



Repairing Standard Enforcement Order

Ordered by the Private Rented Housing Committee

Ref: PRHP/G32/152/11

Re: Property at Flat 0/2, 2 Briarwood Gardens, Glasgow G32 9LP being part and portion of ALL and WHOLE the subjects comprising the ground floor flatted dwellinghouse situated at and known as and forming 2 Briarwood Gardens, Glasgow; Which subjects form part and portion of the subjects more particularly described in and disposed by Disposition by Gordon David Bavaird and Alison Bavaird as trustees for the firm of Bavaird Letting in favour of Alison Bavaird dated Thirty first May and recorded in the Division of the General Register of Sasines applicable to the County of Lanark on the Twenty third August all in the year Two thousand. ("the Property")

The Parties:-

CHERYL DONNELLY, residing at Flat 0/2, 2 Briarwood Gardens, Glasgow G32 9LP ("the Tenant")

ALISON BAVAIRD, residing at RigfootFarm, Strathaven, Lanarkshire ML10 6RP ("the Landlord")

NOTICE TO ALISON BAVAIRD, residing at RigfootFarm, Strathaven, Lanarkshire ML10 6RP

Whereas in terms of their decision dated 20th March 2012, the Private Rented Housing Committee determined that the Landlord had failed to comply with the duty imposed by Section 14 (1)(b) of the Housing (Scotland) Act 2006 and in particular that the Landlord had failed to ensure that:-

- (a) The structure and exterior of the house are in a reasonable state of repair and in proper working order (Section 13(1) (b).
- (b) The fittings, fixtures and appliances provided by the Landlord under the tenancy are in a reasonable state of repair and in proper working order (Section 13(1) (d).
- (c) The house has satisfactory provision for detecting fires and for giving warning in the event of fire or suspected fire (Section 13(1) (f).

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 landlords to carry out such works as are necessary to:

- (a) Repair the flooring in the hallway so that the flooring is even and does not create a tripping hazard.
- (b) Repair the hole in the wall adjacent to the window in the small bedroom at the rear of the property so that the wall is in a reasonable state of repair.
- (c) Instruct a suitably qualified electrician to inspect the light fittings in the bathroom, kitchen and large bedroom of the property and to carry out such repairs as are recommended by that electrician to ensure that these light fittings are in a reasonable state of repair and in proper working order.
- (d) Repair the flooring under the bath at the property and to thereafter re-seal the bath where it connects with the walls of the bathroom. In addition to re-fix the bath panel and in general to ensure that the bath and shower are in a reasonable state of repair and in proper working order.
- (e) Carry other such works as are necessary for the purpose of ensuring that provision for detecting fires and for giving warning in the event of fire or suspected fire within the property comply with the statutory guidance of the Repairing Standard and in particular that mains powered smoke alarms are installed. The alarms should be installed in accordance with the recommendations contained in the British Standard and the Design of Fire Detection Installation for Dwellings (BS5839 – Part 6).

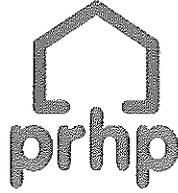
The Private Rented Housing Committee order that the works specified in this Order must be carried out and completed by not later than 15th May 2012.

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.

Signed **A Cowan** Date 4/4/12
Chairperson

C A Millar Witness
CAROL ANNE MILLAR Full Name
7 WEST GEORGE ST Address
GLASGOW G2 1BA



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

Ref: PRHP/G32/152/11

Re: Property at Flat 0/2, 2 Briarwood Gardens, Glasgow G32 9LP being part and portion of ALL and WHOLE the subjects comprising the ground floor flatted dwellinghouse situated at and known as and forming 2 Briarwood Gardens, Glasgow; Which subjects form part and portion of the subjects more particularly described in and disposed by Disposition by Gordon David Bavaird and Alison Bavaird as trustees for the firm of Bavaird Letting in favour of Alison Bavaird dated Thirty first May and recorded in the Division of the General Register of Sasines applicable to the County of Lanark on the Twenty third August all in the year Two thousand. ("the Property")

The Parties:-

CHERYL DONNELLY, residing at Flat 0/2, 2 Briarwood Gardens, Glasgow G32 9LP ("the Tenant")

ALISON BAVAIRD, residing at RigfootFarm, Strathaven, Lanarkshire ML10 6RP ("the Landlords")

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 concerned, and taking account of the evidence led by both the Tenant and the Landlord 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 23rd August 2011 the Tenant applied to the Private Rented Housing Panel for a determination of whether the Landlord had 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 the Tenant considered that the Landlord had failed to comply with their duty to ensure that the house meets the Repairing Standard and the Tenant brought forward the following alleged breaches:-
 - (a) The bedrooms and living room of the property suffer from condensation dampness caused by inadequate heating and/or inadequate ventilation.

