



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

**PRHP REFERENCE PRHP/ML6/40/13**

**Re: Second floor flat at 4 Graham Street, Airdrie ML6 6BU being the subjects registered in the Land Register of Scotland under Title Number LAN16670**

**The Parties**

**Ms. Alison Ferguson-McKillop, residing at the house (the "Tenant")**

**Mr. Arshad Mohammed residing at 126 Cairnhill Road, Airdrie, ML6 9HD (the "Landlord")**

**NOTICE TO ARSHAD MOHAMMED (the "Landlord")**

Whereas in terms of their decision dated 17 September 2013, 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 house meets the repairing standard in that:-

- (1) the house is wind and watertight and in all other respects reasonably fit for human habitation;
- (2) the structure and exterior of the house (including drains, gutters and external pipes) are in a reasonable state of repair and in proper working order;
- (3) the installations in the house for the supply of water, gas and electricity and for sanitation, space heating and heating water are in a reasonable state of repair and in proper working order.

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:

1. overhaul the roof of the larger building of which the house forms part, including properly fixing the lead flashings to the roof, cleaning out the guttering and removing all vegetation and debris and repairing the skylight in the roof, so that the roof is wind and water tight and that rainwater from the roof discharges properly into the downpipes and does not leak or overflow;
2. either remove the loose wire hanging from the hall ceiling or affix to it an operational light fitting;
3. either carry out repairs to, or replace, the middle and side-wall windows in the living room and the window in the bathroom in order to ensure that they are wind and watertight and are capable of being safely and properly opened, closed and locked. This should include the removal of all broken glass, if only single glazing is to be provided in place of existing broken double glazing;
4. remove and replace all floor timbers in the second bedroom which show signs of rot and eradicate all rot;
5. repair or replace the wooden panelling around the window in the second bedroom and ensure that the window is wind and watertight and is capable of being safely and properly opened, closed and locked;
6. re-affix the loose electrical wall-socket in the box room and make safe;
7. have the gas boiler inspected and repaired or replaced as necessary by an appropriately qualified and registered Gas Safe engineer and obtain and produce to the Tenant an up to date gas safety certificate for the appliance.

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: IN WITNESS WHEREOF these presents typewritten on this and the preceding two pages are signed by Derek William Hogg, Chairperson of the Private Rented Housing Committee, at Glasgow on the Seventeenth day of September Two Thousand and Thirteen in the presence of the undernoted witness:-

C T Miller

WITNESS.....

COLLETTE TRACEY MILLER  
45 GORDON STREET  
GLASGOW

D Hogg



**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**

**in connection with**

**Property at 4 Graham Street, Airdrie, ML6 6BU  
(hereinafter referred to as the "house")**

**PRHP REFERENCE – PRHP/ML6/40/13**

**The Parties**

**Ms. Alison Ferguson-McKillop, residing at the house (the "Tenant")**

**Mr. Arshad Mohammed residing at 126 Cairnhill Road, Airdrie, ML6 9HD (the  
"Landlord")**

**DECISION**

The Committee, having made such enquiries as is fit for the purposes of determining whether the Landlord has complied with the duty imposed by Section 14(1) (b) of the Housing (Scotland) Act 2006 (hereinafter referred to as the "Act") in relation to the house concerned, and taking account of the written documentation attached to the application and written representations submitted by the parties; and the findings at an inspection of the house, 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 9 January 2013 and acknowledged by the Private Rented Housing Panel (hereinafter referred to as "PRHP") by letter dated 8 March 2013 the Tenant applied to the PRHP for a determination of whether the Landlord had failed to comply with the duty imposed by Section 14(1)(b) of the Act. Section 14(1)(b) provides that the landlord in a tenancy must ensure that the

house meets the repairing standard set out in the Act at all times during the tenancy. The repairing standard (hereinafter referred to as the "Repairing Standard") is set out in Section 13(1) of the Act. Section 13(1) provides as follows:-

- "13(1) A house meets the repairing standard if—
- (a) the house is wind and water tight and in all other respects reasonably fit for human habitation,
  - (b) the structure and exterior of the house (including drains, gutters and external pipes) are in a reasonable state of repair and in proper working order,
  - (c) the installations in the house for the supply of water, gas and electricity and for sanitation, space heating and heating water are in a reasonable state of repair and in proper working order,
  - (d) any fixtures, fittings and appliances provided by the landlord under the tenancy are in a reasonable state of repair and in proper working order,
  - (e) any furnishings provided by the landlord under the tenancy are capable of being used safely for the purpose for which they are designed, and
  - (f) the house has satisfactory provision for detecting fires and for giving warning in the event of fire or suspected fire."

Section 13 (3) of the Act makes clear that in determining whether for the purposes of section 13(1)(b) of the Act a house meets the Repairing Standard during the tenancy regard is to be had to (a) the age, character and prospective life of the house, and (b) the locality in which the house is situated.

