



Repairing Standard Enforcement Order

Ordered by the Private Rented Housing Committee

RE: Property at 47 Calder Avenue, Coatbridge, North Lanarkshire ML5 4HP all as more particularly described in and registered in Land Certificate LAN 42704 (hereinafter referred to as "the house")

Ms Barbara Williams, residing formerly at the house ("the Tenant")

Mr. Gary Commins, residing at 27 Calder Avenue, Coatbridge ML 5 4HP ("the Landlord")

Reference PRHP/RP/13/0147

NOTICE TO Mr Gary Commins("the Landlord")

Whereas in terms of their decision dated 24 February 2014, 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 the house meets the repairing standard in that:-

- (1) the house is wind and watertight and in all other respects reasonably fit of human habitation;
- (2) 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; and
- (3) 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 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:-

- (a) to eradicate dampness within the house to ensure that the house is wind and watertight and in all other respects reasonably fit for human habitation and the structure of the house is in a reasonable state of repair and in proper working order; and to carry out any remedial work to the house following the works for the eradication of dampness.
- (b) To repair the hall cupboard door to ensure that the door closes properly.

The Private Rented Housing Committee order that the works specified in this Order must be carried out and completed within two months of the date of service of this notice on the Landlord.

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 signed by Aileen Margaret Devanny, Chairperson of the Private Rented Housing Committee, at Glasgow on Twenty Fifth day of February, Two Thousand and fourteen in the presence of the undernoted witness:-

WITNESS..... R Forbes

REBECCA FORBES

EUROPA BUILDING, 450 ARGYLE ST,

GLASGOW

PANEL CLERK

A Devanny



DETERMINATION BY PRIVATE RENTED HOUSING COMMITTEE

**STATEMENT OF DECISION OF THE PRIVATE RENTED HOUSING COMMITTEE
UNDER SECTION
24(1) OF THE HOUSING (SCOTLAND) ACT 2006**

In connection with

**Property at 47 Calder Avenue, Coatbridge, North Lanarkshire ML5 4HP
(hereinafter referred to as "the house")**

Ms Barbara Williams, residing formerly at the house ("the Tenant")

**Mr. Gary Commins, residing at 27 Calder Avenue, Coatbridge ML 5 4HP ("the
Landlord")**

Reference PRHP/RP/13/0147

DECISION

The Committee, having made such enquiries as is 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 presented and the written representations, determined that the Landlord had failed to comply with the duty imposed by Section 14(1) (b) of the Housing (Scotland) Act 2006 (hereinafter referred to as "the Act")

Background

1. By application dated 13 November 2013 and received on 15 November 2013 the Tenant applied to the Private Rented Housing Panel (hereinafter referred to as "PRHP") for a determination of whether the Landlord had failed to comply with the duties imposed by Section 14(1) (b) of the Act.
2. The application by the Tenant stated that the Tenant considered that the Landlord had failed to comply with the duty to ensure that the house meets the repairing standard and in particular that the Landlord had failed to ensure compliance with Section 13(1) (a) and (c) of the Act which states that " the house is wind and watertight and in all other respects reasonably fit for human habitation; and 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". The Tenant's complaints relate to (a) the boiler which requires to be restored to full working order to ensure that there is hot water and space heating in the house; (b) work requires to be carried out to eradicate the dampness in the house; (c) the floorboards at several locations in the house are affected by dampness as is a cupboard within the house; and (d) cupboard door in the hall does not close properly. The Tenant's application submitted to PRHP included a copy letter from the Tenant to the Landlord which had been sent recorded delivery, notifying the Landlord of the required works.

3. By letter dated 28 November 2013, PRHP gave intimation that the President of the PRHP had made a decision to refer the application under Section 23(1) of the Act to a Private Rented Housing Committee.

The Committee comprised the following members:

Mrs. Aileen Devanny, Chairperson
Mr. George Campbell, Surveyor Member
Mrs. Susan Brown, Housing Member

4. The Private Rented Housing Committee served Notice of Referral under and in terms of Schedule 2 Paragraph 1 of the Act upon the Landlord and the Tenant. Following service of the Notice of Referral, the Tenant's agent and the Landlord submitted written representations. The Landlord indicated that he did not wish to attend the inspection and hearing. The Tenant gave no information on her wish to attend the inspection or hearing.

5. In the written representations the Tenant repeated the earlier complaints within the application. She indicated that the works remained outstanding and that the Landlord had alleged the dampness had been caused by her, and that the Landlord was seeking to terminate the tenancy and occupy the house himself. The Landlord in written representations narrated the domestic reasons for terminating the tenancy and the problems in doing so. He wished to occupy the house himself. He accepted that some works were required to the house but attempts at gaining access for obtaining estimates had resulted in dispute between him, the Tenant and her family member.