- (b) There is uneven flooring throughout the property.
 - (c) The handle in the small bedroom window are faulty and the window cannot be opened.
 - (d) The light fittings in the bathroom and large bedroom are defective and unsafe.
 - (e) The bath panel has come loose and requires to be re-fitted.
 - (f) The handle on the WC does not work properly for flushing.
 - (g) The plasterboard in the living room shows movement cracks.
 - (h) There are inadequate smoke detection systems within the property.
- 3 The Private Rented Housing Committee served Notice of Referral dated 13th December 2011 under Section 22(1) of the Housing Scotland Act 2006 on both the Landlord and the Tenant.
- 4 Both the Landlord and the Tenant were advised that the Committee intended to inspect the property on the morning of 20th March 2012 and to thereafter hold a hearing, as to the merits of the application, on the same date.
- 5 The Committee proceeded with the inspection and the hearing on 20th March 2012. The hearing and inspection were both attended by:-
- (a) The Tenant
 - (b) Ms Angela Ward, a Case Worker with Govan Law Firm, who was providing support to the Tenant and was acting as an advocate on her behalf.
 - (c) The Landlord.
 - (d) Mr Gordon Bavaird, the Landlord's husband.

The hearing was held at the office of the Private Rented Housing Panel, Europa Building, 450 Argyle Street, Glasgow G2 8LH.

The Inspection

- 6 At the inspection the Committee noted the following points:-
- (a) There was evidence of mould growth on the window cill of the living room and the small rear bedroom at the property. The surveyor member used a damp meter and ascertained that there was not any significant dampness at these affected areas.
 - (b) The Committee noted that there was uneven flooring in the kitchen of the property. The kitchen had previously had ceramic tiles laid on the floor and at one part of the floor these tiles had become broken. Linoleum had been laid over the ceramic flooring. At those areas where the ceramic tiles had been broken the flooring was very slightly uneven.

Within the hallway of the property there was uneven flooring. The hallway is carpeted, but there were noticeable ridges in the flooring which caused an uneven surface.

- (c) The Committee noted that the handle in the rear bedroom window of the property was operational. The Committee did note that there was a hole in the wall adjacent to the window.
- (d) The Committee noted that the light fitting in the bathroom appeared to be loose. The light fitting in the kitchen appeared to be operational. The light fitting in the large bedroom appeared to be operational.
- (e) The Committee noted that the WC flushed correctly.
- (f) Within the bathroom of the property the Committee noted that the chipboard flooring beneath the bath had partially collapsed. The point load provided by the bath leg had resulted in the floor giving way slightly and as a consequence the bath had dropped slightly. The Committee noted that as a consequence the mastic sealant around the bath was no longer effective. The Committee further noted that the bath panel had become detached from the bath and did not appear to be easily re-fixed.
- (g) The Committee noted that there were two battery operated smoke detectors within the property.
- (h) The Committee noted a crack in the plasterboard in the living room wall.

The Hearing

7 At the hearing the Committee heard evidence from both the Tenant and the Landlord. The Committee also had regard to a written report prepared by Dr Stirling Howieson, Chartered Architect and Chartered Engineer. The report from Dr Howieson was addressed to Govan Law Centre and was dated 22nd December 2010.

This report had been lodged by the Tenant. Dr Howieson was not called to give evidence to the Committee.

With regard to each account of the Tenant's complaints the Committee noted that:-

- (a) The Committee had noted, from their own observations, the presence of mould growth on the window cills of the living room and the rear bedroom. The Committee were of the view that this mould growth was caused by condensation run-off. The Committee noted the report of Dr Stirling Howieson which suggested that moisture which generated from normal domestic activities was unable to escape as there were no trickle vents within these windows. Dr Howieson had expressed a view that this allowed the production of high levels of humidity with condensation on windows and poor indoor air quality.

The Committee's observations at the time of the inspection were that there was no actual dampness at the site of either of the two windows.

The Landlord stated that other flats in the building, within which the subjects were located, had the same type of windows and according to the Landlord were not affected by similar problems with condensation. The Tenant stated that there were other flats which did suffer from similar problems of condensation. The Committee were not able to inspect other flats and disregarded the circumstances of other properties within the building in their consideration.

Although Dr Howieson's report suggested that the condensation within the property was attributable to the lack of trickle vents and to the fact there was no fixed heating source in the rear bedroom, there was no further data given within Dr Howieson's report to support this finding.

The Committee noted that at the time of their visit that the property was uncomfortably warm.

From their own, knowledge, skill and experience the Committee were aware that there were a number of factors which could contribute to the build-up of condensation moisture within the property. Such factors include, how the Tenant reasonably attempts to heat and air the property and the steps taken by the tenant to allow air to circulate in the property by opening windows, and steps taken by the Tenant to wipe and/or clean any condensation run-off which may gather.

- (b) With regard to the uneven flooring in the kitchen the Tenant suggested that this was unsafe, particularly for her small child who lived in the property with her.

With regard to the uneven flooring in the hallway the Landlord accepted that the ridges in the flooring could cause a tripping hazard.

- (c) The Tenant accepted that the handle in the rear bedroom window had been fixed. The Tenant gave evidence that at the time this repair had been carried out a hole had been created in the wall adjacent to the window. The Landlord accepted that this hole required to be repaired.

