



Repairing Standard Enforcement Order

Ordered by the Private Rented Housing Committee

under

Section 24(1) of the Housing (Scotland) Act 2006

Ref prhp/rp/15/0034

In respect of an application lodged in terms of Section 22(1) of the Housing (Scotland) Act 2006 by Rebecca Cowie residing at 20 Lanark Road, Larkhall, ML9 2UB on behalf of herself and Darren Cowie ("the Tenants") against Zahida Syed care of Hemmings, Hanlon, Clark having a place of business at 241, Low Waters Road, Hamilton ("the Landlord") per her Agent, the said Hemmings, Hanlon, Clark, ("the Landlord's Agents")

Re: Property: 20 Lanark Road, Larkhall, ML9 2UB ("the Property") being the Subjects registered in the Land Register of Scotland under Title Number LAN117542

Committee Members

Karen Moore (Chairperson)

Carol Jones (Surveyor Member)

**NOTICE TO THE LANDLORD**

Zahida Syed care of Hemmings, Hanlon, Clark having a place of business at 241, Low Waters Road, Hamilton

Whereas in terms of their decision dated 15 May 2015, the Private Rented Housing Committee determined that the Landlord had failed to comply with the duty imposed by Section 14 (1)(b) of the Housing (Scotland) Act 2006 and in particular that the Landlord had failed to ensure that the Property met the Repairing Standard as set out in Section 13(1) (b),

13 (1) (c) and 13 (1) (d) of the Act by failing to ensure 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, that 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 that any fixtures, fittings and appliances provided by the landlord under the tenancy are in a reasonable state of repair and in proper working order, the Private Rented Housing Committee now requires the Landlord to carry out the following works (or other such works as are necessary for the purposes of ensuring that the Property meets the Repairing Standard and that any damage caused by carrying out of the works in terms of the Order is made good.):-

The Landlord must within six weeks of the date of this Order:-

1. deliver to the Tenants the original of the current Electrical Safety Certificate for the Property and lodge a copy thereof with the Committee;
2. (a) instruct a suitably qualified and registered SELECT or NICEIC electrical contractor (i) to carry out an in service inspection and testing of all electrical equipment in the kitchen including all electrical appliances and an inspection of the electric shower in the main bathroom supplied by the Landlords and (ii) to provide a written report thereon ("the Report") to the Landlord and to submit a copy to the Committee;  
  
(b) ((i) carry out all works as recommended by the Report, including the replacement of any or all of the appliances and the shower, to ensure that all the kitchen electrical appliances and the electric shower are functional and in proper working order and,(ii) confirm in writing to the Committee that the works have been completed;
3. repair or replace the flooring in the main bathroom and the utility room;
4. repair or replace the slabs forming the path, raised patios and steps to the Property;
5. repair or replace the side gate at the Property to ensure it opens and closes properly;
6. repair or replace the gas meter cover at the Property and
7. repair or replace the hinges to the loose bedroom door to ensure it opens and closes properly.

A Landlord or a Tenant aggrieved by the decision of the Private Rented Housing Committee may appeal to the Sheriff by summary application within twenty one 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 typewritten on this and the two preceding pages are signed by me, Karen Moore, Chairperson of the Private Rented Housing Committee on 15 May 2015 at Glasgow before this witness, Norman William Moore, Solicitor, Cumbernauld.

N. MOORE

K. MOORE

*Witness*



**Determination by Private Rented Housing Committee**

**Statement of Decision of the Private Rented Housing Committee issued under**

**Section 24(1) of the Housing (Scotland) Act 2006**

Ref prhp/rp/15/0034

In respect of an application lodged in terms of Section 22(1) of the Housing (Scotland) Act 2006 by Rebecca Cowie residing at 20 Lanark Road, Larkhall, ML9 2UB ("the Tenants") against Zahida Syed care of Hemmings, Hanlon, Clark having a place of business at 241, Low Waters Road, Hamilton ("the Landlord") per her Agent, the said Hemmings, Hanlon, Clark, ("the Landlord's Agents")

Re: Property: 20 Lanark Road, Larkhall, ML9 2UB ("the Property")

Committee Members

Karen Moore (Chairperson)

Carol Jones (Surveyor Member)

**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) of the Housing (Scotland) Act 2006 ("the Act") in relation to the Property, determined that the Landlord has not complied with the duty imposed by Section 14 (1) (b) of the Act in respect that the Property meets the Repairing Standard in respect of Sections 13 (1) (b), 13 (1) (c) and 13 (1) (d) of the Act and that for the reasons set out below.

