



Chairperson

**Repairing Standard Enforcement Order**

**Ordered by the Private Rented Housing Committee**

**Reference Number:- PRHP/RP/14/0253**

**Re: Property at 4 Meadow Court, Dumbarton, G82 2BZ, all as more particularly described in and registered in Land Certificate DMB18289 (hereinafter referred to as "the property").**

**The Parties:-**

**Mr Thomas Millar ("the Tenant")**

**Mr Stewart Carr and Ms Sheena Carr and the Carr Family Trust, all residing at Dunrag House, Church Road, Gartocharn, G83 8NF ("the Landlords")**

**NOTICE TO**

**Mr Stewart Carr and Ms Sheena Carr and the Carr Family Trust, all residing at Dunrag House, Church Road, Gartocharn, G83 8NF ("the Landlords")**

Whereas in terms of their decision dated 21 December 2014, the Private Rented Housing Committee determined that the Landlords have failed to comply with the duty imposed by Section 14 (1) (b) of the Housing (Scotland) Act 2006 ("the Act") and in particular the Landlords have failed to ensure that: the structure and exterior of the house are in a reasonable state of repair and in proper working order, any fixtures, fittings and appliances provided by the Landlords under the tenancy are in a reasonable state of repair and in proper working order and that the house has satisfactory provision for detecting fires and for giving warning in the event of fire or suspected fire.

The Private Rented Housing Committee now requires the Landlords 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 Landlords to carry out such works as are necessary to ensure that:-

- (a) The bath tap fittings are fixed so that they are in a reasonable state of repair and in proper working order; and



- (b) The bathroom window is repaired or replaced to ensure that it is in a reasonable state of repair and in proper working order; and
- (c) The black mould is removed from the bathroom ceiling and to ensure that the effected finishes are made good; and
- (d) The fire safety precautions are upgraded within the property in accordance with the revised Domestic Technical Handbook (September 2014) and that by installing in the kitchen a heat alarm and a smoke alarm in the living room. All alarms at the property, including that in the hallway, to be interlinked.

The Private Rented Housing Committee order that the works specified in this Order must be carried out and completed within the period of 6 weeks from the date of service of this Notice.

**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.

**Please note that in terms of Section 28(1) of the Act, a landlord who, without reasonable excuse, fails to comply with an RSEO commits an offence liable on summary conviction to a fine not exceeding level 3 on the standard scale. A landlord (and that includes any landlord's successor in title) also commits an offence if he or she enters into a tenancy or occupancy arrangement in relation to a house at any time during which an RSEO has effect in relations to the house. This is in terms of Section 28(5) of the Act.**

In witness whereof these presents type written on this page and the preceding page are executed by Patricia Anne Pryce, Chairperson of the Private Rented Housing Committee at Glasgow on 27 April 2015 before this witness:-

P. PRYCE

Sig

Patricia Anne Pryce, Chairperson

Date *27th April 2015*

Witness *NATASHA RUSSELL*  
*PRHP*  
*Europa Building*  
*450 Argyll Street*  
*Glasgow*  
*N. RUSSELL*



## 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

Reference Number: PRHP/RP/14/0253

Re: Property at 4 Meadow Court, Dumbarton, G82 2BZ, all as more particularly described in and registered in Land Certificate DMB18289 (hereinafter referred to as "the property").

The Parties:-

Mr Thomas Millar ("the Tenant")

Mr Stewart Carr and Ms Sheena Carr and the Carr Family Trust, all residing at Dunrag House, Church Road, Gartocharn, G83 8NF ("the Landlords")

#### Decision

The Committee, having made such enquiries as it saw fit for the purpose of determining whether the Landlords have complied with the duty imposed by Section 14 (1) (b) of the Housing (Scotland) Act 2006 ("the Act") in relation to the property concerned and, taking account of the evidence submitted by both the Landlords and the Tenant, determined that the Landlords have failed to comply with the duty imposed by Section 14 (1) (b) of the Act.

