) That the mould is not caused by dampness affecting the flat.
- (i) That the bathroom had been freshly painted.
- (j) That there are no issues affecting the bedroom.
- (k) That no other painterwork to the walls is necessary.
- (l) That the lock to the balcony had been repaired.
- (m) That the Property is wind and watertight.
- (n) That the sofa supplied by the Landlords was dry and clean.
- (o) That the sofa is capable of being used safely for the purpose for which it was designed.

## **Reasons for the decision**

12. The Property is one of two lower flats within a building comprising two lower and two upper flats. The Property comprises a small hallway, bathroom, bedroom and open plan living room and kitchen. There are patio doors leading from the living room into a small garden. There are no windows in the kitchen or bathroom. There is an extractor unit above the electric hob in the kitchen and an extractor fan in the bathroom.

At the time of the inspection there was light wind and intermittent rain.

At the inspection Ms Anna Dudeu acted as interpreter for and representative of the Tenant.

In the kitchen the Committee noted a very small gap between two of the laminated floorboards. The gap poses no hazard or health and safety concerns.

A small sofa was located against the rear wall of the kitchen. Behind the sofa and towards the corner of the rear wall near the floor was a small amount of black mould. The rear wall and adjacent surfaces were not damp. The Committee formed the view that the cause of the mould was poor ventilation by the Tenant.

In the living room, no defects with the laminated flooring were found. Near the floor on the wall behind a small shelving cabinet in the lounge adjacent to the patio doors was a small amount of black mould. The wall and adjacent surfaces were not damp. The Committee formed the view that the cause of the mould was poor ventilation by the Tenant.

The Tenant confirmed the lock on the patio doors to have been repaired and that there were no issues affecting the bedroom which was correct.

The bathroom had been painted by the Landlords only a few days previously. The paint was clean and fresh. The bathroom ceiling had previously been black with mould. There was no mould at the time of the inspection. The bathroom extractor fan was working but the Committee observed that the fan had been turned off at the ceiling switch in the bathroom cupboard adjacent to the shower so it did not automatically operate when the bathroom light was turned on. The Tenant switched on the extractor during the Committee's presence.

There was no flooring in the bathroom and that appeared to have been the case since around August 2015 when the previous vinyl flooring had been removed due to being wet as a consequence of an earlier flood. The Landlords stated that they had tried to get access for their contractor to fit the new flooring. However, in the absence of any flooring the bathroom was not reasonably fit for human habitation.

The Committee considered how long was required for the bathroom flooring to be installed and determined that 3 weeks would be sufficient.

## **Decision**

13. The Committee accordingly determined that the Landlords 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 Committee proceeded to serve notice upon Aberdeen City Council as required by section 24(6).
16. The decision of the Committee was unanimous.

### Observations of the Committee

17. During the inspection the Committee noted that there was not the required provision for detecting or giving warning of fires in contravention of section 13(1)(f) of the Housing (Scotland) Act 2006. In particular, the Committee observed there to be a smoke detector in the living room but no heat detector in the kitchen of the Property nor any smoke detector in the hallway, being a circulation space. All such detectors ought to be hardwired and interlinked.

### Right of Appeal

18. **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

19. 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.

G. BUCHANAN

Signed ..  
Chairperson

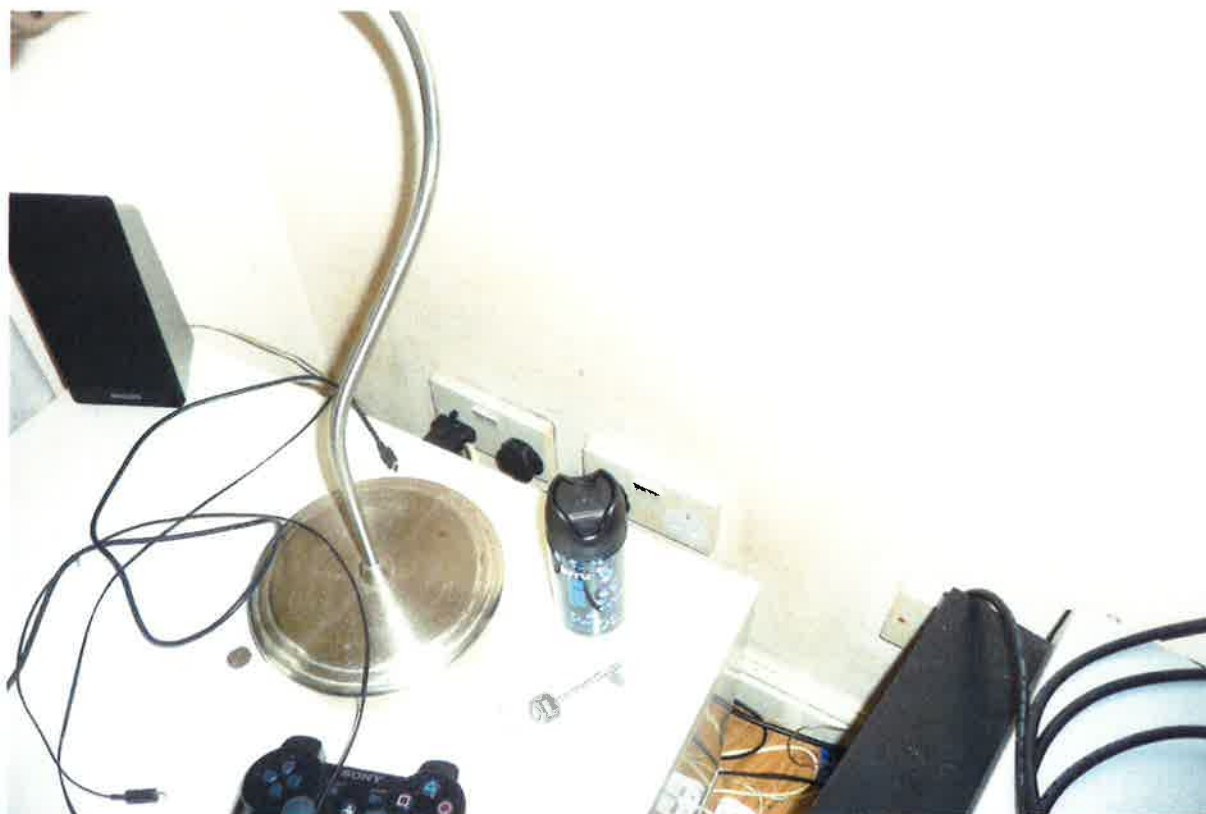


Date.....

5/15/16



Picture of mould behind sofa in kitchen



Picture of mould behind TV in living room





Picture of small crack in laminate floor in kitchen



Picture of bathroom floor





Picture of bathroom ceiling



Picture of patio doors in living room showing trickle vent