



**REPAIRING STANDARD ENFORCEMENT ORDER**  
**Ordered by the Private Rented Housing Committee**

**RE: Property at 4 (4F1) Upper Bow, Edinburgh EH1 2JN, as more particularly described in the Disposition in favour of the Landlord dated 27 June 1984 and registered in the Division of the General Register of Sasines applicable to the County of Midlothian on 3 July 1984 (hereinafter referred to as "the House")**

**The Parties:**

**Katri Vanhatalo, residing at the Property ("the Tenant")**

**Mr Ian Sime, 38 Bootham Crescent, York, YO30 7AH ("the Landlord")**

**PRHP REFERENCE PRHP/RP/14/0251**

**NOTICE TO**

**Mr Ian Richard Andrew Sime, the Landlord**

**WHEREAS** in terms of their decision dated 20 April 2015 the 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 House meets the repairing standard in that:

*"(a) the house is wind and water tight and in all other respects reasonably fit for human habitation, and...*

*(c) the installations in the house 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"*

The Committee now requires the landlord to carry out such work as is necessary for the purposes of ensuring that the House 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 Committee requires the Landlord:

1. To instruct a suitably qualified and competent tradesman registered with a relevant trade body to inspect the roof hatch within the roof structure and to repair it as necessary to ensure that it is water tight;

2. To repair the hole or holes to the rear of the kitchen sink, to replace the skirting there and to replace the kick boards underneath the kitchen sink so as to act as a barrier against rodent infestation and to remove all debris from beneath the kitchen sink;
3. To cover over the gap beneath the boiler in the kitchen to act as a barrier against rodent infestation;
4. To repair the hole in the right hand corner of the front bedroom as viewed from the bedroom door and to place continuous skirting there to act as a barrier against rodent infestation;
5. To repair the double 13 amp socket in the kitchen to the right of the on/off switch and the downlighters beneath the kitchen units to ensure that they each function fully;
6. To repair and reinstall the loose downlighters in the bathroom and hallway;
7. To secure the WC unit to the floor of the bathroom, and secure the cistern to the wall of the bathroom;
8. To replace the tiling in the bathroom and the side panel to the bath;
9. To provide an effective seal under the shower and where it joins the bathroom wall to prevent water leakage and to re-grout the bath;
10. To repair the shower head and flexible hose in the bath and install a secure replacement that functions properly;
11. To provide certification from a suitably qualified and competent electrician that the electrical repairs noted above have been carried out safely; and
12. To provide a Gas Safety Certificate for the House showing that the gas appliances (boiler, oven and living room fire) operate safely.

The Committee order that the works specified in this Order must be carried out and completed within two calendar months from the date of service of this Notice and for written proof of having done so to be supplied to the Private Rented Housing Panel.

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 the decision.

Where such an appeal is made, the effect of the decision and 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 typewritten on this and the preceding page are signed by Maurice O'Carroll, Chairperson of the Private Rented Housing Committee at Edinburgh on the twentieth day of April, Two Thousand and Fifteen in the presence of the undernoted witness:

M. O'CARRÓLL

Chairperson

T. WHITE<sup>1</sup>LAW

Witness:

Name in full: Tracy Whitelaw

Occupation: Advocates Clerk

Witness Address: Parliament House, High Street, Edinburgh, EH1 1RF



**DETERMINATION BY PRIVATE RENTED HOUSING COMMITTEE**

**STATEMENT OF DECISION OF THE PRIVATE RENTED HOUSING COMMITTEE  
UNDER SECTION 24(1) OF THE HOUSING (SCOTLAND) ACT 2006**

**In connection with**

**Property at 4 (4F1) Upper Bow, Edinburgh EH1 2JN ("the House")**

**Katri Vanhatalo, residing at the Property ("the Tenant")**

**Mr Ian Sime, 38 Bootham Crescent, York, YO30 7AH ("the Landlord")**

**PRHP REFERENCE PRHP/RP/14/0251**

**DECISION**

The Committee having made such enquiries as are fit for the purposes of determining whether the Landlord has complied with the duty imposed by section 14(1)(b) of the Housing Scotland Act 2006 ("the Act") in relation to the House, and having taken account of the evidence led at the hearing and of the written documentation attached to the application and submitted by the parties, has made the following decision:

It has determined that the Landlord has failed to comply with the duty imposed by section 14(1)(b) of the Act in terms of section 13(1)(a) and (c) of that Act.

The decision was unanimous.

**Background**

By application dated 17 October 2014 (the "Application") the Tenant applied to the Private Rented Housing Panel ("PRHP") for a determination of whether the Landlord had failed to comply with the duties imposed by section 14(1)(b) of the Act.

The Application 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 the Landlord had failed to ensure compliance with the following paragraphs of section 13(1) of the Act:

*“(a) the house is wind and water tight and in all other respects reasonably fit for human habitation and  
(c) the installations in the house 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...”*

The Tenant complained that the state of the House was such that there was water ingress into the property and that the installations in the bathroom and kitchen were in need of repair. She further stated that the House had been in that state since at least September 2014 and provided evidence of detailed notification of those failures to the Landlord on 4 November 2014.

