



DETERMINATION BY PRIVATE RENTED HOUSING COMMITTEE

**STATEMENT OF DECISION OF THE PRIVATE RENTED HOUSING COMMITTEE
UNDER SECTION 26(1) OF THE HOUSING (SCOTLAND) ACT 2006**

In connection with

**Property at Birk Hedges, Near Haddington EH41 4HF
(hereinafter referred to as "the house")**

**Mr. Colin Blyth, Birk Hedges, near Haddington EH41 4HF, whose agent is Mr.
Thomas Mooney, 7 Dundas Road, Eskbank, Dalkeith EH22 3EN ("the Tenant")**

**Mrs. Catherine Home, Winterfield, 1 Fidra Road, North Berwick EH39 4LY ("the
Landlord")**

Reference PRHP/RP/13/0083

BACKGROUND

- (1) Reference is made to the Determination of the Private Rented Housing Committee ("the Committee") dated 3 December 2013 which decided that the Landlord had failed to comply with the duty imposed by Section 14(1)(b) of the Housing (Scotland) Act ("the Act") and to the Repairing Standard Enforcement Order ("the RSEO") dated 13 December 2013 which confirmed that the Landlord had failed to ensure 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.

The RSEO required the Landlord to undertake works 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 required the Landlord:-

- (a) to repair or replace the windows in the house to ensure that they are in a reasonable state of repair and in proper working order; to carry out remedial work to the plasterwork around the windows affected by dampness; and to remedy the dampness in the wall behind the kitchen unit below the double glazed window

and to rectify the damage caused to the kitchen unit and worktop (Hereinafter the works detailed at (a) are collectively known as "the said repairs").

The said works were to be carried out and completed by 28 February 2014.

2. On 14 April 2014 Mr. Robert Buchan, Surveyor Member of the Committee, carried out an inspection of the house for the purpose of ascertaining if the said repairs in the RSEO had been completed. A report on his findings was submitted to the Committee indicating that the windows except the two small windows in the kitchen have been replaced with new upvc framed double glazed windows. The rotten kitchen window sill, kitchen sink and work top have been replaced. High moisture meter readings were noted around the front right (as viewed from the front) bedroom window. Remedial work to remedy the dampness was still required.

3. Work started in June 2014 to the floor area which had been found to be rotten during the remedial works and the required works have been found to be more extensive than at first thought and will involve lifting the floor boards. The Committee considered the representations of the parties and in all the circumstances, the Committee considered that it would be reasonable to vary the RSEO in terms of Section 25(1) (a) of the Act. The variation provided for extension of the time period for completion of work in the RSEO for a further 21 days from the date of issue of the notice of variation of the RSEO on 4 September 2014. The Landlord was reminded of the requirement in Section 14(2) of the Housing (Scotland) Act 2006 which included a duty to make good any damage caused by carrying out any work for the purposes of complying with the repairing standard. This includes any redecoration work required. The members of the Committee were unanimous in their decision.

4. Following upon expiry of the timescale for completion of works specified in the notice of variation of the RSEO, the Committee asked for information from the parties as to whether the remaining works had been completed. On 3 November 2014 the Tenant's representative indicated that works were still ongoing and had not been completed. The Landlord indicated that the works had proved more extensive than originally anticipated. She provided an estimate from a damp specialist and an invoice for a new floor covering. Intimation was sent that the Committee intended to carry out a re-inspection of the house on 9 December 2014 and thereafter hold a hearing to which the parties were invited to attend to lead evidence and make representations.

5. The inspection by the full Committee took place on 9 December 2014. The Tenant's representative, Mr. Thomas Mooney was in attendance as was the Landlord.

The Committee noted high moisture readings at the left hand side of the window in the front right carer's bedroom and there was high moisture meter readings in that room above the skirting board on the wall adjacent to the left hand side of the window. The Landlord indicated that the gutter had recently been cleared and it was hoped that this was the reason for dampness and it may take time for the dampness to dry out. Although not included in the RSEO and noted as an observation only, the skirting board

along the party wall between this bedroom and the bathroom was rotten and needs replaced.

In the other bedroom front left of the house which is occupied by the Tenant, it was noted that considerable works had been completed with replacement of joists and a new floor installed with new laminate covering. Whilst the windows have been replaced in this room as they have in the other bedroom occupied by the carer, it was observed that there were high moisture meter readings from the right hand side plasterwork in the smaller of the two windows in that room.

The plasterwork on either side of the front door also indicated high moisture meter readings way in excess of readings associate with condensation and it is clear that there is water penetration to this area indicating penetrating dampness. The plaster was also damaged and not wind and watertight at the skirting board. External examination of the house indicates that there are areas of cracked and boss rendering which, together with the lack of a damp proof course, are likely to be contributing to the various areas of continuing dampness in the interior. The observations relating to the plasterwork at the front door are for parties' information and do not form a requirement of the RSEO. However, it was hoped that this would be attended to by the Landlord as part of the overall attention to dampness within the house.

