



## Repairing Standard Enforcement Order

Ordered by the Private Rented Housing Committee

PRHP Ref: PRHP/RP/14/0102

Property at: 8/4 Dumbiedykes Road, Edinburgh EH8 9UR

### The Parties

Jofre Bosch, formerly residing at 8/4 Dumbiedykes Road, Edinburgh, EH8 9UR ("the tenant")

and

Eyup Ozkan, 8 Paisley Crescent, Edinburgh, EH8 7JP ("the landlord"), represented by Easylet Property, 44 Clerk Street, Edinburgh, EH8 9HX

**NOTICE TO** Eyup Ozkan, 8 Paisley Crescent, Edinburgh, EH8 7JP ("the landlord"),

Whereas in terms of their decision dated 24 March 2015, 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 drains serving the house are not in a reasonable state of repair and in proper working order in terms of section 13(1)(b) 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:-

To clear choked drains serving the property and to adjust the alignment of the waste pipes to ensure an adequate run to the drains within four weeks of the date of service of this order;

**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 24<sup>th</sup> March 2015 before this witness:-

witness

**Paul Doyle**

chairman

Kirsten Boettcher  
Secretary  
24 Haddington Place  
Edinburgh



**Statement of decision of the Private Rented Housing Committee  
under Section 24 (1) of the Housing  
(Scotland) Act 2006**

**PRHP Ref:** PRHP/RP/14/0102

**Property at:** 8/4 Dumbiedykes Road, Edinburgh, EH8 9UR

**The Parties**

Jofre Bosch, formerly residing at 8/4 Dumbiedykes Road, Edinburgh, EH8 9UR (“the tenant”)

and

Eyup Ozkan, 8 Paisley Crescent, Edinburgh, EH8 7JP (“the landlord”), represented by Easylet Property, 44 Clerk Street, Edinburgh, EH8 9HX

**Notice to 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 Tenants, determined**

**(a) That, in some respects, the landlord has been unable to comply with the duty imposed by Section 14 (1)(b) of the Act.**

**And**

**(b) that, in other respects, the Landlord has failed to comply with the duty imposed by Section 14 (1)(b) of the Act.**

**Background**

- 1 By application dated 8 April 2014, the tenant applied to the Private Rented Housing Panel for a determination on whether the landlord has failed to comply with the duties imposed by Section 14(1)(b) of the Housing (Scotland) Act 2006 (“the 2006 Act”).
- 2 The application by the tenant 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:



- (a) the landlord had failed to ensure that the house is wind and water tight, and in all other respects reasonably fit for human habitation;
- (b) the appliances provided by the landlord under the tenancy are not in a reasonable state of repair and in proper working order;
- (c) the structure of the house (including the drains) are not in a reasonable state of repair and in proper working order.

3 By letter dated 6 January, the president of the Private Rented Housing Panel intimated a decision to refer the application under Section 22(1) of the 2006 Act to a Private Rented Housing Committee. The committee members were:

Paul Doyle	Chairperson
Susan Napier	Surveyor Member
Sally Wainwright	Housing Member

4 The Private Rented Housing Committee served notice of referral under and in terms of Schedule 2, Paragraph 1 of the 2006 Act on both the landlord and the tenant.

5 Following service of the notice of referral, neither the landlord nor the tenant made any further written representations to the Private Rented Housing Panel. Both the landlord and the tenant had already made representations by a series of e-mails dated between 23 January and 25 June, all 2014.

6 The Private Rented Housing Committee inspected the property during the morning of 4 March 2015. Neither the landlord nor the tenant were present. The tenant's flatmate, Benjamin Pividal Silla, allowed committee members access to the property and told committee members that the tenant had removed (to Italy) at or about the start of January 2015 and no longer lived in the property. Mr Silla told committee members that he would be vacating the property in the next two months. Committee members considered whether or not the application should be treated as withdrawn in terms of Paragraph 7 of Schedule 2 to the 2006 Act and determined (by separate minute of continuation) to continue with the inspection.

7 Following the inspection of the property, the Private Rented Housing Committee held a hearing at 11am (on 4 March 2015) within George House, 126 George Street, Edinburgh. Neither the landlord nor the tenant (nor Mr Silla) attended the hearing.

8 The tenant's position is that, since January 2014, there has been a significant leak in a bedroom of the property; the tenant says that water has been entering and dripping ("like rainfall") into the bedroom occupied by the tenant. The tenant states that the water ingress has rendered the bedroom uninhabitable and has caused a significant infestation of damp and mould. The tenant argues that the property is not water tight and is unfit for human habitation. The tenant also complains that the drain below the sink in the kitchen of the property is blocked so that, whenever the washing machine is

used, the drain cannot cope with the pressure and waste water overflows from the sink. The tenant complains that there are no control knobs on the electric oven in the kitchen.

