



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

prhp ref: RP/16/0036

Re 22 Lamont Crescent, Cumnock, East Ayrshire, KA18 3DU being the subjects registered in the Land Register of Scotland under title number AYR50809 ('the Property')

The Parties:-

Ms Charlene E. Ogg, residing at the Property ('The Tenant')

Mr Ian Urquhart, residing at 63 Brewland Street, Galston, East Ayrshire and Mr Scott Urquhart, residing at 74 Dolphin Drive, Long Bay, St Philip, Barbados ('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 2006 Act') in relation to the Property, determined that the Landlord has failed to comply with the duty imposed by Section 14 (1)(b) of the 2006 Act and made a repairing standard enforcement order in terms of Section 24(2) of the said Act.

Background

1. By application received on 27th January 2016 the Tenant applied to the Private Rented Housing Panel for a determination of whether the Landlord has failed to comply with the duties imposed by Section 14 (1) (b) of the 2006 Act.
2. The application by the Tenant states that she considers that the Landlord has failed to comply with his duty to ensure that the Property meets the repairing standard. The application states that the Tenant believes that the Property is not wind and watertight and in other respects reasonably fit for human habitation, that 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, that any furnishings provided by the landlord under the tenancy are capable of being used safely for the purpose for which they are designed and that the house has satisfactory provision for giving warning in the event of fire or suspected fire. In particular, the Tenant states that there is a

substantial draught coming in the living room window, there is no hot water to the kitchen, three sets of internal doors do not close properly, a door at top of the stairs had fallen off its hinges, there is only one smoke detector for the whole property, there is a condemned gas fire and a damaged exterior fence with sharp wire protruding out. In addition the application made reference to some matters which were faulty at the commencement of the tenancy and which had subsequently been dealt with.

3. The President of the Private Rented Housing Panel, having considered the application, referred the application under Section 22 (1) of the Act to a Private Rented Housing Committee. The Committee comprises of Martin McAllister (Chairperson) and George Campbell (Surveyor Member)

4. The Private Rented Housing Panel served a Notice of Referral under and in terms of Schedule 2, Paragraph 1 of the Act upon both the Landlord and the Tenant on 10th March 2016.

5. Prior to the Inspection and Hearing the Tenant intimated that some repairs had been carried out and Infiniti Properties Management Limited, the letting agents, provided a helpful report setting out what repairs had been done, what were scheduled to be done and what matters they were awaiting authority from the Landlord.

7. The Committee attended at the Property on 20th April 2016 for an inspection. The Tenant was not present because of a doctor's appointment. The Landlord was not present. Ms Angie Wylie of Infiniti Properties Management Ltd, the letting agent was present and facilitated access. The Property comprises a purpose built upper flat entering by an exclusive staircase. A schedule of external and internal photographs is attached to this Determination. The committee found the following:-

7. Findings on Inspection

7.1 There are interconnected mains powered smoke detectors in the hall and living room and there is a heat detector in the kitchen. The heat detector is not functioning properly because when tested an audible alarm is not sounded in the smoke detectors and, when the smoke detectors were tested, the alarm in the heat detector did not sound.

7.2 There is a carbon monoxide detector in the living room which is not functioning.

7.3 The living room window is draught free.

7.5 The hot water tap in the kitchen is functioning effectively.

7.6 The door of the cupboard containing the electric meter and consumer unit does not close securely.

7.7 The French doors between the living room and the kitchen do not close properly and are ill fitting. Replacement French doors were noted to be in the property and are to be installed.

7.8 The living room door sticks and requires force to open it from the hall.

7.9 There is a gas fire in the living room which is part of a back boiler which provides heating. The boiler can be operated but to do so requires the Tenant to lie on the

floor to operate the controls. The fire cannot be operated and there is attached to it a safety warning from a gas engineer dated 9th October 2015 stating that the fire is not to be used.

7.6 At the front of the Property is an iron framed mesh fence. A large section of mesh has been removed and Ms Wylie explained that she had arranged to have a section removed because of ragged edges.

