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**Notice of Variation
of
a Repairing Standard Enforcement Order**

Ordered by the Private Rented Housing Committee

prhp Ref: PRHP/AB11/37/13

Re : Flat 3, 70 Langstane Place, Aberdeen AB11 6EN ("the Property")

Title No: ABN73769

The Parties:-

Allan Hardy, Flat 3, 70 Langstane Place, Aberdeen AB11 6EN ("the Former Tenant")

Rachel Suzannah Gretton, Flat 3, 70 Langstane Place, Aberdeen AB11 6EN ("the Landlord") (care of her agents James and George Collie, Solicitors, 30 Bon Accord Street, Aberdeen AB11 6EL)

**NOTICE TO
Rachel Suzannah Gretton ("the Landlord")**

The Private Rented Housing Committee having determined on 20 March 2014 that the **Repairing Standard Enforcement Order** relative to the Property dated 15 July 2013 should be varied, the said **Repairing Standard Enforcement Order is hereby varied** with effect from the expiry of three months from the date of service of the Order, in the following respects :-

1. work specified in part (a) and any recommendations mentioned in part (b) of the Order must be carried out and completed within the period of six months from the date of service of this Notice;
2. the Landlord shall produce to the Committee the report and recommendations mentioned in parts (a) and (b) of the Order within the said period of six months;
3. work specified in the remainder of part (b) and in part (c) of the Order shall be carried out within a time to be fixed by the Committee following the production of the said report and recommendations by the Landlord and upon the Committee being satisfied that part (a) has been complied with.

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 variation is suspended until the appeal is abandoned or finally determined, and where the appeal is abandoned or finally determined by confirming the decision, the variation will be treated as having effect from the day on which the appeal is abandoned or so determined.

In witness whereof these presents typewritten on this and the preceding page(s) are executed by David Bartos, Advocate, Parliament House, Parliament Square, Edinburgh EH1 1RF, Chairperson of the Private Rented Housing Committee at Edinburgh on 21 March 2014 before this witness:-

GA Grant

witness

chairperson

GILLIAN ANNE GRANT name in full

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**Decision of Private Rented Housing Committee
under Section 25 (1) of the Housing (Scotland) Act 2006**

Statement of Reasons for Decision of the Private Rented Housing Committee

(Hereinafter referred to as "the Committee")

Under Section 25(1) of the Housing (Scotland) Act 2006

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The Parties:-

Allan Hardy, Flat 3, 70 Langstane Place, Aberdeen AB11 6EN ("the Former Tenant")

Rachel Suzannah Gretton, Flat 3, 70 Langstane Place, Aberdeen AB11 6EN ("the Landlord") care of her agents James and George Collie, Solicitors, 30 Bon Accord Street, Aberdeen AB11 6EL

The Committee comprised:-

Mr David Bartos	- Chairperson
Mr Colin Hepburn	- Surveyor member
Mr Michael Scott	- Housing member

Decision

The Committee varied the Repairing Standard Enforcement Order dated 15 July 2013 in respect of the Landlord and the Property (with effect from the expiry of three months from the date of service of the Order) by extending the period for the carrying out and completion of the works specified in the Order so that (1) work specified in part (a) and any recommendations mentioned in part (b) of the Order must be carried out and completed within the period of six months from the date of service of the Notice of Variation ; (2) the Landlord shall produce to the Committee the report and recommendations mentioned in parts (a) and (b) of the Order within the said period of six months; and (3) work specified in the remainder of part (b) and in part (c) of the Order shall be carried out within a time to be fixed by the Committee following the production of the said report and recommendations by the Landlord and upon the Committee being satisfied that part (a) has been complied with.

