



Repairing Standard Enforcement Order

Ordered by the Private Rented Housing Committee

PRHP Ref: PRHP/RP/14/0220

Property at: 71B Bannockburn Road, St Ninians, Stirling, FK7 0DG ("the property")

The Parties:-

Alana Tait, residing at 71B Bannockburn Road, St Ninians, Stirling, FK7 0DG ("the tenant")

and

Gerard Speed, residing at 11 Downie Place, Bannockburn, Stirling, FK7 8LG ("the landlord")

NOTICE TO Gerard Speed, residing at 11 Downie Place, Bannockburn, Stirling, FK7 8LG ("the landlord")

Whereas in terms of their decision dated 5th December 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 installations in the house for the supply of gas, space heating and heating water are in a reasonable state of repair and in proper working order, in terms of Section 13(1)(c) of the 2006 Act.

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 install and operate a dehumidifier within the property for at least the 48 hours prior to carrying out the works required in (b) below to ensure that the property is properly cleared of excess moisture before the works required by part (b) below are carried out

- (b) To repair or replace the entire gas central heating system serving the property and then to obtain and deliver a satisfactory gas safety certificate to the Private Rented Housing Panel, 450 Argyle Street, Glasgow, G2 8LH
- (c) To pay to the tenant £500 as recompense for increased electricity use caused as a result of the inadequacy of the space heating system and to recompense the tenant for the cost of the operation of the dehumidifier required in part (a) above

The Private Rented Housing Committee order that the works specified in this Order must be carried out and completed within 28 days from the date of service of this Notice.

The Private Rented Housing Committee direct that a re-inspection of the property (by the surveyor member of the committee) should be arranged as soon as the 28 day period specified above has passed.

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 type written on this and the preceding page are executed by Paul Doyle, solicitor, 24 Haddington Place, Edinburgh, chairperson of the Private Rented Housing Committee, at Edinburgh on 5th December 2014 before Kirsten Boettcher, secretary, 24 Haddington Place, Edinburgh

Kirsten Boettcher

_____ witness

Paul Doyle

chairman



**Statement of decision of the Private Rented Housing Committee
under Section 24 (1) of the Housing (Scotland) Act 2006**

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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) in relation to the house concerned, and taking account of the evidence led at the hearing, determined that the Landlord has failed to comply with the duty imposed by Section 14 (1)(b) of the Act.

Background

- 1 By application dated 11 September 2014, the tenant applied to the Private Rented Housing Panel for a determination of whether the landlord has failed to comply with the duties imposed by Section 14(1)(b) of the Housing (Scotland) Act 2006.
- 2 The application by the tenant stated that the tenant considered that the landlord 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 that the installations in the house for gas and for space heating and heating water are in a reasonable state of repair and are in proper working order.
- 3 By letter dated 3 October 2014, the president of the Private Rented Housing Panel intimated a decision to refer the application under Section 22(1) of the 2006 Act to a Private Rented Housing Committee. The Committee members were:

Paul Doyle

Legal member

Donald Marshall Surveyor Member
Sally Wainwright Housing Member

- 4 The Private Rented Housing Committee served notice of referral under and in terms of Schedule 2 Paragraph 1 of the 2006 Act on both the landlord and the tenant.
- 5 Following service of the notice of referral, the tenant made further written representations dated 7 October 2014. The landlord did not make any further representations.
- 6 The Private Rented Housing Committee inspected the property during the morning of 2 December 2014. The tenant was present throughout the inspection. The landlord was neither present nor represented.
- 7 Following inspection of the property, the Private Rented Housing Committee held a hearing at Stirling Enterprise Park, John Player Building, Stirling. The tenant was present (and was accompanied by her mother). The landlord was neither present nor represented. The case file reveals that the landlord was given timeous intimation of the date and time of both the inspection and the hearing. No application was made for an adjournment. The committee was satisfied that the application could be justly determined in the landlord's absence.
- 8 The tenant submits that the gas central heating system serving the property has not worked since June 2014. The tenant states that she has repeatedly asked the landlord to repair the gas central heating system and that all he has done is provide an oil-filled electrical heater which is inadequate to heat the property.
- 9 It is the landlord's position that there is no substance in the tenant's complaints and that the house meets the repairing standard.

