



Repairing Standard Enforcement Order

Ordered by the Private Rented Housing Committee

PRHP Ref: PRHP/RP/0208

Re: Property at 101 Dunottar Avenue, Shawhead, Coatbridge ML5 4LP (“the Property”)

Title No: LAN 49943

The Parties:-

Mr Robert Logan and Mrs Catherine Buglass, 58 Talbot Street, Grangemouth FK3 8HU (“the Landlord”)

Mr James Toal and Mrs Gertrude Toal residing formerly at 101 Dunottar Avenue, Shawhead, Coatbridge, ML5 4LP (formerly “the Tenant”)

NOTICE TO Mr Robert Logan and Mrs Catherine Buglass (“the Landlord”)

Whereas in terms of their decision dated 3 October 2016 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 (“The Act”) and in particular that the Landlord has failed to ensure that:-

- (a) 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;
- (b) 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 property 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:-

1. To repair or replace the integrated fridge in the kitchen.
2. To instruct a suitably qualified SELECT or NICEIC registered electrician to carry out a certified electrical condition check on the entire electrical installation of the property to include all storage heaters and associated circuitry, protection and switching. Thereafter to carry out any works recommended by said electrician and obtain and exhibit a copy of the Electrical Installation Condition Report (EICR) to the Committee.

The Private Rented Housing Committee orders that the works specified in this Order must be carried out and completed within the period of four 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 a 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 a RSEO has effect in relation to the house. This is in terms of Section 28(5) of the Act.

In witness whereof these presents type written on this and the preceding page are executed by Josephine Bonnar, Solicitor, Chairperson of the Private Rented Housing Committee at Motherwell on 3 October 2016 before this witness:-

J Bonnar

_____ Chairperson



_____ Witness

Gerard Bonnar _____ Name in full

58 Port Dundas Road _____ Address

Glasgow _____

Solicitor _____ Occupation



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

PRHP Ref: RP/16/00208

Re: Property at 101 Dunottar Avenue, Coatbridge (“the Property”)

Title No: LAN 49943

The Parties:-

**Mr James Toal and Mrs Gertrude Toal, formerly 101 Dunottar Avenue,
Coatbridge (“the Tenant”)**

**Mr Robert Logan and Mrs Catherine Buglass. 58 Talbot Street,
Grangemouth FK3 8HU (“the Landlord”)**

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 the evidence led by the Landlord at the hearing determined that the Landlord had failed to comply with the duty imposed by Section 14 (1)(b) of the Act.

The Committee comprised:-

Mrs Josephine Bonnar, Chairperson

Mr Andrew Taylor, Surveyor Member

Background

- 1. By application received on 7 June 2016 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 (“the Act”).**
- 2. The Application by the Tenant stated that the Tenant considered that the Landlord had failed to comply with his duty to ensure that the house meets the repairing standard. The tenant stated that the Landlord had failed to ensure that (i) The house is wind and watertight and in all other respects reasonably fit for human habitation; (ii) The structure and exterior of the house (including drains, getters and external pipes) are in a reasonable state of repair**

and in proper working order; and (iii) The house has satisfactory provision for detecting fires and for giving warning in the event of fire or suspected fire. In the application the Tenant identified the following as the repairing standard issues at the property - the central heating system is defective with black soot and fumes coming from the storage heaters, the fridge in the kitchen is not working properly and the windows in some rooms are affected by condensation.

3. The Private Rented Housing Committee served Notice of Referral under and in terms of Schedule 2, Paragraph 1 of the Act upon both the Landlord and the Tenant on 6 July 2016.
4. Following service of the Notice of Referral the Tenant notified the PRHP that they had vacated the subjects. The Committee considered whether the application should be determined or abandoned. By Minute of Continuation dated 16 July 2016 the Committee intimated that they would continue to determine the application.
5. The Committee issued a Notice of Direction to the Landlord on 16 July 2016 requiring the Landlord to instruct an electrical installation condition report of the entire installation of the property and exhibit same to the Committee by 3 August 2016. The Landlord exhibited a copy EICR on 9 August. The said report did not cover the entire electrical installation of the property and specifically excluded the heating system on the instruction of the Landlord. The Landlord was notified that the report provided did not comply with the Notice of Direction. A further Notice of Direction was issued dated 14 August 2016 requiring an EICR to be obtained from a SELECT or NICEIC registered electrician to include the heating system by 30 August 2016. A further EICR dated 19 August 2016 was produced. The address on the report was not the correct address of the property and the report was produced by an electrician who was not SELECT or NICEIC registered. The Landlord was again notified that the report did not comply with the Direction. A further EICR dated 15 September 2016 was thereafter produced.
6. At the request of the Landlord the inspection and hearing assigned for 8 August was postponed to 30 August 2016. A further postponement request was refused. The Committee attended at the property on 30 August 2016 but did not get access to same.
7. The Private Rented Housing Committee inspected the property on the morning of 20 September 2016. The Landlord and the new Tenant, Dione Morrissey were present during the inspection.
8. Following the inspection of the property the Private Rented Housing Committee held a hearing at Airdrie Business Centre, Chapel Street, Airdrie. The Landlord was present and gave evidence.

