



Repairing Standard Enforcement Order

Ordered by the Private Rented Housing Committee

prhp Ref:prhp/rp/16/0239

Re : Property at 56 North Bank Street, Prestonpans, East Lothian EH32 9BY ("the Property/ the house")

The Parties:-

Jacqueline Scott, residing at 56 North Bank Street, Prestonpans, East Lothian EH32 9BY ("the Tenant")

Darren Eales, residing at 12 North Bank Road, Prestonpans, East Lothian EH32 9DH ("the Landlord")

NOTICE TO DARREN EALES ("the Landlord")

Whereas in terms of their decision dated 2015, 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 and in particular that the landlord has failed to ensure that:-

- (a) the Property is wind and water tight and in all other respects fit for human habitation,
- (b) the structure and exterior of the Property (including drains, gutters and external pipes) are in a reasonable state of repair and in proper working order,
- (c) 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,
- (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,
- (e) any furnishings provided by the landlord under the tenancy are capable of being used for the purpose for which they are designed,
- (f) the Property has satisfactory provision for detecting fires and for giving warning in the event of fire or suspected fire, and
- (g) the Property has satisfactory provision for giving warning if carbon monoxide is present in a concentration that is hazardous to health.

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:-

1. To repair or replace the rear entrance door of the Property, the threshold, facings and door lock, to ensure it meets the repairing Standard.
2. To instruct a suitably qualified Gas Safe engineer to replace the central heating boiler or to carry out such repairs to the existing central heating boiler to ensure that its controls are in proper working order and that it is properly connected to the programmer.
3. To exhibit to the Committee a current Gas Safety Certificate in respect of the Property.
4. To exhibit to the Committee a satisfactory Electrical Installation Condition Report in respect of the Property.
5. To replace the joints in the guttering to the front and rear of the Property or to carry out such repair work to the existing joints as is necessary to ensure they are watertight and that the gutters are in proper working order.
6. To install in the Property interlinked, mains-wired smoke detectors and in the hallway and living room and a heat alarm in the kitchen, all of which comply with the revised Domestic Technical Handbook and the Scottish Government's guidance on the requirements for smoke alarms.

7. To install one or more carbon monoxide detectors in the Property to comply with the Scottish Government's Guidance for the Provision of Carbon Monoxide Alarms in Private Rented Housing, which came into effect on 1 December 2015.

The Private Rented Housing Committee order that the works specified in this Order must be carried out and completed within the period of 6 weeks 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.

In witness whereof these presents typewritten on this and the preceding page are executed by George Barrie Clark, solicitor, Lasswade, chairperson of the Private Rented Housing Committee at Lasswade, on 28 September 2016, before this witness, Valerie Elizabeth Jane Clark, Droman House, 5 School Brae, Lasswade, Midlothian.

V Clark _____ witness

___ **G Clark** _____ chairman



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

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Re : Property at 56 North Bank Street, Prestonpans, East Lothian EH32 9BY ("the Property/ the house")

The Parties:-

Jacqueline Scott, residing at 56 North Bank Street, Prestonpans, East Lothian EH32 9BY ("the Tenant")

Darren Eales, residing at 12 North Bank Road, Prestonpans, East Lothian EH32 9DH ("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 received on 5 July 2016 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 his duty to ensure that the house meets the repairing standard and in particular that the Landlord had failed to ensure 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,
 - (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,
 - (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,
 - (e) any furnishings provided by the Landlord under the tenancy are capable of being used for the purpose for which they are designed,
 - (f) the house has satisfactory provision for detecting fires and for giving warning in the event of a fire or suspected fire, and
 - (g) the house has satisfactory provision for giving warning if carbon monoxide is

present in a concentration that is hazardous to health.