## **Background**

1. By application received by the Private Rented Housing Panel on 27 January 2015 and signed on behalf of the Tenants by Mrs. Rebecca Cowie, ("the Application"), the Tenants applied to the Private Rented Housing Panel for a determination that the Landlord had failed to comply with the duty imposed on her by Section 14 (1) (b) of the housing (Scotland) Act 2006 in respect that the Property does not meet the Repairing Standard in respect of Sections 13 (1) (b), 13 (1) (c) and 13 (1) (d) of the Act.

2. The president of the Private Rented Housing Panel, having considered the application, intimated to the parties by Notice of Referral dated 9 February 2015, a decision under Section 23 (1) of the Act to refer the Application to a Private Rented Housing Committee and in terms of Schedule 2, Paragraph 1 of the Act fixed an Inspection and Hearing for 6 May 2015 at 9.00 a.m. and 10.00 a.m., respectively.

3. In the Application, it was stated that the Tenants considered that the Landlord had failed to ensure that the Property met the Repairing Standard as set out in Section 13(1) (b), 13 (1) (c) and 13 (1) (d) of the Act by failing to ensure that 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, 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 that any fixtures, fittings and appliances provided by the landlord under the tenancy are in a reasonable state of repair and in proper working order. Although the Tenants did not specifically mention a failure by the Landlord to ensure that 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 in terms of Section 13(1) (b) of the Act, it is clear from the content of the Application that this is a ground complained of and that the Landlord has had fair notice in that respect.

4. In particular, the Tenants, in the Application, stated that the electric shower is broken, the integrated dishwasher is broken, the integrated fridge is not properly sealed, there are broken and unfixed tiles in the bathroom and the utility room, the slabs outside of the house are unfixed, the oven in the kitchen is not working, a number of lights throughout the property are not working, the kitchen ceiling fan is not working, the bedroom cupboard door is hanging off, the side gate is broken and the gas meter on the outside wall is uncovered. The Tenants also stated that the front door was weathered and that there were stains on the carpets.

5. Mrs. Rebecca Cowie on behalf of the Tenants submitted written representations to the Committee on 26 February repeating several of the matters complained of in the Application and confirming the lights had been fixed by the landlord.

#### Inspection and Hearing

6. An Inspection took place on 6 May 2015 at 9.00 a.m. at the Property. Mrs. Rebecca Cowie was present along with her mother, Mrs. Warden. The Landlord did not attend. Mrs. Donna Hanlon of the Landlord's Agents was present for the Inspection of the internal part of the Property. The Committee inspected the items of which the Tenants complained specifically in the Application.

7. Following the Inspection, a Hearing was held at the Avonbridge Hotel, Carlisle Road, Hamilton ML3 7DB on 6 May 2015 at 10.00 a.m. Mrs. Cowie was present along with her mother, Mrs. Warden. The Landlord did not attend. Mrs. Hanlon of the Landlord's Agents was present.

8. At the Hearing, both Mrs. Cowie and Mrs. Hanlon, on behalf of the Landlord, addressed the Committee and answered questions on the matters raised in the Application.

9. With regard to the fridge, Mrs. Cowie advised the Committee that the effect of the broken seal was that the fridge was inoperable as it failed to maintain an even temperature. Mrs. Hanlon advised the Committee, that in the Landlord's opinion, as the fridge was useable and not broken, any repair was cosmetic and that the Landlord had instructed the Landlord's Agents not to effect a repair. Mrs. Hanlon advised the Committee that she had not inspected the fridge on behalf of the Landlord.

10. In respect of the dishwasher, Mrs. Cowie advised the Committee that the dishwasher had never worked from the beginning of the tenancy. Mrs. Hanlon advised the Committee that the Landlord's instruction to the Landlord's Agents was, as the dishwasher had been left in the Property by a previous tenant, the dishwasher was not part of the Landlord's fittings and fixtures and was provided as a "courtesy". Mrs. Hanlon advised the Committee that that the Landlord had instructed the Landlord's Agents not to effect a repair.

