



## Repairing Standard Enforcement Order

Ordered by the Private Rented Housing Committee

prhp Ref:EH23/109/12

Re : "Saltatio" a flatted dwelling house within Harvieston House, by Gorebridge, Midlothian, EH23 4QA ("the Property")

The Parties:-

Christopher Van Schaak, residing at the ground floor rear flatted dwelling-house, known as "Saltatio", within Harvieston House, by Gorebridge, Midlothian, EH23 4QA ("the Tenant")

Messrs M.C & R Jackson, residing at Salmon Hall, Workington, Cumbria CA14 1LW (represented by their agent Mr G Jack of Let Assured Ltd, Cargarrilea, Carllops, West Linton, EH23 4QA) ("the Landlord")

### NOTICE TO Messrs M.C & R Jackson, residing at Salmon Hall, Workington, Cumbria CA14 1LW ("the Landlord")

Whereas in terms of their decision dated 25<sup>th</sup> October 2012, 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 and in particular that the landlord has failed to ensure that:- the property is:-

- (a) The property wind & water tight and in all other respects reasonably fit for human habitation, in terms of s.13(1)(a) of the Act
- (b) The structure & exterior of the house (with particular emphasis on the gutters, drains, external rendering, and access & egress to the property) are in a reasonable state of repair & in proper working order, in terms of s.13(1)(b) of the Act.
- (c) That the Landlord's fixtures & fittings are in a reasonable state of repair & in proper working order, in terms of s.13(1)(d) of the Act
- (e) That the house has satisfactory provision for detecting fires and for giving warning in the event of fire or suspected fire, in terms of s.13(1)(f) of the Act

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:-

- (a) To obtain from an NICEIC registered electrical contractor a full inspection & report on the electrical system, including lighting. Thereafter, to carry out all recommendations within the report & provide an electrical safety & compliance certificate, which should be made available to the panel prior to re-inspection.
- (b) Facilitate an inspection by the Senior Fire Safety Officer, Lothian & Borders Fire & Rescue Service; obtain the senior fire safety officers report, carry out all & any works recommended by the Senior Fire Safety Officer; then make his report available to the panel prior to re-inspection.
- (c) Install satisfactory mains wired smoke detectors in compliance with the current statutory regulations.

- (d) To carry out such works as are necessary to ensure that the property is wind & water tight, including repair & replacement of external rendering & guttering; repointing of masonry work; and specialist damp eradication – including any necessary timber repairs & replacement to remedy rotten & defective timbers.
- (e) Then to obtain a satisfactory report from a specialist damp & rot eradication contractor to be exhibited to the panel prior to re-inspection.
- (f) Facilitate an inspection by the Senior Fire Safety Officer, obtain the fire safety officers report, carry out all & any works recommended by the Senior Fire Safety Officer; then make his report available to the panel prior to re-inspection.
- (g) Eradicate the vermin infesting the property.

The Private Rented Housing Committee order that the works specified in this Order must be carried out and completed within the period of three months 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 are executed by Paul Doyle, solicitor, 24 Haddington Place, Edinburgh, chairperson of the Private Rented Housing Committee at Edinburgh on 25<sup>th</sup> October 2012 before this witness:-

R Hymes \_\_\_\_\_ witness

P Doyle \_\_\_\_\_ chairman

Secretary  
24 Haddington Place  
Edinburgh



## Statement of Reasons for Decision of the Private Rented Housing Committee under Section 24 (1) of the Housing (Scotland) Act 2006

prhp Ref:EH23/109/12

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### The Parties:-

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Messrs M.C & R Jackson, residing at Salmon Hall, Workington, Cumbria CA14 1LW (represented by their agent Mr G Jack of Let Assured Ltd, Cargarrilelea, Carlons, West Linton, EH23 4QA) ("the Landlord")

