

Repairing Standard Enforcement Order
Ordered by the Private Rented Housing Committee
Case reference number :PRHP/G65/126/12

Re:- Property at 25 Park Lane, Kilsyth, Glasgow, G65 0JH ("the property")

The Parties:-

Barbara Josephine Caldwell, residing at 25 Park Lane, Kilsyth, Glasgow, G65 0JH
("the tenant")

and

Thomas Harkins and Mrs Anna Harkins, residing at 38 Arden Grove, Kilsyth, G65 9NU
("the landlord")

Notice to Thomas Harkins and Mrs Anna Harkins

Whereas in terms of the decision dated 26th October 2012 the Private Rented Housing Committee determined that the landlords had failed to comply with the duty imposed by Section 14(1)(b) of the Housing (Scotland) Act 2006 and in particular the landlords had failed to ensure that:-

The landlords have failed to ensure that:-

- (a) The house is wind and watertight

The Private Rented Housing Committee now requires the landlord to carry out all necessary repairs to the windows in the living room and the bedroom of the property to make the windows wind and watertight and in particular to replace the broken seals and to carry out all necessary repairs to the handles to ensure that they are in full and proper working order.

The Private Rented Housing Committee orders that the works specified in this order must be carried out within six weeks of the date of this Order

A landlord or tenant aggrieved by the decision of the Committee may appeal to the Sheriff by summary application within 21 days of being notified of that decision. The appropriate respondent in such appeal proceedings is the other party to the proceedings and not the PRHP or the Committee which made the decision.

Where such an appeal is made the effect of the decision or of the order is suspended until the appeal is abandoned or finally determined. Where the appeal is abandoned or finally determined by confirming the decision, the decision and the order are to be treated as having effect from the day on which the appeal is abandoned or so determined.

Signed..... / **J Bauld**

Date 26 Oct 2012

James Bauld, Chairperson

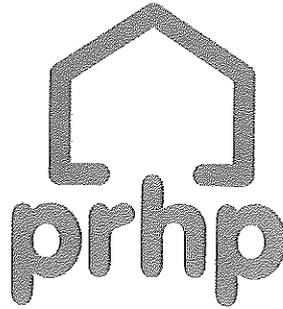
Signature of Witness..... **N Walker**

Date 26 October 2012

Name: NATALIE WALKER

Address: 7 West George Street, Glasgow, G2 1BA

Designation: SENIOR COURT ADMINISTRATOR



Determination by Private Rented Housing Committee

Statement of Decision of the Private Rented Housing Committee

(Hereinafter referred to as "the Committee")

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

Case Reference Number: PRHP/G65/126/12

Re:- Property at 25 Park Lane, Kilsyth, Glasgow, G65 0JH ("the property")

Land Register Title No: **STG7768**

The Parties:-

Barbara Josephine Caldwell, residing at 25 Park Lane, Kilsyth, Glasgow, G65 0JH ("the tenant")

And

Thomas Harkins and Mrs Anna Harkins, residing at 38 Arden Grove, Kilsyth, G65 9NU ("the landlord")

The Committee comprised:-

Mr James Bauld	- Chairperson
Mrs Sara Hesp	- Surveyor member
Mr Jim Riach	- Housing member

Decision:-

The Committee unanimously decided that the landlord had failed to comply with the duties imposed by Section 14(1) of the Housing (Scotland) Act 2006 (the 2006 Act). The Committee accordingly proceeded to make a Repairing Standard Enforcement Order (RSEO) as required by Section 24 (2) of the said Act.

Background:-

1. By application dated 3rd July 2012, the tenant applied to the Private Rented Housing Panel (PRHP) for a determination that the landlord had failed to comply with the duties imposed by Section 14(1) of the 2006 Act.
2. Following sundry correspondence, the president of the PRHP decided to refer the application to a Private Rented Housing Committee. Notice of that referral was sent to the tenant and the landlords on 1st August 2012. On 10th September 2012, the Committee wrote to both the landlords and the tenant indicating that the Committee proposed to hold an inspection and a hearing on 1st October 2012.