11. With regard to the electric shower, Mrs. Cowie advised the Committee that this had never worked from the beginning of the tenancy and that the Landlord's Agents had advised her that the Landlord was of the view that, as there was another working shower in the Property, the electric shower would not be fixed. Mrs. Hanlon advised the Committee that

although the Landlord had instructed the Landlord's Agents to repair the shower, the Landlord did not consider this an urgent repair. Mrs. Hanlon further advised that, the Landlord, having had the shower inspected by an electrician, intended to replace the shower, but, as the Tenants had withheld rent, the Landlord had instructed the Landlord's Agents not to effect a repair.

12. In respect of the tiling in the bathroom and utility room, Mrs. Cowie advised the Committee that the floor tiles had been loose and broken from the beginning of the tenancy. Mrs. Hanlon advised the Committee that the Landlord's instruction to the Landlord's Agents originally had been that this was cosmetic repair but now accepted that the flooring should be replaced. Mrs. Hanlon further advised the Committee that as the Tenants had withheld rent, the Landlord had instructed the Landlord's Agents not to proceed with the replacement.

13. In respect of one of the bedroom cupboard doors, Mrs. Cowie advised the Committee that this had been hanging off the hinges from the beginning of the tenancy and that although Mr. Cowie had attempted to re-attach the door, this had not been successful. On behalf of the Landlord, Mrs. Hanlon made no comment.

14. With regard to the external slabs, Mrs. Cowie advised the Committee that these had been loose from the beginning of the tenancy. Mrs. Hanlon advised the Committee that she had thought these had been fixed in December 2014 as she had been invoiced for the repair work by the tradesman. Mrs. Cowie stated that although a tradesman had called to the Property, he had repaired that back door, and, as far as Mrs. Cowie was aware, he had not repaired any external slabs.

15. In respect of the side gate, Mrs. Cowie advised the Committee that this had been broken from the beginning of the tenancy. On behalf of the Landlord, Mrs. Hanlon stated that she was not aware that this required to be fixed.

16. In respect of the front door, Mrs. Cowie advised the Committee that this had been weathered from the beginning of the tenancy. Mrs. Cowie advised that Committee that she viewed this as a minor matter and raised it to record that it was not an item of damage caused by her and her husband. On behalf of the Landlord, Mrs. Hanlon made no comment.

17. In respect of the gas meter cover, Mrs. Cowie advised the Committee that this had been unattached and lying on the ground from the beginning of the tenancy. Mrs. Cowie advised that Committee that she viewed this as a minor matter and raised it to record that it was not an item of damage caused by her and her husband. On behalf of the Landlord, Mrs. Hanlon made no comment.

18. In response to questions from the Committee, in respect of complaints made by the Tenants about the oven, faulty ceiling lighting and a faulty ceiling fan, Mrs. Cowie and Mrs. Hanlon, on behalf of the Landlord, agreed that these had been fixed by an electrician instructed by the Landlord. Mrs. Cowie advised the Committee that the oven timer remained inoperable.

19. In response to questions from the Committee, Mrs. Hanlon advised that Committee that there were current Electrical and Gas Safety Certificates for the Property. Mrs. Hanlon also advised that there was an Energy Performance Certificate. Mrs. Hanlon undertook to provide copies of these to the Tenants.

20. Mrs. Cowie advised the Committee that the water temperature is difficult to control and there had been an occasion on which she had been scalded by excessively hot bath water. Mrs. Cowie accepted that this matter had not been notified to the Landlord. On behalf of the Landlord, Mrs. Hanlon advised that the boiler was most likely not a combi-boiler and so the water temperature would be difficult to control.

21. In summing up Mrs. Cowie advised the Committee that she viewed the weathered front door and stained carpets as minor matters and raised these to record that they were not damage caused by her and her husband to ensure that the repair costs would not be deducted from the tenancy deposit. Mrs. Cowie also advised the Committee that the Property had not been clean when she and her husband took entry. On behalf of the Landlord, Mrs. Hanlon advised that the carpets had been shampooed before the Tenants took entry to the Property but that the Property had not been professionally cleaned, the Landlord having relied on the outgoing tenant to clean the Property. Mrs. Cowie also advised the Committee that she and her husband had decided to leave the Property.