The Inspection

9. At the time of the inspection the weather was dry and bright. The Committee were able to inspect the whole property. The property is a mid-terraced house in the Shawhead area of Coatbridge comprising hall, living room and kitchen downstairs and 2 bedrooms and a bathroom upstairs. The property is generally in a reasonable state of repair and well maintained. The Committee noted that the windows at the property were in a reasonable state of repair and open and close satisfactorily. There was no evidence of condensation affecting same. A small window underneath the main kitchen window may have damaged seals but the effect is not significant and does not affect the larger window. Heating is provided by electrical storage heaters which were not on at the time of inspection. There was no soot evident on windows or walls. There was no evidence of damage to any of the heaters. The new Tenant advised the Committee during the inspection that she has had the heating on recently and that it is working. There is a small wall heater in the bathroom which the Landlord advised was installed by the Tenant and which he had asked them to remove before vacating the subjects. Lastly, the Committee noted the integrated fridge in the kitchen. It was empty at the time of the inspection and both new Tenant and Landlord stated that it does not work. There is a fridge freezer in the corner of the kitchen. The Committee was advised that this belongs to the new Tenant. The Committee noted the presence of smoke detectors at the property.

The Hearing

10. At the Hearing the Landlord gave evidence. He stated he does not believe there to be anything wrong with the windows. With regard to the small window in the kitchen he accepted that there may be an issue with the seals but stated that it had no adverse effect on the effectiveness of the main kitchen window and was of the view that the windows at the property were wind and watertight. He further advised that the windows in the property are about ten years old and comply with current regulations. The Landlord further advised the Committee that the notification to him of the alleged defects by the former tenant was of relatively recent date. He had received a number of letters from the former Tenant which had not been submitted with the application and were not available to the Committee. He was unable to indicate when exactly the concerns about the windows had been raised. The Landlord was also unable to identify the exact date upon which he was made aware of the defective fridge but thought that it might only have been a few weeks before the Tenant vacated. He accepted however, that the fridge did not work and that he has taken no action to repair same. The Landlord stated that the complaints made about the heating are not true. He said that 2 separate electricians have been at the property

and found no defect. He indicated that he had a letter from the tenant which stated that they complained about the heaters in November 2015 and left messages from him to call. He had received no such complaint or messages. He was provided in May 2016 with copy invoices relating to repairs to the heater which had apparently been carried out in November 2015. The Committee questioned the Landlord about the various EICR reports which had been produced. In response the Landlord accepted that the first report did not cover the heating and the second report did not appear to relate to the correct property (wrong address stated) and was not carried out by a SELECT or NICEIC registered electrician. The last report was produced a few days before the inspection and hearing. The Committee noted that again it did not cover the heating system at the property. In response to questions by the Committee the Landlord could offer no explanation for this omission and stated that he had not asked for the heating to be excluded. He further stated that the heating is in working order and that the electricians who had been at the property had confirmed this to him. He further stated that he was informed by one of the electricians that as the heaters are sealed units no soot or fumes could be emitted from same.

11. By way of general background the Landlord informed the Committee that there is no letting agent for the property and that he had not inspected it for about 3 years prior to the departure of the former Tenant. The reason offered was that the former tenants had at one time been owner occupiers of the property. The property was sold to the Landlord as a result of financial problems and the owners became his tenants. They did not encourage him to inspect the property and indeed had failed to allow him access on occasion when he was certain that they were at home. Initially the Landlord/Tenant relationship had been a good one and he had charged them a reduced rent. Over time this relationship had deteriorated. The former tenant had given notice and vacated the property at the end of June 2016. The new Tenant moved in about 6 weeks ago. Prior to her moving in the Landlord had arranged for the whole house to be repainted. On the recommendation of one of the electricians he instructed the replacement of a new electrical distribution board. Lastly he confirmed that 3 years ago he installed smoke detectors at the property to comply with current regulations and despite the lack of any gas provision at the property, a carbon monoxide detector, at the request of the former tenant.