Section 15(1) of the Act also provides that in the case of houses which form part of larger premises (such as the present case where the house is a flat within a larger tenement block), the reference in Section 13(1)(b) to the house includes reference to any part of the larger premises which the owner of the house is responsible for maintaining, either solely or in common with others, by reference to ownership of the house, or in terms of title burdens or otherwise. Accordingly, Section 15(1) is relevant to any consideration of whether any common parts of the larger tenement of which the house forms part (such as the roof, rainwater guttering and downpipes) meet the Repairing Standard.

- 1.2. The application was submitted to the PRHP for and on behalf of the Tenant by her solicitors, McWhinney Richards. The application by the Tenant stated that the Tenant considered that the Landlord had failed to comply with the duty to ensure that the house meets the Repairing Standard and that the Landlord had failed to ensure compliance with Sections 13(1)(a), (b), (c), (d) and (e) of the Act.
- 1.3 The matters complained of by the Tenant were as follows:-
  - 1.3.1 repairs undertaken by the Landlord to the ceiling of the hallway in the house, following the ceiling having collapsed in June 2012, had not been undertaken adequately, including there being a bare electrical wire hanging from the ceiling;
  - 1.3.2 there is a gap in the skylight in the roof immediately above the hall ceiling, which admits rainwater;
  - 1.3.3 the attic hatch in the hall is defective, with the wooden frame hanging loose and not fitting properly;
  - 1.3.4 the windows in the living room, bathroom and spare bedroom admit draughts and the ingress of water;
  - 1.3.5 the floorboards under the window in the spare bedroom are damp and rotting;
  - 1.3.6 bare electrical wires are present in the box room at an electrical socket;
  - 1.3.7 the gas-fire hot water boiler in the kitchen does not work, following it having been turned off on safety grounds by a Scotland Gas Networks engineer (this situation occurred subsequent to the submission of the Tenant's application to the PRHP but was intimated to the Landlord and was included in the referral by the President of the PRHP to the aftermentioned Committee).
2. The Tenant, through her solicitors, submitted evidence of notification of the disrepair complained of by recorded delivery post. A copy of the tenancy agreement was submitted as a production.
3. By letter dated 23 May 2013 the President of the PRHP intimated a decision to refer the application under Section 23(1) of the Act to a Private Rented Housing Committee (hereinafter referred to as the "Committee").

The Committee comprised the following members:

Mr. Derek Hogg, Legal Member  
Ms. Sara Hesp, Surveyor Member

Ms. Susan Brown, Housing Member

4. The Committee served Notice of Referral under and in terms of Schedule 2 Paragraph 1 of the Act upon the Landlord. Following service of that notice, written representations were submitted by the Landlord and by the Tenant's solicitors on her behalf. Both the Tenant and the Landlord indicated that they did not wish to attend a hearing.
5. The Committee inspected the house on the morning of 27 August 2013. The Tenant was present as was her support worker, John Quinn of Lanarkshire Association for Mental Health. The Landlord did not attend the inspection and was not represented.
6. Following the said inspection the Committee held a hearing at the PRHP offices at the Europa Building, 450 Argyle Street, Glasgow. Neither the Tenant nor the Landlord attended the hearing, nor were they represented by any third party. The Committee considered the findings from the inspection, representations and productions and made their determination of the application.

#### **Tenant's representations**

7. In the written submission made by McWhinney Richards on behalf of the Tenant, the complaints of disrepair set out in the Tenant's application to the PRHP were reiterated. It was explained that the house was regularly suffering from leaks and water ingress, with the Tenant having to place buckets and other receptacles around the house in order to collect the rainwater. In relation to the boiler, the Tenant had telephoned Scotland Gas Networks on 23 November 2012 after feeling dizzy and experiencing other symptoms of carbon monoxide poisoning. Scotland Gas Networks attended the house and turned the boiler off due to concerns about the safety of the appliance. As a result of the boiler continuing to be non-operational, the Tenant had no other means of heating water and was having to bathe in cold water.

#### **Landlord's representations**

8. In his written representations, the Landlord indicated that he had no difficulty undertaking repair work, but that he had not been able to gain access to the house for his tradesmen, despite various attempts to organise access via McWhinney Richards.

### **Summary of the issues**

9. The issue to be determined is whether the house meets the Repairing Standard as laid down in Section 13 of the Act and whether the Landlord had complied with the duty imposed by Section 14(1) (b).