Summary of Issues

- 10 The issues to be determined are whether or not the installations in the house for the supply of gas, space heating and heating water are in a reasonable state of repair and in proper working order, in terms of Section 13(1)(c) of the 2006 Act.

Findings in Fact

- 11 The Committee finds the following facts to be established:
 - (a) In July 2013, the landlord agreed to let the property (which is the subject matter of the application) to the tenant. Before moving into the property, the tenant paid the landlord a £450 deposit against rental. The landlord still holds that deposit (despite the fact that The Tenancy Deposit Schemes (Scotland) Regulations

2011 came into force on 7 March 2011). The landlord and tenant then signed a lease. The landlord did not provide the tenant with either a tenant information pack or an energy performance certificate (EPC). The tenant has lived in the property since moving into the property in July 2013.

- (b) On 1 August 2014, the landlord and tenant signed a new lease for the property. The landlord provided neither a tenant information pack nor an energy performance certificate when presenting the tenant with the lease to sign in August 2014.
- (c) The property forms a ground floor flatted dwelling-house, entering from a common passage and stair. The front door provides access to a central hallway which, in turn, provides access to two bedrooms, a bathroom and a living room. The kitchen is entered through a door from the living room. The property is occupied by the tenant and her five year old child.
- (d) An old battery operated smoke detector is attached to the ceiling in the hall between the bathroom and the living room. Section 13(1)(f) of the 2006 Act places an obligation on the landlord to ensure that there are suitable working systems for the detection of fire. The revised domestic technical handbook guidance states that there should be at least one functioning smoke alarm in the room which is frequently used by the occupants for general daytime living purposes, one functioning smoke alarm in every circulation space (such as the hallway), one heat alarm in every kitchen and that all alarms should be interlinked. Since 2009 (before this tenancy started), it has been a legal requirement for the landlord to provide a mains wired smoke detection system. The smoke and fire detection systems in this property are woefully inadequate and do not comply with the repairing standard.
- (e) The property has gas fired central heating, with radiators in each room and in the hallway. When the tenant moved into the property, the central heating system worked, each of the radiators warmed and the house was properly heated.
- (f) In June 2014, the tenant received a letter from Scotland Gas Networks plc stating that an inspection of the gas supply within the property was due. On 17 June 2014, Transco (contractors for Scotland Gas Networks plc) visited the property and found that there was a gas escape in the kitchen and living room area which they determined to be immediately dangerous. They carried out immediate works at the meter outlet, the effect of which was to stop the gas central heating boiler (which is a back boiler situated in the chimney space in the living room) from working.

- (g) The only source of heating apart from the central heating system in the property between July 2013 and June 2014 was a gas fire which stands on the fireplace in the living room. That gas fire does not work.
- (h) Immediately after Transco had visited the property on 17 June 2014, the tenant contacted the landlord to advise that the central heating and hot water heating no longer worked.
- (i) On 18 August 2014, the landlord provided the tenant with a free standing oil filled electrical heater. That has been the only space heating apparatus within the property since 18 August 2014. The oil filled heater is powered by electricity. As a result, the tenant has faced increased heating bills since 17 June 2014.
- (j) In or about September 2014, the landlord visited the property and repaired the immersion heater so that, since then, the tenant has had a supply of hot water. Until Transco disconnected the gas supply (in June 2014) hot water had been provided from the gas central heating boiler. Between June 2014 and September 2014 the tenant was without hot water.
- (k) The property benefits from double glazed windows. Because the property has not been properly heated since June 2014, there has been excessive condensation and a large amount of moisture in the air. There is now black mould growth on the interior wall beneath the window in the living room and on in the interior wall in the bedrooms. White mould growth is evident on the living room carpet.
- (l) The installations in the property for the supply of gas and for space heating and heating water are not in a reasonable state of repair. They are not in proper working order. The property fails to meet the repairing standards set out in Section 13(1)(c) of the 2006 Act.

