



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/14/0179

In respect of an application lodged in terms of Section 22(1) of the Housing (Scotland) Act 2006 by Ms Maya Hoffman residing at 17, Barclay Square, Renfrew, PA4 8DZ formerly the Tenant of the Property against R & J Properties having a place of business at 65, Causeyside Street, Paisley, PA4 8DZ ("the Landlords")

Re: 17 Barclay Square, Renfrew, PA4 8DZ 8DZ being the subjects registered in the Land Register for Scotland under Title Number REN42294 ("the Property")

Committee Members

Karen Moore (Chairperson)

Andrew Taylor (Surveyor Member)

Colin Campbell (Housing Member), ("the Committee")

This Decision should be read in conjunction with:-

- i) Decision in respect of the Property dated 28 January 2015;
- ii) Repairing Standard Enforcement Order in respect of the Property dated 28 January 2015;
- iii) Failure to Comply Certificate in respect of the RSEO dated 11 August 2015;
- iv) Rent Relief Order dated 11 August 2015.

Background

1. By application dated 18 July 2014 and signed by Ms Maya Hoffman, ("the Application"), Renfrewshire Citizens' Advice Bureau applied to the Private Rented Housing Panel for a

determination that the Landlords had failed to comply with the duty imposed on them by Section 14 (1) (b) of the Act in respect that the Property does not meet the Repairing Standard in respect of Sections 13 (1) (a) of the Act. The president of the Private Rented Housing Panel, having considered the application, intimated to the parties by Notice of Referral dated 25 August 2014 a decision under Section 23 (1) of the Act to refer the Application to a Private Rented Housing Committee and fixed an Inspection and Hearing for 19 December 2014 at 10.00 a.m. and 11.30 a.m., respectively.

2. By letters sent to the committee, at that time comprising Karen Moore, Alexander Carmichael, Surveyor Member, and Colin Campbell, ("the First Committee") on 17 and 18 December 2014, Renfrewshire Citizens' Advice Bureau confirmed to the First Committee that they had contacted the Tenant who instructed them as her agent that she wished to withdraw her application as the dampness had been treated, and so, she considered that the matter complained of in the Application had been remedied by the Landlords. The First Committee gave consideration to the Tenant's withdrawal of the Application and took the view that there was sufficient concern that the matters complained of might not have been fully resolved to meet the Repairing Standard as required by the Act. Accordingly, the First Committee continued with the proceedings in terms of paragraph 7(3)(b) of Schedule 2 to the Act .

First Inspection, Hearing and RSEO

3. An Inspection and Hearing took place on 19 December 2014 at 10.00 a.m. and 11.30 a.m., respectively, following which the First Committee found that the Landlords had failed to comply with the duty imposed by Section 14 (1) (b) of the Act in respect that the Property does not meet the Repairing Standard in respect of Section 13 (1) (a) and Section 13 (1) (f) of the Act and imposed a Repairing Standard Enforcement Order ("RSEO") as follows:-

(a) within fourteen calendar days of the date of the Order, to instruct an inspection of and a Report on the entire lower walls and sub floor areas of the Property. The inspection and Report are to be carried out by a competent firm of damp proofing and timber specialists, a competent firm being a firm capable of providing a 30 year timber specialists' guarantee. The inspection and Report should address the extent of the rising and penetrating dampness within the Property, the causes of the said rising and penetrating dampness and should recommend works necessary to remedy the said rising and penetrating dampness and prevent the recurrence of same;

(b) to submit the said Report to the Committee within fourteen calendar days of the date of the Report;

(c) to carry out such works as recommended by the said Report and that within a period of eighty four calendar days from the date of the Report and

(d) to install within the Property a sufficient number of hard wired smoke and heat detectors in compliance with current Building Regulations and the guidance set out in the Domestic Technical Handbook and that within a period of fourteen calendar days from the date of the Order.

4. The Surveyor Member of the First Committee attempted a re-inspection of the Property on 29 April 2015 for the purpose of ascertaining whether the repairs required by the RSEO had been completed. The Surveyor Member was unable to gain access to the Property but was advised by an occupant of the Property that the repairs had not been carried out. Following the Surveyor

Member's attempt at a re-inspection, the First Committee, being concerned at the impact that the condition of the Property was having on the health and safety of the occupants, issued a Failure to Comply Certificate and imposed a Rent Relief Order.

5. The Surveyor Member of the First Committee resigned from the First Committee and Mr. Andrew Taylor was appointed as Surveyor Member.

6. On 17 May 2016, the Landlords intimated in writing to the Committee that the works required by the RSEO had been completed by submitting photographs of the refurbishment of the Property and a Home Report dated 16 May 2016. The Committee, taking account of the proceedings to date and having regard to the fact that the Report required by the RSEO had not been submitted by the Landlords, determined that a further Inspection and Hearing should take place, and, accordingly an Inspection and Hearing were fixed for 3 August 2016 at 10.00 a.m. and 11.30 a.m., respectively.

Further Inspection and Hearing .