By letter dated 31 December 2014, the President of the PRHP intimated a decision to refer the application under section 23(1) of the Act to a Private Rented Housing Committee (hereinafter referred to as “the Committee”).

The Committee comprised the following members:

Maurice O'Carroll, Chairperson  
Carolyn Hirst, Housing Member  
Ian Murning, Surveyor Member

The Committee inspected the House at 10.30am on 16 April 2015. The Tenant was present at the inspection. Neither the Landlord nor any representative on his behalf were present at the inspection.

Following the inspection, the Committee held a hearing at George House, 126 George Street, Edinburgh at 11.30am. The Tenant was again present at the hearing. The Landlord did not attend the hearing nor did anyone on his behalf despite having been notified of the time and venue of the hearing. The Committee considered the written evidence submitted by the parties and heard representations from the Tenant.

### **Evidence at the Hearing**

At the hearing, the Tenant explained that she had moved into the House on or about November 2013 with a co-tenant. A further lease was entered into by the Tenant with another co-tenant, Jenny Kassner, dated 31 August 2014 for one year from 1 September 2014. That lease is due to expire on 1 September 2015. At the time of entering into the second lease, the Tenant pointed out certain defects in the House which were never remedied.

The Tenant verified by means of a telephone call with City of Edinburgh Council in October 2014 that the Landlord was not registered as a Landlord as required by the relevant legislation. As a result of that, the deposit which the Tenant paid was not lodged with Deposit Scotland, also as required by statute. These matters have been reported to the landlord registration division of City of Edinburgh Council.

In August 2014, a water leakage was reported to the Tenant by the occupier of the flat below the House. Its provenance was unclear but was eventually located as emanating from below the kitchen sink. Initially, it was understandably presumed to have come from the bathroom. As a result of that, the bath panel and tiling within the bathroom were removed in order to allow investigations to proceed. As confirmed during the inspection, the bathroom tiles remain beneath the kitchen sink where they were then placed and the bath panel was never replaced, some six months later.

The Tenant advised that as at October 2014 it was not possible to obtain a gas meter reading due to a fault in the gas meter and that the gas meter did not have an on/off valve in order to enable isolation of the gas supply. As a result of this, the Tenant contacted Scottish Gas Network who fitted a new gas meter which was functioning and certified as safe. The Committee has not, however, had sight of a Gas Safety Certificate valid for the property which certifies that the gas appliances, namely the boiler, the gas cooker and the gas fire in the living room, are safe.

Also during the first lease running from 2013 to 2014, there was a problem with a leakage into the House during stormy weather which required a bucket to be placed in the hallway in order to catch water coming into the property. The source of that leak was found to be the roof hatch on the roof. The Landlord caused that leak to be fixed by means of placing lagging onto the roof hatch within the ceiling void above the hallway. That repair has been largely successful. However, on at least one occasion since then (in December 2014), there has been another instance of water ingress into the House during inclement weather.

The House is subject to rodent infestation, in particular from mice, which the Tenant has personally seen in the kitchen and in the front bedroom. Rodent access is possible due to the kickboard under the kitchen sink having been removed and not replaced, a gap in the skirting board behind the sink, a gap beneath the boiler in the kitchen and a gap in the skirting of the front bedroom in the corner behind the bed.

The tenant also advised that the WC unit in the bathroom is loose and that there is no seal beneath the shower screen or between the shower screen and the wall to which it is fixed. This requires her and her co-tenant to take especial care when using the shower in order to avoid water leakage onto the bathroom floor. The grouting is also discoloured as a result. Also, the shower head does not fix properly to the flexible hose and frequently becomes detached during normal use.

The main socket used in the kitchen (to the right of the on/off switch) does not work reliably. The downlighters from the units in the kitchen provide only 15 minutes service before they fail to work and will not work again until considerable time (several hours) is allowed to pass. Two downlighters, one in the bathroom and one in the hallway are loose and hanging down from the ceiling.

The Tenant provided the Committee with a copy of the installation advice received from Scottish Gas Network in respect of the gas meter. She also provided a

statement from her co-tenant Jenny Kassner which confirmed account of events and which narrated a history of the Landlord having visited the House to view the problems in September 2014, but having taken no further action. He is recorded as having stated that prior to the Tenant's first tenancy, he had not himself viewed the House to inspect it for a period of over two years.

The Tenant also provided the Committee with notification of the problems which she sent to the landlord by ordinary post and by text messages which she had printed out, as well as the formal notification using a pro forma letter provided by PRHP. She provided the Committee with notification to the landlord that she and the tenant would be withholding rent until such time as the notified repairs were rectified and that such rent would be held in a deposit account meantime. The Tenant showed the Committee a bank statement showing a balance of £4,200 in a deposit account representing six months rent which had been held further to that notification.

### **Summary of the Issues**

The issues to be determined are: whether (a) the House meets the repairing standard as laid down in section 13(1)(a) and (c) of the Act; and therefore (b) whether the Landlord has complied with the duty imposed by section 14 (1)(b).

