



Repairing Standard Enforcement Order

Ordered by the Private Rented Housing Committee

Reference Number:- PRHP/RP/16/0099

Re: Property at 29 Martin Avenue, Irvine, KA12 9NU, all as more particularly described in and registered in Land Certificate AYR227 (hereinafter referred to as “the property”).

The Parties:-

Mr. Sebastian Sudorowski (“the Tenant”)

Mr. Andrew Russell and Mrs. Allison Russell, 211A Glassdrumman Road, Annalong, Newry, Northern Ireland, BT34 4QN (“the Landlords”)

NOTICE TO

Mr. Andrew Russell and Mrs. Allison Russell, 211A Glassdrumman Road, Annalong, Newry, Northern Ireland, BT34 4QN (“the Landlords”)

Whereas in terms of their decision dated 12 September 2016, the Private Rented Housing Committee determined that the Landlords have failed to comply with the duty imposed by Section 14 (1) (b) of the Housing (Scotland) Act 2006 (“the Act”) and in particular the Landlords have failed to ensure that: the house is wind and watertight and in all other respects fit for human habitation, the structure and exterior of the house are in a reasonable state of repair and in proper working order and that that the 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 Landlords 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:-

- (a) To repair or replace the windows in the kitchen of the property to ensure that they are wind and watertight and in proper working order.
- (b) To repair or replace the back door of the property to ensure that it is wind and watertight and in proper working order.
- (c) To repair or replace the gutters to ensure that they are in a reasonable state of repair and in proper working order.
- (d) To repair or replace the flooring in the downstairs hallway and in the kitchen to ensure that it is in a reasonable state of repair and in proper working order and to make good any damage to the floor covering in the hallway and kitchen caused by the uneven flooring.

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 12 September 2016 before this witness:-

Signed **Patricia Pryce**

Date 12 September 2016

Patricia Anne Pryce, Chairperson

Nicholas Pryce

WITNESS

NICHOLAS PRYCE

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/16/0099

Re: Property at 29 Martin Avenue, Irvine, KA12 9NU (“the Property ”)

The Parties:-

Mr Sebastian Sudorowski (“the Tenant”)

**Mr. Andrew Russell and Mrs. Allison Russell, 211A Glassdrumman Road,
Annalong, Newry, Northern Ireland, BT34 4QN (“the Landlords”)**

Decision

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

The Committee consisted of:-

Patricia Anne Pryce	-	Chairperson
George Campbell	-	Surveyor Member

Background

1. By application comprising of all documents received between 15 March 2016 and 17 May 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 Landlords 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 Landlords have failed to complete repairs with repairs first being requested four years ago.

That every window in the property is not wind and watertight.

That the front and back doors in the property are not wind and watertight.

That the floors in the hall and kitchen are damaged by the Landlords.

That the kitchen units are damaged by water as they are not sealed properly.

That the gutters are leaking.

The Tenant considers that the Landlords are in breach of their duties under the Housing (Scotland) Act 2006 in relation to the repairing standard and in particular the Landlords have failed to ensure:-

- (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, gutters and external pipes) are in a reasonable state of repair and in proper working order.
 - (iii) Any fixtures, fittings and appliances provided by the Landlord under the tenancy are in a reasonable state of repair and in proper working order.
3. By Minute dated 1 June 2016 a Convener of the Private Rented Housing Panel with delegated powers under section 96 of the Housing (Scotland) Act 2014 intimated a decision to refer the application under Section 23(1) of the Act to a Private Rented Housing Committee.
 4. On 13 June 2016, the Private Rented Housing Committee ("the Committee") wrote to the Landlords to advise that the Committee intended to inspect the property on 22 July 2016 at 10.00 hours. The letter further confirmed that a Hearing had been arranged in relation to the application, which Hearing would be held in the Greenwood Conference Centre, Greenwood Gate, Dreghorn, Irvine, KA11 4GZ commencing at 11.00 hours. Finally, the letter confirmed that any written submissions had to be received by the Committee by 4 July 2016.
 5. On 11 July 2016, the Committee received a postponement request from the Tenant as the Tenant advised that he would be out of the country on the date of the inspection and hearing. The Committee granted this request. A further inspection was arranged for 12 September 2016 at 10:00 hours with a hearing arranged for the same date at 11:00 hours at the Greenwood Conference Centre as stated above. Parties were

advised of the new date and times by the Committee by letter dated 25 July 2016.

6. On 7 September 2016, the Committee received from Administration of the PRHP an email from the Tenant dated 5 September 2016 wherein the Tenant advised that he wished to cancel both the inspection and hearing as the Landlords had advised that they would carry out the repairs within the next two months. The Committee treated this as a withdrawal of the Tenant's application under Section 22(1) of the 2006 Act. The Committee considered whether or not the application should proceed. The Committee decided to proceed with the application as some of the repairs outstanding could raise health and safety issues for the occupants of the property. On 8 September 2016, the Committee issued a Minute of Continuation under Schedule 2 Paragraph 7(3) of the 2006 Act which was intimated on parties on the same date.