8. The Hearing

Following the Inspection, a Hearing took place at Barrhill Community Centre. Neither the Tenant nor the Landlord were present. Ms Wylie was present and gave evidence. The Committee had before it the application, representations of the Landlord's agents and a copies of a Gas Safety Report dated 9th October 2015 and an Electrical Installation condition Report dated 24th March 2016. The Committee also had a copy of the tenancy agreement which indicated that the tenancy commenced on 16th December 2015. The Committee also had copies of various emails between the tenant and the letting agents.

9. Preliminary issues

Ms Wylie drew the Committee's attention to the written representations which outlined the work which had been done and the work which scheduled to be done

10. The Issues and evidence

The repairing standard is set out in Section 13 of the 2006 Act as amended:
A house meets the repairing standard if—

- (a) the house is wind and water tight 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,*
- (d) any fixtures, fittings and appliances provided by the landlord under the tenancy are in a reasonable state of repair and in proper working order,*
- (e) any furnishings provided by the landlord under the tenancy are capable of being used safely for the purpose for which they are designed, and*
- (f) the house has satisfactory provision for detecting fires and for giving warning in the event of fire or suspected fire.*
- (g) The house has satisfactory provision for giving warning if carbon monoxide is present in a concentration that is hazardous to health.*

The Committee noted the terms of the Gas Safety Report which highlighted that the gas fired is "deemed at risk". Ms Wylie said that the gas fire could not be replaced without the back boiler being replaced. She indicated that the fire cannot be repaired. She said that she had obtained a quotation for replacement of the boiler and the fire and that she understood that the Landlord is obtaining another quotation.

Ms Wylie said that the smoke and heat detectors were recently installed and that she planned to call the electrician to have him remedy the fault found on inspection.

Ms Wylie said that it had been recognised that the French doors required to be replaced. She said that the replacement doors seen on inspection are second hand and had been sourced by the Tenant. She said that arrangements were being made to have them installed. She said that she had agreed a suitable financial agreement with the tenant with regard to the supply of the replacement doors. She said that she would also arrange for the joiner to fix the sticking door and make the meter cupboard secure.

Ms Wylie said that she had arranged for the defective fencing to be removed and that it is planned to install plastic mesh fencing.

11. Findings

The Committee found that the gas fire cannot be used and also considered that the means required to operate the central heating boiler is not satisfactory.

The Committee found that the French doors between the living room and the kitchen, the door between the living room and the hall and the meter cupboard door are defective.

The Committee found that the fence at the front of the property requires to be repaired.

The Committee had no portable appliance testing report before it and noted that the tenancy commenced after 1st December 2015.

The detectors for heat and smoke are not operating correctly.

12. The Committee arrived at its findings from what it found on inspection, the documentation produced to it and the evidence of Ms Wylie. The Committee noted the efforts made by the letting agent to deal with repairs and considered it clear from the emails between the tenant and agents that there is a good relationship and that parties have been trying to resolve matters.

13. The Committee considered whether or not any defects it found established brought the Property below the repairing standard in terms of the 2006 Act as amended. The Committee discussed the issue of the gas fire. The gas fire was not working at the commencement of the tenancy but was supplied by the Landlord and accordingly required to be in effective working order. The Committee recognised that the fire and central heating boiler were attached and that replacement of the fire may necessitate replacement of the boiler.

In respect of the Findings it had made, the Committee considered that a repairing standard enforcement order should be made and proceeded to do so. The

Committee considered that it is reasonable for the Landlord to be given eight weeks for the works to be completed.

14. Decision

The Committee accordingly determined that the Landlord has failed to comply with the duties imposed by Section 14(1)(b), of the Act, as stated.

