



REPAIRING STANDARD ENFORCEMENT ORDER
Ordered by the Private Rented Housing Committee

RE: Property at 29 Weensland Road, Hawick, TD9 9NW, as more particularly described in the Disposition in favour of the Trustees of the Congregation of the Hawick Baptist Church dated 17 August and 7 September 1969 and recorded in the Division of the General Register of Sasine applicable to the County of Roxburgh on 5 December 1969

The Parties:

Mr Roy Shuttleworth, residing at the House ("the Tenant")

and

Hawick Baptist Church, per Mrs Wendy Underhill, Congregation Treasurer, The Cottage, Appletreehall, Hawick, TD9 8PW ("the Landlord")

PRHP REFERENCE PRHP/RP/15/0223

NOTICE TO

Mrs Wendy Underhill, on behalf of the Landlord

WHEREAS in terms of their decision dated 31 December 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;*
- (b) 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;*
- (d) any fixtures, fittings and appliances provided by the landlord under the tenancy are in a reasonable state of repair and in proper working order; and*
- (f) the house has satisfactory provision for the detection of fires and for giving warning in the event of fire or suspected fire."*

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 to:

1. Carry out such works as are necessary to eliminate draughts at the main front door;
2. Repair or replace the kitchen sink unit so that the doors are secure and in good working order;
3. Replace and make good the missing tiles to the walls in the kitchen;
4. Carry out such works as are necessary to eliminate water ingress to the kitchen porch roof;
5. Carry out such works as are necessary to low level gutters, semi-circular cast iron gutters and down pipes at the rear of the property, including clearing any blockages to drainage so that the roof drainage system functions correctly;
6. Repair or replace the three cast iron roof lights to eliminate water ingress, including replacing water damaged ingoes;
7. Provide and install smoke detection and alarm equipment in accordance with the British Standard on the design of fire detection installations for dwellings (BS5389 Part 6) in conjunction with the Scottish Government's Technical Handbook 2013 Domestic under Section 2 - Fire, sub-section 2.11 Communication.

The Committee order that the works specified in this Order must be carried out and completed within four 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 two pages are signed by Maurice O'Carroll, Chairperson of the Private Rented Housing

Committee at Edinburgh on the 31st day of December Two Thousand and Fifteen in
the presence of the undernoted witness:
M. MCCARROLL

Chairperson
E. POTTER

Witness:

Name in full, occupation and address:

EMMA POTTER
ADVOCATES CLERK
PARLIAMENT HOUSE
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 29 Weensland Road, Hawick, TD9 9NW ("the House")

Mr Roy Shuttleworth, residing at the House ("the Tenant")

**Hawick Baptist Church, per Mrs Wendy Underhill, Congregation Treasurer, The
Cottage, Appletreehall, Hawick, TD9 8PW ("the Landlord")**

PRHP REFERENCE PRHP/RP/15/0223

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 Landlords have failed to comply with the duty imposed by section 14(1)(b) of the Act.

The decision was unanimous.

Background

By application dated 7 August 2015 (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 Landlords had failed to comply with the duty to ensure that the House meets the repairing standard and in particular that the Landlords 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;*
- (b) 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;*
- (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; and*
- (f) the house has satisfactory provision for detecting fires and for giving warning in the event of fire or suspected fire.”*

By letter dated 24 September 2015, 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 decision to refer was made by Minute dated 4 September 2015.

The Committee comprised the following members:

Maurice O'Carroll, Chairperson
Andrew Taylor, Surveyor Member

The original date of inspection of 11 November 2015 was postponed at the request of the Landlord. A new date for an inspection and hearing was subsequently fixed and the Committee inspected the House at 11.30am on 18 December 2015. The Tenant was present at the inspection. The Landlord was present at the inspection as represented by Mrs Wendy Underhill, Miss Mary Hobkirk and Mr Andrew Green, all office bearers of the Hawick Parish Church, being the Treasurer, Property Convenor and Secretary thereof.

