



## **Repairing Standard Enforcement Order**

### **Ordered by the Private Rented Housing Committee**

References: PRHP/RP/16/0178

Re property at: ALL and WHOLE those 437.79 square metres of ground with house 11 Mearsdale Drive, Moffat, known as 11 Mearsdale Drive, Moffat, DG10 9JB, being the subjects more particularly described in the Disposition by Annandale District Council in favour of William Armit and Jean Govan Armit and recorded in the Division of the General Register of Sasines applicable to the County of Dumfries on the eighth March Nineteen ninety six ("the Property")

The Parties:-

Mr Andrew McGill, formerly residing at 149 Carlisle Road, Crawford, Biggar, and now residing at 21 Queen Street, Lochmabon, Dumfriesshire, DG11 1PP ("the Landlord")

And

Mr John Warner & Mrs Anne Warner, 11 Mearsdale Drive, Moffat, DG10 9JB ("the Tenants")

And

Heather Warner, 29 Smith Way, Beattock, Moffat, DG10 9QH ("the Tenants' Representative")

Lynne Davies, Dumfries & Galloway Citizens Advice Service, 81/85 Irish Street, Dumfries, DG1 2PQ

#### **NOTICE TO**

**Mr Andrew McGill, residing at 21 Queen Street, Lochmaben, Dumfriesshire, DG11 1PP 4LZ  
("the Landlord")**

Whereas in terms of their decision dated 3 October 2016, the Private Rented Housing Committee ("the 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:-

- (a) The Property is wind and water tight and in all other respects reasonably fit for human habitation.
- (b) The structure and exterior of the Property (including the drains, gutters and external pipes) are in a reasonable state of repair and in proper working order (Section 13 (1) (b)).

- (c) The installations in the Property 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 Committee now requires the Landlord to carry out such work as is necessary for the purposes of ensuring that the Property 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 Committee requires the Landlord to:-

- (a) Carry out such works as are necessary to ensure that the windows within the living room of the Property are in a reasonable state of repair and in proper working order, and to further ensure that the Property is wind and watertight and in all other respects reasonably fit for human habitation.
- (b) Carry out such works as were necessary to repair and/or renew the porch so that it was in a reasonable state of repair and in proper working order, and so that the Property is fully wind and watertight and in all other respects reasonably fit for human habitation.
- (c) Carry out such works as are necessary to the gutters at the Property so that they are brought to a reasonable state of repair and in proper working order.
- (d) Carry out such works as are necessary to the system for heating water at the Property so that the system is brought to a reasonable state of repair and in proper working order.

The Committee order that the works specified in this Order must be carried out and completed within the period of 4 weeks from the date of service of this Notice.

**A Landlord or a Tenant aggrieved by the decision of the 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 type written on this page and the two preceding pages only are executed by Andrew Cowan, chairperson of the Private Rented Housing Committee at Glasgow on 4 October 2016 before this witness:-

**A Cowan**

Signed  
Andrew Cowan, Chairperson

**L McManus**

.....Witness  
Laura McManus, Secretary, 7 West George Street, Glasgow, G2 1BA



**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**

References: PRHP/RP/16/0178

("the Property") ALL and WHOLE those 437.79 square metres of ground with house 11 Mearsdale Drive, Moffat, known as 11 Mearsdale Drive, Moffat, DG10 9JB, being the subjects more particularly described in the Disposition by Annandale District Council in favour of William Armit and Jean Govan Armit and recorded in the Division of the General Register of Sasines applicable to the County of Dumfries on the eighth March Nineteen ninety six ("the Property")

The Parties:-

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And

Mr John Warner & Mrs Anne Warner, 11 Mearsdale Drive, Moffat, DG10 9JB ("the Tenants")

And

Lynne Davies, Dumfries & Galloway Citizens Advice Service, 81/85 Irish Street, Dumfries, DG1 2PQ ("the Tenants' Representative")

**Decision**

The Private Rented Housing Committee ("the Committee"), having made such enquiries as it saw fit for the purpose of determining whether the Landlord has complied with the duty imposed by Section 14 (1)(b) of the Housing (Scotland) Act 2006 ("the Act") in relation to the Property concerned and, taking account of the evidence led by the Tenants at the hearing, determined that the Landlord has failed to comply with the duty imposed by Section 14 (1)(b) of the Act.