- 9 The landlord concedes that the property has been affected by a leak from a separate property on the floor above of the larger building of which this property forms part. It is the landlord's position that significant investigation was carried out and that the proprietor of the upstairs property (City of Edinburgh Council) would not co-operate with the repairs. Notwithstanding that difficulty, the landlord believes that all necessary repairs have been carried out, the leak has been fixed, the drains have been fixed and work properly, and that the control knobs on the oven have been replaced. The landlord states that additional works have been carried out to the property.

### **Summary of Issues**

- 10 The issues to be determined are:
- (a) is the house wind and water tight, and in all other respects, reasonably fit for human habitation;
  - (b) is the structure and exterior of the property (including the drains) in a reasonable state of repair and in proper working order;
  - (c) are the appliances provided by the landlord under the tenancy in a reasonable state of repair and in proper working order.

### **Findings in Fact**

- 11 The committee finds the following facts to be established:
- (a) On 12 November 2013, the landlord agreed to let to the tenant (and one other person) the property at 8/4 Dumbiedykes Road, Edinburgh. A short assured tenancy was entered into in terms of Section 32 of the Housing (Scotland) Act 1988. The landlord's obligations contained in that lease are consistent with the landlord's duties to repair and maintain the property in terms of Sections 13 and 14 of the 2006 Act.
  - (b) The property is a flatted dwellinghouse on two floors, entering from an external balcony on the first floor of the larger building of which the property forms part. The front door provides access to the first level of the property in which there is a central hallway providing access to the kitchen and living room (with cupboard space off). A flight of stairs leads to the second level of the property, on which there is a landing, two bedrooms and a bathroom.
  - (c) The tenant occupied a bedroom on the upper level of the property. In January 2014, water leaked from the ceiling of that bedroom. The extent of the leak intensified so that there were times when water was pouring from a point in the ceiling of the bedroom.



- (d) The tenant contacted the landlord's agents and, in an e-mail exchange throughout February and March 2014, complained to the landlord's agents, (a) that there was water ingress, and (b) that as a result of the water ingress, the room had become damp and there was mould staining on the ceiling and walls of the tenant's bedroom.
- (e) Immediately above the upper floor of this property, there is another flatted dwellinghouse which is owned by City of Edinburgh Council. As soon as the tenant reported a leak from the ceiling, it was feared that the leak was coming from the flatted dwellinghouse above this property. The property owned by City of Edinburgh Council above the tenant's property is laid out so that a kitchen is immediately above the tenant's bedroom. The landlord's agents drew the conclusion that the leak was coming from the kitchen in the property owned by City of Edinburgh Council situated immediately above the tenant's bedroom.
- (f) The landlord's agents sent their own contractors out to investigate the leak. The landlord's agents confirmed that the leak was coming from the kitchen of the property above the tenant's bedroom. The City of Edinburgh Council were contacted and the City of Edinburgh Council sent out a member of their "property team" who insisted that the City of Edinburgh Council property above the tenant's bedroom "*...is dry and there are no leaks coming from this*".
- (g) The landlord's own expert investigated the property. He took damp meter readings which indicated that the damp problem within the property is not condensation - because of the level of readings. The landlord's own agent noted that the ceiling is made of a concrete beam type construction. The floors in the City of Edinburgh Council's flat and this property are floating floors on top of concrete (to allow for pipe runs). The damp meter readings taken by the landlord's expert was in the region of 90%.
- (h) The landlord made repeated attempts to gain access to the property immediately above the tenant's bedroom. The City of Edinburgh Council did not allow access to the property and continues to insist that the leak does not come from that property.
- (i) In April 2014, the leak in the tenant's bedroom had dried out. The landlord instructed contractors to remove the mould and decorate the room afresh. There has been no ingress of water since the room was decorated in April 2014, however in one spot on the bedroom ceiling, approximately one metre inside from the exterior wall to the property, excessive damp meter readings remain. The damp meter readings on each of the walls and the remainder of the ceiling within the tenant's bedroom of the property remain within the normal range.
- (j) By June 2014, the landlord had:

- (1) replaced the kitchen taps;
  - (2) repaired the electric cooker in the property;
  - (3) repaired the washing machine in the property;
  - (4) repaired and replaced damaged furniture and fittings in the property; and
  - (5) fitted trickle vents to the windows of the property.
- (k) The property does not have a condensation problem. Damp meter readings within the normal range can be found on each of the interior walls of the property.
- (l) At the time of application, the controls of the electric oven in the kitchen of the property were faulty. The controls have been replaced. The control panel and the controls on the electric oven and hob all work properly.
- (m) When the washing machine (situated in the kitchen) is used, the waste water does not drain away properly and flows back into the kitchen sink (and over the sides of the kitchen sink). On 4 March 2015, a plumber instructed by the landlord was working on the property to try to clear the drains. He did not know whether his work would be effective. He did not know if the drains could be cleared by "plunging" or if there was a more serious problem further down the drains which would require rodding.
- (n) There has been a leak from the bathroom (on the upper floor of the property) into the kitchen. At the date of inspection, there were water marks on the timber lined ceiling in the kitchen. There were marks where water had previously dripped down the wall fitted kitchen units. On 4 March 2015, the landlord's plumber removed the bath panel to inspect underneath the bath to try and find the source of the leak. By 10.15 am on 4 March 2015, he had not found a source of a leak.
- (o) On the date of inspection, there was a defect with the drains of the property. Even though the landlord's plumber was working on the drains at the time of inspection, the defect had not been remedied and had not been properly identified. The drains are not therefore in proper working order. The landlord does not fulfil the requirement of Section 14(1)(b) of the 2006 Act.
- (p) The tenant removed from the property in or about January 2015. He now lives in Italy.

### Reasons for Decision

- 12 (a) The Committee inspected this property during the morning of 4 March 2015. The landlord was neither present nor represented. The tenant had already removed from the property. The door was answered by the tenant's flatmate, Benjamin Silla. Mr Silla welcomed committee members into the property and explained that the tenant had removed "*approximately one and a*



*half months ago*" and now lives in Italy. Committee members considered whether or not the application should be treated as abandoned. Committee members reminded themselves of the terms of Paragraph 7 of Schedule 2 to the 2006 Act. Committee members were concerned that the nature of the complaint made by the tenant (and the nature of the property's communal areas) raised questions of health, safety and public policy. Committee members determined to continue to consider the application. It was immediately clear to committee members that a plumber was working in the property, moving between the kitchen on the entry level of the property and the bathroom on the upper level of the property.

(b) A hearing took place at 11am on 4 March 2015 at George House, George Street, Edinburgh. Neither the landlord nor the tenant were present, nor were they represented. The case file reveals that all parties have been given adequate and timeous notice of the time, date and place of the hearing. Committee members continued with the hearing and considered the available evidence.

(c) During the inspection, Mr Silla took committee members to the bedroom on the upper level of the property (which was the tenant's bedroom) and explained that it was in that room that water had leaked through the ceiling, causing damage to the walls. He indicated areas on the surface of interior walls on which, he told us, mould had previously gathered. What he told us was consistent with the photographs reproduced in the file of papers each committee member has.

(d) Committee members took damp meter readings. The damp meter readings on the interior walls in the tenant's former bedroom of the property were all within the normal range. There was no sign of damp. Initially, damp meter readings taken from the ceiling were within the normal range. It was clear that the room had been decorated. The documentary evidence before the committee indicates that decoration and remedial work was carried out between April and May 2014. The ceiling was covered with wood chip paper and a thick layer of paint. There was one small section where there was no wood chip paper covering the ceiling, only paint. Damp meter readings taken in that isolated spot only were extremely high and were indicative of pooling water above the ceiling.

(e) Committee members have read the exchange of e-mails in this case. Committee members can see from the documentary evidence produced that the flat immediately above the property which is the subject of this application is a flatted dwellinghouse owned by City of Edinburgh Council. Committee members can see from the documentary evidence that members of the City of Edinburgh Council's Property Services Department have visited this property and refused to accept that water leakage is coming from the City of Edinburgh Council's property above.

(f) Committee members can see that contractors appointed by the landlord (Acorn Services Ltd) offer the opinion that the ceilings in this property are concrete bison beam constructions and that the floors are floating floors



on top of the concrete (allowing for pipe runs etc). Placing reliance on the skill, knowledge and experience of committee members together with the weight of evidence, committee members come to the conclusion that the reliable evidence indicates that the ingress of water (& it is not disputed that there was an ingress of water) comes from the property above and is not the result of condensation dampness.