3. By letter dated 11 August 2016 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 written representation to the Committee. The Landlord made no written representations to the Committee.
6. The Private Rented Housing Committee inspected the Property on the morning of 28 September 2016. The Tenant and the Landlord were present during the inspection.
7. The Committee comprised George Clark (Chairman) and Ian Murning (Surveyor member).
8. A file of photographs, taken at the inspection, is attached to and forms part of this Statement of decision
9. Following the inspection of the Property the Private Rented Housing Committee held a hearing at Prestonpans Community Centre, Preston Road, Prestonpans, East Lothian EH32 9QS and heard from both the Tenant and the Landlord. The Landlord was represented by a solicitor, Mr Raymond Fairgrieve of MHD Solicitors, 45 Queen Charlotte Street, Leith, Edinburgh EH6 7HT. The Tenant was represented by Sophie Thompson, Prevention Officer at East Lothian Council. Councillor Willie Innes and Mike Links of PRHP observed the hearing.
10. The Tenant, in her application, submitted as follows:- the back door did not lock properly. Facings were missing from the door and a hole in the bottom left of the door had to be stuffed with a towel to prevent draughts; the rhones and guttering were split and needed to be cleaned out; the central heating boiler had to be switched on and off at the power point, as the heating was coming on outwith the timer and the hot water heating was coming on at the same time; there was no Gas Safety Certificate for the boiler and a red light on it was flashing, causing concern for safety; there were no hard wired smoke detectors, merely a battery-operated one in the hall; and there was no carbon monoxide detector.
11. The Landlord made no written submissions to the Committee.
12. At the hearing, Mr Fairgrieve, on behalf of the Landlord, told the Committee that the Landlord had no knowledge of the lease presented to the Committee. He had not instructed Messrs McKinnon Forbes, solicitors to prepare it. He did, however, accept that he was receiving rent of £415 per month from the Tenant, but he was passing on £400 of that to his former partner, Ms Andrena Scott, who was the sister of the Tenant and co-owner of the Property. Mr Fairgrieve said that Mr Eales accepted that he was the de facto landlord, but he was unable to carry out any work to the Property as he did not have a set of keys. Mr Fairgrieve told the Committee that, when he was instructed by the Landlord, he had asked Messrs McKinnon Forbes for their file. He had received their reply only on the morning of the hearing, to the effect that they did not hold a file for the Landlord, but they enclosed a copy of a lease dating from March 2006, which they had retrieved from their Deeds Store. Mr Fairgrieve produced the copy lease at the hearing and subsequently provided the Committee with a copy of the lease and of the letter from McKinnon Forbes dated 27 September 2016. Mr Fairgrieve told the Committee that the copy lease provided by the Tenant was identical to the one sent by McKinnon Forbes, but the tenant's name and address, figures and dates appeared to have been tippexed out and replaced in handwriting. The signatures of the solicitors and the witness were in

installation and is a combi-boiler and the relative pipework appeared to be modern.

- In view of the apparent wiring issues in relation to the central heating boiler and programmer, the Committee require to see a satisfactory up to date Electrical Installation Condition report in respect of the Property.
- There is no Gas Safety Certificate in respect of the Property.
- The only means of smoke detection in the Property is one battery-operated detector in the hall.
- There is no carbon monoxide detector in the Property.

Reasons for the decision

17. The Landlord's solicitor told the Committee that the Landlord did not have a set of keys for the Property. The Committee does not have the power to require a Tenant to provide his or her Landlord with keys and the obligation of a tenant is to permit the Landlord or his contractors to have access for the purpose of inspection, maintenance and repair. This would not necessarily involve the Landlord in having a set of keys.
18. The damage to the back entrance door of the Property is such that it is not wind and water tight nor is it secure. The obligation of the Committee is to make an Order requiring the Landlord to carry out such work as is necessary to make the Property wind and water tight. If the Landlord believes he has the right to insist that the Tenant pays for the work, he can argue that at a later date, in a court if necessary, but the obligation to carry out such as is necessary to comply with the Repairing Standard rests with the Landlord.
19. The gutter joints are leaking and are not in proper working order.
20. The central heating boiler is not in proper working order.
21. The Committee heard conflicting evidence regarding the intended inspection by the gas central heating engineer, but is unable to prefer one version of events over the other, so is not able to hold that the Landlord has been prevented from carrying out repair works to the Property.
22. The Property does not have satisfactory provision for detecting fires and for giving warning in the event of fire or suspected fire.
23. The Property does not have any provision for giving warning if carbon monoxide is present in concentration that is hazardous to health.

Decision

24. The Committee accordingly determined that the Landlord had failed to comply with the duty imposed by Section 14 (1)(b) of the Act.
25. The Committee proceeded to make a Repairing Standard Enforcement Order as required by section 24(1).
26. The decision of the Committee was unanimous.

Right of Appeal

27. **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

28. 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 **G Clark** Date: 28 September 2016
Chairperson