The Inspection

3. The Committee attended at the property on the morning of 1st October 2012. The tenant was present during the inspection and the landlords were also present. Subsequent to the inspection a hearing took place within the Twechar Healthy Living Enterprise Centre, St John's Way, Main Street, Twechar. The tenant was present at the hearing. Mr Harkins was present during the meeting.

Summary of Issues

5. The issues complained of in the application before the committee can be summarised as follows:-
 - (a) Complaints regarding the standard of repair of the external roughcasting of the building.
 - (b) Complaints regarding the standard of repair of the windows within the building.
 - (c) Complaint regarding the absence of a fire escape window in the building.
 - (d) Complaints regarding the standard of repair of the smoke alarms within the building.
6. During the course of the inspection the Committee viewed the property and noted the general standard of repair of the property. The Committee also asked the tenant and the landlords for comments at various points during the inspection.

The Hearing

7. The hearing took place in the Healthy Living Centre in Twechar. The tenant, Mrs Barbara Caldwell was in attendance and was represented at the hearing by her son David Caldwell. Mr Caldwell had also been present during the inspection. Mr Thomas Harkins, one of the landlords was present at the hearing. Mrs Anna Harkins was unable to attend. Mr Harkins was assisted at the hearing by his son-in-law Mr Kenny Bowie.
8. At the commencement of the hearing, the Committee sought clarification from both parties with regard to the question of whether there was a tenancy between the parties. The tenant indicated that she believed she had an assured tenancy of the property which would last for Mrs Caldwell's lifetime. The landlord's position was that the tenancy should be a short assured tenancy. While the committee were not in a position to determine which view was correct, it was clear that parties were agreed that there was a tenancy between them and accordingly the Committee had jurisdiction to determine whether or not the property met the repairing standard.

9. The Committee then heard from both parties with regard to the various issues which were in dispute.
10. With regard to the condition of the external roughcast, it was noted that repairs had been carried out to the roughcast in or around February 2011. The landlord indicated that there had been a further inspection carried out on 24th September. The inspection had been carried out by a Mr Dunbar an employee of North Lanarkshire Council. The property in question sits within a block of flats which are factored by North Lanarkshire Council and which also contains flats owned by North Lanarkshire Council. Accordingly external repairs can only be carried out with the consent and concurrence of North Lanarkshire Council. The landlord conceded that everyone was agreed that the repairs which had been carried out to the roughcast in February 2011 were not satisfactory and he produced an email from Alan Clark, the service delivery manager at North Lanarkshire Council dated 27th September. That email confirmed that the required repairs to the roughcast which are common to the block are progressing. Both parties indicated that they wished the Committee to make a determination on whether the roughcast fell short of the repairing standard and whether any order should be made.
11. The Committee then addressed the question of the standard of repair of the windows. The tenant's position was that the windows were not wind and watertight. The tenant's view was that the windows were draughty and the tenant also indicated that the lock on the bedroom window had now become broken and could not be operated. The tenant also pointed out that there was a broken seal in the living room window and also indicated this window was not wind and watertight. The tenant also indicated that the kitchen window did not have any safety catch to prevent it from swinging completely open whenever it was opened.
12. The landlord's position with regard to the windows was that any flaws within the window were simply cosmetic and he took the view that it was not necessarily the landlord's job to fix these problems. The landlord's position was that the windows were in a reasonable state of repair.
13. Some discussion then followed with regard to the existence of keys for the window locks. The landlord's view was that the keys were present when the house was first occupied by the tenant. The tenant's position was that no keys were ever present.
14. The landlord then indicated that he had had the windows inspected recently by a Mr McGrory who had been the contractor who had originally installed them. He indicated that he had no written report from Mr McGrory to produce to the Committee but that Mr McGrory had confirmed that there were grommets and gaskets missing and that handles required to be secured by the installation of new wedges. The landlord's view was that these were small items and did not affect the repairing standard.
15. The Committee then considered the tenant's complaint that there was no fire safety window within the property. The tenant conceded he had been told by the local council that such a window was not required on a ground floor property and he then conceded that the committee did not need to make a determination on that matter.
16. Finally the committee considered the tenant's position that the fire alarm within the property was inadequate and did not meet the repairing standard. The tenant's position was there was only one smoke alarm in the property and it was located in the wrong position. The tenant took the view that a smoke alarm located in the hall near the front door would not operate if there was a fire in the living room for example. The landlord's position was that the smoke alarm within the property met the repairing standard. It was hard wired to the mains and no other smoke alarm was required to be provided.

