



Repairing Standard Enforcement Order

Ordered by the Private Rented Housing Committee

Reference PRHP/ML9/19/12

Property at 17 Mauldsie Place, Ashgill ML9 3BE ("the house")

The Parties:-

Miss. Bridget McBride, residing at 17 Mauldsie Place, Ashgill ML9 3BE ("the Tenant")

Mrs. Karen Lambert, who was represented by Mr. Jim Lambert, of JAK. G Limited, 33 Kittoch Street, The Village, East Kilbride G74 4JW ("the Landlord")

NOTICE TO Mrs Karen Lambert ("the Landlord")

Whereas in terms of their decision dated 25 May 2012, the Private Rented Housing Committee having 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 house meets the repairing standard in that the house is wind and watertight and in all other respects reasonably fit for human habitation; 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 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; and 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 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 instruct a periodic electrical inspection report from a qualified electrician and to carry out any works identified as necessary in that report to a satisfactory standard. The report should also confirm that (1) the installations for the supply of electricity and for heating water are in a reasonable state of repair and proper working order, and (2) any smoke detection devices are hard wired and interlinked and comply with current building regulations and the statutory guidance issued by Scottish Ministers on provision for detecting fires and for giving warning in the event of fire or suspected fire.*
- (b) *To repair the front door by replacing the missing facing and replacing the loose surround and then sealing adequately so that the door and surround are wind and watertight and in a reasonable state of repair and proper working order.*

The Private Rented Housing Committee order that the works specified in this Order must be carried out and completed within the period of 42 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.

IN WITNESS WHEREOF these presents typewritten on this and the preceding page are signed by Aileen Margaret Devanny, Chairperson of the Private Rented Housing Committee, at Glasgow on Seventh day of June, Two Thousand and twelve in the presence of the undernoted witness:-

WITNESS..... **S James**

A Devanny

SARA JAMES

Europa Building
450 Royal Street
Glasgow
Panel Secretary.



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**

In connection with

Property at 17 Mauldslie Place, Ashgill ML9 3BE ("the house")

The Parties:-

Miss. Bridget McBride, residing at 17 Mauldslie Place, Ashgill ML9 3BE ("the Tenant")

Mrs. Karen Lambert, who was represented by Mr. Jim Lambert, of JAK. G Limited, 33 Kitch Street, The Village, East Kilbride G74 4JW ("the Landlord")

Reference PRHP/ML9/19/12

DECISION

The Committee, having made such enquiries as is fit for the purpose 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 presented and the representations, determined that the Landlord had failed to comply with the duty imposed by Section 14(1) (b) of the Housing (Scotland) Act 2006 (hereinafter referred to as "the Act")

Background

1. By application received on 30 January 2012 the Tenant applied to the Private Rented Housing Panel (hereinafter referred to as "PRHP") for a determination of whether the Landlord had failed to comply with the duties imposed by Section 14(1) (b) of the Act. Attached to the application form were details of the manner of notification of the required works on the Landlord, evidenced by correspondence between the Landlord the Tenant's solicitor, and a copy of the tenancy agreement. Mr. Lambert confirmed that he acts as agent for his wife, who is owner of the house.

2. The application by the Tenant states that the Tenant considers that the Landlord has failed to comply with the duty to ensure that the house meets the repairing standard. The Tenant's application relates to a list of complaints as follows:-

- a) The front door is broken and not weather tight and rainwater runs down a section of door causing the lock to freeze in cold weather
- b) The fridge and washing machine are unusable
- c) The absence of a kitchen door leading to the living room is unsafe
- d) The staircase is unsafe
- e) The fire alarms are not satisfactory
- f) The hot water system is not working properly

3. By letter dated 9 March 2012, PRHP gave intimation that the President of the PRHP had made a decision to refer the application under Section 23(1) of the Act to a Private Rented Housing Committee. Directions were issued by the Committee requiring the production by the Landlord of a periodic inspection report from a registered electrical contractor on the electrical installations and appliances in the house.

The Committee comprised the following members:

Mrs. Aileen Devanny, Legal Member
Ms. Carol Jones, Surveyor Member
Mr. Scott Campbell, Housing Member

4. The Private Rented Housing Committee served Notice of Referral under and in terms of Schedule 2 Paragraph 1 of the Act upon the Landlord and the Tenant. Following service of the Notice of Referral the Tenant submitted written representations raising a number of issues unrelated to the repairing complaints which items are out with the jurisdiction of the Panel. She submitted a copy letter from South Lanarkshire Council Planning and Building Standards Service confirming that the spiral stair contained some contraventions of building regulations which appear to have been prompted by an enquiry from the Tenant about applying for permission to install a new staircase. There was also a report from Strathclyde Fire and Rescue Service following a home safety visit giving some suggestions which were recommendations only. The Landlord also lodged written representations and documents responding to the repairing complaints.