Background:-

1. The Committee issued a Repairing Standard Enforcement Order ("RSEO") in respect of the Property dated 15 July 2013. In terms of the RSEO the work in the RSEO required to be completed by the end of 3 months from the date of service of the RSEO. The RSEO was served on or about 17 July 2013. On 6th November 2013 Mr Hepburn carried out a reinspection of the Property. Present at the reinspection was the Landlord and her letting agent. Mr Hepburn was handed a number of quotations from Proserv Property Services and JPR Services for the work to be carried out and for other work such as replacement of lightbulbs, pointing around the doorway and replacement of damaged timber joists and timber linings in the stairwell, replacement of stairwell windows, that were not required by the RSEO. It was unclear from the quotations whether the cornerstone of the RSEO, namely the obtaining of an appropriate report on the source or sources of water ingress into the window areas, had actually been obtained.
2. During the re-inspection on 6th November it was observed that the Former Tenant had moved out of the Property. As a result by letters dated 21 November 2013 the Committee's clerk enquired with the Landlord, her letting agents and the Former Tenant whether the Tenancy had come to an end and informing them that in the absence of a response by 5th December the Committee would infer that the tenancy had been lawfully terminated. The content of the letter was also sent to the Former Tenant by e-mail on the same date. By letter of 23rd November 2013 the letting agents confirmed that the Former Tenant had vacated the Property on 9th September 2013. There was no response from the Former Tenant.
3. The tenancy having terminated after the making of the RSEO, the Committee was entitled to enforce the RSEO despite the termination of the tenant's interest.
4. By letter of 16th January 2014 to the Landlord the Committee's clerk informed the Landlord that the Committee had not seen evidence of compliance of part (a) of the RSEO relating to the obtaining of a report with recommended works, and the carrying out of such works. The Landlord was informed that the Committee was minded to decide that there had been a breach of the RSEO and to report the matter to the Procurator Fiscal and to the local authority. It also invited the Landlord to request a hearing before any decision was made.
5. By letter of 18th January 2014 the Landlord indicated that she was under the impression that the work done to the flat had been in good order and that all required paperwork had been passed over to the Private Rented Panel by her letting agents. She requested a hearing. The Committee agreed to the request on 28th January 2014 and on that date also made a direction requiring the Landlord to lodge with the Panel a statement explaining how and when parts (a) and (b) of the RSEO were said to have been complied with, to lodge all reports, quotations, letters, invoices or other documents held by her or her agents in support of a contention that

the RSEO had been complied with, and should the Committee find that the RSEO had not been complied with, whether it should be revoked and why.

6. The direction was intimated to the Landlord on or about 10th February and a re-inspection of the Property was fixed for 6th March 2014 at 11.30am and the hearing at 12.30pm in The Credo Centre, 14-20 John Street, Aberdeen, AB25 1BT. By letter of 27th February and received on 3rd March 2014 the Landlord's law agent (solicitor) submitted that Part (b) of the RSEO had been fully complied with on the basis that the three window areas had been assessed by Proserv (Scotland) Ltd, all necessary works carried out and the windows certified as wind and water tight. She also indicated in the letter the difficulties experienced by the Landlord in obtaining access to the common areas and obtaining consent from the other owners for the work contemplated in parts (a) and (c) of the RSEO. She indicated that the Landlord was working with two of the other owners to have the communal work done. In the light of her own interest in having the work done and the interest of her mortgage lenders, the "order" was unnecessary.
7. The letter also enclosed an affidavit from one of the other owners, namely the owner of Flat 2, Christopher Curtis. In his affidavit Mr Curtis confirmed that in summer 2013 he was contacted by the Landlord to advise that communal repairs were required. He also spoke in the affidavit to the owner of Flat 5 being the uppermost flat, having a kitchen waste pipe loose which was leaking onto the pavement and having illegally converted the communal "attic space" into a further room which prevented access to it for inspection. He was concerned that works should not be instructed without a full commitment to pay for them from the other owners. He said that the Landlord had recently been made redundant and would not be in a position to pay for more than her share.

The Inspection

8. The Committee re-inspected the Property on 6th March 2014 at 11.30 a.m. The Landlord and her solicitor Hayley Mitchell of James & George Collie (who are also the letting agents) were present. The weather was dry, bright and sunny. During the inspection damp meter readings were taken in the living room, the bedroom, and the kitchen. The window areas in these rooms were inspected. Having inspected the flat, the Committee inspected the common parts pertaining to the Property. They inspected the stairwell from the third to ground floors and checked it for signs of dampness.

