



## Repairing Standard Enforcement Order

Ordered by the Private Rented Housing Committee

prhp Ref: PRHP/RP/14/0134

Re: Property at 7 Merkland Road East, Aberdeen, AB24 5PS ("the Property")

Sasine Description: ALL and WHOLE that eastmost ground floor flatted dwellinghouse known as and forming 7 Merkland Road East, Aberdeen being the subjects more particularly described in and disposed by Disposition by Tulloch-Taylor (B M) Limited in favour of Robert Rankine Bryce and Mrs Elizabeth Eileen Bryce registered in the General Register of Sasines for the County of Aberdeen on 3 October 1974

### The Parties:-

MR JOSEPH LEWSLEY and DEBORAH LEWSLEY, 15 Buckles Road, Finstown, Orkney, KW17 2UE ("the Landlord")

MISS SUMRAH AL-BAGHDADI ("the Tenant")

### NOTICE TO MR JOSEPH & MRS DEBORAH LEWSLEY ("the Landlord")

Whereas in terms of their decision dated 31/10/14 2014, 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 ("The Act") and in particular that the Landlord has failed to ensure that:-

- (a) The Property is wind and watertight and in all other respects reasonably fit for human habitation;
- (b) The installations in the Property 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;
- (c) Any fixtures, fittings and appliances provided by the Landlords under the tenancy are in a reasonable state of repair and in proper working order;
- (d) The Property has satisfactory provision for detecting fires and for giving warning in the event of fire or suspected fire.

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 carry out such works as are necessary to prevent water ingress and damp occurring in the Property;
- (b) to repair any areas of damaged plasterwork arising as a result of the said water ingress/damp and to redecorate the flat as appropriate;
- (c) to obtain a clear electrical installation condition report by a suitably qualified electrician and to carry out any works necessary to allow the issue of the said report;
- (d) to repair the broken flush mechanism on the toilet in the Property;
- (e) to repair the external door entry/buzzer mechanism;
- (f) to carry out such works as are necessary to ensure a proper supply of hot water to the Property for use by the Tenant; and

(g) to install a hardwired interlinked heat detector to the kitchen area in the sitting room to connect into the existing smoke detection system.

The Private Rented Housing Committee order that the works specified in this Order must be carried out and completed within the period of 2 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.

**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 type written on this and the preceding page are executed by Ewan Kenneth Miller, Solicitor, Whitehall House, 33 Yeaman Shore, Dundee, DD1 4BJ, Chairperson of the Private Rented Housing Committee at Dundee on 31/10/14 before this witness:-

\_\_\_\_\_ witness

**Ewan Miller**\_\_ Chairman

Lindsay Johnston  
Secretary  
Thorntons Law LLP  
Whitehall House  
33 Yeaman Shore  
Dundee  
DD1 4BJ



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

prhp Ref: PRHP/RP/14/0134

Re: Property at 7 Merkland Road East, Aberdeen, AB24 5PS ("the Property")

### The Parties:-

MISS SUMRAH AL-BAGHDADI ("the Tenant")

MR JOSEPH LEWSLEY and DEBORAH LEWSLEY, 15 Buckles Road, Finstown, Orkney, KW17 2UE ("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 21 May 2014 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 Tenant stated that the Tenant considered that the Landlord had failed to comply with their 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 and watertight and in all other respects reasonably fit for human habitation;
  - (b) The installations in the Property 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;
  - (c) Any fixtures, fittings and appliances provided by the Landlords under the tenancy are in a reasonable state of repair and in proper working order;
  - (d) The Property has satisfactory provision for detecting fires and for giving warning in the event of fire or suspected fire.
3. By letter dated 26 June 2014 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.
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 material written representation to the Committee other than her original application. The Landlord made no representations to the Committee.
6. The Private Rented Housing Committee (comprising Mr E K Miller, Chairman; Mr A Anderson, Surveyor Member; and Mrs L Robertson, Housing Member) inspected the Property on the morning of 17 September 2014. The Tenant was present during the inspection. The Landlord was neither present nor represented.
7. Following the inspection of the Property, the Private Rented Housing Committee held a Hearing at Credo Centre, 14-20 John Street, Aberdeen, AB25 1BT. The Tenant was present and represented herself. The Landlord was neither present nor represented.
8. The Tenant submitted that there had been ongoing issues in the Property for a couple of years. She had tried on numerous occasions to get the Landlord to deal with matters but whilst the Landlord had made several promises, no action had ever been taken. She felt the Property was damp and was impacting negatively on the health of her and her daughter. She also had serious concerns regarding the electrical system within the Property. She had also been living without hot water for some considerable period of time. Overall she was dissatisfied and felt that she did not have any other option than to complain to the Committee.
9. There were no submissions or representations from the Landlord.