5. The Private Rented Housing Committee inspected the house on the afternoon of 25 May 2012. The Tenant, Miss. Bridget McBride, and the Landlord, Mrs. Karen Lambert, and her husband and agent, Mr. Jim Lambert, were present at the inspection and the hearing.

6. Following the said inspection the Private Rented Housing Committee held a hearing at Dalserf Primary Community Wing, Ashgillhead Road, Ashgill.

Submissions at the Hearing

7. At the hearing the Committee considered the application with the accompanying paperwork, the written representations and documents received. The Committee heard evidence and representations from the Tenant and the Landlord and Landlord's agent.

7.1 The Tenant maintained that the front door handle and lock had only recently been fixed by her but there was still an issue about water running down the outside panel of the front door; she maintained that the lack of a kitchen door was unsafe; she felt the stairs unsafe in part due to the different height of risers; she mentioned that the fridge and washing machine appliances were in working order and she had not plugged them into the electrical supply. Her reluctance to use these items was because she felt that they were old and unclean; the hot water system was constantly on and she felt it was not in good working order as it made a screeching noise which was disturbing her as her hearing is affected by certain frequencies; and she felt the smoke detection devices were inadequate although she accepted that a hard wired alarm downstairs has been installed. She then wanted to make representations on a range of issues unrelated to the repairing standard including housing benefit issues; compensation for extra costs; and allegations concerning the conduct of others, and the Committee advised that such matters could not be considered as they had no powers to decide matters beyond their jurisdiction which was limited to decisions on the repairing standard. Miss McBride denied that she had caused difficulties to the Landlord's workmen and denied that she did not provide access.

7.2. Mr. Lambert accepted that repairs had been notified but he stated that he and his workmen had been having difficulty gaining access for works to be carried out. He accepted that he had received Directions from the Committee for a periodical electrical inspection report and had tried to comply with this requirement and he had arranged for an electrician to call at the house on 12 March but the electrician could not gain access as Miss McBride was uncooperative. He stated that there had been repeated access problems as Miss McBride would not cooperate with workmen.

In reply to the various points the following was submitted by Mr. Lambert

- a) The outside front door – He indicated that it was accepted that a repair was required and it would be carried out.
- b) The washing machine and fridge had been signed for in the inventory "as new" and these appliances were in working order which was accepted by the Tenant at the inspection and any mould was as a result of the Tenant not cleaning these appliances. He had recommended to the Tenant at the start of the tenancy that her first use of the washing machine should be a cleaning cycle before a clothes wash. He disputed her claim that there was black mould in the machine which transmitted to clothes. He stated that offers have been made to have the washing machine checked by an engineer but these offers have been refused by the Tenant.

- c) The door between kitchen and living room had been removed to allow more space and he disputed that its absence was unsafe. The fire services report indicated that replacement was only a recommendation but he indicated that he would refit it if required but then the space would be tight. He pointed out that the house was viewed by the Tenant without a door.
- d) The staircase is as viewed by the Tenant and is the original fitting installed when the house was built. The problems which the Tenant encounters are personal to her and it does not prevent her using the toilet on the upper floor. The stairs are not unsafe and at the inspection the stairs safely withstood the weight of several members of the Committee on them. It is a one bed roomed house and the stairs are safe for the occupants of the house. The original survey report was produced which did not mention any adverse comments about the stairs.
- e) The Landlord accepted that following upon the refurbishment of the house before the Tenant moved in that the smoke detection alarms had inadvertently been removed from the property. The fire service had installed battery alarms and Mr. and Mrs. Lambert indicated that after many attempts to gain access their electrician had installed a hard wired system downstairs which they thought complied with the requirements. Mr. and Mrs. Lambert indicated that they would ensure that any additional requirements would be complied with and the Committee undertook to send to the Landlord a copy of the guidance on smoke detection devices.
- f) He disputed that there was anything wrong with the water heater. The "screeching" noise complained of by the Tenant is the electrical element heating and is not as noisy as a kettle. The Tenant requested that the fuse be removed to the heater. There is no gas in the house.

Once the Tenant and Landlord had made representations at the hearing, the Committee adjourned to consider the evidence and representations, and to make their determination.

Summary of the issues

8. The issue to be determined is whether the house meets the repairing standard as laid down in Section 13 of the Act and whether the Landlord had complied with the duty imposed by Section 14(1) (b).

Findings in Fact

9. The Committee made the following findings in fact:-

9.1. The Tenant entered into a lease for the rent of the house on 1 October 2011.

9.2. The Landlord's agent was notified by letters dated 18 November and 2 and 9 December 2011 and in other correspondence of the required works to the house. There is further correspondence on the issue of repairs between Landlord and Tenant, copies

of which were submitted to the Committee and circulated to the Parties. The Landlord has had a reasonable time since notification to carry out the works. Although the Landlord has the necessary rights of access to carry out works, there appear to have been access problems.