### **Findings in Fact**

The Committee made the following findings in fact:

The Landlord and the Tenant entered into the present Tenancy agreement in respect of the House on 31 August 2014. The lease is due to expire on 1 September 2015. The rent payable is £700 per calendar month.

The Landlord was recorded on the Lease as being Ian Sime.

The registered owner of the House is Mr Sime as designated above under by virtue of a disposition in his favour dated 17 June 1984 and registered in the division of the General Register of Sasines applicable to the County of Midlothian on 3 July that year.

The Tenant took possession of the House from November 2013 and currently remains in occupation with a co-tenant. The lease will legally terminate on 1 September 2015 following the service of a notice to quit unless continued by the parties.

The provisions of Chapter 4 of Part I of the Act apply to the tenancy.

The Tenant formally notified the Landlord of the defects in the house which are now the subject of the Application on 4 November 2014, although she had informally complained about all of the defects on many occasions prior to that date. In particular, she brought defects to the Landlord's attention on 28 September 2014 via text message and on 20 October 2014, she notified him that she and her co-tenant would be withholding rent until such time as all necessary

repairs were carried out satisfactorily. She provided formal notification as required by the Act on 4 November 2014.

In giving her evidence, the Committee found the Tenant to be entirely credible and reliable. It was impressed by the straightforward and unexaggerated manner in which she described her attempts to have the various defects in the House remedied.

The inspection on 16 April 2015 revealed:

The property is a fourth floor flat in a tenement block of flats. In general, there are 2 flats per floor, although the House is the sole property on the fourth floor. The block is a typical Old Town Edinburgh tenement, consisting of 5 storeys in total.

The House is a two bedroom flat consisting of a hallway giving onto a bathroom with bath/shower and WC, kitchen, living room and a bedroom to the front and one to the rear of the property. The windows of the living room and front bedroom of the House all face the street. It is generally in a poor state of decorative repair.

The House had a single mains Aico smoke detector in the hallway which the Committee confirmed was functional.

No Gas Safety Certificate was available for viewing by the Committee in respect of the gas boiler, the gas cooker or the gas fire in the living room.

There were brown stains on the ceilings in both bedrooms which were evidence of prior water penetration although not actively allowing water ingress at the time of inspection.

The Tenant had made a makeshift barrier in the corner of the front bedroom where skirting was missing in the form of stuffed papers in an attempt to prevent mice from entering.

All of the defects in the House narrated by the Tenant in the course of her evidence were verified by the Committee as being present and unremedied despite complaint having been made to the Landlord. In particular, the Committee noted the following:

When the roof void above the hallway was viewed, daylight could be seen from the roof around the roof hatch.

The toilet pan was not fixed to the floor: the bootlet holes on either side were empty. The cistern was not fixed to the wall. The only stability which was provided was by means of the mains water supply pipe. Other than that, the appliance was held in place by means of gravity only. There is a material risk that the water supply pipe could come loose and cause significant water damage.



Beneath the kitchen sink, not only was there no skirting, but there was a hole there which allowed vermin to enter the House. The kick boards beneath sink had been removed and not replaced. Debris in the form of tiles from the bathroom had been placed beneath the sink since the investigation into flooding which had taken place in September 2014 and not replaced.

### **Decision of the Committee and reasons**

The Committee was of the view that the House in its present state is not water tight and in all other respects fit for human habitation. In particular, it reached this finding on the basis that the roof still leaked from the roof hatch area due to the previous repair to it having been inadequate. The House is prone to vermin infestation from mice due to the absence of skirting and the presence of a hole behind the kitchen sink, the absence of skirting in the corner of the bedroom on the right hand side when viewed from the bedroom door, the absence of kick boards beneath the kitchen sink and the gap beneath the boiler in the kitchen.

The Committee was also of the view that the installations in the House in its present state for the supply of water, gas and for sanitation are not in a reasonable state of repair or in proper working order. It reached this finding on the basis of the loose WC unit, the bathroom remaining untiled, the bath panel being removed and not replaced, the shower head being unsecure and the shower screen being unsealed at the bottom where it reaches the bath and where it fixes to the wall. It also made this finding on the basis of the loose downlighters hanging down from the ceiling in the bathroom and hallway.

In respect of the kitchen, it made this finding on the basis of the wall socket to the right of the on/off switch not working and the unit downlighters not functioning properly.

Accordingly, the Committee, considering the terms of section 13(3) of the Act, determined that the Landlord had failed to comply with the duty imposed by section 14(1)(b) of the Act.

The Committee was therefore of the view that it was necessary for it to make a Repairing Standard Enforcement Order in terms of section 24(2) of the Act.

The decision of the Committee was unanimous.

### **Right of Appeal**

Section 64 of the Act provides a right of appeal to a landlord or tenant aggrieved by a decision of a private rented housing committee. An appeal may be made to the Sheriff within 21 days of the Landlord or Tenant being informed of the decision.

Where such an appeal is made, the effect of the decision and 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.

M. O'CARROLL

Maurice O'Carroll  
Chairperson

Date: 20 April 2015