Findings in Fact

12. The property is a two bedroom mid terraced dwelling house. The accommodation comprises a hallway, living room and kitchen on the ground floor and two bedrooms and a bathroom upstairs.
13. The former Tenant resided at the property as the owner occupier of same until the property was purchased by the Landlord on 10 march

2008. The former tenant became the tenant of the property at that time until June 2016 when they vacated the property. The property is now occupied by a new tenant.

14. The former Tenant notified the Landlord of repair issues at the property. The Landlord failed to carry out any repairs to address same.
15. The windows at the property are in proper working order and with the exception of a minor defect in a small kitchen window are not defective.
16. The integrated fridge in the kitchen is broken.
17. The electrical storage heaters at the property require to be inspected by a SELECT or NICEIC registered electrician and any recommended repairs carried out to ensure that the heaters are safe and in proper working order.

Reason for decision

18. The Committee considered the issues of disrepair set out in the Application and noted at the inspection and hearing.
19. The Tenant had vacated the property prior to the inspection and hearing and therefore did not attend or give evidence. The Committee noted that the Landlord is adamant that he had only been notified of repairing standard issues at the property a short time before the application was submitted although he was unable to provide specific dates. He did not however dispute that he had been notified and the Committee were satisfied that he had been made aware of the alleged defects and had the opportunity to attend to same. The Committee noted that the former Tenant had previously been the owner occupier of the property but did not consider this to be a material consideration. The Landlord accepted that he had owned the property since 2008 and responsible for same since that time. He acknowledged that he had given little attention to the property and failed to insist on regular inspections and checks. The Tenant had intimated in the application to the PRHP that the Landlord was in breach of the requirement in Section 13(1) (f) to ensure that the property is provided with smoke detectors. However, no specific complaint of a lack of smoke detectors in the property was included in the application nor was there evidence of notification to the Landlord of such an alleged defect. In any event the Committee noted the presence of hard wired interlinked smoke detectors in the property and this was confirmed by the Landlord in his evidence.

20. The Committee accepted the Landlords evidence regarding the windows at the property. On inspection these were found to be in proper working order with no evidence of condensation or the misting referred to in the application. Only a very small kitchen window was noted to have possible damaged seals. The larger kitchen window above this is in full working order and is unaffected by the slight damage to the smaller unit which the Committee did not consider to be a breach of Sections 13(a) or (b) of the Act as claimed by the former Tenant. On inspection the integrated fridge appeared to be defective and the Landlord accepted that it is not working and that he has made no attempt to have same repaired. The Committee are of the view that the fridge was provided by the Landlord as part of the tenancy and that the failure to repair or replace same does amount to a breach of the repairing standard in terms of Section 13(d) of the Act.
21. The Committee were unable to establish whether the storage heaters at the property are in working order as the heating was not on at the time of the inspection. No soot marks were noted on walls or windows but the Committee noted from the evidence of the Landlord that the walls in the property have recently been repainted. The Committee was concerned that notwithstanding the issuing of Notices of Direction on 16 July and 14 August 2016 requiring the Landlord to provide an EICR in specific terms, these have not been complied with. Three separate EICRs have been produced. The first and third failed to report on the condition of the heating system. The second had the wrong address and was not carried out by a SELECT or NICEIC registered electrician. The Landlord was unable to provide a reasonable and satisfactory explanation for this failure. His evidence that electricians had confirmed to him that the heaters are working and safe was not persuasive in the absence of a report to this effect. The Committee therefore took the view that an order in relation to the storage heaters and the provision of an EICR was required and that the Landlord is in breach of the repairing standard in relation Section 13(c) of the Act.
22. The Committee accordingly took the view that the property fails to meet the repairing standard in relation to subsection 13(1)(c) and (d) and that it will require to make a Repairing Standard Enforcement Order in respect of the fridge and the electrical storage heating system.

Decision

23. The Committee accordingly determined that the Landlord had failed to comply with the duty imposed by Section 14 (1)(b) of the Act.
24. The Committee proceeded to make a Repairing Standard Enforcement Order as required by section 24(1)

25. The decision of the Committee was unanimous

Right of Appeal

26. 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

27. 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...
Josephine Bonnar, ChairpersonDate 3 October 2016



101 Dunottar Avenue, Shawhead, Coatbridge, ML5 4LP
PRHP/RP/16/0208
Schedule of Photographs - Inspection Date 20/9/2016
Weather – Bright and sunny



1. The property



2. Hall storage heater



3. Living room storage heater



4. Living room storage heater



5. Bedroom storage heater



6. Integral fridge



7. Integral fridge



8. Living room window



9. Bedroom window



10. Bathroom window



11. Hard wired heat detector and carbon monoxide detector



12. Bathroom fan heater



13. New tenants fridge