



STATEMENT OF DECISION OF THE PRIVATE RENTED HOUSING COMMITTEE UNDER SECTION 26(1) OF THE HOUSING (SCOTLAND) ACT 2006

**Reference number:** PRHP/RP/14/0281

**Land Registration Number:** REN12418

**In connection with**

**Property at 21 Craighburn Crescent, Houston, Johnstone, PA6 7NE (“the property”)**

MS MARGARET KIRKTON, 21 Craighburn Crescent, Houston, Johnstone, PA6 7NE (“the tenant”)

FIONA MARGARET SIDDALL, Dewlands, Crayshill Road, Crayshill, Billericay, Essex. (“the landlord”)

**Background**

1. Reference is made to the determination of the Private Rented Housing Committee (“the committee”) of 20<sup>th</sup> May 2015 and the decision of the committee that the landlord had failed to comply with the duty imposed by section 14 of the Housing (Scotland) Act 2006 (“the Act”).
2. Further, reference is made to the Repairing Standard Enforcement Order (RSEO) of 20<sup>th</sup> May 2015 issued by the committee which confirmed that the landlord had failed to ensure that 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.
3. The terms of the RSEO were that the landlord was required to carry out such work as was necessary to ensure that the house meets the repairing standard and, in particular, the following specific areas:-
  - *To replace or carry out such works to the external door and the entrance to the storage cupboard at the rear of the property to ensure that it is wind and water tight and that it is in a reasonable state of repair;*
  - *To have a full inspection and test of all electrical wiring and appliances at the property by a suitably qualified independent electrical engineer, with particular emphasis on the shower unit in the bathroom and the wiring emanating from the storage cupboard in the upper hallway to ensure that all electrical installations at the property are in a reasonable state of repair and in proper working order and for the engineer to report on his findings with regard to their state of repair and working order and for the landlord to produce a copy of that report to the committee;*
  - *To instruct an independent suitably qualified Gas Safe registered engineer to carry out an inspection of the boiler and heating system, for him to report on his findings with regard to their state of repair and working order and to produce a copy of that report to the committee.*
  - *Should it be reported that the boiler and system for heating water are not in a reasonable state of repair and in proper working order following that inspection, then the engineer should carry out any necessary repairs or, as appropriate, replacement any fittings to ensure that the boiler and heating system are in proper working order and meet the repairing standard. If either the boiler or system for heating the property*

*are found not to be in a reasonable state of repair, the landlord should provide receipts or evidence of the works undertaken.*

- *To produce an up to date gas safety certificate on the installation and supply of gas;*
  - *To provide satisfactory provision for detecting fires and for giving warning in the event of fire or suspected fire.*
4. The committee ordered that the works specified in the order were to be carried out and completed by 19<sup>th</sup> June 2015.
  5. The original surveyor member of the committee stepped down from the committee in January 2016.
  6. In February 2016, surveyor, Mr Robert Buchan, was appointed to inspect the property as an expert witness.
  7. An inspection of the property was carried out by Mr Buchan on 14<sup>th</sup> March 2016 at 10am to ascertain whether the work required by the RSEO of 20<sup>th</sup> May 2015 had been completed.
  8. The tenant was present at the inspection and provided access to Mr Buchan on 14<sup>th</sup> March 2016. The tenant indicated that her intention was to vacate the tenancy.
  9. On inspection, Mr Buchan noted the following works remained outstanding :
    - *A satisfactory electrical installation condition report to be produced;*
    - *No earth bonding wires were attached to the pipes of the new boiler;*
    - *the pipes and boiler are located directly above an electrical socket creating a hazard and either the boiler or the electrical socket(s) be relocated or re-arranged in order to remove the hazard;*
  10. Mr Buchan produced a report setting out his findings, dated 16<sup>th</sup> March 2016.
  11. A copy of that report was intimated to the landlord by the PRHP setting out a time limit of 14<sup>th</sup> April 2016 for the landlord to respond with any comments in respect of the content of the report.
  12. By email of 31<sup>st</sup> March 2016 the landlord's representative, Mr Tyler, contacted the PRHP stating the following:

*"I would like to confirm that Ms Kirkton no longer resides at this property and terminated her lease on 10<sup>th</sup> March 2016. She therefore had no authority to give anyone access to the property on 14<sup>th</sup> March 2016. I would appreciate if there was no further correspondence with Ms Kirkton in association with this property going forward. Please find attached recorded delivery letter I received from Ms Kirkton terminating her tenancy."*
  13. By email of 1<sup>st</sup> April 2016 to the PRHP, the landlord's representative intimated a copy of a letter from the tenant dated 10<sup>th</sup> February 2016. The letter intimated an intention on the part of the tenant that she would be leaving the property. It read:

*"I write to terminate my tenancy at the above address and give you one months notice as from today."*

14. The representations on behalf of the landlord to the PRHP were silent on the content of the inspection report of 16<sup>th</sup> March 2016.
15. The committee is satisfied that the landlord has failed to comply with the terms of the RSEO.
16. The PRHP received a letter from the tenant dated 13<sup>th</sup> April 2016. The letter alleged that new residents were occupying the property and that the property had been re-let by the landlord.
17. A letter was issued to the landlord on 15<sup>th</sup> April 2016 requesting the landlord's response to this allegation and setting out the potential consequences for the landlord should the property have been let whilst a RSEO was in force.
18. No response was received from the landlord in response to the letter of 15<sup>th</sup> April 2016.

### Decision

19. Having considered the works outstanding at the date of the re-inspection and the landlord's failure to respond to the terms of the surveyor's re-inspection report, it is the decision of the committee that the landlord has failed to comply with the RSEO and directed that a notice of failure be served on the local authority.
20. The committee have no evidence that the property is being re-let and make no comment in relation to that.
21. The committee now proceeds to serve notice of the landlord's failure on the local authority.
22. The committee do not intend to make a rent relief order at this time.

### Reasons for decision

23. Section 26 of the Act sets out the effect of a failure of a landlord to comply with an RSEO as follows:

#### **26 Effect of failure to comply with repairing standard enforcement order**

*(1) It is for the private rented housing committee to decide whether a landlord has complied with a repairing standard enforcement order made by the committee.*

*(2) Where the committee decide that a landlord has failed to comply with the repairing standard enforcement order, the committee must—*

*(a) serve notice of the failure on the local authority, and*

*(b) decide whether to make a rent relief order.*

*(3) The committee may not decide that a landlord has failed to comply with a repairing standard enforcement order—*

*(a) unless the period within which the order requires the work to be completed has ended, or*

*(b) if the committee are satisfied, on the submission of the landlord or otherwise—*

*(i) that the landlord is unable to comply with the order because of a lack of necessary rights (of access or otherwise) despite having taken reasonable steps for the purposes of acquiring those rights, or*

*(ii) that the work required by the order is likely to endanger any person.*

(4) Where the committee are prevented by reason only of subsection (3)(b) from deciding that a landlord has failed to comply with a repairing standard enforcement order, the committee must serve notice on the local authority stating that they consider the landlord to be unable to comply with the repairing standard enforcement order.

24. In light of the reference in the email of 31<sup>st</sup> March 2016 to the tenant having provided access on 14<sup>th</sup> March 2016 to enable the inspection to proceed, the committee is satisfied that the landlord received intimation of the RSEO through the landlord's representative. The landlord was absent from the inspection. Receipt of the RSEO would have confirmed to the landlord that the tenant had been present.
25. On the basis of the findings of Mr Buchan's report of 16th March 2016 and the content of the emails from the landlord's representative to the PRHP of 31<sup>st</sup> March and 1<sup>st</sup> April 2016, each of which were silent on the content of the report, the committee is satisfied that the landlord has failed to comply with the RSEO.
26. Therefore, in terms of section 26 (2) the committee *must—*  
(a) *serve notice of the failure on the local authority, and*  
(b) *decide whether to make a rent relief order.*
27. The committee received no response to the RSEO from the landlord. There is no evidence before the committee to suggest that there is anything preventing the landlord from carrying out the works. Therefore the committee proceeds to serve notice of the landlord's failure on the local authority in terms of section 26 (2) of the Act.
28. The property having now been vacated by the tenant and the tenancy agreement between the tenant and the landlord now at an end, the committee finds no basis in terms of section 27 of the Act to impose a rent relief order.

### Right of Appeal

29. 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.
30. 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 determined.

IN WITNESS WHEREOF these presents typewritten on this are signed by Simone Sweeney, Chairperson of the Private Rented Housing Committee, at Glasgow, on 26<sup>th</sup> of May, Two Thousand and Sixteen in the presence of the undernoted witness:

**Simone Sweeney**

Chairperson

**Barry Divers**

Witness

Designation: Advocate, Faculty of Advocates, Parliament House, 11 Parliament Square, Edinburgh, EH1 1RF