- (d) The Tenant gave evidence that past water ingress from an upper floor in the building had given concern as to the safety of the electrical light fitting within the bathroom of the property. The Committee had also observed that that light fitting appeared to be loose. The Landlord accepted that the light fitting in the bathroom should be inspected by a qualified electrician and any repair works which were identified as required for safety reasons would be carried out. Given that the Tenant had also expressed concern in her evidence as to the safety of the lighting in the kitchen and in the larger of the rear bedrooms the Landlord indicated that he accepted that any electrical report should also report on these particular issues and that any necessary repairs to the electric lights which may be required for safety reasons should be completed in those rooms.

- (e) The Committee noted that the handle of the WC was now working properly and no further action was required.

- (f) Both the Landlord and the Tenant appeared to accept that (possibly through past water ingress) the chipboard flooring under the bath had rotted and as a consequence the bath sunk slightly causing the sealant around the bath to become ineffective.

- (g) The Tenant gave evidence that the current battery smoke detectors which were installed in the property were installed by the Fire Brigade. The Tenant confirmed that battery smoke detectors had been in the property at the time that she took occupancy of the subjects. These battery smoke detectors had however been replaced by the Fire Brigade with new battery smoke detectors following a small fire in the rear bedroom of the property.

- (h) The Committee noted that a crack had appeared in the plasterwork of the living room. The Tenant gave evidence the crack had become apparent during her period of occupancy and during which time the plasterboard cracks had become more noticeable.

Decision

- 8 Having inspected the property and having considered the evidence heard at the hearing the Committee determined that:-

- (a) There was insufficient of evidence to establish that the condensation mould in the bedroom and living room of the property was caused as a result of failure to maintain the structure and exterior of the house in a reasonable state of repair or in proper working order. There was insufficient evidence to establish that the existence of condensation was caused because there was a failure to keep the house in a wind and watertight condition. There was insufficient evidence to establish that the existence of condensation resulted in a failure to ensure the property was fit for human habitation. In particular the Committee were unable to establish that the condensation was caused by a lack of ventilation and/or heaters as complained of by the Tenant. In all the circumstances the Committee are not satisfied that the evidence of mould growth on the window cills of the living room and the small bedroom is sufficient to establish that there was a failure of the Repairing Standard as specified in Section 13 of the Housing (Scotland) Act 2006.
- (b) The Committee were not satisfied that the slightly uneven flooring within the kitchen of the property was a breach of any of the Repairing Standards.
- The Landlord accepted that the uneven flooring of the hallway of the property required repair. In the circumstances the Committee were satisfied that the flooring in the hallway (being a fixture provided by the Landlord under the Tenancy) was not in a reasonable state of repair.
- (c) The Committee noted that the Tenant accepted that the rear bedroom window handle had been repaired. The Committee agreed that the hole which had been created in the wall adjacent to the building (at the time of the repair to the handle was completed) meant that this part of the structure of the house was not in a reasonable state of repair.
- (d) The Committee accepted, on the evidence of the Tenant, that there were concerns as to whether the light fittings in the bathroom, kitchen and large bedroom of the property were in a reasonable state of repair. The Committee were not able to establish from their own observations or from the evidence available as to whether or not these fittings met the Repairing Standard. The Committee noted that the Landlord was prepared to have these fittings inspected by a qualified electrician and to carry out necessary works to ensure the safety of these fittings.
- (e) The Committee noted that the WC flushed correctly and no further action was required.
- (f) The Committee noted that the Landlord accepted that the flooring under the bath was not in a reasonable state of repair. The Committee further noted that as a consequence of this the bath had sunk slightly and the sealant around the bath was ineffective. The bath panel had become detached from the bath. In the circumstances the Committee are not satisfied that the flooring under the bath or the bath itself is in a reasonable state of repair and in proper working order.
- (g) The Committee noted that two battery operated smoke detectors within the property were installed by the Fire Brigade on behalf of the Tenant after the Tenant took occupation in 2010. The Committee are not satisfied that in accordance with current regulations the house has a satisfactory method for detecting fires and for giving warnings in the event of a fire or suspected fire. In accordance with the statutory guidance in terms of the Housing (Scotland) Act 2006, any smoke alarm which is installed in the property after 3rd September 2007 must be mains powered. The Committee noted that the battery smoke alarms within the property had been installed by the Fire Brigade after 3rd September 2007. Accordingly there is a requirement that the smoke alarms within the property should be mains powered.
- (h) The Committee determined that the crack in the plasterwork on the wall of the living room was not evidence in itself of any failure of the Repairing Standard. The Committee determined that the crack in the plasterwork did not mean that the

structure of the house was not in a reasonable state of repair and in proper working order.

- 9 The Committee accordingly determined the Landlords had failed to comply with the duty imposed by Section 14 (1) (b) of the Act.
- 10 The Committee proceeded to make a Repairing Standard Enforcement Order as required by Section 13(1) (b), (d) and (f) of the Act.
- 11 The decision of the Committee was unanimous.

Right of Appeal

- 12 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

- 13 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.

Signed A Cowan Date 4/4/12
Chairperson

C A Millar Witness
Carol Anne Millar Full Name
7 West George St. Address
Glasgow G2 1BA