



## **Repairing Standard Enforcement Order**

### **Ordered by the Private Rented Housing Committee**

**Ref: PRHP/DG9/7/13**

**Re property at: 12 Park Lea Gardens, Stranraer, DG9 7NB, being the subjects registered in the Land Register of Scotland under Title Number WGN4058 ("the Property")**

**The Parties:-**

**Miss LISA STEWART, residing at 12 Park Lea Gardens, Stranraer, DG9 7NB ("the Tenant")**

**And**

**Mr PHILIP BALCHIN, residing at Thorntree, Springholm, Castle Douglas, DG7 3LP ("the Landlord")**

**NOTICE TO PHILIP BALCHIN, residing at Thorntree, Springholm, Castle Douglas, DG7 3LP**

Whereas in terms of their decision dated 26<sup>th</sup> March 2013, 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:-

The structure and exterior of the house (including the drains, gutters and external pipes) are in a reasonable state of repair and in proper working order (Section 13 (1) (b));

The Private Rented Housing Committee now requires the Landlord to carry out such work as are 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 and maintain or where necessary renew the windows within the property such that they are in a reasonable state of repair and in proper working order.
- (b) Repair the letterbox and the front door of the property such that they are in a reasonable state of repair and in proper working order.

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

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.

*AC*  
**A Cowan**

Signed ..... Date *26/3/13* .....  
Chairperson

**S McDougall**

..... Witness

Samantha McDougall, Secretary, 7 West George Street, 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/DG9/7/13**

**Re property at: 12 Park Lea Gardens, Stranraer, DG9 7NB, being the subjects registered in the Land Register of Scotland under Title Number WGN4058 ("the Property")**

#### **The Parties:-**

**Miss LISA STEWART, residing at 12 Park Lea Gardens, Stranraer, DG9 7NB ("the Tenant")**

**And**

**Mr PHILIP BALCHIN, residing at Thorntree, Springholm, Castle Douglas, DG7 3LP ("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 concerned, and taking account of the evidence led by both the Tenant and the Landlord both in writing and 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 11 January 2013, 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)** Broken window seals within the property are causing excessive condensation and water ingress.
  - (b)** There is dampness in one of the bedrooms of the property.

- (c) There is ineffective heating within the property which failed to heat the home and was causing high fuel bills.
  - (d) There is no boiler jacket (so the water does not remain hot).
  - (e) There is a broken letterbox
- 3 The Private Rented Housing Committee served Notice of Referral dated 28 January 2013 under Section 22(1) of the Housing Scotland Act 2006 on both the Landlord and the Tenant.
- 4 The Landlord thereafter provided written representations dated 7 February 2013. The Tenant also provided written representations by letter dated 8 February 2013.
- 5 By letter dated 20 February 2013, both the Landlord and the Tenant were advised that the Committee intended to inspect the property on 13 March 2013 and to thereafter hold a hearing, in relation to the merits of the application. It was confirmed in the letter that the hearing would be held at the North West Castle Hotel, Stranraer at 12pm on 13 March 2013.
- 6 The Committee proceeded with the inspection and the hearing on 13 March 2013. Both the hearing and inspection were attended by:-
- (a) The Tenant;
  - (b) The Landlord; and
  - (c) Miss Fiona Brown, Senior Housing Advisor, Shelter Scotland who was acting as the Tenant's advisor in relation to the application.

### **The Inspection**

- 7 At the inspection the Committee noted the following points:-
- (a) The Committee noted that the windows throughout the property were, in general, in need of general maintenance and overhaul. All of the windows are of a timber casement type with double glazed panes. The Committee noted that on a number of the windows, condensation had formed between the two double glazed panes. It was apparent that the seal surrounding these double glazed panes had been breached in a number of areas. The Committee further noted that the external timber joinery was rotten in certain parts of certain of the windows. There were gaps in some of the window frames and there was evidence of some water ingress around certain of the windows. In general, the Committee noted the condition of the windows were such that they were not in a reasonable state of repair;
  - (b) The Committee noted that there was evidence of condensation dampness within the rear bedroom within the property;
  - (c) The Committee noted that the Landlord had fitted a new thermal jacket to the boiler in the property;
  - (d) The Committee noted that the letterbox within the property was broken and the panel on the inside face of the front door required replacement.
  - (e) The Committee noted there were wall mounted convector heaters within the bedrooms of the property and storage heaters in the hall and living room. In addition, the living room had an ornamental fire which could provide an alternative source of heat through a fan heater.