#### **Summary of the issues**

10. The issues to be determined were:-
  - (1) Whether there was damp in the Property.
  - (2) Whether the heaters were in proper working order and otherwise whether the general electrical installation in the Property was safe and met the repairing standard.
  - (3) Whether the toilet had a working flush mechanism.
  - (4) Whether the external door entry buzzer to the Property was in proper working order.
  - (5) Whether there was a proper supply of hot water within the Property.
  - (6) Whether the smoke detectors within the Property were in proper working order and met the repairing standard.

#### **Findings of fact**

11. The Committee finds the following facts to be established:-
  1. There was damp within the Property caused by water ingress.
  2. The Committee had concerns regarding the heater in the living room and a general concern regarding the electrical installation within the Property.
  3. The toilet did not have a proper working flush mechanism.
  4. The external door entry buzzer to the Property did not work.
  5. There was no proper supply of hot water from the immersion heater to the Property.
  6. The existing smoke detector was in proper working order although a heat detector was required in the kitchen area of the sitting room.

## Reasons for the decision

12. The Committee based its decision primarily on the evidence obtained during the course of the inspection.

The Surveyor Member of the Committee carried out various damp meter readings within the Property. There were several areas of high dampness, co-incident with staining primarily on the external gable wall side where it appeared that some water ingress was occurring. This was leading to the Property being damp and encouraged the formation of mould on various walls within the Property. The level of damp penetration had reached the stage where, in the main bedroom, the wallpaper was disintegrating on the walls due to the level of mould. It was readily apparent that the Landlord would require to carry out such works of repair or replacement as were necessary to prevent any further water ingress to the Property, to carry out such works as were necessary to repair any damage to the plasterwork caused by the water ingress and generally to carry out such works of redecoration to the Property throughout as was necessary to make good those areas damaged by damp/mould.

The Committee was conscious that some condensation in the Property may have been caused by everyday living. However, the Committee was of the view that this was being severely exacerbated by the water ingress to the Property and the lack of heating available to the Tenant. Once these two issues were addressed this should greatly alleviate the position.

The Committee inspected the heating system within the Property. There were two fixed storage heaters in the flat. The Tenant advised that the heater in the lounge had started to smoke one day and she had not used it since. Some scorch marks were evident on the heater. The Committee was unable to determine on the day whether the heater was in proper working order. The Committee had no reason to disbelieve the Tenant. In the circumstances the Committee was satisfied that the appropriate course of action was for the Landlord to provide a clear Electrical Installation Condition Report. The Landlord would require to carry out any works required to ensure that the report could be issued without any items marked C1 or C2.

The Committee inspected the toilet at the Property. It was clear that the flush button was broken. The Tenant had had to tie a piece of ribbon to the internal flush mechanism within the cistern and had then pulled this out through the hole where the button was. This then allowed her to flush the toilet. This was inadequate and the Landlord required to repair this.

The Committee noted that the external buzzer on the door entry system to the Property was not working. The Landlord would require to repair this and ensure it was in proper working order.

The Committee inspected the system for providing hot water to the Property. The immersion heater This did not appear to be in proper working order. The Tenant indicated that she had not had hot water from the immersion for around a year now. The Committee was readily satisfied that the Landlord would require to carry out such works as were necessary to provide the Tenant with hot water.

The Committee inspected the smoke alarm at the Property. This did appear to be in working order (the Tenant had simply been unsure about this). The Committee activated the test button and it appeared to be in proper working order. The Committee did however note that to comply with current regulations a heat detector would now be required in the kitchen area of the sitting room. The Committee was satisfied that it was appropriate for the Landlord to install this to ensure compliance.

The Committee was concerned at the lack of response to the Tenant's complaints by the Landlord. Clearly the damp issue within the Property required to be addressed and it could impact on the Tenant's health. It was inexcusable for a Landlord to leave a Tenant

without hot water in a Property for so long a period. The Committee was extremely dissatisfied with the manner in which the Landlord had failed to deal with matters.

After discussion, the Committee was satisfied that the Landlord would require to carry out the necessary works within two months from the date of notification of the RSEO.

**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 **Ewan Miller**  
Chairperson

..... Date..... **31/10/4** .....