

Repairing Standard Enforcement Order

By the Private Rented Housing Committee

Case Reference Number: PRHP/RP/14/0042

Re: - Property at 3 Brisbane Road, Largs KA30 8LF ("**the property**")

Land Register Title No: AYR47911

The Parties:-

Mrs Ammabile Bianchi, residing at 3 Brisbane Road, Largs KA30 8LF ("**the tenant**")

And

Mr Alastair Adam Millar Mills, residing at 10 Charles Street, Largs, KA30 8HJ ("**the landlord**")

Repairing Standard Enforcement Order Against:

Mr Alastair Adam Millar Mills, residing at 10 Charles Street, Largs, KA30 8HJ

Whereas in terms of its decision dated 6 August 2014, the Private Rented Housing Committee determined that the landlord and the head landlord had failed to comply with the duty imposed by Section 14 (1) (b) of the Act, and in particular that the landlord and head landlord have failed to ensure that the house meets the repairing standard in that:

- the property is not wind and watertight and in all other respects reasonably fit for human habitation
- the structure and exterior of the house (including drains, gutters and external pipes) is not 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 purpose of ensuring that the property meets the repairing standard and that any damage caused by the carrying out of any work in terms of this order is made good before the date specified in this order.

The order

In particular the Private Rented Housing Committee requires the landlord to:

1. Carry out the necessary repairs to the roof and gable wall to ensure that the property is wind and watertight, and that the roof and gable walls are in a reasonable state of repair and in proper working order. On completion of the repair works all affected finishes and decoration are to be restored to an acceptable standard.
2. Repair the gate adjacent to the fence to ensure that it is capable of being locked and closed securely.

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

Rights of Appeal

1. 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.
2. The appropriate respondent in such appeal proceedings is the other party to the proceedings and not the panel or the committee which made the decision.

Effects of Section 63

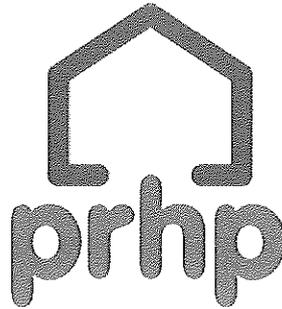
3. Where such an appeal is made, the effect of the decision and of any Order made in consequence of it is suspended until the appeal is abandoned or finally determined. Where the appeal is abandoned or finally determined by confirming the decision, the decision and the Order made in consequence of it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

IN WITNESS WHEREOF these presents typewritten on this and the preceding page are signed by Sarah Frances O'Neill, Chairperson of the Private Rented Housing Committee, at Glasgow on the sixth day of August Two Thousand and Fourteen before this witness Gemma Wardlow of Europa Building, 450 Argyle Street, Glasgow, G2 8LH : -

Sarah O'Neill

Chairperson

Witness



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 ("the Act")

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Re: - Property at 3 Brisbane Road, Largs KA30 8LF ("**the property**")

Land Register Title No: AYR47911

The Parties:-

Mrs Ammabile Bianchi, residing at 3 Brisbane Road, Largs KA30 8LF ("**the tenant**")

And

Mr Alastair Adam Millar Mills, residing at 10 Charles Street, Largs, KA30 8HJ ("**the landlord**")

The Committee comprised:-

Sarah O'Neill - Chairperson

George Campbell - Surveyor member

Elaine Munroe - Housing member

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) of the Housing (Scotland) Act 2006 ("the Act") in relation to the property, and taking account of all the available evidence, determines that the landlord has failed

to comply with the duty imposed by Section 14 (1) (b) of the Act. The committee therefore issues a Repairing Standard Enforcement Order. The committee's decision is unanimous.

Background

1. By application dated 4 February 2014, the tenant applied to the Private Rented Housing Panel ("the panel") for a determination that the landlord had failed to comply with his duties under Section 14(1) of the Act.
2. In her application, which was completed by her representative, her son Mr Luca Bianchi, the tenant stated that she considered that the landlord had failed to comply with his duty to ensure that the property met the repairing standard as set out in sections 13(1) (a) and (b) of the Act. Her application stated that the landlord had failed to ensure that:
 - the property is wind and watertight and in all other respects reasonably fit for human habitation
 - the structure and exterior of the house (including drains, gutters and external pipes) is in a reasonable state of repair and in proper working order
3. The tenant stated in her application that the roof of the property had slates missing, leading to heavy water ingress. She stated that this had resulted in the ceiling in one of the bedrooms falling in completely; that there were signs of dampness in the other bedroom; and that there was now water coming through the ceiling, which had started to crack. She also stated that the outer fence had come down, as a result of which drug taking and drinking was taking place in the garden, and that she was being terrorised by people banging the outer entrance door to the tenement.
4. The tenant stated in her application that the following work required to be carried out at the property:
 1. Roof repaired/ replaced
 2. Dampness to be addressed
 3. Ceilings in the bedrooms replaced
 4. Outer fence erected and made secure.
5. By letter dated 8 April 2014, the President of the panel wrote to the parties and to the tenant's representative advising of her decision to refer the application under Section 22(1) of the Act to a private rented housing committee. Written representations were requested by 29 April 2014. No written representations were received from either party.
6. On 5 June 2014, the panel served a notification under and in terms of the 2006 Act upon the parties, indicating that an inspection and a hearing would take place on 26 June 2014. Approximately one week prior to the hearing date, the tenant's son, Mr Luca Bianchi, contacted the panel requesting an adjournment, as neither he nor the tenant was available to attend the

