



**REPAIRING STANDARD ENFORCEMENT ORDER**  
**Ordered by the Private Rented Housing Committee**

**Re: Property at 40 Findlay Street, Rosyth, KY11 2RF registered on 22 April 2009 in the Land Register under Title Number FFE11918 ("the House")**

**In connection with**

**Property at 40 Findlay Street, Rosyth, KY11 2RF ("the House")**

**The parties:**

**Ms Sharen Tallis, residing at the House ("the Tenant")**

**and**

**Ehsanel Haq Anwar, 7 Queen Margaret Fauld, Dunfermline, KY12 0UY ("the Landlord")**

**PRHP REFERENCE PRHP/RP/16/0194**

**NOTICE TO EHSANEL HAQ ANWAR**

**WHEREAS** in terms of their decision dated 29 July 2016 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 and in particular that the Landlord has failed to ensure that the House meets the repairing standard in that:

*"(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...are in a reasonable state of repair and in proper working order; and*

*(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"*

The Committee now requires the landlord to carry out such work as is necessary for the purposes of ensuring that the House 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:

1. To eliminate all water ingress into the House, in particular in relation to bedrooms 1 and 2 as referred to in the Committee decision and repair all damp staining in the said bedrooms;
2. Repair or replace all windows to the House so as to ensure that they are draught proof;
3. Repair or replace the front door to the House so as to eliminate draughts;
4. Provide the Committee with a copy of an up to date Electrical Installation Condition Report containing no C2 or C3 recommendations in respect of the House.

The Committee order that the works specified in this Order must be carried out and completed within four calendar months from the date of service of this Notice and for written proof of having done so to be supplied to the Private Rented Housing Panel.

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 the decision.

Where such an appeal is made, the effect of the decision and 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 two pages are signed by Maurice O'Carroll, Chairperson of the Private Rented Housing Committee at Edinburgh on the twenty ninth day of July, two thousand and sixteen in the presence of the undernoted witness:

Chairperson **M O'Carroll**

Witness **E Potter**

Name in full: Emma Potter

Occupation: Advocates Clerk

Witness Address:

Advocates' Library, Parliament House, Edinburgh  
EH1 1RF



**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 40 Findlay Street, Rosyth, KY11 2RF ("the House")**

**The parties:**

**Ms Sharen Tallis, residing at the House ("the Tenant")**

**and**

**Ehsanel Haq Anwar, 7 Queen Margaret Fould, Dunfermline, KY12 0UY ("the Landlord")**

**PRHP REFERENCE PRHP/RP/16/0194**

**DECISION**

The Committee having made such enquiries as are 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 ("the Act") in relation to the House, and having taken account of the evidence led at the hearing and of the written documentation attached to the application and submitted by the parties, has made the following decision:

It has determined that the Landlord has failed to comply with the duty imposed by section 14(1)(b) of the Act.

The decision was unanimous.

**Background**

By application received on 13 May 2016 (the "Application") the Tenant applied to the Private Rented Housing Panel ("PRHP") for a determination of whether the

Landlord had failed to comply with the duties imposed by section 14(1)(b) of the Act.

The Application 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 in particular that the Landlords had failed to ensure compliance with the following paragraph of section 13(1) of the Act:

- “(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...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 capable of being used safely for the purpose for which they are designed; ...*
- (f) the house has satisfactory provision for detecting fires and for giving warning in the event of fire or suspected fire; ...and*
- (g) the house has satisfactory provision for giving warning if carbon monoxide is present in a concentration that is hazardous to health.”*

Notices of Referral to a Private Rented Housing Committee under section 23(1) of the Act were sent to the parties on 20 June 2016, following a decision to refer made by the President on 7 June 2016.

The Committee comprised the following members:

Maurice O'Carroll, Chairperson  
David Lawrie, Surveyor Member  
Mary-Claire Kelly, Legal member (observing)

The Committee inspected the House at 10am on Wednesday 27 July 2016. The Tenant was present at the inspection. Also present were the Landlord and a colleague, Mr Amjid Ali.

Following the inspection, the Committee held a hearing at 11am at St Leonards Church Hall, Dunfermline. The Tenant was present accompanied by a representative from Fife Council Housing Department, Ms Sharon Morrison. Mr Ali and the Landlord were also present at the hearing. The Committee considered the written evidence submitted by the parties and heard representations from the parties.

### **Summary of the Issues**

The issue to be determined is whether (1) the House meets the repairing standard as laid down in section 13(1)(b) and (d) of the Act and therefore (2) whether the Landlord has complied with the duty imposed by section 14 (1)(b).

## Evidence at the Hearing

Ms Morrison confirmed that she had sent a letter dated 18 December 2015 to the Landlord notifying him of the defects within the House that required to be rectified.

The Tenant confirmed that certain works had been carried out shortly prior to the inspection as follows:

- (i) linked, mains operated smoke alarms had been fitted in the hallway, living room and kitchen of the House;
- (ii) a carbon monoxide detector and heat sensor had been fitted within the kitchen;
- (iii) the kitchen cabinets and drawers had been properly fixed;
- (iv) the front door had been fixed to remove rattling, but there was still a draught detectable and daylight visible between the left of the door and the door jamb;
- (v) a replacement door to the living room had been provided. It was a solid wooden door without glass which now fitted properly;
- (vi) the external guttering had been cleared of debris and vegetation;
- (vii) an Electrical Installation Report had been produced on 1 June 2016. However, the report lists four category C2 items on page 2 and a further C2 item at paragraph 5.18 all of which require urgent remedial action.