**Committee Members**

Andrew Cowan – Chairperson

Kingsley Bruce – Surveyor Member

**Background**

1. By an application received by the Private Rented Housing Panel ("the Panel") on 4 May 2016, the Tenants applied to the Panel for a determination as to whether the Landlord has failed to comply with the duties imposed by Section 14 (1)(b) of the Act.
2. The application by the Tenants stated that the Tenants considered that the Landlord has failed to comply with his duty to ensure that the Property meets the repairing standard at all times during the tenancy (as required by Section 14 (1)(b) of the Act).
3. The Tenants have listed in their application a summary of how they consider the Landlord has failed to meet the repairing standard and have further stated details of the nature of the work which they consider requires to be completed by the Landlord to ensure that the Property meets the repairing standard.
4. A summary of the alleged breaches of the repairing standard are:-
  - (a) Rubber window seals falling off;
  - (b) Loose glazing in exterior of sitting room windows;
  - (c) Broken and loose gutter joints;
  - (d) The woodwork in the porch is rotten;
  - (e) Dampness in bedroom; and
  - (f) No thermostat resulting in extremely hot water.

5. By letter dated 4 May 2016, the President of the Panel intimated a decision to refer the application under Section 22(1) of the Act to a Private Rented Housing Committee.
6. The Committee served a notice of referral dated 4 August 2016, under Section 22(1) of the Act on the Landlord, the Tenants' Representative and the Tenants.
7. In terms of the said notice of referral, parties were advised that the Committee intended to inspect the Property on 15 September 2016 at 10am and to thereafter hold a hearing in relation to the application, on the same date, at Moffat Town Hall, High Street, Moffat, DG10 9HF at 11am.
8. By email dated 11 September 2016, the Landlord advised the Panel that he would not be attending the inspection or the hearing which had been fixed for 15 September 2016. The Landlord acknowledged in his email that the property required repairs, but that he was not prepared to start work due to what he perceived as the attitude of the Tenants.
9. The Committee proceeded with the inspection on 15 September 2016. The Committee attended at the Property and carried out a visual inspection of the Property. The Tenants were present during the inspection. The Landlord did not attend the inspection of the Property.
10. Photographs were taken during the inspection by the Committee. Copies of the photographs taken by the Committee are attached as a schedule to this report.

### **The Inspection**

11. At the inspection the Committee noted the following points:-
  - (a) the Committee noted that the windows in the living room of the Property were in need of maintenance and repair. In particular, the seal between the window frame and the window casement was ineffective. Rubberised foam tape had

been applied to the window frame, but this rubberised foam had detached and was not effective. Adjustment or repair of the opening mechanism was required. The windows had loose external glazing bars. The Committee further noted that all windows throughout the Property were in need of general maintenance, and repair to ensure that the house was wind and watertight and in all other respects fit for human habitation.

- (b) the Committee noted that there was an area of localised dampness which was located in the main bedroom of the Property. This particular area was on a cold outer wall and the Committee could not see any evidence that there was any particular structural defect which would cause that particular dampness. The Committee formed the view that, given the age, character and prospective life of the house, together with the location of the bed which restricted airflow, the cause of the dampness was not a structural defect, but was localised condensation. and was not an issue which the Landlord could be reasonably expected to address.
- (c) The Committee noted that there was some minor cracking in the ceiling of the hallway of the Property, and around the area of the kitchen door. The Committee were of the view that this minor cracking was not of a structural nature and was commensurate with the age, character and prospective life of the Property.
- (d) There is a wooden porch at the rear of the Property. Much of the timber around the windows of the porch was decayed or rotten and the main door leading into the porch was rotten at the bottom part. A rain water down pipe is missing and it was evident to the Committee that the porch structure was not wind and watertight.