7. The Inspection took place on 3 August 2016 at 10.00 a.m. at the Property at which Mr. James Irvine of the Landlords was present at the Inspection.

8. As the Committee inspected the Property with regard to the works required by the RSEO, namely:-

(i) the works required to remedy the rising and penetrating dampness within the Property and

(ii) the provision of a sufficient number of hard wired smoke and heat detectors in compliance with current Building Regulations.

9. At the Inspection, the Committee took digital photographs of the Property which photographs form the Schedule annexed and executed as relative hereto.

10. Following the Inspection, a Hearing was held at Wellington House, Wellington Street, Glasgow on 3 August 2016 at 11.30 a.m. at which Mr. James Irvine of the Landlords was present at the Inspection.

11. Mr. Irvine advised the Committee that he had instructed a Report in terms of the RSEO by Peter Cox Preservation Limited ("the Peter Cox Report") and tendered a copy of that Report to the Committee at the Hearing. The Committee noted that the Peter Cox Report is dated 10 December 2015, some months after the expiry of the time allowed in the RSEO for the preparation of the Report. Mr. Irvine explained that the delay in instructing the Report was due to (i) inability to gain access to the Property and (ii) the Tenant having been given funding to carry out the works.

12. The Committee noted that the Peter Cox Report recommended that a damp proof course be inserted at the rear of the Property between the bathroom and bedroom. Mr. Irvine advised the Committee that he had not instructed Peter Cox Preservation Limited but had instructed his own builder to insert the damp proof course as part of the full refurbishment of the Property. Mr. Irvine was unable to provide the Committee with details of the builder, other than that his name is "Sid", the extent of the works carried out by the builder or the type of damp proof course inserted by the builder. However, Mr. Irvine advised that there is no guarantee for the works. Mr. Irvine also

advised the Committee that Liam Muir, Electrical Contractor, Paisley installed the hard wired smoke and heat detectors. Mr. Irvine stated to the Committee that the Property is currently unlet, that he no longer intended to let the Property but intended to sell it, hence the Home Report.

Summary of the Issues

13. The issues to be determined by the Committee are (i) whether or not the Property meets the Repairing Standard in respect of Section 13 (1) (a) of the Act and is wind and watertight and in all other respects reasonably fit for human habitation and (ii) whether or not the Property meets the Repairing Standard in respect of Section 13 (1) (f) and has satisfactory provision for detecting fires and for giving warning in the event of fire or suspected fire at the date of the Inspection and Hearing and whether or not the Landlords had complied with the RSEO.

Findings of Fact

14. Mr. James Irvine of R & J Properties having a place of business at 65, Causeyside Street, Paisley, PA4 8DZ is the owner of the Property.

15. From the Inspection the Committee noted the following:-

- i. The outward facing internal walls of the living room and of both bedrooms all showed minimal sign of dampness;
- ii. The rear bedroom has been repaired and is properly sealed and there was penetrating dampness through this window;
- iii. There are sufficient hard wired smoke and heat detectors in the Property
- iv. The Property is freshly decorated and appears to have been refurbished and
- v. The expanding foam which had blocked the external fresh air inlet under the front living room window has been removed.

16. From the Hearing, the Committee noted the Landlords' position as put forward by Mr. Irvine and accepted that works had been carried out to the Property. The Committee found it most unsatisfactory that the Landlords had not submitted the Peter Cox Report to the Committee prior to the Hearing and that Mr. Irvine was unable to detail the works instructed and carried out by the builder. The Committee found it extraordinary that a prudent professional landlord would be unaware of the extent of works instructed by it and carried out on its behalf.

Decision of the Committee and Reasons for the Decision

17. The Committee's decision was based on the Landlords' written submissions of 17 May 2016, the Inspection and the Hearing.

18. Having inspected the Property, the Committee determined that the Landlords have complied with the duty imposed by Section 14 (1) (b) in respect of Section 13 (1) (f) of the Act as the Property has satisfactory provision for detecting fires and for giving warning in the event of fire or

suspected fire. Therefore, the Committee is satisfied that this part of the RSEO has been complied with.

19. However, in respect of the duty imposed by Section 14 (1) (b) of the Act that the Property does not meet the Repairing Standard in respect of Section 13 (1) (a) of the Act the Committee could not be certain that the Property is wind and watertight and in all other respects reasonably fit for human habitation, as the Committee could not be certain that the damp proof course recommended by the Peter Cox has been properly installed. Therefore, the Committee is not satisfied that the RSEO has been complied with in this respect. Accordingly, the Committee is not of a mind to revoke the RSEO and the RSEO remains extant until the Committee is satisfied that the Landlords have complied with Section 13 (1) (a) of the Act.

Right of Appeal

20. The parties' attention is drawn to the terms of Section 64 (4) of the Act regarding their right to appeal and the time limit for doing so. It provides that a landlord or tenant aggrieved by a decision of a private rented housing committee may appeal to the Sheriff within a period of 21 days of being notified of the decision.

21. Where an appeal is made, the effect of the appeal is that the determination of the committee 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

K Moore

Karen Moore, Chairperson

Date 18 August 2016