



Repairing Standard Enforcement Order

Ordered by the Private Rented Housing Committee

Reference Number:- PRHP/RP/16/0217

Re: Property at 34 Hamilton Avenue, Glasgow, G41 4JD all as more particularly described in and registered in Land Certificate GLA194202 (hereinafter referred to as “the property”).

The Parties:-

Ms. Vanessa Walsh (“the Tenant”)

Mr. Rashaid Ali, 32 Hamilton Avenue, Glasgow, G41 4JD (“the Landlord”)

NOTICE TO

Mr. Rashaid Ali, 32 Hamilton Avenue, Glasgow, G41 4JD (“the Landlord”)

Whereas in terms of their decision dated 9 August 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 the Landlord has failed to ensure that: the structure and exterior of the house (including drains, gutters and external pipes) 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 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 reinstate the fence in the rear garden.**

The Private Rented Housing Committee order that the works specified in this Order must be carried out and completed within the period of 28 days 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 9 August 2016 before this witness:-

Signed

Patricia Anne Pryce, Chairperson

Date 9 August 2016

NICHOLAS PRYCE, WITNESS
ACCOUNTANT.
55 BLYTHSWOOD ST
GLASGOW



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

Reference Number: PRHP/RP/16/0217

Re: Property at 34 Hamilton Avenue, Glasgow, G41 4JD (“the Property ”)

The Parties:-

Ms. Vanessa Walsh (“the Tenant”)

Mr Rashaid Ali, 32 Hamilton Avenue, Glasgow, G41 4JD (“the Landlord”)

Decision

The Committee, having made such enquiries as it saw fit for the purpose 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 submitted by the Tenant and the application by the Tenant, determined that the Landlord has failed to comply with the duty imposed by Section 14 (1) (b) of the Act.

The Committee consisted of:-

Patricia Anne Pryce	-	Chairperson
Kingsley Bruce	-	Surveyor Member

Background

- 1. By application comprising of all documents received on 13 June 2016, from the Tenant, the Tenant applied to the Private Rented Housing Panel for a determination as to whether the Landlord had 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 Landlord had failed to comply with his duty to ensure that the property meets the repairing standard and the Tenant brought forward the following breaches:-**

That the property was let with an enclosed back garden yet upon clearing the overgrowth, the fence was found to be falling down and a health and safety risk if not removed. The Landlord was asked permission to erect a suitable replacement, at no cost to him. The Landlord gave permission and the Tenant purchased the materials then the Landlord retracted permission and refuses to erect a fence.

The Tenant considers that the Landlord is in breach of his duties under the Housing(Scotland) Act 2006 in relation to the repairing standard and in particular that the Landlord has failed to ensure:-

- (i) The structure and exterior of the house (including drains, gutters and external pipes) are in a reasonable state of repair and in proper working order.**
- 3. By Minute dated 22 June 2016 the Convener of the Private Rented Housing Panel intimated a decision to refer the application under Section 23(1) of the Act to a Private Rented Housing Committee.**
 - 4. On 29 June 2016, the Private Rented Housing Committee (“the Committee”) wrote to the Landlord, the Landlord’s agents, KPM Residential Lt, 23 Park Circus, Glasgow, and to the Tenant to advise that the Committee intended to inspect the property on 8 August 2016 at 11.30 hours. The letter further confirmed that a Hearing had been arranged in relation to the application, which Hearing would be held in Wellington House, 134-136 Wellington Street, Glasgow, G2 2XL commencing at 15.00 hours. Finally, the letter confirmed that any written submissions had to be received by the Committee by 20 July 2016.**

The Inspection

- 5. On 8 August 2016, the Committee attended at the property for the purposes of inspection of the property. The Tenant was present. The Landlord and the Landlord’s agents did not attend the inspection.**

At the inspection on 8 August 2016, the Committee noted the following points:-

- (a) The Committee did not require to enter that part of the property where the Tenant resided with her children aged 2 and 3 years respectively as the application related only to the garden area of the property.**
- (b) The Tenant resided in the lower level of a semi-detached traditional sandstone villa. The rear garden of the property was divided into two with one half being enjoyed by the occupants of the upper level of the property and the other half being enjoyed by the Tenant.**
- (c) There was a partial fence consisting of two panels and a gate between the two parts of the rear garden. It was through this gate that the Tenant gained access to her part of the rear of the garden.**

- (d) There were two posts remaining in the ground against which there had obviously been erected a fence.**
- (e) The Tenant advised that when she had viewed the property, the undergrowth had been so overgrown she could only see the top of the fence and had no reason to question the state of that fence at that time.**
- (f) The Tenant advised at the inspection that she discovered on moving into the property that most of the fence had either fallen down or was about to fall down and was in a dangerous condition.**

The surveyor member of the Committee took several photographs which form the Schedule attached to this decision.

