



Notice of a decision to Revoke

A Repairing Standard Enforcement Order

Ordered by the Private Rented Housing Committee

prhp Ref: Prhp/G84/225/11

Re : Property at Flat 1/1, 23 East Princes Street, Helensburgh G84 7DE ("the Property")

Title No: DMB78679

The Parties:-

John (also known as Ian) C. Bailey, Flat 1/1, 23 East Princes Street, Helensburgh G84 7DE ("the Tenant")

Mrs Doreen-Ann Flatman and Adrian Flatman, 21B West Montrose Street, Helensburgh G84 9PF ("the Landlords"),
(care of their agents Raeburn Hope, 77 Sinclair Street, Helensburgh G84 8TG)

NOTICE TO the Tenant and Landlord

The Private Rented Housing Committee having determined on 26 June 2012 that the work required by the **Repairing Standard Enforcement Order** relative to the Property dated 30 March 2012 is no longer necessary, the said **Repairing Standard Enforcement Order** is hereby revoked with effect from the date of service of this Notice.

A landlord or a tenant aggrieved by this 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 revocation is suspended until the appeal is abandoned or finally determined, and where the appeal is abandoned or finally determined by confirming the decision, the revocation 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 David Bartos, Advocate, Parliament House, Parliament Square, Edinburgh EH1 1RF, chairperson of the Private Rented Housing Committee at Edinburgh on 26 June 2012 before this witness:-

E Potter

witness

D Bartos

chairman

Emma Potter

name in full

Parliament House

Address

Edinburgh

EH1 1RF

Advocates Clerk

Occupation



**Decision of Private Rented Housing Committee
under Section 25 (1), 26 (1) and 60 of the Housing (Scotland) Act 2006**

Statement of Reasons for Decision of the Private Rented Housing Committee

(Hereinafter referred to as "the Committee")

Under Section 25(1), 26 (1) and 60 of the Housing (Scotland) Act 2006

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(care of their agents Raeburn Hope, 77 Sinclair Street, Helensburgh G84 8TG)**

The Committee comprised:-

Mr David Bartos	- Chairperson
Mr Kingsley Bruce	- Surveyor member
Mr Christopher Harvey	- Housing member

Decision

The Committee refused to grant a Certificate of Completion, refused to make a Rent Relief Order in respect of the Repairing Standard Enforcement Order dated 30 March 2012 in respect of the Landlords and the Tenant, and revoked the said Repairing Standard Enforcement Order.

Background:-

1. On 11 June 2012 the Committee carried out a re-inspection of the works required by the Repairing Standard Enforcement Order ("RSEO") dated 30 March 2012 and issued by the Committee in respect of the Property. The Landlord's representative Mrs Richardson of Raeburn Hope, together with Mrs Flatman herself were present during the inspection. There was no appearance by or on behalf of the Tenant. The date and time for the re-inspection had been intimated to both the Tenant and the Landlords by letter from the Clerk to the Private Rented Housing Panel ("PRHP") dated

17 May 2012. The Tenant had indicated to the Committee by e-mail dated 18 May 2012 that he would not be present during the re-inspection scheduled for 11 June due to being away from Helensburgh. In that e-mail he indicated that the Committee would be entitled to have access by obtaining the keys from his neighbour. Subsequently, however in a telephone conversation with the Committee's clerk Mr MacLean, he indicated that whilst he had no objection to the Committee proceeding to determine whether the works were complete, he did not wish the Committee to have access to the Property without his presence.