### Decision

The Committee, having made such enquiries as it saw fit for the purposes of determining whether the Landlord has complied with the duty imposed by Section 14 (1)(b) in relation to the house concerned, and taking account of the evidence led by both the Landlord and the Tenant at the hearing, 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 5<sup>th</sup> June 2012 the Tenant applied to the Private Rented Housing Panel for a determination of whether the Landlord had failed to comply with the duties imposed by Section 14 (1)(b) of the Housing (Scotland) Act 2006 ("the Act").
2. The application by the Tenants stated that the Tenants considered that the Landlord had failed to comply with his duty to ensure that the house meets the repairing standard and in particular that the Landlord had failed to ensure that:-
  - (a) The property is wind & water tight and in all other respects reasonably fit for human habitation, in terms of s.13(1)(a) of the Act
  - (b) The structure & exterior of the house (with particular emphasis on the gutters, drains, external rendering, and access & egress to the property) are in a reasonable state of repair & in proper working order, in terms of s.13(1)(b) of the Act.
  - (c) That the installations for sanitation & space heating are in a reasonable state of repair and in proper working order, in terms of s.13(1)(c) of the Act
  - (d) That the Landlord's fixtures & fittings are in a reasonable state of repair & in proper working order, in terms of s.13(1)(d) of the Act
  - (e) That the house has satisfactory provision for detecting fires and for giving warning in the event of fire or suspected fire, in terms of s.13(1)(f) of the Act

3. By letter dated 1<sup>st</sup> August 2012 the President of the Private Rented Housing Panel intimated a decision to refer the application under Section 22 (1) of the Act to a Private Rented Housing Committee.  
The Committee was made up of the following members:-  
Mr Paul Doyle, legal member  
Mr Ian Mowatt, surveyor member  
Mr John Blackwood, housing member
4. The Private Rented Housing Committee served Notice of Referral under and in terms of Schedule 2, Paragraph 1 of the Act upon both the Landlord and the Tenant.
5. Following service of the Notice of Referral the Tenant made no further written representation to the Committee other than their original application dated 5<sup>th</sup> June 2012. The Landlord made no written representation to the Committee, but the Committee have been given copies of the correspondence passing between the parties between April & July 2012.
6. The Private Rented Housing Committee inspected the Property on the morning of 4th October 2012. The Tenant and the Landlord's representative, Mr G Jack were present during the inspection.
7. Following the inspection of the Property the Private Rented Housing Committee held a hearing at Middleton Village Hall, Middleton, Midlothian, and heard from both the Tenant and the Landlord's agent.
8. The tenant submitted that the property had suffered from a lack of maintenance for years, that there were numerous leaks to the windows and the roof allowing water ingress, and that the property was damp. In particular the tenant complained:-
  - (a) That the property is infested with damp (now evidenced by black mould) because the windows and the roof let rain in. As a result, structural beams within the property are now compromised by rot.
  - (b) That the ceiling of the property is damaged by water leaking from above, and parts of the ceiling and cornice are cracked and falling.
  - (c) That the bathroom within the property does not have an extractor fan leading to the exterior of the property, and the cistern serving the WC does not have a cover which fits properly. In addition the appellant claims that the soil pipe leaks. The appellant complains that the floor in the bathroom has a substandard covering.
  - (d) That the property suffers from vermin infestation
  - (e) That the light fittings in the property are "substandard".
  - (f) The appellant complains about the exterior of the property, declaring that the rendering is bulging and allowing water to enter the property; That the pointing in the chimney stack and surrounding exterior is defective, and so another source of water ingress; That the gutters leak; That the access to the appellant's property is damaged and defective, and that there are no exterior lights to assist with access during the hours of darkness.
  - (h) The appellant complains that the property does not have a fire alarm, and that inspection drew our attention to a battery-operated smoke alarm.
9. The landlords submitted that they had inherited the property 14 years ago, and are aware that maintenance and repairs the property had been required, but have struggled to find the financial resources to maintain the property adequately. The landlord refers to the history of disputes with (other) tenants, and complains that the applicant has not given prior notice of all of his complaints. In any event it is the Landlord's position that the property is now sold, and as part of the sale transaction inspections have been carried out by Midlothian Council. In addition, a property maintenance company had been employed to carry out the works identified as necessary. The Landlord is sure that most of those works have now been completed.