The Committee consisted of:-

Patricia Anne Pryce	-	Chairperson
Sara Hesp	-	Surveyor Member
Elizabeth Dickson	-	Housing Member

#### Background

1. By application dated 24 October 2014, the Tenant applied to the Private Rented Housing Panel for a determination as to whether the Landlords have 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 Landlords had failed to comply with their duty to ensure that the property meets the repairing standard and the Tenant brought forward the following breaches:-

That the gas safety certificate expired on 11<sup>th</sup> July 2014. The shower in the property had not worked since the Tenant moved into the property on 28<sup>th</sup> August 2013. The seal around the front door of the property was broken and the front door was warped. There is black mould in the bathroom and kitchen due to lack of ventilation in the property. The windows in the front bedroom and living room leak due to broken or missing seals. The bathroom window opens but does not close. The worktop in the kitchen is warped due to water damage caused by a leaking tap which was not repaired by the Landlords for ten months. There is



only one smoke detector within the property which is located at the top of the stairs and there is no other smoke detector located within the rest of the property. The bath panel is cracked and the bathroom tiles are warped due to water damage. The Tenant complains that the washing machine, which belongs to the Landlords, does not clean clothes properly. The Tenant considers that the Landlords are in breach of their duties under the Housing (Scotland) Act 2006 in relation to the repairing standard and in particular the Landlords have failed to ensure:-

- (i) The house is wind and watertight and in all other respects reasonably fit for human habitation,
- (ii) 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,
- (iii) The house has satisfactory provision for detecting fires and for giving warning in the event of fire or suspected fire.

3. By letter dated 29 January 2015 the President of the Private Rented Housing Panel intimated a decision to refer the application under Section 22(1) of the Act to a Private Rented Housing Committee.
4. On 29 January 2015, the Private Rented Housing Committee wrote to both the Landlords and the Tenant to advise that the Private Rented Housing Committee intended to inspect the property on 19 March 2015 at 10 am. The letter further confirmed that a Hearing had been arranged in relation to the application, which Hearing would be held in the Office of the PRHP, Europa Building, 450 Argyle Street, Glasgow, G2 8LH commencing at 12 noon.
5. While the Private Rented Housing Committee wrote to both Landlords and invited them both to the inspection and Hearing, it should be noted that the Tenancy Agreement produced by the Tenant to the Private Rented Housing Committee bore only to be between the Tenant and the Carr Family Trust and signed on behalf of the said Trust by Mr. Stewart Carr. There was no mention of the individually named Landlords, namely, Mr. Stewart Carr and Ms. Sheena Carr. However, an extract of the Land Register Land Certificate DMB18289 revealed that the Landlords are joint owners of the property. Accordingly, this decision by the Private Rented Housing Committee is in respect of all of the Landlords.
6. By email of 10<sup>th</sup> March 2015, the Tenant intimated further written representations to the Committee. However, it is unfortunate that these further representations were not brought to the attention of the Committee or to the Landlords until the afternoon of 18<sup>th</sup> March 2015. This was an oversight on behalf of the administration of the PRHP. However, as soon as it was realised, the PRHP clerk telephoned the Landlords and spoke to Mr. Stewart Carr who provided the clerk with an email address which allowed the clerk to immediately forward to written representations by the Tenant of 10<sup>th</sup> March 2015 to the Landlords. Mr. Carr advised the clerk that the Landlords had no intention of attending either the inspection or the hearing on the 19<sup>th</sup> March 2015. The Committee considered the further representations of the Tenant dated 10<sup>th</sup> March 2015. While the Committee acknowledged that it was unfortunate that the intimation of these to the Landlords was so late, the Committee was of the opinion that the late intimation of these representations was not the



fault of the Tenant. Furthermore, the Committee was of the opinion that these further representations did not add to the earlier application made by the Tenant and therefore there was no prejudice to the Landlords in allowing these representations by the Tenant to be submitted for consideration by the Committee and the Committee allowed these representations to form part of the case before the Committee.

### **The Inspection**

7. On 19 March 2015, the Committee attended at the property for the purposes of inspection of the property. The Tenant was present at the inspection along with his partner, Tracey Smith and her son, Mr. Kieran Smith.

At the inspection on 19 March 2015, the Committee noted the following points:-

- (a) There was condensation on the window in the living room. However, there was an external seal which ran along the bottom length of the window.
- (b) There was black mould on the two corners of the ceiling closest to the window of the living room.
- (c) There was black mould on the two corners of the ceiling of the kitchen closest to the window.
- (d) There was no means of smoke or heat detection within the kitchen.
- (e) The washing machine which is owned and provided to the Tenant by the Landlords contained clothes and apparently functioned.
- (f) The leaky kitchen tap had been replaced.
- (g) The kitchen worktop was not warped although the surface underneath felt rough to touch.
- (h) The shower/bath mixer in the bathroom does not function properly as it only drips out water from the shower head without a proper flow.
- (i) There is black mould on the bathroom ceiling and, at inspection, the bathroom window would not open at all and was covered in mould. There was no other form of ventilation within the bathroom.
- (j) The rear bedroom was mould free.
- (k) The front bedroom window had an external seal which ran the length of the bottom of the window.
- (l) There was a hard wired smoke detector located within the hall which apparently functioned.
- (m) There was black mould located on the ceiling in the hallway close to the front door.
- (n) The front door opened without apparent difficulty. The seal to the front door frame was ragged near the bottom of the frame.