inspection that day. When a member of the panel staff telephoned the landlord regarding the potential rescheduling of the hearing date, he stated that he had not received either the notice of referral to a committee or the notice of an inspection and hearing. He said that he had not lived at the address it was sent to (Broom Lodge, 5 Broomfield Place, Largs KA30 8DR) for some years, and that his current address was 10 Charles Street, Largs, KA30 8HJ. In the circumstances, the committee decided to adjourn the inspection and hearing to a new date of 23 July 2014 and again served all of the papers on the landlord at the address he had provided.

The inspection

7. The committee inspected the property on the morning of 23 July 2014. The tenant and her representative, Mrs Franca McGinty, were present at the inspection. The tenant's son, Mr Paolo Bianchi also arrived at the property during the inspection. The landlord was not present or represented at the inspection.

The property

8. The property is an upper flat, built around 1900. It comprises a living room, sitting room, two bedrooms, kitchen and bathroom. It is situated above the shops at numbers 39 and 41 Nelson Street, Largs. There is an area of garden ground to the rear of the property.

The hearing

9. Following the inspection, the committee held a hearing at the Woodhouse Hotel, 2 Barr Crescent, Largs KA30 8PX. The tenant was present at the hearing, together with her representatives Mrs Franca McGinty and her son Paolo Bianchi. The landlord was neither present nor represented. The committee was satisfied that, in terms of regulation 24 of the Private Rented Housing Panel (Applications and Determinations) (Scotland) Regulations 2007, the requirements of regulation 19 (1) regarding the giving of notice of a hearing had been complied with. The committee therefore decided to proceed to make a decision on the basis of the inspection, the oral representations made by the homeowner and her representatives at the hearing and the other evidence before the committee.

The evidence

10. The evidence before the committee consisted of:
 - The application form completed by the tenant's representative
 - Notification letter sent to the landlord by the tenant's son, Mr Luca Bianchi, dated 23 February 2014, together with certificate of posting to 5 Broomfield Place, Largs KA30 8DR, dated 24 February 2014
 - Registers Direct copy of Land Register title AYR47911
 - The oral evidence of the tenant and her representatives

Summary of the issues

11. The issue to be determined was whether the property meets the repairing standard as set out in Section 13 of the Act, and whether the landlord has complied with the duty imposed on him by section 14 (1) (b).

Findings of fact

12. The committee made the following findings in fact:

- The tenant has lived in the property since 1963-1964 or thereabouts. She had two previous landlords, prior to the current landlord who bought the property in 2007. The committee accepted her evidence that she pays rent of £450 per month to the landlord by direct debit.
- The committee is satisfied that there is a tenancy in place, and no representations have been received from the landlord to the contrary. The tenancy is a tenancy of a house let for human habitation, which does not fall within the exceptions set out in section 12 (1) of the Act. The provisions set out in Chapter 4 of the Act therefore apply.
- The land certificate for the property provides that the owner has a right in common with the other proprietors of 'the Tenement 39 and 41 Nelson Street and 3 Brisbane Road' to the common parts of the tenement, including outside walls, gables, roof, chimney heads etc. It also includes a real burden which provides as follows:

'our said dispones will be bound to pay in respect of the subjects hereby disposed a share being the proportion which the Rateable Value of the subjects hereby disposed bears to the total Rateable Value of the tenement 39 and 41 Nelson Street, Largs and 3 Brisbane Road, Largs from time to time of the expense of upholding in good order and repair the foundations, outside walls, gables, roof and chimney heads....'

- The committee in its inspection carefully checked all of the items which were the subject of the complaint. The committee observed signs of past water ingress on the ceiling and walls of the bedroom on the west common gable at the front of the property. The ceiling was currently dry, but there were signs of dampness and high moisture readings were found on the rear wall of the front bedroom.
- The committee observed that the ceiling in the rear bedroom had been recently repaired, but not redecorated.
- The committee also observed signs of past water ingress on the ceiling in the kitchen.

- The committee observed from outside the property that the 'common' gable wall on the west side of the building appeared likely to be the cause of the main dampness penetration.
- The committee also noted that the east side of the rendered common west gable appeared to have been partly repaired fairly recently.
- The committee noted that the fence to the rear of the property had been replaced to a fairly high standard, but accepted the oral evidence of the tenant and her representatives that the gate does not close properly due to a fault with the bolt which has been fitted.