### Summary of the issues

10. The issues to be determined are

(a) Is the house is wind and water tight and in all other respects reasonably fit for human habitation in terms of section 13(1)(a) of the 2006 Act?

(b) Is the structure and exterior of the house (including the drains, gutters and external pipes) in a reasonable state of repair and in proper working order in terms of section 13(1)(b) of the 2006 Act?

(c) Are the installations for sanitation & space heating in a reasonable state of repair and in proper working order, in terms of s.13(1)(c) of the 2006 Act?

(d) Are the Landlord's fixtures & fittings are in a reasonable state of repair & in proper working order, in terms of s.13(1)(d) of the 2006 Act?

(e) Is there adequate provision for the detection of (& warning of) fire in terms of s.13(1)(f) of the 2006 Act?

### Findings of fact

11. The Committee finds the following facts to be established:-

(a) On 13 January 1994 the Landlord and Tenant signed an agreement creating a tenancy of the property from 1 February 1994. The tenancy is an assured tenancy. The Tenant has consistently occupied the property since 1<sup>st</sup> February 1994. The property consists of one large room, with a bathroom off, and a step ladder leading to a platform bed. The kitchen has been fitted into a large alcove. There is one entrance door, and one large double sash and casement window, providing natural light for the property.

(b) The property is part of a much larger room which has been divided by a stud wall. The property is situated on the ground floor to the rear of a much larger country mansion house which is surrounded by gardens and grazing land's secluding the property from the A7 road and the neighbouring village of Gorebridge. The larger building of which this property forms part was divided into 11 flats some time ago. Only three flats ( the property which is the subject of this application and two others) are now occupied. The remainder of the building is empty.

(c) Access to the property is obtained by walking across the gravel path to the side of the larger building of which the property forms part, then crossing a short grassed area which leads to a narrow wooden footbridge crossing a stone clad basement/cellar area. There are then steep stone built steps, rising to a height of approximately 1½ metres, which lead to the front door of the property. When the front door of the property is opened, one is faced with four narrow, steep, wooden steps in the form of a short ladder leading into the property. There is no other entrance or exit to the property. It is possible to approach the front door of the property by walking around the lawns of the larger building of which the property forms part, and so approaching the front door without the need to negotiate the narrow wooden footbridge. The property does not benefit from external lighting.

(d) The narrow wooden footbridge has been badly worn by the weather, and may be rotten in parts. The plank which forms the footbridge is springy. It would be foolish for more than one person (at a time) to walk or stand on the footbridge. The footbridge has a barrier on one side, and is open on the other side.

(e) The short wooden stepladder leading to the front door of the property from the inside of the property gives the appearance of being temporary in nature. It is both

narrow and steep, so that care has to be taken when ascending or descending those steps.

(f) There has been water ingress through the ceiling of the property. There continues to be water ingress through the solum below the windows serving the property. There is water ingress through an old chimney serving the property. Water enters the property through the stud wall separating the property from the larger building of which the property forms part. The water ingress has created significant damp in the property. The tenant has placed his own dehumidifier in the property, which operates constantly and draws litres of moisture each day. The various leaks affecting the property have caused damage to the ceiling plasterwork. Parts of the cornice have fallen to the floor.

(g) There is only one light fitting in the property, and it does not work. The tenant has created a network of extension cables to provide power for lights, and other electrical appliances. The tenant has health problems which affect his mobility. The appellant walks with the aid of an elbow crutch. The appellant is not able to negotiate the stepladder which leads to the platform bed.

(h) Mice have entered the property from the exterior, and from the adjacent parts of the larger building of which the property forms part.

(i) Over the years that the tenant has occupied the property, he has accumulated a collection of possessions. The tenant's possessions fill the property and limit the available space within the property significantly. The property is cluttered with the Tenant's possessions to the extent that it is impossible to approach the interior walls of the property. It is very difficult to obtain a clear view of each internal aspect of the property.