(g) The high meter readings taken in March 2014 indicate that the damp problem was not a condensation problem but was a problem of significant water ingress. The construction of the property indicates that it is likely that water would pool above the ceiling of the tenant's former bedroom. The damp meter readings taken by committee members indicate that the source of water is still there and is still the flat above the tenant's former bedroom owned by City of Edinburgh Council. The weight of evidence indicates that there is a leak coming from the property above. The property above is not in the ownership, nor under the control of the landlord.

(h) The weight of evidence before the committee indicates that the landlord has made efforts to ensure that neighbouring proprietors fix the leak that is causing a problem within the landlord's property and which causes the principal problem about which the tenant complains. Committee members remind themselves of the terms of Sections 15, 16(4) and 24(6) of the 2006 Act.

(i) The weight of evidence indicates that there is a defect which prevents this property from being water tight, but the weight of evidence also indicates that the landlord has only failed to comply with the duty imposed by Section 14(1)(b) of the 2006 Act because the landlord does not have the necessary rights of access to remedy the defect. The landlord has repeatedly asked the City of Edinburgh Council to remedy the defect. The City of Edinburgh Council have consistently refused to accept that the defect lies in their own property.

(j) The committee draws the conclusion that they are prevented, by reason only of Section 16(4) of the 2006 Act, from finding that the landlord has failed to comply with the duties imposed by Section 14(1)(b). The committee therefore determines to serve a notice on the local authority, stating that the committee considers the landlord is unable to comply with the duty.

(k) The tenant complains that the electric oven in the kitchen does not have functioning controls. The landlord indicates that, in May 2014, amongst the works that were carried out to the property was the repair and replacement of the oven within the kitchen. Committee members, when they inspected the kitchen, could see that all of the controls for the oven and the hob were in place. Committee members switched the oven on and used the controls to find that the controls worked. The oven (and hob) in the kitchen is a fixture and fitting provided by the landlord. It is a proper state of repair and is in proper working order. The landlord fulfils the requirements of Section 14(1)(b) of the 2006 Act in relation to the fixtures, fittings and appliances provided by the landlord under the tenancy.



(l) The tenant complains that there is a problem with the drains in the kitchen; that the drains does not carry waste water away properly and overflow. Mr Silla told committee members, that whenever the washing machine is used, the waste water does not drain away but fills the kitchen sink.

(m) On the date of inspection, a plumber was busily working between the kitchen and the bathroom. He spoke to committee members and told committee members that he was hoping to clear a blockage in the drains by "*plunging*" but he could not confidently say whether or not his efforts would be successful. It was clear that, at the time of inspection, there was a blockage in the drains. By the time the inspection had concluded, the plumber was still working on the drains. The weight of evidence indicates that the drains are not in proper working order. The very fact that the landlord's plumber was still working on the drains after the inspection finished is a clear indication that the drains are not in proper working order. It may be that the landlord will have remedied the problem with the drains by the time the Repairing Standard Enforcement Order is served, but the committee must make a decision based on the evidence available at the date of inspection and hearing. The evidence available at that time clearly indicates that the drains are blocked to some extent. The committee therefore make a Repairing Standard Enforcement Order ordering the landlord to carry out any necessary repairs to clear the blockage in the drains.

(n) Although not part of the application, it was clear to committee members that there has also been a leak from the bathroom into the kitchen in this property (the bathroom is located immediately above the kitchen). The landlord's plumber showed committee members that he had removed the bath panel and had inspected under the bath. In the kitchen, committee members could see evidence of water staining on the timber lined ceiling and on the work surfaces and on wall mounted kitchen units. The landlord has already appointed a plumber to inspect. The landlord will, of course, want to ensure that there are no future leaks from the bathroom into the kitchen.

(o) Considering all of these matters, the committee come to the conclusion that notice must be served on the local authority in terms of Section 24(6) of the 2006 Act in relation to the tenant's complaint of water ingress from a leak because committee members find that the source of the leak is the City of Edinburgh Council's own adjoining property.

(p) The committee make a Repairing Standard Enforcement Order requiring the landlord to remedy the defects in the drains because the weight of evidence indicates that the landlord cannot satisfy the requirements of Section 13(1)(b) of the 2006 Act.

## Decision

- 13 (a) The committee accordingly determined that the landlord (in relation to the drains serving the property) has failed to comply with the duty imposed by Section 14(1)(b) of the Act.



(b) In relation to the remainder of the application, the committee determined that the Landlord was unable to comply with the duty imposed by s. 14(1)(b) of the Act.

14. The Committee proceeded to serve notice on City of Edinburgh Council as required by s. 24(6) of the Act.
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

**Paul Doyle**

Date 24/3/2015