



## **Repairing Standard Enforcement Order**

**Ordered by the Private Rented Housing Committee**

**prhp Ref: PRHP/RP/16/0082**

**Re : Property at 1 Arthur Street Dunfermline KY12 0PR ("the Property")**

**Title No: FFE 18094**

**The Parties:-**

**Elizabeth Davis, c/o Fife Properties, 74A Chalmers Street Dunfermline KY12 8DG ("the Landlord")**

**Andrea Mann, 1 Arthur Street Dunfermline KY12 0PR ("the Tenant")**

### **NOTICE TO Elizabeth Davis (landlord)**

Whereas in terms of their decision dated 6<sup>th</sup> May 2016 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 ("The Act") and in particular that the landlord has FAILED to ensure that the property is:-

- (a) Wind and watertight and in all other respects fit for human habitation
- (b) the structure and exterior of the house are in a reasonable state of repair and in proper working order
- (c) any fixtures, fittings and appliances provided by the landlord under the tenancy are in a reasonable state of repair and in proper working order
- (d) has satisfactory provision for giving warning if carbon monoxide is present in a concentration that is hazardous to health

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 provide sufficient ventilation to ensure condensation can be eliminated.
- (b) To repair or replace the windows in the property to ensure they open and close freely.
- (c) To repair or replace the expelair machines in the kitchen and bathroom to ensure they are in proper working order
- (d) To repair or replace the back door and lock to ensure the door fits the frame and can be locked from inside and out.
- (e) To repair the plasterwork in the cupboard in the bedroom.
- (f) To repair or replace the kitchen units and the cooker hood to ensure they are in a reasonable state of repair and proper working order.
- (g) To install a carbon monoxide detector.
- (h) To produce gas and electrical safety certificates.

The Private Rented Housing Committee order that the works specified in this Order must be carried out and completed within the period of 12 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.

**Please note that in terms of section 28(1) of the Act, a landlord who, without reasonable excuse, fails to comply with a RSEO commits an offence liable on summary conviction to a fine not exceeding level 3 on the standard scale. A landlord (and that includes any landlord's successor in title) also commits an offence if he or she enters into a tenancy or occupancy arrangement in relation to a house at any time during which a RSEO has effect in relation to the house. This is in terms of Section 28(5) of the Act.**

In witness whereof these presents typewritten on this and the preceding pages are subscribed by Anne McCamley, Chairman of the Private Rented Housing Committee at Edinburgh on the Eleventh day of May Two Thousand and Sixteen in the presence of Murdoch McCamley, retired Chartered Accountant, 5b Wester Coates Terrace, Edinburgh.

M. MCCAMLEY

A. MCCAMLEY

(witness)

C. haerman  
Private Rented Housing Committee



**Determination**  
**Private Rented Housing Committee**  
**Statement under section 24 (1)**  
**Housing (Scotland) Act 2006**

**Property: 1 Arthur Street Dunfermline KY12 0PR**  
**Title number: FFE18094**

**Tenant: Andrea Mann 1 Arthur Street Dunfermline**  
**Landlord: Elizabeth Davis c/o Fife Properties**  
**74A Chalmers Street Dunfermline**

**Committee: Mrs A McCamley (Chairman)**  
**Mrs S. Napier (Surveyor)**  
**Inspection and Hearing: 6<sup>th</sup> May 2016**

**PRHP ref: PRHP/RP/16/0082**

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**Decision:-**

The committee, having made such enquiry as it sees fit for the purpose of determining whether or not the landlord has complied with the duty imposed by section 14(1)(b) of the Housing (Scotland) Act 2006 in relation to the property concerned, and, having taken account of the whole oral and written evidence presented by both the landlord and tenant, determines that the landlord has failed to comply with the duty imposed by section 14(1)(b) of the Act.

**Background:-**

By application received 25/2/16 the tenant applied to the Private Rented Housing Panel for a determination as to whether or not the landlord had failed to comply with the duties imposed by section 14 (1)(b) of the Act.

The application by the tenant stated she considered the landlord had failed to comply with the duty to ensure the property meets the repairing standard and brought forward the following alleged breaches:-

- a) The property suffers from significant condensation. Mould growth is evident on the walls and surrounding the windows.
  - b) The windows have been painted shut. One window which does open has a broken sash cord. Two other windows have cracked panes.
  - c) Hot pipes and wires are exposed in the kitchen
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The back door cannot be locked and is warped. It does not properly fit the doorframe.

- d) The kitchen units have broken handles, a missing drawer and two warped doors.
- e) Gas and electrical safety certificates have not been produced.
- f) There is a leak under the kitchen sink.
- g) The extractor fan above the cooker does not work.
- h) There is evidence of dampness in the porch.
- i) There is a hole in the wall/ceiling of a bedroom cupboard.
- j) There is no carbon monoxide detector.