22. In summing up, on behalf of the Landlord, Mrs. Hanlon advised Committee that the rental payment for the Property reflected its condition. Mrs. Hanlon further advised Committee that the Landlord, in any event, had begun recovery of possession proceedings and that she understood that the Landlord intended to sell the Property rather than re-let it.

### **Summary of the Issues**

23. The issues to be determined by the Committee are whether or not the Property meets the Repairing Standard in respect of Section 13 (1) (b), 13 (1) (c) and 13 (1) (d) of the Act at the date of the Inspection and Hearing. In particular whether 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, 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 and that any fixtures, fittings and appliances provided by the landlord under the tenancy are in a reasonable state of repair and in proper working order.

### **Findings of Fact**

24. The Landlord is the owner of the Property and the Tenants are the tenants of the Property in terms of a short assured tenancy agreement between the parties dated 26 November 2014.

25. The Property is a detached bungalow situated in a rural location on the edge of the Clyde Valley around 7 miles south-east of Hamilton in Lanarkshire. It was built in the 1980's and has a roughcast exterior and pitched tiled roof. The accommodation comprises a living room, 3 bedrooms, dining kitchen, bathroom, shower room and utility room. There are extensive gardens around the property.

26. From the Inspection, the Committee found the following:-

- i. the electric shower in the main bathroom does not work;
- ii. the integrated dishwasher does not work;
- iii. the seal on the fridge is badly cracked and the fridge is inoperable;
- iii. there are several broken and unfixed floor tiles in both the bathroom and the utility room;
- iv. the hinges of one of the bedroom cupboard doors are broken and the door is loose;
- v. the side gate does not close properly;
- vi. there are several unfixed slabs around the outside of the Property;
- vii. the gas meter cupboard on the external wall of the Property is uncovered.

27. The Committee also noted that the fencing at the front of Property had collapsed into the front garden and that the rear gate was broken. These were not matters raised in the Application or notified to the Landlord.

28. From the Hearing, the Committee found that the evidence given by both Mrs. Cowie and Mrs. Hanlon was truthful, accurate and proportionate and supported fully the matters raised by the Tenants in the Application and listed in paragraph 26 above.

## **Decision of the Committee and Reasons for the Decision of the Committee**

29. The Committee's decision was based on the Inspection and on the statements made to the Committee at the Hearing In respect of Sections 13 (1) (b), 13 (1) (c) and 13 (1) (d), of the Act, the Committee found that at the date of the Hearing the Landlord has failed to comply with the duty imposed by Section 14 (1) (b) of the Act.

30. From the Hearing, the Committee were of the view that there was no dispute between the Tenants and the Landlord that the defects complained of by the Tenants required to be remedied. The dispute was that the Landlord delayed or refused to carry out the repairs because the Landlord either considered the repairs non-essential, were not her responsibility or because the Tenants are withholding rent. The Committee are of the view that there is no statutory basis for the Landlord to adopt this approach.

31. The Committee dismissed Mrs. Hanlon's statement, on behalf of the Landlord, that the repairs to the fridge were cosmetic. The Committee found that the seal was so badly broken to render the fridge inoperable. The Committee also dismissed Mrs. Hanlon's statement, on behalf of the Landlord, that the dishwasher was not part of the Landlord's fittings and fixtures and was provided as a "courtesy". The dishwasher, having been in the Property at the start of the tenancy is an appliance provided by the Landlord and, as such, falls to be maintained by the Landlord in a reasonable state of repair and in proper working order.

32. This decision is unanimous.

33. The Committee, having determined that the Landlord had failed to comply with the duties imposed by Section 14(1) (b) of the Act proceeded to make a Repairing Standard Enforcement Order as required by Section 24(2) of The Act.

34. The Landlord is reminded that it is a criminal offence to re-let a Property to which a Repairing Standard Enforcement Order applies.

## **Right of Appeal**

35. 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.

36. Where such an appeal is made, the effect of the decision and of any repairing standards enforcement 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 any repairing standards enforcement order will be treated as having effect from the day on which the appeal is abandoned or so determined.

Signed

K MOORE

Karen Moore, Chairperson

Date 15 May 2015