### **Findings in Fact**

10. The Committee made the following findings in fact:-
  - 10.1. On 12 October 2012 the Tenant entered into a lease with the Landlord for the let of the house. The Tenant occupied the house by virtue of a short assured tenancy in terms of the Housing (Scotland) Act 1988. The provisions outlined in Chapter 4 of the Act apply. The Tenant remained in occupation of the house at the time of the inspection.
  - 10.2. Whilst in occupation of the house, the Tenant notified the Landlord of the required works to the house and submitted an application to the PRHP on 9 January 2013.
  - 10.3. The Committee confined their inspection to the complaints in the Tenant's application. The inspection by the Committee on 27 August 2013 revealed:-
    - 10.3.1 the house comprises a second floor flat within a stone - built tenement, with the ground floor being occupied by a sandwich shop and with the first floor being occupied by a jewellers business. The house is accessed by way of a common stair;
    - 10.3.2 repairs had previously been undertaken by the Landlord to the ceiling in the hallway of the house, following the collapse of the previous hall ceiling. The plaster work appeared to be adequate, albeit it had not been redecorated, but an electrical wire was hanging from the new ceiling with no light fitting having been re-fitted to it. The hatch in the ceiling which gives access to the roof of the building is permanently open, with no door or sliding panel available to close off the house from the roof void. The skylight in the roof, which is located directly above the hatch, contains a transparent perspex panel which does not fit properly within its frame, leaving a gap of a few millimetres through which rainwater can enter;

- 10.3.3 the window in the bathroom consists of a double-glazed unit, but only contains one pane of glass, the external pane having been smashed at some point, leaving jagged fragments of broken glass. The window frame is badly fitting and admits water and draughts, which the Tenant has sought to combat by attempting to fill the gaps with a variety of materials;
- 10.3.4 the window in the front or main bedroom did not appear to leak or admit draughts, although it was noted that it had no handle attached to it and so was difficult to open and close;
- 10.3.5 two of the three windows in the living room - the middle window and the one in the side wall - were in a poor state of repair. The middle window, while originally a double-glazed unit, only contained one pane of glass, with the external second pane having been smashed, leaving only some jagged splinters of glass. The tilt and turn mechanism did not operate. The window in the side wall had been permanently closed with screws and did not fit properly within its frame and was draughty. That window also had no handle;
- 10.3.6 the ceiling and cornice work in the living room was badly damaged and cracked at various places and showed signs of water damage;
- 10.3.7 in the box room, an electrical wall socket was loose and badly fitted, with exposed wiring;
- 10.3.8 in the second bedroom, while the double glazed window unit appeared to be satisfactory, there were clear signs of water ingress and staining to the wooden panelling surrounding the window. The floor boards in the area below the window showed extensive signs of wet rot and were loose and broken;
- 10.3.9 the boiler in the kitchen was not operational at the time of inspection, having been turned off by a Gas Safe engineer on safety grounds. At the inspection, the Tenant indicated that the Landlord had never provided her with a gas safety certificate for the boiler and that she could not recollect the boiler ever having been inspected on behalf of the Landlord during the period of the tenancy;
- 10.3.10 a ground-level inspection of the roof of the building of which the house forms part showed vegetation growing at various points in the guttering and that the lead flashing was not properly fixed around the perimeter of the roof.

## Reasons for the Decision

11. The Committee carried out an inspection of the house and in particular, closely examined the specified defects complained of by the Tenant. The Committee based its decision primarily on the evidence obtained during its inspection of the house. Based upon its findings, the Committee concluded that the house suffered from various defects and that the Tenant's complaints were well-founded. It was clear that the house suffers from water ingress through various windows and window surrounds as well as from the badly-fitting roof light in the attic. The Committee also considered it probable that the lead flashings on the roof and the vegetation in the guttering were contributing to the problems of water ingress. Several of the windows within the house were clearly not fit for purpose, in terms of being wind and watertight or being capable of being safely open and closed. The lack of a safe and properly-operating boiler and an accompanying gas safety certificate was of particular concern. The Committee felt considerable sympathy with the Tenant, who had not had the benefit of hot water for many months.
12. The Committee concluded that the absence of a door or panel on the attic hatch to block off the roof void did not mean that the house failed to meet the Repairing Standard. As an observation, however, the Committee noted that it would be preferable if the attic hatch was closed off, in order to fully separate the house from the roof void above, and that it would not be difficult for the Landlord to do that while attending to other works to the house.
13. While the Committee noted from the Landlord's written representations that he indicated that he had not been able to organise access to the house in order to undertake repair work, this is not something which is relevant to the Committee's decision on whether the house does or does not comply with the Repairing Standard. Section 16(4) of the Act provides that a landlord is not to be treated as having failed to comply with the repairing duty imposed by section 14(1) where the purported failure occurred only because the landlord lacked necessary rights (of access or otherwise) despite having taken reasonable steps for the purposes of acquiring those rights. However, section 181(4) of the Act gives a landlord, or someone authorised by him, the right to enter the house both (a) for the purpose of viewing its state and condition for the purpose of determining whether the house meets the repairing standard, and (b) in order to carry out any work which is necessary to comply with the landlord's repairing duty or to comply with a repairing standard enforcement order. The Committee also noted that in terms of the short assured tenancy agreement which the parties entered into that the Landlord did reserve rights of access to the house

for any proper purpose, subject to giving the tenant notice. The Landlord does not therefore lack necessary rights of access, although clearly the issue of enforcing these rights is a separate matter. In relation to access, the Committee also felt it worthwhile to remind the Tenant of the obvious point that, unless workmen instructed by the Landlord are afforded appropriate access to the house by prior arrangement, then the period during which the Tenant suffers because of disrepair will be longer than otherwise it might be.