After sundry administrative procedures the property was inspected by the committee on the morning of 6<sup>th</sup> May 2016. The tenant facilitated access and was supported by her husband. The landlord did not attend and was not represented.

Following the inspection the committee held a Hearing in the vestry of St Leonard's Church, Dunfermline. At the Hearing the tenant and her husband gave oral evidence to the committee. The committee had the opportunity to test their evidence through questioning. The landlord had indicated she would not attend the Hearing, and, although she had hoped her agent might attend, he did not. We did not commence the hearing until 11.45am just in case he had been unavoidably delayed.

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**Findings from the Inspection:-**

Having inspected the property and being guided by the surveyor member the committee makes the following findings in fact as regards the condition of the property.

- a) There is a significant level of condensation dampness in all rooms except the downstairs bedroom. Mould spore growth is evident on the walls surrounding the windows and on the window frames.
  - b) The windows have been painted shut. They cannot be opened to allow ventilation. Expelairs have been provided in the bathroom and kitchen windows however neither are in working order. Two window panes are cracked. The window sash cord in the back bedroom is broken. The windows in the downstairs bedroom were not inspected and do not form part of the allegations.
  - c) The hot pipes and exposed wires in the kitchen have been boxed in.
  - d) The back door is warped and the lock has lost the 'keeper'. As a result the door cannot be locked.
  - e) Neither gas nor electrical safety certificates could be produced.
  - f) It was evident there had been a leak from the pipe under the kitchen sink. Although there was a bucket positioned to catch any leakage we are satisfied the repair effected has been effective and currently the pipe is sealed.
  - g) The 'cooker hood' is broken. It does not 'switch on'.
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- h) The dampness in the porch is as a result of a leak from the bathroom which is directly above the porch. This leak has been rectified and we are satisfied any dampness in the porch is historic.
- i) There is a hole in the plaster work around the ceiling/wall of a bedroom cupboard.
- j) There may or may not be a carbon monoxide detector in the hallway. We cannot determine this by visual inspection but on balance we find there is not. Sight of an electrical safety report will settle the matter.
- k) The units in the kitchen are in a poor state of repair. Handles are missing or broken on 8 of the units, a drawer is missing and 2 units are warped.

#### **The Hearing:-**

The tenant and her husband submitted that the landlord had failed to carry out all the required repairs despite repeated requests. The landlord's agent would arrange times for tradesmen to call and then change the date or time with very little warning. The tenant could not

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always be available to allow access at short notice. One of the tradesmen who called admitted he had no experience in the area of work he had been instructed to repair. He confirmed was a handyman rather than a tradesman and the tenant had refused to allow him to do any work. We were shown a trail of text messages between the tenant and the landlord's agent which showed the agent trying to re arrange multiple altered appointment times because of failures on the part of tradesmen. The tenant found this very disruptive.

In written submissions the landlord told us many tradesmen had been unable to gain access and the tenant had refused access to certain workmen.

The tenant told us that both she and her son were experiencing significant respiratory problems and produced a letter from her GP confirming that she, the tenant, was troubled with breathing difficulties. The tenant believes, and is largely supported by her GP in this, that these problems are as a result of the dampness in the property which she can do nothing to alleviate.

As regards the condition of the kitchen units the landlord believes any damage is as a result of tenant misuse, explaining the units were fine when the tenant moved in. The tenant told us the units started to collapse soon after she moved in, that the handles were unstable from the start of the tenancy and the unit doors were not robust.

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The written evidence from both landlord and tenant went into details regarding a Notice to Quit, rental payments and other matters which have no bearing on the issues before the committee today.

#### Reasons for the Decision:-

In considering the repairing standard issue the committee carried out an internal and external inspection of the property and in particular closely examined the specific defects highlighted by the tenant in the application and detailed in correspondence. In addition the committee carefully considered the written documentation and oral evidence submitted.

Visual inspection of the property confirmed the presence of condensation dampness in the house. The committee considered whether the extent of the dampness was to a level which made the house 'not reasonably fit for human habitation' and to what extent the condensation may have arisen as a result of the manner in which the tenant uses the house.

In relation to these issues, the committee considered the guidance laid down in the cases of *Gunn v City of Glasgow Council* 1992 SCLR 1018, *Fyfe v Scottish Homes* 1995 SCLR 209 and *Summers v Salford Corporation* 1943 AC 283. In short, these cases establish the position

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that the comfort with which a tenant can live in a house is relevant to its fitness for habitation and that a landlord has a duty to provide a house which, in respect of heating and ventilation, can be reasonably heated to such an extent that there would be no dampness. The committee considered these cases in the context of deciding if the house meets the repairing standard laid down in section 13(1)(a) of the Act which states that the repairing standard is met if 'the house is wind and water tight and in all other respects reasonably fit for human habitation'. The committee considered the degree of condensation dampness in the house was to a level that the house could not be said to be reasonably fit for human habitation. The committee saw spore growth on the walls and window surrounds of all rooms except the downstairs bedroom. The tenant contended there has been injury to her health caused by the dampness and the presence of mould. This contention is, largely, supported by her GP. This reinforces the view of the committee that the house is not fit for human habitation.