### **The Hearing**

8. The Tenant, his partner Ms. Tracey Smith and her son Mr. Kieran Smith attended at the Hearing. The Landlords did not attend the Hearing. The Landlords did not provide any



written submissions to the Committee, although the Tenant had produced to the Committee a letter of 22<sup>nd</sup> October 2014 by the Landlords to the Tenant.

Both the Tenant and Ms. Smith gave evidence to the Committee at the hearing. They confirmed that they had both resided in the property since the date of entry of 28<sup>th</sup> August 2013. However, Mr. Smith moved into the property in September 2014. The property is a two bedroomed upper cottage flat with a separate living room, kitchen and bathroom.

Both the Tenant and Ms. Smith advised that they had encountered problems with the property since the date of entry. However, they helpfully confirmed that some matters had now been resolved. At the hearing, the Tenant provided the Committee with the Gas Safety Certificate signed on 31<sup>st</sup> October 2014. Ms. Smith confirmed that the problems with black mould in the property had begun around the October of 2013 around three months after they had moved into the property. She complained about a lack of ventilation in the property and confirmed that in the warmer months they kept the windows in the living room and the kitchen open most of the time. The Tenant and Ms. Smith complained about the condensation on the windows in throughout the property. When questioned; they confirmed that condensation forms on the windows every day but they only wipe this off around once per week.

The Tenant confirmed that he attends college four days per week and he also works three days per week including night shift so he is hardly ever in the property. Ms. Smith advised the Committee that she works four or five night shifts per week. She advised that when they come home, they normally go to bed at eight o'clock in the morning. Given their work patterns, she confirmed that they very rarely use the central heating system in the property. She advised that they use it very sparingly and do not use it like normal people. Ms. Smith confirmed that when they do use the central heating system, they will generally only use it in the colder weather for a maximum of half an hour to an hour per day.

Ms. Smith advised that the black mould first appeared in the bathroom around October 2013. After around nine months of complaining to the Landlords but with no response, the Tenant and Ms. Smith decided to remove this mould themselves and used a specialist cleaning product to effect this removal. She advised that the black mould in the kitchen appeared just after October 2013 but they made the decision not to do anything about this as they felt it was the Landlords' duty to do this.

Ms. Smith confirmed that they had always had a problem with the bathroom window from the moment they moved into the property. She was of the opinion that this was because the frame of the window in the bathroom was made from wood and was, according to her neighbour downstairs, the original window from when the property was constructed around 28 years ago whereas the other windows in the property had been replaced.

The Tenant advised that the problem with the bathroom window was due to the lack of ventilation in the bathroom. The Committee questioned the Tenant about the statement contained within the Landlords' letter to the Tenant of 22<sup>nd</sup> October 2014 that the Landlords had attempted to have two extractor fans fitted within the property but that the Tenant had failed to cooperate with the Landlords' electrician to arrange access to the property. The Tenant confirmed that he had made arrangements with the Landlords' electrician on at least



three separate occasions but that the electrician had cancelled on one occasion and had been a no show on two other occasions. Ms. Smith confirmed this. The Tenant confirmed that the electrician had cancelled the appointment made for the 24<sup>th</sup> July 2014 and thereafter had failed to appear on both the 13<sup>th</sup> August and 18<sup>th</sup> November, both 2014. The Tenant confirmed that the electrician had made no attempt to re-arrange the appointment between the August and the November of 2014. The Tenant admitted that he had received a further message from the electrician in January 2015 to try and re-arrange access but that the Tenant had not responded to this as he did not have the time to keep making arrangements like this only for the electrician to fail to attend.

The Tenant confirmed that the black mould appeared in the kitchen then the hallway and, more recently, in the living room. He confirmed that it did not disappear when the weather gets warmer. He advised that it causes dusty mould to form on their possessions.

Ms. Smith advised that the Landlords said they would fix the gutters and window seals but she said that all they did was to have them painted and that they still overflow at the front door. The Tenant confirmed that he was not present at the property when this work was carried out. Ms. Smith advised that the windows were only painted and that no sealant was placed around the windows.