The Hearing

- 6. The Tenant attended the hearing. The Landlord and the Landlord's agents did not attend the hearing.**

The Tenant confirmed that her full name was Ms. Vanessa Walsh and that she had resided at the property since 11 August 2015. She lives there with her two daughters aged 2 and 3 years.

The Tenant advised that she pays £795 per calendar month by way of rent for the property.

The Tenant advised that she is employed as an economist.

The Tenant advised that she has a pet dog called Bruno who is a chocolate Labrador. She confirmed that she sought permission from the Landlord prior to moving into the property to ensure that she could have a dog at the property and that the garden would be enclosed to allow the dog to run around in the garden.

The Tenant advised that she viewed the property on 24 July 2015 but was not aware at that time that the fence was in such a poor state of repair as the garden was so overgrown that nothing in the garden could be seen clearly at that time.

The Tenant confirmed that she asked the Landlord to have the garden cleared but that the Landlord never did this and the Tenant herself had to clear the garden. It was only when she started to clear the garden that she discovered the poor state of repair the fence in the garden. She confirmed that it was in such a poor state of repair that she had no option but to remove it as it presented a danger to her two young children as she was scared that this would fall down on them.

The Tenant produced to the Committee photographs she had taken of the garden on 11 August 2015, her date of entry to the property. In

these photographs, it can clearly be seen that there was at that time a fence between the two parts of the rear garden and that the fence was in a state of such disrepair that parts of it had fallen down and the remaining parts looked on the point of falling down.

The Tenant advised that the fence was so fragile that she managed to pull it down with her bare hands without the need to use tools of any kind.

The Tenant confirmed that she simply wanted a safe garden for her children and her dog so that the dog did not annoy her neighbours.

The Tenant confirmed that she asked the Landlord through his agent, KPM Residential Ltd, if she could purchase dog run fencing to erect between her garden and the part of the garden which belonged to the property upstairs. She advised that she was willing to erect this herself. She advised that the Landlord initially consented to this fencing and then after the Tenant had purchased the materials, the Landlord withdrew his consent.

The Tenant confirmed that the Landlord stated that the fence could have fallen into disrepair during the Tenant's lease. It was clear to the Committee from the photographs the Tenant provided that the fence had been in a state of disrepair for some considerable time in advance of August 2015.

The Landlord refused to erect any other fence in its place.

The Tenant confirmed that the agents for the Landlord had advised her to make her present application to the PRHP.

The Committee found the Tenant to be credible, honest and straightforward when giving evidence. She made no attempt to embellish or exaggerate and was very matter of fact. The Committee had no hesitation in believing the Tenant.

Given all of the circumstances, the Committee is satisfied that the structure and exterior of the house (including drains, gutters and external pipes) are not in a reasonable state of repair and in proper working order as there is a partial bit of fence remaining and two posts with no fence attached to them resulting in a complete lack of boundary fence between the two parts of the garden.

Decision

7. The Committee accordingly determines that the Landlord has 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.

- 8. The decision of the Committee was unanimous.**
- 9. The Private Rented Housing Committee require the Landlord to carry out such works as are necessary to ensure that the property meets the Repairing Standard.**
- 10. The Committee considered that it would be reasonable to allow a period of 28 days from the date of the RSEO to carry out these works.**

Reasons for Decision

- 11. The Committee considers that the Landlord has had sufficient time to carry out the outstanding repairs.**

The Committee considers that the Landlord has failed in his duty under Section 14(1)(b) of the Act and has not complied with the repairing standard in terms of Sections 13 (1) (a) of that Act.

Observations

The Committee notes that the Tenant felt unhappy about bringing, as she put it, such a “trivial” matter before the Committee. However, the Committee notes that the Tenant has gone above and beyond trying to resolve this issue, to the point of purchasing materials for a fence. The Committee notes that the Landlord has simply refused to attempt to resolve this problem. The Committee notes that the Tenant had no option but to remove the fence for safety reasons as the Landlord refused or delayed to do so.

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

Patricia Anne Pryce

Date 9 August 2016

SCHEDULE OF PHOTOGRAPHS:

34 HAMILTON AVENUE, GLASGOW

DATE: 8 AUGUST 2016