## The Hearing

- 8 At the hearing, the Committee heard evidence from both the Tenant and the Landlord. The Committee also had the benefit of the written submissions which both parties had made to the Committee in advance of the Hearing.

At the start of the hearing, the Chairman of the Committee explained to both parties the purpose and role of the Committee. It was emphasised that the Committee's primary role was to establish whether or not the property met the repairing standard as set out in Section 13(1) of the Act. With regard to each of the Tenant's complaints, the Committee noted that:-

- (a) The Committee had noted from their own observations, at the time of inspection that the windows within the property were in a poor state of repair and in need of general overhaul. The Committee indicated to the parties that they were of the view, following their inspection that the windows were not in a reasonable state of repair. This view was not contested by either the Landlord or the Tenant. The Landlord had explained that he could not afford the necessary works. Whilst the committee were sympathetic to his position in this respect, it was explained that this was not an issue which the committee could consider when determining whether the property met the repairing standard.
- (b) The Committee had noted from their own observations the presence of condensation and dampness within the bedroom of the property. At the same time, the Committee had noted from the Tenant that the available heating system within the property was only used sparingly as she found the cost of running the convector heaters and storage heaters to be excessive.

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 together with the steps taken by the tenant to allow air to circulate in the property.

The Tenant confirmed that all of the heating appliances within the property were operational. She did explain that the storage heater in the lounge tended to cool very quickly at night. She further explained that she was not able to afford to run the heating in the bedrooms on a regular basis as a consequence of the high cost;

- (c) The Committee noted that the Landlord had now fitted a thermal jacket to the boiler of the property. The Tenant confirmed this part of her complaint had now been dealt with by the Landlord;
- (d) The Committee noted that the Landlord had confirmed he was willing to carry out work to repair the letterbox at the property.

## Decision

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

- (a) The windows within the property (being part of the structure and exterior of the house) are not in a reasonable state of repair or in proper working order;
- (b) The installations in the house for space heating are in a reasonable state of repair and in proper working order. In making this finding, the Committee recognised that the actual heaters as supplied by the Landlord at the start of the tenancy continue to be in an operational state. They are in working order. The Committee accepted the evidence of the Tenant that the cost of running these appliances was high. Notwithstanding this, however, the Committee were of the view that the question

which they required to consider was whether these appliances were in a reasonable state of repair and in proper working order. The Committee were of the view that they could answer this question in the affirmative. Accordingly, the Committee do not consider that there was a breach of the repairing standard in the Tenant's complaint in relation to this matter;

- (c) The Committee determined there was insufficient evidence to establish that the condensation mould in the bedroom of the property was as a result of any failure by the Landlord to meet the repairing standard. Taking account of their own knowledge and experience, the Committee considered that the most likely cause of the condensation dampness was due to the low levels of heating within the property and the continuing need to ensure there was a regular flow of air through the property. Whilst the Committee appreciated that the Tenant found it difficult to afford to heat the property to a reasonable standard, the Committee were of the view that there was nonetheless no failure of the repairing standard in this respect. It was noted by the Committee that necessary works required to the windows at the property referred to at paragraph a above would allow the Tenant to operate the windows more effectively and to allow a flow of air through the property. This may in itself assist addressing issues of condensation mould although it would be necessary for a regular source of heat to be supplied throughout the property;
  - (d) The Committee noted the Landlord had supplied a thermal boiler jacket to the property and that this issue had now been rectified. There was accordingly no failure in the repairing standard in this respect;
  - (e) The Committee noted that the Landlord accepted that the letterbox at the property required to be repaired. As a fixture provided by the Landlord under the tenancy, it was not in a reasonable state of repair or in proper working order and, accordingly, it did not meet the repairing standard.
- 10 The Committee accordingly determined the Landlord had failed to comply with the duty imposed by Section 14 (1) (b) of the Act.
- 11 The Committee proceeded to make a Repairing Standard Enforcement Order as required by Section 13(1) (b), (d) and (f) of the Act.
- 12 The decision of the Committee was unanimous.

### Right of Appeal

- 13 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.

### Effects of Section 63

- 14 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 ..... Date 26/3/13  
Chairperson

  
..... Witness  
Samantha McDougall, Secretary, 7 West George Street, Glasgow, G2 1BA