The Committee proceeded to make a Repairing Standard Enforcement Order as required by section 24(1) and 24(2) of the 2006 Act in the following terms:

- a) The Landlord requires to provide a suitable heating system for the Property including a gas fire in the living room and provide to the Committee a certificate from a qualified Gas Safe Registered Engineer confirming that the system is effective and safe.
(Section 13 (1) (c) of the Act).**
- b) The Landlord requires to repair the fence at the front of the Property.
(Section 13 (1) (b) of the Act).**
- c) The Landlord requires to ensure that heat and smoke alarms comply with the requirements of the revised Domestic Technical Handbook issued by Scottish Government's Building Standards Division (Technical Handbooks 2013:- Domestic-Fire)
(Section 13 (1) (f) of the Act).**
- d) The Landlord requires to install the replacement French doors between the living room and the kitchen, repair the door between the living room and the hall and ensure that the meter cupboard door can be closed securely.
(Section 13 (1) (b) of the Act).**
- e) The Landlord requires to produce to the Committee a Portable Appliance Testing Report in acceptable terms in respect of any electrical appliances supplied by the Landlord.
(Section 13 (1) (d) of the Act).**
- f) The landlord requires to install a functioning carbon monoxide detector.
(Section 13 (1) (g) of the Act).**

In view of the nature of the failure to meet the Repairing Standard as defined in the 2006 Act, the committee determined that the repairing standard enforcement order requires to be complied with by the date eight weeks from service of the repairing standard enforcement order upon the Landlord.

Right of Appeal

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

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 . **M McAllister**
Martin J. McAllister
Chairperson

.... Date 26th April 2016



Repairing Standard Enforcement Order

Ordered by the Private Rented Housing Committee

ref: RP/16/0036

Re 22 Lamont Crescent, Cumnock, East Ayrshire, KA18 3DU being the subjects registered in the Land Register of Scotland under title number AYR50809 ('the Property')

The Parties:-

Ms Charlene E. Ogg, residing at the Property ("The Tenant")

Mr Ian Urquhart, residing at 63 Brewland Street, Galston, East Ayrshire and Mr Scott Urquhart, residing at 74 Dolphin Drive, Long Bay, St Philip, Barbados ("The Landlord")

Notice to Ian Urquhart and Scott Urquhart

Whereas in terms of its decision dated 26th April 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) in respect of the property known as 22 Lamont Crescent, Cumnock, KA18 3DU being the subjects registered in the Land Register of Scotland under **Title Number AYR50809** and, in particular, that the Landlord has failed, in terms of Section 13 of the said Act to ensure that that the structure and exterior of the house 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, any fixtures, fittings and appliances provided by the landlord under the tenancy are in a reasonable state of repair and in proper working order, that the house has satisfactory provision for detecting fires and for giving warning in the event of fire or suspected fire and that the house has satisfactory provision for giving warning if carbon monoxide is present in a concentration that is hazardous to health **Now Therefore** the Private Rented Housing Committee requires the Landlord to carry out such work as is necessary for the purposes of ensuring that the Property meets the repairing standard in terms of the Act 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 following:

- a) **The Landlord requires to provide a suitable heating system for the Property including a gas fire in the living room and provide to the Committee a certificate from a suitable qualified Gas Safe Registered Engineer confirming that the system is effective and safe.
(Section 13 (1) (c) of the Act).**
- b) **The Landlord requires to repair the fence at the front of the Property.
(Section 13 (1) (b) of the Act).**
- c) **The Landlord requires to ensure that heat and smoke alarms comply with the requirements of the revised Domestic Technical Handbook issued by Scottish Government's Building Standards Division (Technical Handbooks 2013:- Domestic-Fire)
(Section 13 (1) (f) of the Act).**
- d) **The Landlord requires to install the replacement French doors between the living room and the kitchen, repair the door between the living room and the hall and ensure that the meter cupboard door can be closed securely.
(Section 13 (1) (b) of the Act).**
- e) **The Landlord requires to produce to the Committee a Portable Appliance Testing Report in acceptable terms in respect of any electrical appliances supplied by the Landlord.
(Section 13 (1) (d) of the Act).**
- f) **The landlord requires to install a functioning carbon monoxide detector.
(Section 13 (1) (g) of the Act).**

The Committee determined the works require to be done within eight weeks of service of the repairing standard enforcement order upon the Landlord.

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 repairing standard enforcement order 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 repairing standard enforcement order has effect in relation to the house. This is in terms of Section 28(5) of the Act.

M McAllister

Signed.....

Martin Joseph McAllister
Chairperson

. Date 26th April 2016

A Green

.....
Saltcoats.

.....witness: Alistair Neil Green, 51 Hamilton Street,

Signed at Saltcoats