- (e) The Committee noted that the gutters at the rear of the Property were in a poor condition and in need of maintenance. There was extensive vegetation growing from part of the guttering.
- (f) The Committee noted that the heating and hot water in the Property were controlled by one central thermostat. There were no separate controls for controlling the hot water temperature within the Property.

### **The Hearing**

- 12. The Committee had advised the Landlord and the Tenants that they intended to hold a hearing in relation to the application following upon their inspection of the property at Moffat Town Hall, High Street, Moffat, DG10 9HF at 11am. The Tenants, together with Lynne Davies, of Dumfries & Galloway Citizens Advice Service attended the hearing. The Landlord did not attend the hearing.
- 13. At the hearing the Committee discussed their findings from their own inspection of the Property.
- 14. The Tenants gave evidence that the windows in the living room were of a particular concern to them. Their evidence was that strong draughts came through the windows as there was not a sufficient seal between the window and the window casements.
- 15. The Tenants gave further evidence that the porch was not wind and watertight as it leaked in wet weather and it was, in their view, not in a reasonable state of repair as large parts of the wooden porch structure were rotten in places.
- 16. The Tenants gave evidence that they were unable to control the temperature of the hot water at the Property. They gave evidence that the water was heated by a back boiler and that the water temperature was excessive, such that it was the Tenant's view that the hot water was not capable



of being safely used as they could not even put their hands under the water as it was an excessive temperature.

### **Decision**

17. Having inspected the Property and having considered the evidence which had been provided in writing by the Tenants and the Landlord and, further considering the oral evidence of the Tenants at the hearing, the Committee determined as follows:-

- (a) The living room window within the Property, being part of the structure and exterior of the house, is not in a reasonable state of repair and in proper working order. The window does not provide a wind and watertight seal and requires further adjustment so that it may close properly. External glazing bars were found to be loose and in need of repair. The Committee, accordingly, determined that the living room windows at the Property do not meet the repairing standard and accordingly directs that the Landlord should carry out such works as are necessary to ensure that the living room windows within the Property are in a reasonable state of repair and in proper working order, and to further ensure that the Property is wind and watertight and in all other respects reasonably fit for human habitation.
  
- (b) The Committee noted that the dampness of which the Tenants had complained in the bedroom was not of a structural nature and was likely to be caused by a lack of flow of air behind the bed which was located against the wall at the site of the localised dampness the likely cause of which was condensation. The Committee did not consider that there was a failure of the repairing standard in relation to that particular matter.

- (c) The Committee considered that the minor cracking which was visible within the hallway and around the kitchen door of the Property was not structural and that there was no failure of the repairing standard in relation to that particular issue.
  
- (d) The Committee determined that the rear porch of the Property was part of the structure and exterior of the Property. The Committee further determined that the porch was not in a reasonable state of repair and in proper working order. Further, the Committee determined that the porch, being part of the Property, was not wind and watertight and in all other respects reasonably fit for human habitation. The Committee, accordingly, determined that the Landlord should be required to carry out such works as were necessary to repair and/or renew the porch so that it was in a reasonable state of repair and in proper working order, and so that the Property was fully wind and watertight and in all other respects reasonably fit for human habitation.
  
- (e) The Committee determined that the guttering at the rear of the Property was not in a reasonable state of repair and in proper working order. The Committee, accordingly, determined that the Landlord should carry out such works as are necessary to the gutters at the Property so that they were brought to a reasonable state of repair and in proper working order.
  
- (f) The Committee determined that the system for heating water in the property was not in a reasonable state of repair and in proper working order. The Committee, accordingly, determined that the Landlord should carry out such works as are necessary so that the hot water system is brought to a reasonable state of repair and in proper working order.

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

### Right of Appeal

20. 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 that decision.

### Effect of section 63

21. 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.