2. The Committee attended at the Property on 11 June. The Committee did not obtain access to the Property. They did however meet Mrs Richardson and Mrs Flatman. They offered to the Committee access to a flat on the second floor of the tenement forming 23 East Princes Street which takes access from the same stairwell as the Property. The flat in question was to the west of the Property. It was Flat 2/2. It was vacant and undergoing renovation at the time. The Committee accepted the offer. From the window of Flat 2/2 the Committee could see the external work carried out to the Property and the tenement surrounding it. The Committee also carried out a visual inspection of the tenement, including the Property from the street.
3. The evidence produced to the Committee consisted of:-
 - Copy e-mail from the Tenant to PRHP Admin dated 18 May 2012
 - Copy letter from EBS Construction's David A. Sinclair to the first named Landlord at The John Dobbie Trust dated 28 March 2012
 - Copy 4 page letter from EBS Construction's David A. Sinclair to the first named Landlord at The John Dobbie Trust dated 17 April 2012
 - Copy invoice from EBS Construction to the first named Landlord dated 10 May 2012 drawing of front elevation of 21 and 23 East Princes Street with handnoted sketches (enclosed with the letter of 17 April)
 - The oral evidence of the first named Landlord
 - The oral evidence of Dianne Richardson

The Hearing

4. At the conclusion of the re-inspection the Committee held a hearing within the Victoria Halls, Sinclair Street, Helensburgh. Both Landlords were represented by Dianne Richardson of Raeburn Hope, solicitors and property agents. The first named Landlord was present. The Tenant was not present for the reasons stated above. Mrs Richardson gave evidence that Mr Sinclair of EBS Construction had been instructed to look at the Property and to recommend works to be carried out. He had been instructed because he had completed work on the Property before. He also had expertise in stonework of the kind at the Property. He was also aware of the problems with the Property. In these circumstances he was

considered to be the best person to do the job. EBS had been recommended a number of years ago by Alastair Sills an architect in Helensburgh back in about 2007. Internal investigations had been carried out before 28 March 2012 but she was not present when these were carried out. As far as she was aware no ladder or scaffold or the like had been used for the investigations but she had not been present. Mrs Flatman had been present at the time of the investigations. The works had been carried out as per the invoice. Although she was not an expert she was quite satisfied that the work had been carried out. Mrs Flatman and Mr Sinclair had inspected the works on completion.

5. Mrs Flatman, the first named Landlord gave evidence. She said that she was aware that EBS Construction had done "a tremendous amount of work" and that Mr Sinclair, who was a director of EBS had a lot of experience in tenement building works, especially for housing associations. She had seen work being done by EBS at Maryhill, in the centre of Glasgow and on the south side of Glasgow. She explained that she had met with Mr Sinclair following his inspection. She had asked him to show what he meant by lead capping by means of a quick sketch. Mr Sinclair had done this next to a drawing of the front elevation of the tenement. She asked for this sketch to be sent to him. She thereafter received the letter of 17 April from Mr Sinclair enclosing the sketch of leadwork. She was asked by the Committee about whether she thought the leadwork as shown in the "Section A lead detail" sketch had been carried out. As a lay person she felt that the leadwork had been carried out. On it being suggested to her by the Committee that the Committee had observed that the lead capping had not been carried out in the manner sketched, she said that she drew a distinction between the work being carried out and the way it had been carried out.
6. The Committee had no reason to doubt the credibility of the first named Landlord or Mrs Richardson. Both however freely acknowledged that they were lay persons and in so far as what they said conflicted with the observations of the Committee the Committee preferred its own evidence from observations during the re-inspection in which the Committee used its own expertise.

Findings of Fact

7. Having considered all the evidence, including their re-inspection, the Committee found the following facts to be established:-
 - (a) By RSEO dated 30 March 2012 the Landlords were ordered to carry out various works to the Property. The full terms of the RSEO are incorporated herein. The RSEO was intimated to the Landlords on or about 1 April 2012.
 - (b) On or about 6 April 2012 the RSEO was intimated to EBS Construction Ltd. A director of EBS Construction Ltd is Mr David A. Sinclair. On 12 April 2012 Mr Sinclair met with the first named Landlord.