Following the inspection, the Committee held a hearing at Mansfield House Hotel at 12.30pm. The Tenant was again present at the hearing, along with his wife, Anita Shuttleworth, both of whom gave evidence. The Landlord was again present as represented by the same parties who attended the inspection. At the hearing only Mrs Wendy Underhill provided evidence to the Committee. The Committee considered the written evidence submitted by the parties and the evidence of both parties. Subsequent to the hearing, Mrs Underhill provided two copy estimates as requested, in relation to works proposed to be carried out to the House.

Summary of evidence at the Hearing

At the hearing, the Tenant explained some of the history of his tenancy at the House. When he originally moved in with his wife in March 2014, it was clear that the House required a degree of special care and attention due to its age and condition. He had attempted to assist with that such as by repainting parts of it and effecting small repairs. More significantly, he had applied to the local

authority for a grant to pay for the installation of a new boiler and central heating system at no expense to the Landlord. The new boiler works had been completed by the time of the inspection.

He also complained that the House had been without a valid Gas Safety Certificate for the period running from 1 August 2014 to 24 February 2015, a total of seven months. He had required to contact HSE to prompt the present current Gas Safety Certificate to be put in place. He had also required to contact the local authority's Housing Department in order to have an inspection carried out into the state of the property. The report dated 26 February 2015 produced by the Council's Enforcement Officer noted a number of defects within the House. In all, he had become very frustrated with the pace of improvements to the House and the number of problems that he had experienced with the property. Towards the end of his evidence, he suggested the identity of a joiner who could potentially assist the Church with effecting repairs.

Mrs Shuttleworth also pointed out, not without justification, that it is for the Landlord to carry out the necessary repairs to the property which it owns and not the tenant. Other than that, the Tenant was content to rely upon the aspects of the House which he had pointed out to the Committee during the inspection and was satisfied that they had all been duly observed.

On behalf of the Church, Mrs Underhill stated that it had been originally agreed that the Tenant would apply draft excluder to the main front door but he has not done so. One of very few local joiners has now refused to attend the House in order to carry out works to it. Plumbers had, however, recently been instructed and a report was awaited from them. Copy estimates were shown to the Committee in respect of roofing works. Certain estimates could not now be instructed because the roofing contractor concerned had ceased to be self-employed and was now working for another company. In any event, Mrs Underhill explained that the Church simply did not have the money necessary to carry out those works. The Church building has a dry rot problem so available funds require to be expended to remedy that issue first. She accepted that the Gas Safety Certificate had been neglected due to an oversight but, as confirmed by the Committee, there was presently a valid Certificate in force for the House. She had contacted an electrician about getting a heat detector installed in the kitchen of the House but had been advised that it was unnecessary.

On the latter point, the new fire detection provisions and guidance which came into force on 1 December 2015 were discussed briefly during the hearing. Normally, the full extent of those requirements would apply to new tenants rather than existing ones. However, where a Housing Committee finds, following a complaint relating to inadequate fire detection provision, that such provision is inadequate, it is required to order works to be carried out so that it is rendered satisfactory. Such an order for works requires to be in accordance with current statutory requirements unless. The present legislative requirements defining the location of smoke alarms and requirement for heat sensors came into force in October 2013.

Summary of the Issue

The issue to be determined is whether (a) the House meets the repairing standard as laid down in section 13(1)(a)(b)(c) and (f) 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 a Tenancy agreement in respect of the House on 17 February 2014. In terms of the lease, the tenancy was to run from 3 March 2014 and endure for six months. The Tenants took possession of the House from the start of the tenancy and currently remain in occupation. It has since continued by operation of tacit relocation. By addendum dated 26 June 2015, a four-weekly schedule of rent payments has been agreed by the parties running until 22 December 2016.

The Landlord is recorded on the Lease as being Hawick Baptist Church, per Wendy Underhill as designated above. Although the Application was completed and signed by Mr Roy Shuttleworth, the tenancy is held jointly by himself and his wife Anita Shuttleworth.