# A Cowan

Signed  
Andrew Cowan, Chairperson

Date 4 October 2016

# L McManus

Witness

Laura McManus, Secretary, 7 West George Street, Glasgow, G2 1BA

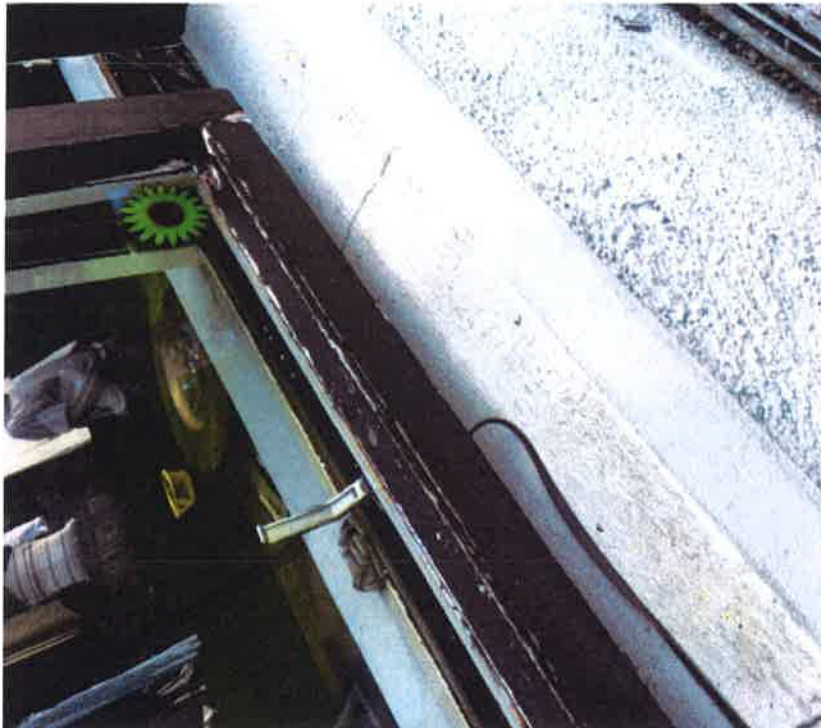


Schedule of photographs taken during the inspection of 11 Mearsdale Drive, Moffat, DG10 9JB, by the Private Rented Housing Committee on 15 September 2016.

Reference Number: PRHP/RP/16/0178



K Bruce

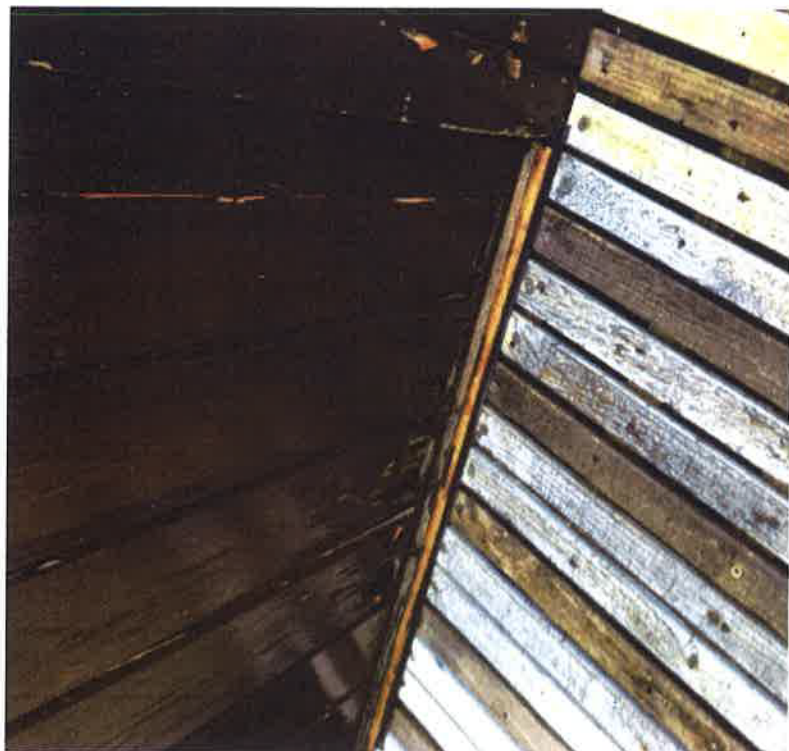


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