The committee went on to consider whether the condensation dampness was due to the tenant's failure to use the house in a proper manner. This is a relevant consideration in view of section 16(1)(b) of the Act which makes it clear that the landlord's duty imposed in section 14 does not require 'any work to be carried out for which the tenant is liable by virtue of the tenants duty to use the house in a proper manner'.

The committee noted the windows have been painted shut and cannot be opened to ventilate the property. The Expelairs which have been installed in the kitchen and bathroom are not in proper working order.



The tenant submitted she heated the house properly and we have no reason to doubt her word.

Having considered the evidence, the committee did not think any blame could be attached to the tenant concerning improper use of the house, and it is the view of the committee that the problem of condensation is materially caused by the lack of permanent ventilation provision. The provision of ventilation is essential to eradicate the condensation. The tenant is unable to ventilate the property by opening the windows since these have been painted shut. Nor can she use the Expelairs which are not in working order. The tenant is not at fault as regards ventilation. The committee concluded that the landlord has failed in her duty to ensure the property meets the repairing standard detailed in section 13(1)(a) of the Act.

In relation to the windows, back door, and bedroom cupboard we found our facts as above.

Having regard to the faults we noted on our visual inspection we are satisfied the windows are not in a reasonable state of repair or in proper working order. The windows are painted shut. Two panes of glass are cracked and a sash cord is frayed. All windows should be capable of opening and closing freely, panes of glass must be in-tact and fit the frames securely. Sash cords must be in-tact. Handles are required on the windows.



The backdoor does not fit the frame and the locking mechanism does not work. The door should open and close freely and should be capable of locking from inside and outside using a key. We are satisfied the door is not in a reasonable state of repair or in proper working order.

There is a hole in the ceiling/wall of a bedroom cupboard. As a result this cupboard is not in a reasonable state of repair.

Accordingly the committee concludes that the landlord has failed in her duty to ensure the property meets the repairing standard detailed in section 13(1)(b) of the Act.

In relation to the kitchen units and the cooker hood we found our facts above. The landlord seems to attribute damage to the kitchen units to the tenant's failure to use the house in a proper manner. We have met the tenant and heard her give evidence on her own behalf. We found her to be a reliable and credible witness. She told us, that although there are a lot of people using the house, the little ones would not be in the kitchen because it would not be safe for them to be around the cooker etc and the older children are sufficiently disciplined not to cause damage. On balance we believed her, and concluded that the units have deteriorated over time as a result of normal household wear and tear which may have been prevented if the units had been promptly repaired.



In light of the foregoing we find the landlord has failed in her duty to meet the repairing standard detailed in section 13(1)(c) of the Act.

In relation to the carbon monoxide detector, the committee cannot be satisfied the unit shown to them by tenant was such a detector. The tenant is not aware of a detector having been installed. Accordingly we find the landlord has failed in her duty to ensure the property meets the repairing standard detailed in section 13(1)(g) of the Act.

**Decision:-**

The committee determines that the landlord has failed to comply with the duty imposed by section 14(1)(b) of the Act and makes a Repairing Standard Enforcement Order as required by section 24(1) of the Act.

**Right of Appeal:-**

A landlord or tenant aggrieved by the decision of the Committee may appeal to the Sheriff by summary application within 21 days of being notified of the 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 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.

A. MCCAMLEY

Chairman -  
6<sup>th</sup> May 2016.

**PRHP     Reference PRHP/RP/16/0082**

**Property – 1 ARTHUR STREET, DUNFERMLINE KY12 0PR**

**PHOTOGRAPHS OF INSPECTION 6 MAY 2016**

**Front elevation**



**Photographs of 1 Arthur Street, Dunfermline KY12 0PR**

**6 May 2016**

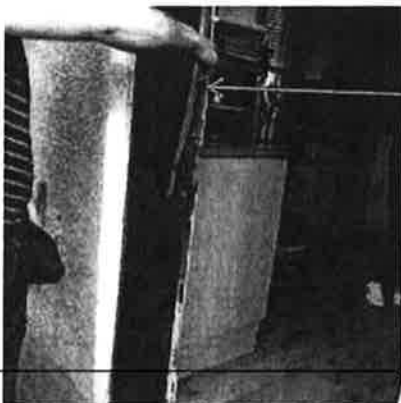
**Broken glass in Windows in two bedrooms (also showing mould growth on frames)**



**Dampness and Mould in main bedroom on window frame and on internal wall**



**External Door to rear not secure**



No lock keeper in door frame.  
Draughtproofing broken.



### **Kitchen Units falling apart**



8 door and drawer fronts broken.

Susan Napier BSocSc, FRICS  
Surveyor Member PRHP  
7 May 2016