At the meeting there was a discussion of lead capping to the window sill and "horizontal course" above the windows of the Property and the flats of the tenements numbers 21 and 23 East Princes Street in general. Mr Sinclair reiterated a recommendation that such capping be carried out. This was something that he had mentioned in the last paragraph of page 2 of his letter of 28 March 2012 which pre-dated the RSEO. In his letter of 17 April 2012 Mr Sinclair reiterated the work that he recommended, being that on page 4 of that letter in relation to "Area 1" being the first and second floor flats of No. 23, including the Property. The letter contained further detail of the capping work to be done and referred to an attached drawing with a sketch of the capping work to be done. This included a lead drip running down from the stonework overlapping further leadwork resting on the (horizontal) stringer course.

- (c) Mr Sinclair's experience was as set out by the first named Landlord in her evidence.
- (d) By 10 May 2012 the works set out in page 4 of the letter of 17 April 2012 had been carried out in respect of Area 1. The leadwork carried out to the (horizontal) stringer course recommended in the letter of 17 April and the sketch enclosed with it was not carried out. In particular, the detail sketched by Mr Sinclair had not been executed in accordance with the hand drawn sketch provided, ie incorporating a "cover flashing" over the leadwork capping the stringer course.
- (e) The leadwork carried out to the stringer course and window cill above the street-facing bay window of the Property appears to render the Property watertight. This is so despite absence of the lead cover flashing.

Reasons for Decision

8. The Committee required to decide firstly, whether the works in the RSEO had been completed. The RSEO specified the works in three parts (a), (b), and (c). With regard to part (a) after what appeared to Committee as an expression of surprise that the matter of an independent consultant was being raised, Mrs Richardson submitted that Mr Sinclair in his individual capacity had been instructed as an independent consultant with demonstrable experience in the identification of construction defects in tenemental properties similar to that of which the Property forms part. In relation to his demonstrable experience she relied on the evidence of the first named Landlord and that on EBS' notepaper they were said to be registered with "Constructiononline" and were labelled as "Masonry specialists". Mrs Richardson claimed that "Constructiononline" were a professional governing body for construction but was unable to explain anything about that body in the nature of qualifications, professional standards or the like. In the event the Committee felt able to rely on the evidence of the first named Landlord in this respect and accept that Mr

Sinclair had the necessary demonstrable experience. The Committee had more difficulty with the suggestion that Mr Sinclair had been instructed as an "independent consultant" to carry out an investigation. Whilst it is trite to say that Mr Sinclair was independent of the Landlords or the Tenant, the truth appeared to be that he had been instructed because the company of which he was a director, namely EBS had previously carried out construction repair work at the property. EBS clearly had a commercial interest in the carrying out of further work at the Property. Mr Sinclair could not be described as an "independent consultant" as indicated in part (a) of the RSEO. In these circumstances the Committee were of the view that the Landlords had not instructed an independent consultant as required by part (a) and to that extent had failed to comply with the RSEO. The Committee also took note of the lack of evidence of Mr Sinclair carrying out a close external examination further to his receipt of the RSEO and also his reference in the EBS letter of 17 April 2012 to the RSEO mentioning lead capping when it does no such thing. This is not what one would expect from an independent consultant further underlining the Landlords' failure to adhere to the terms of part (a) of the RSEO.

9. Turning to part (b) of the RSEO, notwithstanding the failures already noted in respect of part (a) of the RSEO, the Committee observed that the letter of 17 April and its enclosures and reference back to the letter of 28 March 2012 did contain recommendations for works necessary to make the bay window of the Property wind and watertight. The Committee also noted that the recommendations by Mr Sinclair were descriptive but did not provide a detailed specification of works and contained only limited information. Were those recommendations followed? The Committee accepted the evidence of the first named Landlord as supported by the invoice from EBS that the work had been done but with the exception of the installation of a lead cover flashing above the horizontal stringer course over the bay window. This was clearly evident on observation. In these circumstances it could not be said that the Landlords had carried out all recommended works, even as recommended by a non-independent consultant, Mr Sinclair. There was therefore non-compliance with part (b) of the RSEO. From what the Committee could see and gather the Property had been reinstated and made good. In this respect the Committee could see only the outer façade of the Property. However the Tenant in his e-mail of 18 May did not query any aspect of the work, including the internal work and therefore the Committee infer that the Property has been reinstated and made good as required by part (c) of the RSEO.
10. In these circumstances the Committee were unable to conclude that the works required by the RSEO had been completed and that a certificate of completion should be issued.
11. The next issue was whether the Committee should make a Rent Relief Order in respect of the said failures. It was submitted by Mrs Richardson that the Landlords should be given time to complete any work not done or to carry out any work necessary to remedy any failure. The Tenant has temporarily left the Property for the summer period returning sometime in