The registered owner of the House is the Congregation of the Hawick Church pursuant to a disposition in its favour dated August 17 and September 7, 1969 and recorded in the Division of the General Register of Sasine applicable to the County of Roxburgh on 5 December 1969.

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

The Tenant notified the Landlord of the defects in the house which are now the subject of the Application on a number of occasions during 2015, but most specifically by email on 2 June and 24 August 2015.

A member of Scottish Borders Council Housing Department inspected the House and submitted a report of a complaint to Mrs Underhill on 26 February 2015 indicating that certain aspects of the House did not meet the Repairing Standard in terms of the 2006 Act.

The Committee found all of the witnesses who gave evidence to be credible and reliable.

The inspection on 18 December 2015 revealed:

The property, a former manse, is a substantial stone-built two storey Victorian house (built c. 1890). On the ground floor on entry is a short vestibule giving onto a hallway with staircase in front and a cloakroom just off it. To the left of the hallway is a large reception room with bay window. The end of the hallway gives onto a further reception room to the rear of the

property, currently used as a dining room. To the left of the hallway at the end is a large room (former dining room) which gives onto the kitchen at the rear of the property. The kitchen is within an extension to the rear of the House and there is a further lean-to porch with doorway providing access directly into it from the garden area.

Upstairs, the House has three bedrooms, a bathroom equipped with shower cubicle and separate toilet room with newly installed velux window, where the WC is located. Access by means of a ladder was provided to the attic space which has three original cast iron skylight windows. The House is double glazed throughout, with the exception of the decorative window to the right of the staircase.

There was a battery operated carbon monoxide detector in the kitchen and the dining room off it. There were a total of three battery operated smoke alarms: One was located in the hallway and two further ones on the upstairs landing, one of which was non-functioning.

Outside the House, the guttering and downpipes at the House and kitchen porch area could be observed as well as the garden and out-house to the rear. The Tenant pointed out the location of a drain blockage. The rear fascias on the rear dormer windows to the House could be seen to be stained and in need of maintenance.

The House is in generally good condition and decorative order throughout. There was evidence of some plaster cracking which was commensurate for a building of this type and age and did not raise any structural concerns. Photographs were taken of all parts of the House observed on inspection and are appended to this decision.

In terms of the specific parts of the Repairing Standard, the Committee noted the following (using the numbering of section 13 of the Act):

- (a) When the main front door was closed, daylight could be seen around the edges and a distinct draught could be detected demonstrating that the House was not wind and watertight at that location; the vestibule in the kitchen had two distinct leaks at either corner which allowed water ingress; the cast iron roof lights seen in the attic were leaking and showed signs of water ingress;
- (b) The downpipe to kitchen extension at the rear of the property continues to be blocked and the guttering at that point and alongside the current dining room is in need of repair to ensure proper drainage; although the rear fascias are in need of maintenance (which has been planned), they do not breach the Repairing Standard;
- (c) The installations for the supply of water and gas and space heating are in good repair standing the recent installation of a brand new central heating boiler;
- (f) The House does not have satisfactory provision for the detecting of fires and an upgrade is required.

The Committee also noted that in the kitchen there were some wall tiles missing. It also observed that the doors of the units under the kitchen sink had come loose and did not fit properly. This would fall under section 13(1)(d) (fixtures, fittings and appliances) but that section was not ticked on the original Application, although the Tenant did however narrate the tile issue. The Landlord has moreover, been informed of these defects (tiling issue on 26 February 2015 and the kitchen sink unit on 22 August 2015). The Minute of Referral dated 4 September 2015 defines the Application as including documents received to 25 August 2015. These issues will therefore form part of the Repairing Standard Enforcement Order to follow upon this decision.

Decision of the Committee and reasons

The Committee was of the view that the House had failed to comply with the Repairing Standard in terms of section 13(1)(a), (b), (d) and (f) of the Housing (Scotland) Act 2006 based upon its own observations at inspection and for the reasons stated above.

Accordingly, the Committee, considering the terms of section 13(3) of the Act, determined that the Landlords 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 required 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: 31 December 2015