The Evidence

9. The evidence before the Committee consisted of that mentioned in the decision making the RSEO and :-

- Quotations from ProServ (Scotland) Ltd numbered QUO03334 printed off 26 September 2013, QUO03189 printed off 3 September 2013, QUO03293 printed off 7 October 2013, QUO03243 printed off 9 September 2013
- Quotation from JPR Services Ltd dated 16 September 2013
- Quotations from Mike Spence of MD Maintenance e-mailed 14 October 2013
- Letter from the Landlord dated 18 January 2014
- Invoice from ProServ (Scotland) Ltd numbered 00023296 dated 24 October 2013
- Affidavit of Christopher Curtis dated 28 February 2014
- The oral evidence of the Landlord

The Hearing

10. Following the inspection the Committee held a hearing within the Credo Centre, 14-20 John Street, Aberdeen AB25 1BT. The Landlord's solicitor Ms Mitchell appeared at the hearing accompanied by the Landlord.
11. She adopted her written submission in the letter of 27 February but confirmed that none of the work in the RSEO had been carried out, and not merely parts (a) and (c). Work had been carried out to the kitchen and bedroom window areas as set out in the invoice from ProServ but this had not followed the obtaining of the report sought in part (a).
12. She submitted that the fee quoted by ProServ for the report and associated works was large and that the Landlord was not able to pay for it herself. There were 6 flats in the building plus the restaurant on the ground floor. Without legal steps to make them pay she would not be reimbursed for their share of the cost of the report. At present her client was not able to represent herself in court proceedings that would be necessary to force the others to pay. The Landlord does not wish to contravene the RSEO but given her circumstances it was inappropriate for it to remain in place.
13. On the Committee querying the lack of activity since September of last year Ms Mitchell explained that she had been instructed only two weeks earlier. The Manager Leasing Department of James & George Collie had not understood the RSEO and had not referred the matter to the Legal Department. That person was no longer with James & George Collie. She apologised to the Committee for the delay that had been caused through this and stressed that the Landlord was not personally responsible.
14. Since being instructed the Landlord had applied for legal aid to pursue remedies against the other owners who were unwilling to co-operate in having the work in the RSEO done and paying for it. The Landlord was committed to having the work done and did not wish it to be left in its current condition. She indicated that the Landlord was contemplating remedies under the Tenements (Scotland) Act, as well as interdict, specific implement and small claims to obtain reimbursement for costs.

15. In mitigation of the failure to comply with the RSEO Ms Mitchell invited the Committee to give weight to the following factors :
 - the existence of other owners in the tenement who were being unco-operative
 - the extensive amount of the work
 - the difficulties caused in James & George Collie's Leasing Department.
16. With regard to the possibility of revocation, Ms Mitchell submitted that in deciding whether the work was not necessary the Committee were entitled to look at the position of the Landlord. The work was no longer necessary as the tenant was not longer *in situ*. The Landlord was now living in the Property. She was experiencing damp in her sitting room. It was an important asset to her. She had a mortgage and realised that the work would have to be done. The works were extensive, might take a long time and a variation order might require years or at least until Spring or Summer 2015 given the legal action that required to be taken. There was a difficulty with access to the loft space given the lack of co-operation of the owner of Flat 5. The Landlord did not anticipate re-letting.
17. Ms Mitchell confirmed that aside from Mr Curtis, Syd Graham, the owner of Flat 1 was aware of the need for the work and was arranging for quotations himself. The owners of the restaurant were communicating. It would take months for the owners to meet.
18. It was submitted that if the Committee were not minded to revoke the RSEO, a variation should allow for the Committee to review progress in stages to ensure that work was progressing.
19. The Landlord gave evidence at the hearing. She confirmed that the ladder in the top floor corridor for access to the loft hatch had been removed. The actual panel in the hatch had been battened down with screwed down planks. There was a rumour that the gentleman in Flat 5 had done it. However despite knocking on his door he does not answer. The loft of the building had been converted to living space. At dusk when looking at the building from the outside she had seen into Flat 5 and seen clearly a ladder going from the living room into the ceiling below the loft space. It had a slanted loft-type stairs. Upon being shown a picture of the velux window, the Landlord said that the velux would be above the bedroom of Flat 5. She was unable to explain the black plastic bag hanging off the rear roof.
20. She had moved in on 4 February 2014. Since then there had been some water ingress into the living room but the catch on the window had been replaced by contractors and it had been ok since. There had been no other noticeable water ingress since moving in.
21. The Committee had no difficulty in finding the Landlord's evidence credible and reliable as far as it went and accepted it.