9.3 The house comprises a one bedroom two storey back to back starter home built in a block of four similar properties and constructed in the 1980's. It is located in a small private residential area in Ashgill, a former mining village situated about two miles east of Larkhall in Lanarkshire. The Committee confined their inspection to the items specified in the application and the alleged breaches of repairing standard. The weather was dry and sunny at the time of inspection with little wind.

9.4 The Committee findings on the condition of the house following the Committee's observations at the inspection and consideration of the oral and written representations are as follows:

a) The front door was broken and not weather tight and rainwater ran down a section of door causing the lock to freeze in cold weather

The Committee observed that the PVC surround was loose and a facing was missing. It is possible given these defects that rainwater is collecting and then running down the face of the door next to the lock. The Committee considers that the repairing standards in Sections 13(1) (a) and (b) of the Act have not been met as the door is part of the structure and exterior of the house and should be in a reasonable state of repair and in proper working order and the house should be wind and watertight.

b) The fridge and washing machine are unusable

The Tenant stated at the hearing that these appliances are in working order but that the appliances have black mould growth. From observation the Committee noted that the appliances were not plugged in to the electricity supply and the Tenant indicated that she did not use them. The interior of the appliances would benefit from a clean which is consistent with their non use for several months but there is no evidence of black mould in the drum of the washing machine which would cause black dots on clothes. There was a slight musty smell from the fridge consistent with its non-use. There was no evidence to suggest that these appliances failed to meet the repairing standard and were unusable.

c) The absence of a kitchen door leading to the living room is unsafe

The door had been removed to allow better access to the kitchen which is small. The Committee does not believe that this is a safety issue which would raise questions of the house being unfit for human habitation (a requirement of Section 13(1) (a) of the Act) or an unacceptable safety risk. It is common in some modern properties for the kitchen to form part of an open plan living area and the Committee did not consider that the repairing standard had been breached by the absence of a door at this location. Neither does it raise an issue about the state of repair of the structure.

d) The staircase is unsafe

This fixture appears to be the original spiral staircase and, although the risers in the stairs are not uniform, the Committee does not think that the staircase raises a safety issue nor can it be said that the staircase is not in reasonable repair. The Tenant talked about her mobility problems and her difficulties using the stairs. However, although this may be a problem personal to the Tenant, the Committee does not consider that the staircase fails to meet the repairing standard.

e) The smoke alarms are not satisfactory

The Tenant confirmed that there were no smoke alarms in the house at entry and battery smoke alarms were provided by the Fire Service. The Landlord accepted this and stated that it was an oversight which had occurred during a refurbishment programme. Battery smoke alarms provided after September 2007 do not meet the statutory guidance issued by Scottish Ministers on the provision for detecting fires and for giving warning in the event of fire or suspected fire. The Landlord has now installed a hard wired smoke alarm downstairs but to comply with the statutory guidance there requires to be a hard wired smoke alarm on each floor which is electrically interlinked. The Committee considers that the house fails to meet the repairing standard in Section 13(1) (f) of the Act. Any hard wired smoke detector must comply with building regulations.

f) The hot water system is not working properly

The Tenant complained that the hot water was on constantly and the Committee noted the removal of a circuit breaker from the electrical system. Given the removal of the circuit breaker the Committee considers that this is indicative that the electrical installation does not at present meet the repairing standard in Section 13(1) (c) of the Act as the installations for the supply of electricity and for heating water require to be in reasonable state of repair and proper working order.

Reasons for the Decision

10. In considering the repairing standard issues the Committee carried out an inspection of the house and in particular closely examined the specific defects highlighted by the Tenant in the application. In addition the Committee carefully considered the written representations submitted and oral evidence.

The Committee determined that the Landlord has failed to comply with the duty imposed by Section 14(1) (b) of the Housing (Scotland) Act 2006. Inspection of the house indicated items of complaint which required repair as narrated already in this determination. The Committee considers that to comply with Section 13(1) (a), (b), (c), and (f) of the Act that these items require remedial works. Sections 13(1) (a),(b),(c), and (f) provide that the house meets the repairing standard if (a) the house is wind and watertight and in all other respects reasonably fit for human habitation; (b) 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; (c) 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; and (f) the house has satisfactory provision for detecting fires and for giving warning in the event of fire or suspected fire.

The Committee considered that a period of 42 days from service of the Notice on the Landlord would be a reasonable period of time for the works to be carried out.

Decision

11. The Committee, considering the terms of Section 13(3) of the Act, determined that the Landlord had failed to comply with the duty imposed by Section 14(1) (b) of the Act.

12. The Committee proceeded to make a Repairing Standard Enforcement Order as required by Section 24(2), which Order is referred to for its terms.

13. The decision of the Committee was unanimous.

Right of Appeal

14. 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

15. 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.

A Devanny

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Chairperson,
25 May 2012