She provided the Committee with a copy of a Gas Safety Certificate in respect of the House dated 21 April 2016, the first she had seen in her three years living at the House.

The Tenant also stated that all of the windows to the property were draughty and rattled during windy conditions, especially in winter. The penetrating damp in two of the bedrooms had been present for quite some time and was getting worse. She had attempted to redecorate both rooms but the dampness is such that it made no difference and the work carried out by her had been almost immediately spoiled.

The Landlord accepted that there was water ingress into the property. He provided the Committee with an estimate obtained from a roofing contractor, Fisher and Anderson. He was presently attempting to obtain the consent of the property below the House to carry out the common repairs to the roof listed in the quotation. It was implicit in that evidence that he accepted roof repairs required to be carried out and that such repairs would address the water ingress issue within the House.

At the time of the hearing, the owners of the property below the House were on vacation within the UK. The Landlord undertook to make efforts to contact them in order to obtain their consent to the necessary roof works.

The Landlord also accepted that the windows within the House were draughty and indicated that there were possible solutions to address that, whether by replacing certain of the smaller windows or installing draught proofing. He indicated that he was currently investigating these options.

## Findings in Fact

The Committee made the following findings in fact:

The Landlord and the Tenant entered into a Tenancy agreement in respect of the House on 1 October 2013. The duration of the lease was for 6 months, but it has by means of tacit relocation since then. The rent payable at that time was £400 per calendar month.

The landlord designed in the written lease agreement was Cala d'Or Estates, a incorporated company, but which is now defunct. It was accepted by the Landlord that there is a valid tenancy agreement between him as a private individual and the Tenant in the terms set out in the original lease.

The registered owner of the House is the Landlord as recorded in the Land Register on 22 April 2009 under Title Number FFE11918.

Ms Morrison, on the Tenant's behalf, notified the Landlord of the defects in the house which are now the subject of the Application, on 18 December 2015.

The electrical system was last inspected on 1 June 2016 and an EICR was produced at that time. The EICR lists a total of 5 items in category "C2" and four items in category "C3".

There is a valid Gas Safety Certificate in place for the House, dated 21 April 2016.

In light of the recent installation of smoke and carbon monoxide detectors and the heat sensor in the kitchen, the parts of the Application relating to section 13(f) and (g) of the 2006 Act were withdrawn.

The provisions of Chapter 4 of Part I of the Act apply to the tenancy.

The inspection on 27 July 2016 revealed:

The House is an upper flat in a block of four dwelling houses, accessed by an external staircase. There is a garden to the rear of the property which is owned by the downstairs flat.

Inside, the House has three bedrooms which are accessed from a central hallway. On entry from the front door, two bedrooms are off to the left and the third is directly ahead. At the end of the hallway to the right is the living room, with kitchen off it. Closer to the front door on the right hand side of the hallway is the internal bathroom with bath, WC and shower over the bath.

The electrical consumer unit is located above the front door. The gas boiler is located in the kitchen. There are mains, interconnected smoke alarms in the hallway, living room and kitchen. There is a heat sensor and carbon monoxide detector in the kitchen.

The House has sash and case windows throughout with the exception of the kitchen, the bathroom and the hallway. All are draughty and require to be repaired or replaced. In addition, the front door still has a gap on the left hand side where it meets the door jamb where daylight is in fact visible and permits draughts to enter the House.

There is clear evidence of penetrating damp in bedrooms 1 and 2 (the ones at the end of the hallway with bedroom 1 being the one to the rear at the end). The wall opposite the window and the back wall in bedroom 1 show damp staining and had a positive result when tested with a damp meter.

In bedroom 2, there is clear evidence of damp where the ceiling meets the wall to the right of the bedroom door and extends down to the window and along the exterior facing wall. Damp meter readings were also positive at this location.

Within the bathroom, there was evidence of mould on the ceiling above the shower and on the wall opposite the shower. There was no extractor fan and the bathroom window is very small so that mould is in all likelihood caused by condensation and inadequate ventilation. This did not, however, form part of the Application.

When the rear of the tenement block was viewed from the exterior, it could be seen that the lower iron rhones had been cleared, although they were in a rusty condition. In the absence of rain, it was not possible to ascertain whether they were functioning correctly. However, there was some cracking evident on the chimney stack and some vegetation was present at the upper levels where the chimney pots were located.

Photographs relative to the above findings have been produced and are attached to this decision.

### **Decision of the Committee and reasons**

In the view of the Committee, the House is not wind and watertight as evidenced by the damp found in bedrooms 1 and 2 and its finding that there were persistent draughts in all windows and the front door to the House.

As accepted by the Landlord, roof repairs and other external works are necessary in order to address the damp issue within the House.

It noted that the Electrical Installation Condition Report dated 1 June 2016 listed items requiring urgent action.

In light of the findings above, the Committee, considering the terms of section 13(3) of the Act, determined that the Landlords had failed to comply with the duty imposed by section 14(1)(b) of the Act. It found this in relation to the complaints under paragraphs (a), (b) and (c) of section 13(1) of the Act.



The Committee was therefore of the view that it was necessary for it to make a Repairing Standard Enforcement Order in terms of section 24(2) of the Act.

The decision of the Committee was unanimous.

### **Right of Appeal**

**Section 64 of the Act provides a right of appeal to a landlord or tenant aggrieved by a decision of a private rented housing committee. An appeal may be made to the Sheriff within 21 days of the Landlord or Tenant being informed of the decision.**

Where such an appeal is made, the effect of the decision and 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.

## **M O'Carroll**

Maurice O'Carroll  
Chairman

Date: 29 July 2016





