August. There are no ongoing leaks or suggestion that leaks may occur. In these circumstances the Committee took the view that notwithstanding the failures which have been identified, there should be no Rent Relief Order.

12. In these circumstances the Committee proceeded to consider whether the work which was sought by the RSEO and which had not been carried out was, nevertheless, no longer necessary and the RSEO should be revoked.
13. The Committee deprecated the failure of the Landlords to instruct an independent consultant to carry out the investigation and to make recommendations of the works to be carried out. From the nature of the submissions that were made to it by Mrs Richardson on part (a) of the RSEO the Committee gained the impression, rightly or wrongly that no attention had been paid by the Landlords' representatives or the Landlords themselves to the need for an independent consultant with the demonstrable experience sought. One would have expected a report to be produced by a consultant without a commercial interest in carrying out the works setting out his experience. That report could then have been acted on through the invitation of contractors to tender for the works. Instead a short cut was taken to simply instruct the contractors previously used in spite of the doubts expressed by the Committee of the aluminium stearate treatment recommended by those contractors.
14. The fact that the lead cover flashing even as recommended by Mr Sinclair himself was not carried out by his firm further underlines his lack of independence.
15. Having said all of that the Committee exercising its expertise took the view that the work that has been carried out is sufficient, on a balance of probability, to make the Property watertight as required by section 13(1)(a) of the Housing (Scotland) Act 2006. It took the view that having carried out an external examination of the work no further investigation by an independent consultant of the appropriateness of the work was required. Within the limits of the Committee's inspection, it was concluded that there was no visible indication of ongoing water ingress or of immediate source for water ingress and that works had been undertaken to "protect" the upper side of the stringer course, previously referred to, from the action of weather, by covering horizontal surfaces and joints with leadwork. The hand drawn detail, provided by Mr Sinclair, was consistent with what the Committee would have anticipated for an enduring detail for lead capping. However, instead, where lead sheet has been fitted this has been "ragged" or dressed directly into stonework above and a topical sealant applied to the joint between lead and stone. This joint appeared intact. That being the case the Committee took the view that the works in parts (a) and (b) of the RSEO were no longer necessary.

Decision

16. For these reasons the Committee proceeded to make the decision as stated above under sections 60 (in respect of the application for a

certificate of completion), 26(2) (in respect of a rent relief order) and 25(1) (in respect of the revocation) of the 2006 Act. The decision of the Committee was unanimous.

Rights of Appeal

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

18. Unless the lease or tenancy between the parties has been brought to an end, the appropriate respondent in such appeal proceedings is the other party to the proceedings and not the Committee which made the decision.

Effects of Section 63 of the 2006 Act

19. Where such an appeal is made, the effect of this decision and of any Order made in consequence of it is suspended until the appeal is abandoned or finally determined.

20. Where the appeal is abandoned or finally determined by confirming the decision, the decision and the Order made in consequence of it are to be treated as having effect from the day on which the appeal is abandoned or so determined.

D Bartos

Signed Date: 26 June 2012.....

David Bartos, Chairperson

E Potter

Signature of Witness: Date: 26 June 2012.....

Name of witness (please print) Emma Potter.....

address of witness: Parliament House, Edinburgh, EH11 1RF.....

occupation of witness: Advocates Clerk.....