The Tenant confirmed that there was a lot of moisture in the attic area of the property but there was no apparent leak from the roof. Ms. Smith advised that Environmental Health Services from the local authority had visited the property at their request. These officers had advised that there was a problem with condensation. Ms. Smith said that they had advised that the ceilings needed to be bleached. The Tenant and Ms. Smith advised that they had not received a written report from the Environmental Health officers nor had they received confirmation that Environmental Health had contacted the Landlords.

As regards the washing machine, Ms. Smith confirmed that she did not think that it washed clothes properly. She stated that it does not clean off marks on clothes even at a 90 degree wash.

Ms. Smith advised that they do not have a tumble dryer in the property. She stated that they use the whirly or the line in the shared back garden. However, in the winter months and when the weather is bad they have no option but to dry the clothes within the property.

The Tenant and Ms. Smith confirmed that the gas safety certificate had now been renewed and they were content with this. They also confirmed that the kitchen tap had been replaced, the gutters painted and the windows painted outside.

The Tenant and Ms. Smith advised that there was a crack in the bath panel which had grown since they had first moved in but confirmed that this did not prevent them from using the bath and that the bath did not leak.

They both advised that the Landlords had checked the kitchen worktop and the Landlords were of the opinion that it did not need to be replaced.



Ms. Smith confirmed to the Committee that while they keep the kitchen and living room windows open in the warmer weather, in winter time they need to keep the windows closed as the house is so cold there is no ventilation which causes the black mould.

#### **Discussion on Evidence**

9. The Committee is satisfied on the evidence that the Landlords have failed to meet the repairing standard in respect of the property. At the time of inspection, the bathroom window could not be opened. Although the Tenant did not indicate in his application to the PRHP that he felt that the property failed the Repairing Standard due to the structure and exterior of the house not being in a reasonable state of repair and in proper working order, it was clear to the Committee that the bathroom window fell within this particular part of the Repairing Standard and that by failing to open at all, could not meet the Repairing Standard. The Landlords had fair notice that this formed part of the Tenant's application to the PRHP from the outset. There was no other means of ventilation within the bathroom. The Committee is satisfied that the failure of the window in the bathroom to open causes a lack of ventilation within the bathroom which in turn causes black mould on the ceiling in the bathroom and on the bathroom window.

Furthermore, when tested at the inspection, the shower failed to work adequately and thus failed to meet the Repairing Standard.

However, the Committee is satisfied that the property is wind and watertight.

In addition, the Committee is of the opinion that there was no evidence at inspection that there was anything wrong with the guttering in the property.

When inspected by the Committee, it was clear to the Committee that the windows in the living room and the front bedroom had sealant which ran along the bottom length of these windows externally. It was clear to the Committee that the windows were properly sealed.

The Committee is aware that one of the main causes of condensation and mould growth in Scottish properties is an imbalance of heating and ventilation where there may be moisture in the atmosphere. The Tenant and Ms. Smith were honest in their evidence and admitted that they are very sparing in their use of the central heating within the property combined with their admission that they only open the windows in the warmer months. The Committee is of the opinion that the combination of the Tenant's sparing use of heating and venting the property has led to black mould appearing in the kitchen, living room, front bedroom and hallway of the property. In the opinion of the Committee, the Landlords are not responsible for the formation of black mould within these areas of the property.

Finally, the Committee noted that there is not a satisfactory provision for detecting fires and giving warning in the event of fire as there is only one smoke detector within the property located in the hallway. This does not meet current standards.



### Decision

10. The Committee accordingly determines that the Landlords have failed to comply with the duty imposed by Section 14 (1) (b) of the Act. The Committee proceeded to make a Repairing Standard Enforcement Order as required by Section 24 (1) of the Act.
11. The decision of the Committee was unanimous.
12. The Private Rented Housing Committee require the Landlords to carry out such works as are necessary to ensure that the window in the bathroom opens and closes easily, the bath tap fittings are fixed so that they are in a reasonable state of repair and in proper working order, the black mould in the bathroom is removed and that the fire safety precautions are upgraded to meet the Repairing Standard.
13. The Committee considered that it would be reasonable to allow a period of 6 weeks from the date of the RSEO to carry out these works.

### Observations

14. The Committee noted with regret that the Landlords chose not to engage in the PRHP process as this could have proved helpful in reaching a practical solution to the outstanding issues. The Committee also noted that it would be advisable for the Landlords to install a carbon monoxide detector within the kitchen of the property.

### Right of Appeal

1. 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

2. 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.

P. PRYCE

Signed

Patricia Anne Pryce

Date

27<sup>th</sup> June 2015