Findings of Fact

22. Having considered all the evidence, including their inspection, the Committee found the following facts to be established:-
- (a) The Former Tenant moved from the Property on or about 9 September 2013, one day before the extended ish of 10 September 2013. The Landlord has taken no issue with the lawful termination of the lease on 10 September 2013.
 - (b) On 6 March 2014 the living room suffered from dampness around the bay window. In the kitchen there was dampness in the right ingo of the window. The wallpaper in that area had been reinstated and painted with emulsion paint since the Committee's inspection on 8 July 2013. That paint showed signs of discolouration towards the top right hand corner consistent with damp.
 - (c) Flat 5 is a top (third) floor flat within the building. It is immediately above the Property. Entry to Flat 5 is from a corridor branching from the stairwell of the building. At the end of the corridor is an entry hatch into the loft space of the building. Immediately below the hatch on the wall is a space for the holding of a ladder to allow access. There was no ladder present. The hatch itself has been boarded up with a chipboard panel preventing access.
 - (d) At the third floor landing the window from the stairwell is boarded up. There were signs of dry rot on the landing. The corner of the walls on the landing adjacent to the kitchen of the Property had dampness in the walls.
 - (e) At the second floor landing there was peeling wallpaper on the walls at the corner. There was dampness in those walls. The floor boards in the corner adjacent to the window showed signs of rot.
 - (f) On the ground floor in the corridor leading from the front door to the stairwell there was staining on the ceiling above the door. The wallpaper near the light switches was peeling off. The walls were found to have dampness.
 - (g) The guttering of the building was still choked with grass or weeds. The roof appeared to be in a reasonable condition, but owing to the height of the building, and the surrounding properties a detailed inspection was not possible. One or two chipped and slipped slates were noted to the roof. Velux type openings had been formed in the communal roof void, and there were plastic bags on the roof, but it was unclear whether these were wind blown rubbish or covered some opening to the roof fabric. There was grass growing on the top of the chimney head around one of the chimney pots. The rear of the roof had what appeared to be a plastic bin liner hanging off a slate. A vent had been

installed into the rear roof near the chimney head. On the front of the roof, in the direction of Union Street, there was a velux window.

- (h) The evidence given by the Landlord to the hearing set out above.
- (i) The Landlord owns the roof, chimney heads (but not any chimney cans), main and gable walls, rhones, gutters, main drains, soil and water pipes of the tenement in common with the owner of the restaurant on the ground floor and five other flatted dwellinghouses in the tenement. She owns all other parts which are common or may be common to the owners of the dwellinghouses of the tenement in common with the owners of the other five flatted dwellinghouses entering by the common entrance door passage and stair at 70 Langstane Place. She owns any chimney can serving the Property outright.