(j) The kitchen in the property is located in a windowless alcove, where there is a wood-burning stove, an electric cooker, a fridge, sink and draining board, and cupboard space is provided. The kitchen does not have an extractor fan.

(k) The bathroom in the property contains a three-piece sanitary suite. The lid of the cistern does not fit properly and is not secured. Although there is a method of ventilation in the bathroom, the ventilation leads to a passageway in the cellar of the larger building. There is no external light or ventilation in the bathroom. The soil pipe leading from the bathroom in the property had previously been damaged. The landlord had repaired the damage to the soil pipe well in advance of the inspection.

(l) The property (and the larger building of which the property forms part) has clearly been neglected for years. Damage to the rendering & pointing to the exterior of the property is evident. It is clear that that damage has existed for some time, and has worsened with the passage of time.

(m) The gutters immediately outside the property have been choked for some time. The Landlord has appointed a property factor and instructed him to carry out maintenance of the larger property. The Landlord's property factor has taken his instructions seriously, and when tradesmen were not willing to carry out certain works the Landlord's property factor has tried to carry out the work himself to remedy the defects and to halt the decline in the larger building of which this property forms part. In particular the Landlord's property factor has donned climbing gear and tried to clear the gutters above the property. His efforts have, for the most part, been successful, but there is an area of guttering immediately above this property which the Landlord's property factor has been unable to reach. There is an area of guttering above this property which is still choked and overflows.

(n) The electrical wiring within the property is old and requires to be overhauled. It is likely that there is more than one electrical circuit within the property. It is certain that there is a lot of dead and redundant wiring within the property.

(o) A battery-operated smoke alarm was provided by the Landlord within the last three months. The property does not have the benefit of a fire alarm. There is no fire alarm in the larger building of which the property forms part.

### **Reasons for the decision**

12. (a) The Committee inspected this property on the morning of the 4 October 2012. There are now only three flats occupied within Harviestoun House, and each of the tenants of the three flats have made applications to the Private Rented Housing Panel. The Committee visited each of the three occupied flats on the morning of 4<sup>th</sup> October 2012. This property was the last of the three flats inspected by the Committee.

(b) After inspecting the property, a hearing took place at Middleton Village Hall, Middleton, Midlothian. The Tenant (& his two neighbouring tenants) was present, but was not represented. The Landlord was not present, but was represented by Mr G Jack of Let Assured Ltd, Cargarrilea, Carllops, West Linton, EH23 4QA, who has recently been appointed as the Landlord's property factor. The Tenant & Mr Jack answered questions from Committee members. Mr Jack read to us a written submission from the Landlord, & provided a copy of that submission. We then reserved our determination.

(c) This property is situated in a rear corner on the ground floor of Harviestoun House. Each member of the Committee enjoys good health, no member of the Committee has any difficulty with mobility, yet each member of the Committee was struck by the uncertain nature of the access to this property in broad daylight. We were led to the property by the Landlord's property factor. Negotiating the gravel driveway and grass was not difficult, but each member of the Committee gingerly edged their way across a footbridge which was little more than a plank of wood across a noticeable drop onto stone paving. The footbridge was damp and springy and showed significant signs of wear. The footbridge led to steep stone & breezeblock steps climbing to the front door of this property. When the front door was opened, we were faced with a steeper wooden stepladder leading into the property. The interior wooden stepladder appeared to be temporary in nature. The Committee's concerns were immediately raised about the quality of access to and egress from this property.

(c) On inspection, it was clear that the only method of access and egress was to the front door served by steps which are difficult to negotiate. It was obvious from our inspection that there was no fire alarm, and that there was only a battery-operated smoke alarm provided in 2012. The Committee's concerns were raised that the tenant has no reasonable prospect of safely evacuating from this property in the event of fire.

(d) When the Committee looked around this property what could be seen was a property which is so cluttered that it is difficult to understand how the Tenant can comfortably enjoy possession of the property; but it could also be seen that the provision of sufficient electric power points to provide power to a very small amount of electrical appliances relies entirely on a network of power strips joined to one another, and dangling mid-air, around the property. The only light in the property is a wall light which does not work and is adjacent to the front door. Inspection showed that the electrical system within the property is both dated and tired.