### Decision

14. The Committee, considering the terms of Section 13(3) of the Act, determined that the Landlord had failed to comply with the duty imposed by Section 14(1)(b) of the Act.
15. The Committee found that the house does not meet the Repairing Standard in that:-
  - 15.1 the condition of the skylight, rainwater guttering and lead flashing on the roof of the larger building of which the house forms part; the condition of the windows in the living room, bathroom and second bedroom and the frames surrounding these windows; and the presence of wet rot in the floorboards of the second bedroom means that the house is not wind and watertight and reasonably fit for human habitation. Accordingly the house does not meet the Repairing Standard laid down in Section 13(1)(a) which states that the Repairing Standard is met if the house is wind and watertight and in all other respects reasonably fit for human habitation;
  - 15.2 the condition of the windows referred to above and the roof skylight, lead flashing and rainwater guttering do not meet the Repairing Standard laid down in Section 13(1)(b) which states that the structure and exterior of the house (including drains, gutters and external pipes) are in a reasonable state of repair and in proper working order;
  - 15.3 the absence of a gas safety certificate for the boiler and the fact that it had been turned off on safety grounds, as well as the loose wall-socket in the box room and the bare wire hanging from the hall ceiling means that the house does not meet the Repairing Standard laid down in Section 13(1)(c) of the Act which states that the installations in the house for the supply of water, gas and electricity and for sanitation, space heating and heating water are in a reasonable state of repair and in proper working order.

16. The Committee proceeded to make a Repairing Standard Enforcement Order as required by Section 24(2).
17. The Committee were of the view that the Landlord would require to:
  - 17.1. overhaul the roof of the larger building of which the house forms part, including properly fixing the lead flashings to the roof, cleaning out the guttering and removing all vegetation and debris and repairing the skylight in the roof, so that the roof is wind and water tight and that rainwater from the roof discharges properly into the downpipes and does not leak or overflow;
  - 17.2. either remove the loose wire hanging from the hall ceiling or affix to it an operational light fitting;
  - 17.3. either carry out repairs to, or replace, the middle and side-wall windows in the living room and the window in the bathroom in order to ensure that they are wind and watertight and are capable of being safely and properly opened, closed and locked. This should include the removal of all broken glass, if only single glazing is to be provided in place of existing broken double glazing;
  - 17.4. remove and replace all floor timbers in the second bedroom which show signs of rot and eradicate all rot;
  - 17.5. repair or replace the wooden panelling around the window in the second bedroom and ensure that the window is wind and watertight and is capable of being safely and properly opened, closed and locked;
  - 17.6. re-affix the loose electrical wall-socket in the box room and make safe;
  - 17.7. have the gas boiler inspected and repaired or replaced as necessary by an appropriately qualified and registered Gas Safe engineer and obtain and produce to the Tenant an up to date gas safety certificate for the appliance.
18. The Committee also recommends the installation of a carbon monoxide detector, given the complaints of the Tenant in relation to the boiler which led to it being turned off, although the Committee recognises that the provision of carbon monoxide detectors are not currently mandatory and so this is only a recommendation and will not form part of the aftermentioned Repairing Standard Enforcement Order.
19. The Landlord is also reminded that Section 14(2) of the Act makes clear that the landlord's duty in terms of Section 14(1) of the Act to ensure that the house meets the Repairing Standard includes a duty to make good any damage

caused to the house by carrying out any work for the purposes of complying with the Section 14(1) duty.

20. The Committee considered how long the Landlord would require to carry out the works in the circumstances. The Committee were of the view that twelve weeks would be sufficient in which to have all of the works undertaken. The Committee did feel strongly that the gas boiler should be inspected and repaired or replaced so as to be put into proper working order, and a gas safety certificate obtained, as a matter of some urgency, having regard to the safety of the Tenant and her ongoing lack of hot water and so, while the time limit being set by the Committee relates to completion of all of the required works, the Landlord is urged to attend to the boiler as soon as possible.
21. The decision of the Committee was unanimous.

### **Right of Appeal**

22. 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**

23. 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.

**D Hogg**

Derek Hogg

Chairperson, 17 September 2013