Following the inspection, a hearing took place at the Loch Centre, Well Wynd, Tranent and Mr. Mooney and the Landlord were in attendance. Mr. Mooney acknowledged that works had been carried out at the house since the RSEO had been imposed and windows had been installed. The priority was to get the works completed and that was more important than the issue of rent relief order. He stated that no maintenance had been carried out during the Tenant's tenancy and the reason why the Panel had been approached was the Landlord's delay in carrying out works. The Landlord accepted that she had not maintained the house to the required standard and she candidly stated that she had not inspected the house as often as she should have. She admitted that she did not get the roof regularly checked and indeed in 25 years there had been no roofing check. The gutters were normally checked by the Tenant's carer although she believed that an employee of the damp specialist firm had recently cleaned out the gutter which may have been the source of water penetration at the window area of the carer's bedroom. She did not comment on the issue of imposing a rent relief order. She stated that the works to date including the new windows ran to thousands of pounds.

The Committee comprised Mrs. Aileen Devanny, Chairperson, Mr. Robert Buchan, Surveyor Member, and Mrs. Susan Brown, Housing Member.

DETERMINATION AND REASONS

6. The Committee considered the evidence. The Committee unanimously decided in terms of Section 26(1) of the Act that the Landlord had failed to comply with the RSEO and directed that a notice of the failure be served on the Local Authority on which the house is situated. The Committee did not consider that the failure to comply with the RSEO was due to a lack of necessary rights of access or otherwise as the Landlord possesses rights for access under Section 181(4) of the Act and the Tenant and his carers are co-operating with repair works. Ample opportunity has been provided to the Landlord to carry out works. The Landlord accepts that she has failed to carry out the works in the RSEO. As a consequence the house remains damp and this will have a detrimental effect on the health of the occupants of the house. The Committee expressed their disappointment that despite being given an extension of time to complete the works, the Landlord was not taking a comprehensive approach to carrying out and completing the works but appears to be trying to undertake them piecemeal with the extension of disruption for the Tenant and other occupants.

The Committee considered whether or not a variation or revocation of the RSEO was appropriate but discounted these options given the evidence before them that the Landlord had already had sufficient time to complete the works; and the Landlord's previous assurances that works would be completed which had not been implemented.

Having decided that the Landlord had failed to comply with the RSEO, the Committee then considered if a reduction in rent was appropriate and if so the appropriate level of reduction. Given the delays in carrying out the works; the disruption to the Tenant of the ongoing works which involved furniture being stored in a living area; the impact of the defects on the Tenant's enjoyment of the house; the associated health risks caused by the nature of the defects; and the complete lack of urgency displayed by the Landlord in completing the works detailed within the RSEO, and balancing these factors against the completion of some works such as the window and flooring repairs and the costs incurred to date by the Landlord, the Committee considered that a reduction in rent in the order of £350 per month from the contractual rental level of £500 rent per month is appropriate in the circumstances and the Committee made a Rent Relief Order in terms of Section 27 of the Act.

RIGHT OF APPEAL

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

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 28 days from the day on which the appeal is abandoned or so determined.

Aileen Devanny

Chairperson,
19th December 2014



Rent Relief Order

Ordered by the Private Rented Housing Committee

**Property at Birk Hedges, Near Haddington EH41 4HF
(hereinafter referred to as "the house")**

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Mrs. Catherine Home, Winterfield, 1 Fidra Road, North Berwick EH39 4LY ("the Landlord")

Reference PRHP/RP/13/0083

NOTICE TO Mrs Catherine Home ("the Landlord")

Whereas in terms of their decision dated 11 December 2014, the Private Rented Housing Committee ("the Committee") determined in terms of Section 26(1) of the Housing (Scotland) Act 2006 (the "said Act") that the Landlord has failed to comply with the Repairing Standard Enforcement Order in relation to the house made by the Committee.

The Committee determined to make a Rent Relief Order in terms of Section 27 of the said Act reducing the rent payable under the tenancy for the house by an amount of £350 per month from the contractual rent which would, but for the Order, be payable. The rent reduction will take effect 28 days after the last date on which the decision to make the Rent Relief Order may be appealed under Section 64 of the said Act.

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. Where the appeal is abandoned or finally determined by confirming the decision, the Rent Relief Order will take effect 28 days after the date on which the appeal is abandoned or the decision is confirmed.

Aileen Devanny

Chairperson
Private Rented Housing Committee
19 December 2014