(e) Although the untidy clutter created by the tenant's possessions made inspection of the property difficult, it was clear to the Committee that water has penetrated this property from a number of points for a period of years. The property is obviously damp. The property has had water dripping from the ceiling, and seeping under the stud wall which separates this property from its former glory as a well-appointed ballroom. The Committee have great concerns for the welfare of the Tenant. This property has a combination of significant water ingress and a compromised electrical system. The property is cramped and cluttered. The prospect of fire is a realistic risk. The property is intended to be open plan. Part of the property has an internal kitchen situated in an alcove opening onto a damp property with water dripping close to a dated electrical system.

(f) The property has vermin infestation. Mice are rodents known to gnaw through power cables.

(g) The combination of gnawing rodents, water, and trailing electrical cables causes the Committee great concern. In the simplest of terms, this property is a fire risk. A nimble, agile person would struggle to negotiate the solitary exit from this property. The only warning of fire a Tenant in this property would have would be the battery-operated smoke alarm. There is no telling where a fire might breakout in this property. There is only one way out, and not even the able-bodied members of this Committee were able to quickly negotiate the exit to this property. This property is damp, it is infested by vermin, and it is a fire risk.

(h) The committee reminded themselves with the terms of section 13(1)(a) of the 2006 act. The Committee asked themselves whether or not a damp, vermin infested, fire risk of a property is a property which is reasonably fit for human habitation. The members of the Committee unanimously came to the conclusion that a property which is a fire risk is not reasonably fit for human habitation. None of the members of the Committee felt inclined to invite another person to occupy a damp, vermin infested property. On that objective basis, the Committee drew the conclusion that the property is not reasonably fit for human habitation and so does not comply with section 13(1)(a) of the 2006 act.

(i) There is only one light fitting provided by the Landlord. It does not work. The fixtures, fittings & appliances provided by the Landlord cannot therefore be said to be in a reasonable state of repair. The Landlord does not therefore comply with section 13(1)(d) of the 2006 act.

(j) S. 13(1)(f) of the 2006 act requires the Landlord to make satisfactory provision for detecting fires & for giving warning in the event of fire or suspected fire. This is an unusual property because it is a large section of a room in what was once a country mansion house. Only a small part of the larger house is now occupied. The Committee found that the electrical supply within the property was dated and may well be compromised. Because of the nature of this property, there is an enhanced risk of fire. There is no method within this property, nor within the parts of the larger building which we saw, of giving adequate warning of fire. There is only one way to exit this property, and that requires a degree of agility. The exterior of the property is not lit during the hours of darkness. This property has no provision for detecting fires and for giving warning of fires - other than a battery-operated smoke alarm. The property cannot, in its current condition, satisfy the requirements of paragraphs 13(1)(f) of the 2006 Act.

(k) The Committee could see that the gutters have recently been serviced. The Landlord's property factor conceded that despite his significant efforts there is a small part of guttering that he could not reach in his attempts to clear the choked gutters and downpipes. The only conclusion that can be reached is that there is still a part of the gutters which are choked and leak. That section of guttering is above the property which is the subject of this application. Section 13(1)(b) of the 2006 Act specifically refers to gutters. The property clearly does not comply with section 13(1)(b) of the 2006 Act.

(l) We are therefore obliged to make of repairing standard enforcement order (RSEO) because our findings in fact indicate that the property cannot and does not comply with the requirements of section 13(1)(a), 13(1)(b) 13(1)(d) and 13(1)(f) of the 2006 Act.

### **Decision**

13. The Committee accordingly determined that the Landlord had failed to comply with the duty imposed by Section 14 (1)(b) of the Act.

14. The Committee proceeded to make a Repairing Standard Enforcement Order as required by section 24(1).

15. The decision of the Committee was unanimous.

### **Right of Appeal**



16. 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**

17. 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.

Signed .....  
Chairperson

**P Doyle**

..... Date..... 25/10/2012 .....