Reasons for Decision

23. Section 25(1) of the Housing (Scotland) Act 2006 provides,
 - "The private rented housing committee which made a repairing standard enforcement order may, at any time -
 - (a) vary the order in such manner as they consider reasonable; or
 - (b) where they consider that the work required by the order is no longer necessary, revoke it."
24. The first issue for the Committee is therefore whether the work required by the RSEO is no longer necessary. The Committee takes the view that "necessity" must be judged by reference to the aim of the RSEO in question. The aim of an RSEO is to make sure that the property meets the repairing standard in s.13(1) of the 2006 Act where a failure to meet such standard has been alleged by a tenant. The private interests or circumstances of the Landlord, however difficult these may be, play no part in the decision of whether an RSEO should be made. Equally, if an RSEO is made, these private circumstances can have no bearing on whether the work required by the RSEO, designed to ensure compliance with the repairing standard, is no longer necessary. Whilst we have some sympathy for the Landlord's personal situation, it follows that the submission that her personal circumstances are relevant is rejected.
25. The RSEO was worded as it was on account of the Committee being unable to identify the cause of the water ingress that had taken place and therefore the nature of remedial works to be carried out. The Committee draws the Landlord's attention to paragraphs 18 and 19 of the Statement of Reasons which accompanied the RSEO dated 15 July 2013. The Committee's re-inspection of the Property and its common stairwell disclosed significant dampness in the areas of the original water ingress and also in the stairwell, in particular on the third floor landing adjacent to the kitchen of the Property. No report as envisaged by the Committee had been obtained or works consequent to it carried out. The cause of the

water ingress and consequent dampness remains unknown. Dampness is ongoing. There is still an apparent breach of the repairing standard. In these circumstances the Committee are unable to conclude that the work in the RSEO, which is designed to ensure compliance with the repairing standard, is no longer necessary. The Committee therefore refuses to revoke the RSEO.

26. It is however open for the Committee to vary the RSEO notwithstanding that the time for compliance has expired without any variation. As s.25(1) makes clear, the variation can be made "at any time". The Committee appreciates the difficulties in having the works carried out principally due to the lack of co-operation of some of the other owners in the building. Having said that until Ms Mitchell's involvement there appear to have been no energetic steps taken to pursue the other owners. In particular it seems to the Committee that this is a case where there could be a scheme decision under the Tenement Management Scheme contained in the Tenements (Scotland) Act 2004 (including the payment of monies into a maintenance account) and that there may be scope for pursuit of the various remedies under that Act and in particular sections 17 and 6.
27. The Committee appreciate that these steps are likely to take some time. At the same time valuable time has been lost since last September when the tenant moved out and a quotation for a report was obtained. The Committee are keen to keep progress under review. In the circumstances the Committee have decided to vary the RSEO by requiring part (a) of the RSEO together with the obtaining of any recommendations in terms of part (b) (together "the initial work") to be carried out within 6 months from the date of service of the Notice of Variation and requiring the Landlord within that time to produce to the Committee the report and recommendations in the initial work. The performance of the remainder of part (b) and the whole of part (c) are to be carried out within a time to be fixed by the Committee following the production to it of the report and recommendations. The variation is to have retrospective effect.
28. The Committee having decided to vary the RSEO by altering the time limits for the performance of the works stated therein, with retrospective effect, the question of whether the Landlord failed to comply with the RSEO and whether notice of failure to report to the local authority and procurator fiscal should be made falls away.
29. The Landlord and her solicitors are reminded of the ability to apply to the Committee for variation of any time limit in variation now being made. Given the delay that has been experienced thus far, however, the Committee would strongly encourage that any such application be made well before the expiry of the time limit with a full reasons given. While the variation that the Committee have made at present is retrospective, it cannot be taken that any future variation would be decided with that effect.

Decision

30. In the exercise of its discretion the Committee varied the RSEO as set out above. The decision of the Committee was unanimous.

Rights of Appeal

31. A landlord or tenant aggrieved by this decision of the Committee may appeal to the Sheriff by summary application within 21 days of being notified of that decision.
32. Unless the lease or tenancy between the parties has been brought to an end, the appropriate respondent in such appeal proceedings is the other party to the proceedings and not the Committee which made the decision.

Effects of Section 63 of the 2006 Act

33. Where such an appeal is made, the effect of this decision and of any Order made in consequence of it is suspended until the appeal is abandoned or finally determined.
34. Where the appeal is abandoned or finally determined by confirming the decision, the decision and the Order made in consequence of it are to be treated as having effect from the day on which the appeal is abandoned or so determined.

D Bartos

Signed Date: 21 March
2014.....

David Bartos, Chairperson

GA Grant

Signature of Witness Date 21 March 2014

Name of witness: GILLIAN ANNE GRANT

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Occupation of witness: DIRECTOR, PUBLISHING