Reasons for Decision

12 (a) The inspection of this property took place during the morning on 2 December 2014. The landlord was neither present nor represented. The tenant (accompanied by her mother) welcomed committee members into the property. The property was cold and condensation was evident on the inside of each of the windows. There was no warmth in any of the radiators (which were touched by committee members).

(b) A hearing took place at 11.30am on 2 December 2014 within Stirling Enterprise Park. The tenant (and her mother) was present. The landlord was neither present nor was he represented. The tenant answered questions from committee members.

(c) Committee members could see an old battery operated smoke detector attached to the ceiling in the hallway between the bathroom and the living room. The cover of the smoke detector was open. It was clear that no battery was fitted to the smoke detector. Committee members could see that there were no other installations for the detection of either smoke or fires within the property. Section 13(1)(f) of the 2006 Act requires the landlord to ensure that the house has satisfactory provision for detecting fires and for giving warning in the event of fire or suspected fire.

(d) With her application, the tenant produced a lease dated 1 August 2014. The tenant showed committee members the lease that preceded that lease - from which committee members could see that the tenant first moved into the property in July 2013. Since 2009, it has been necessary to have mains wired, interlinked smoke and fire detectors in a rented property in order to meet the repairing standard. If the applicant had raised the issue of smoke detectors as part of her application, the committee would have no hesitation in making a Repairing Standard Enforcement Order because the requirements of Section 13(1)(f) of the 2006 Act are not met. It is only because the landlord has not received fair notice of the inadequacy of provision for the detection of smoke or fires within the property that a Repairing Standard Enforcement Order in relation to the installation for the detection of smoke and fires is not made. If the landlord does not now provide adequate interlinked mains wired smoke and fire detectors immediately, he runs the risk of prejudicing the safety of the tenant and her young child.

(e) The tenant's application is in clear focus. It is the tenant's position that the gas central heating last worked on 17 June 2014 when necessary works were carried out (as an emergency by Transco) which disconnected the boiler and halted the provision of hot water and space heating.

(f) The provision for heating water was remedied by some works carried out to the immersion heater approximately one month later. The absence of space heating has not been remedied. As a result, there has been a significant build-up of condensation, damp and moisture within the property. The weight of evidence indicates that the gas central heating system was working when the tenant moved into the property. It is clear, both from the evidence of the tenant and from committee members' observations, that the gas central heating system is not working and has not worked for months. The committee therefore finds that the installations for space heating and provision of hot water (which were in place at the commencement of the tenancy) do not work and are in need of repair.

(g) The committee accepts the tenant's unchallenged evidence that on 18 August 2014, the landlord provided the tenant with one small, oil filled, portable, electric heater to heat the property which has two bedrooms, a living room, a kitchen, a hallway and a bathroom. It is obvious that the tenant has faced increased electricity bills because she has relied on an immersion heater to heat water and one small, portable, oil filled, electric heater to heat the entire property.

(h) The committee therefore make a Repairing Standard Enforcement Order ordaining the landlord to repair and replace the gas installation for space heating and heating water within a period of 28 days ?From the date of this notice?.

(i) Committee members noted a large amount of moisture in the property. The weight of evidence indicates that that moisture has gathered in the property because of the inadequacy of the space heating since June 2014. In order to properly return this property to the condition it was in when the tenant moved in, it is part of the Repairing Standard Enforcement Order that, before the repaired gas central heating system is fired up, a dehumidifier is used at the landlord's expense for a minimum of 48 hours to remove the excessive moisture which has entered the carpets and walls and is present in the air space within the property.

(j) The tenant has already faced increased electricity bills as well as inadequate space heating since June 2014. The installation of a dehumidifier will require an electricity supply. The tenant should not meet the costs of operating dehumidifier equipment for 48 hours or more within the property. The committee conclude that a reasonable estimate of the costs of increased electricity usage for both the portable oil filled electric heater provided by the landlord in August 2014 and the operation of the dehumidifier amounts to £500. The committee therefore make, as part of the Repairing Standard Enforcement Order, an obligation on the landlord to pay the tenant £500.

Right of Appeal

13. 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

14. 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.

Paul Doyle

Signed

Chairperson

Date

8/12/2014