Reasons for decision

13. Following its inspection and the hearing, the committee determined that:

1. the property is not wind and watertight and in all other respects reasonably fit for human habitation.
2. the structure and exterior of the house (including drains, gutters and external pipes) is not in a reasonable state of repair and in proper working order.

14. The tenant is 80 years old, and stated at the hearing that she could not face living in the property for another winter if the roof is not repaired and the dampness addressed. She also stated at the hearing that there have been problems with the roof leaking for a number of years. She stated that in the winter, she had to move her bed to avoid the water ingress and place buckets underneath the leaks. She said that she has raised this with the landlord on a number of occasions, and that there have been various patch up jobs carried out in the past, but despite recent promises to fix the roof and the ceiling this has not happened. She has also contacted the local authority housing department, which has visited the property and is aware of the problem. The committee found the tenant to be credible and reliable and accepted her oral evidence.

15. On the basis of its inspection of the property, together with the tenant's evidence, the committee determined that the roof of the property is in clear need of repair or replacement. The common gable wall is also in need of repair. The property is not currently wind and watertight, and the roof and gable wall also form part of the structure of the property, and are not therefore in a reasonable state of repair and in proper working order.

16. The committee noted that any repairs to the roof and gable wall may constitute common repairs, as the title deeds provide that the landlord has a right in common with the other proprietors of 'the Tenement 39 and 41 Nelson Street and 3 Brisbane Road' to the common parts of the tenement, including outside walls, gables, roof and chimney heads. It noted that, while

the landlord has an obligation to maintain these common parts, he is obliged to pay for only a proportion of the cost of such repairs.

17. Section 15 of the Act states:

'(1) Where a house forms part only of any premises, the reference in section 13(1) (b) [i.e. the requirement to ensure that the structure and exterior of a house is in a reasonable state of repair and in proper working order] includes reference to any part of those premises which the owner of the house is responsible for maintaining (solely or in common with others) by virtue of ownership, any real burdens or otherwise.'

(2) Nothing in subsection (1) requires the landlord to carry out any work unless any part of the premises, or anything in the premises, which the tenant is entitled to use is adversely affected by the disrepair or failure to keep in proper working order.'

18. This has the effect that the landlord is required to ensure that the structure and exterior of premises which include a flat which s/he owns is in a reasonable state of repair and in proper working order, where s/he has a responsibility to maintain the common parts of those premises. This applies where any part of those premises which the tenant is entitled to use is adversely affected by the disrepair or failure to keep in proper working order.

19. It is clear in this case that the landlord has a legal obligation to maintain the relevant common parts i.e. the roof and the gable walls under a real burden contained in the title deeds for the property. It is equally clear that the failure to keep those common parts in a reasonable state of repair and in proper working order has resulted in part of the premises - primarily the bedrooms - which the tenant is entitled to use being adversely affected.

20. In other words, the landlord has a duty to comply with the repairing obligation here regardless of the fact that others share the responsibility to carry out and pay for common repairs. While the landlord is entitled to pursue the other owners in the tenement to pay for their share of the repairs, that is a matter for the landlord and does not affect his legal responsibility to ensure that the property meets the repairing standard.

21. With regard to the fence, the committee determines that this forms part of the 'structure and exterior' of the house. In terms of section 194 (1) of the Act, 'house' includes 'any yard, garden, garage, out-house or other structure which is, or is capable of being, occupied or enjoyed together with the living accommodation (solely or in common with others)'.

22. The tenant and her representatives stated at the hearing that the previous fence had been down for some time, during which intruders were able to enter the garden. People had been drinking in the garden and the outer entrance door had been smashed in twice and the doorbell pulled out, and the police had been called on several occasions. It was clear from the

tenant's oral evidence that she had suffered considerable distress as a result of these episodes. A substantial fence had been recently erected, but the gate does not close properly. While the tenant stated that there had as yet been no further problems following the erection of the gate, she and her representatives stated at the hearing that the tenant is still living in fear because the gate is not secure.

23. The committee therefore determines that the fence is not at present in a reasonable state of repair and in proper working order.

Summary of decision

24. The committee concludes that the property does not meet the repairing standard, as the landlord has failed to comply with the duty imposed by Section 14 (1) (b) of the Act.

25. The committee therefore makes a Repairing Standard Enforcement Order (RSEO) as required by section 24 (2) of the Act.

26. The committee takes the view that the roof and gable repairs need to be done quickly, before the winter months. The gate should also be secured as a matter of urgency, given the impact this is having on the tenant. The committee has therefore stipulated a period of two months to carry out the repairs specified in the RSEO.

Rights of Appeal

27. 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.

28. The appropriate respondent in such appeal proceedings is the other party to the proceedings and not the panel or the committee which made the decision.

Effects of Section 63 of the 2006 Act

29. 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. 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.

Sarah O'Neill

Signed..... ..

Date... 6/8/19

Sarah O'Neill, Chairperson