The Inspection

7. On 12 September 2016, the Committee, along with an observer, attended at the property for the purposes of inspection of the property. The Tenant and his wife were present at the inspection. The Landlords were not present or represented at the inspection.

At the inspection on 12 September 2016, the Committee noted the following points: -

- (a) The property comprises a four apartment mid-terrace house. It is assumed to be of traditional brick construction and rendered. It is situated in a residential area of Irvine and is around forty years old.
- (b) The accommodation comprises on two levels. On the ground floor, there is an entrance hallway, a kitchen and a living room. On the first floor, there are three bedrooms and a bathroom.
- (c) The Committee noted that there was no heat detector located in the kitchen. There were two battery operated smoke detectors located in the downstairs and upstairs hallways. There was no smoke detector located in the living room of the property.
- (d) All of the windows in the property were of a single glazed timber frame construction. On the day of inspection, it was very windy. Despite the prevailing weather conditions, the Committee noted that only the window in the kitchen was draughty.
- (e) The seal around the back door which is located in the kitchen had failed.
- (f) The gutters in the property were rusted and leaking.

- (g) The front door of the property appeared to be in good condition and was wind and watertight.
- (h) The flooring in the downstairs hallway and kitchen was uneven and appeared to be loose under the floor coverings.

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

The Hearing

8. The Tenant was no longer part of the process having withdrawn his application and did not attend the hearing. The Landlords were not present and were not represented at the hearing. The Committee considered that it had sufficient information to proceed with consideration of the application without parties being present. There was an observer present at the hearing.

Preliminary Issue

The Committee noted that although the Tenant had sought to include consideration of the kitchen units within the property as part of the present application, the Committee could not properly consider this as an issue at the hearing as the Tenant had failed to properly notify the Landlords of this specific issue in advance of making the application to the Committee.

The Committee proceeded to consider the evidence before it in the form of the application produced by the Tenant. The Landlords did not submit any written representations to be considered by the Committee nor did they attend the inspection and hearing.

In light of the application and what the Committee saw at the inspection, the Committee is satisfied that the property is not wind and watertight and in all other aspects reasonably fit for human habitation as a result of draughts emanating from the kitchen window and the failing seal around the back door of the property. The Committee is satisfied that the structure and exterior of the house are not in a reasonable state of repair and in proper working order as a result of the rusting and leaking gutters and the uneven flooring in the downstairs hallway and in the kitchen.

As narrated above, the Committee has decided that it cannot properly consider the issue of whether or not any fixtures, fittings and appliances provided by the Landlords under the tenancy are in a reasonable state of repair and in proper working order as the Landlords were not properly

notified of the issue with the kitchen units in advance of this present application.

Decision

9. The Committee accordingly determines that the Landlords have 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.
10. The decision of the Committee was unanimous.
11. The Private Rented Housing Committee require the Landlords to carry out such works as are necessary to ensure that the property meets the Repairing Standard.
12. 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

13. The Committee considers that the Landlords have had sufficient time to carry out the outstanding repairs.

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

Observations

The Committee noted with great concern that there were insufficient smoke detectors within the property. There were only two battery operated smoke detectors located within the property. There was no smoke detection device located within the living room of the property. Furthermore, there was no heat detector located in the kitchen. The Committee would strongly urge the Landlords to install sufficient numbers of smoke detectors within the property, compliant with present regulations. These should be hardwired and interlinked. The Committee would strongly urge the Landlords to install a heat detector within the kitchen. Without all of these detectors, the lives of any occupants of the property could be placed at risk.

The Committee noted that it could not consider these matters as they had not been raised within the present application but would simply note that there is nothing to prevent these matters from being raised in a further application by any occupant of the property.

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.

Patricia Pryce

Signed

Date 12 September 2016

Patricia Anne Pryce

Photographs taken at 29 Martin Avenue, Irvine KA12 9NU on 12 September 2016 (RP/16/0099)



01 - Front elevation (showing front gutter)



02 - Battery-operated smoke alarm, lower hall



03 - Battery-operated smoke alarm, upper hall



04 - Carbon monoxide alarm at boiler



05 - Living room - window to front



06 - Living room - window to rear



07 - Kitchen - window to rear



08 - Kitchen - window external



09 - Living room - window external



10 - Kitchen - damage to vinyl at loose flooring



11 Kitchen - 'nailhead?' protruding from vinyl



12 - Front door



13 - Rear door, damaged seal at RHS



14 - Rear gutter



15 - Rear gutter