Findings in Fact

17. The Committee found the following facts to be established.
18. The property in question is a ground floor flatted dwellinghouse in a two storey terraced block. It appears to be of brick construction with a pitched tiled roof. The external walls have been rendered. Internally the property consists of a living room with kitchenette off, one bedroom, bathroom and hall. The windows are double glazed with UPVC frames. The property is accessed via a common close and has garden ground to the front and rear. The property is located in a residential area of Kilsyth and appears to be reasonably close to local facilities.
19. The external roughcast to the building has been patched in places and there are some small areas where it requires to be re-rendered. However the Committee, during their inspection, tested the wall of the bedroom and found no evidence of water penetration. Accordingly the Committee took the view that the roughcast was in a reasonable state of repair and that there was no breach of the repairing standard.
20. The windows to the living room and bedroom to the property are not wind and watertight. The committee determined that there are draughts coming through both. The living room window has a broken seal within the lower opening window hopper. The handles and locks to these windows are also insecure and loose and the relevant wedges which should secure the handles are missing. The committee took the view that the windows did not meet the repairing standard and that repairs were required.
21. The smoke alarm within the property was tested by the Committee during their inspection. It appeared to be in full working order. The smoke alarm was hard wired. It appeared to meet the repairing standard and the Committee accordingly found that there was no breach of the repairing standard with regard to the smoke alarm.

Reasons for Decision

22. The Committee determined that the only failure with regard to the repairing standard was with the windows to the property. The windows are clearly draughty and require repair. The lock in the bedroom window is broken. There are broken seals within the living room window. The landlord, in his submissions to the Committee at the hearing, confirmed that he had received a report from an independent contractor confirming that works were required to the windows. The Committee found that the windows, in their present state, do not meet the repairing standard. They are not wind and watertight and they are not in a reasonable state of repair. The Committee accordingly decided to make a RSEO requiring works to be carried out to the windows to bring them up to the repairing standard.
23. The Committee decided that the roughcast to the building did not fail the test set out in the repairing standard. Although unsightly in places, the Committee took the view that there is no evidence of water penetration to the internal walls of the flat. The committee took the view that the roughcast was currently in a reasonable state of repair. Accordingly the Committee decided to make no order in respect of the roughcast although it was noted that works will be done to the roughcast by North Lanarkshire Council.
24. The Committee took the view that the smoke alarm within the property fully met the repairing standard and no order was required to be made.

The Decision

25. The Committee accordingly determined that the landlord had failed to comply with the duty imposed by section 14 (1) (b) of the Act only in respect of the windows to the living room and bedroom of the property.

26. The Committee accordingly proceeded to make a RSEO as required by Section 24.
27. The decision of the Committee was unanimous.

Rights of Appeal

28. A landlord or tenant aggrieved by the decision of the Committee may appeal to the Sheriff by summary application within 21 days of being notified of that decision.
29. The appropriate respondent in such appeal proceedings is the other Party to the proceedings and not the PRHP of the Committee which made the decision.

Effects of Section 63

30. Where such an appeal is made, the effect of the decision and of any Order made in consequence of it is suspended until the appeal is abandoned or finally determined.
31. 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.

J Bauld

Signed.....

Date: 26 October 2012

James Bauld, Chairperson

N Walker

Signature of Witness.....

Date: 26 October 2012

Name: NATALIE WALKER

Address: 7 West George Street, Glasgow, G2 1BA

Designation: SENIOR COURT ADMINISTRATOR,