6. The Tenant vacated the house before the date of the inspection and hearing. This was confirmed by the Tenant's solicitor. The Committee considered whether to continue to determine the application or whether to abandon it in terms of Schedule 2 Paragraph 7(3) of the Act. The Committee decided to continue with the application due to the nature of the allegations which raise potential health and safety issues for future occupants. Since the tenancy has been lawfully terminated the Tenant is deemed to have withdrawn the application in terms of Schedule 2 Paragraph 7 (1) of the Act.

7. The Private Rented Housing Committee inspected the house on the morning of 18 February 2014. An acquaintance of the Landlord, Mr. John Power, provided access to the house and was present throughout the inspection.

8. Following the said inspection the Private Rented Housing Committee held a hearing at Europa Building, 450 Argyle Street, Glasgow G2 8LH. The Landlord did not attend. The Tenant is no longer a party to the application.

Summary of the issues

9. The issue to be determined is whether the house meets the repairing standard as laid down in Section 13 of the Act and whether the Landlord had complied with the duty imposed by Section 14(1) (b).

Findings in Fact

10. The Committee made the following findings in fact:-

10.1. The Tenant had a tenancy of the house. The tenancy terminated prior to 7 February 2014.

10.2. The Tenant notified the Landlord of the complaints in the application and the Landlord is aware of the alleged repairs.

10.3. The house is a ground floor flat within a four in the block former local authority house built around 1930 comprising lounge, kitchen, bedroom, and bathroom. The block of flats is situated in a residential area. The flat has its own UPVC front and back doors. The exterior walls are roughcast. The Committee confined their inspection to the items of complaint in the application.

The weather at the time of inspection on 18 February 2014 was dry.

It was obvious that works had very recently been carried out internally at the house with evidence of fresh plasterwork and fresh décor. The inspection of the flat revealed: - (1) that the combi - boiler had been checked by a Gas Safe Engineer the day before the inspection and a satisfactory certificate had been issued. The heating was working at the time of inspection and there was hot water; (2) Damp meter readings were taken in the lounge, hall, kitchen and front bedroom as well as the cupboards in the hall and bedroom. These readings provided evidence of dampness in isolated locations. A significant number of the exterior walls provided high moisture readings. The main areas of damp were above the skirting either side of the front door; the lower level front bedroom wall; the right hand side of the fireplace in the lounge; and either side of the back door up to a height of one metre; (3) the hall floor was tiled and the lounge floor laminate. Whilst there was movement in the laminate floor it was not a trip hazard; and (4) the hall cupboard door was difficult to close and the door was catching on the door surround.

Reasons for the Decision

11. In considering the repairing standard issue the Committee carried out an internal and external inspection of the house and in particular closely examined the specific defects

highlighted by the Tenant in the application. In addition the Committee carefully considered the written documentation submitted.

Visual inspection of the house indicates that, despite recent removal of plaster and re-plastering of some walls, there is the presence of dampness in specific locations, particularly on some outside walls towards ground level and up to about a metre in height, and the Committee mindful of Section 13(1) (a) and (b) of the Act which states that the house meets the repairing standard if " the house is wind and watertight and in all other respects reasonably fit of human habitation; and 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", considers that the Landlord has failed to comply with the repairing standard given the existence of dampness within the house. The Committee considers that to comply with Section 13(1) (a) and (b) of the Act the dampness in the house requires to be eradicated. The Committee would recommend that a specialist report be obtained to provide the Landlord with the appropriate advice on how best this can be achieved. The Committee considers that the boiler meets the repairing standard in its present condition as do the floorboards. The hall cupboard door does not close properly and therefore cannot be said to meet the repairing standard in Section 13 (1) (d) of the Act which requires "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 Committee would require the hall door to be repaired to ensure that it closes properly and meets the standard required. The Committee considered that a period of two months would be a reasonable period of time for these repairs to be carried out.

The application did not include any complaint that the house did not meet the requirement for the provision of smoke detection devices but the Landlord is reminded of the statutory guidance for the provision of such devices which should be complied with before the house is re-let. A copy of the guidance is available on the panel website.

Decision

12. The Committee, considering the terms of Section 13(3) of the Act, determined that the Landlord had failed to comply with the duty imposed by Section 14(1) (b) of the Act.

13. The Committee proceeded to make a Repairing Standard Enforcement Order ("RSEO") as required by Section 24(2), which Order is referred to for its terms. The Landlord is reminded that it is an offence to re-let the house whilst a RSEO applies to the house.

14. The decision of the Committee was unanimous.

Right of Appeal

15. 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

16. 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.


A Devanny

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Chairperson,
24 February 2014

