



Repairing Standard Enforcement Order

Ordered by the Private Rented Housing Committee

prhp ref: RP/16/0195

Re 31 Holmlea Drive, Kilmarnock, KA1 1UX being the subjects registered in the Land Register of Scotland under title number AYR5638 ('the Property')

The Parties:-

Miss Lisa Hyland (The Tenant'), residing at the Property.

Mr Thomas Gordon Stevenson, 15 Parish Gardens, Symington, East Ayrshire, KA1 5SB and Mr Neil Stevenson, 18 Holly Place, Kilmarnock, KA1 2JU ('The Landlord').

The Committee: Martin J. McAllister, Chairperson and George Campbell, Surveyor Member.

NOTICE TO

Mr Thomas Gordon Stevenson

Whereas in terms of their decision dated 12th July 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 and, in particular, that the Landlord has failed, in terms of Section 13 of the said Act to ensure that the house is wind and watertight and in all other respects reasonably fit for human habitation and 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 Property meets the repairing standard in terms of Section 13 of the said 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:

The Landlord requires to resolve the water ingress and structural defects at the rear of the Property as outlined in the Report of Prime Structural Solutions dated 17th February 2016.

(Section 13 (1) (a) and 13 (1) (b) 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 three months from 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.

M McAllister

Signed
Martin J. McAllister
Chairperson

Date 12th July 2016

P Sinclair

witness: Paula Sinclair, paralegal, 51 Hamilton
Street, Saltcoats



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/16/0195

Re 31 Holmlea Drive, Kilmarnock, KA1 1UX being the subjects registered in the Land Register of Scotland under title number AYR5638 ('the Property')

The Parties:-

Ms Lisa Hyland , residing at the Property ("The Tenant").

Mr Thomas Gordon Stevenson, residing at 15 Parish Gardens, Symington, East Ayrshire, KA1 5SB ("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 dated 16TH May 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 and 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. In particular, the Tenant states there is water ingress and that the property is not watertight. It also states that the Property has draughts and is not windproof.
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 on 19th May 2016. The Committee comprises of Martin McAllister (Chairperson) and George Campbell (Surveyor Member) (the Committee).

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 31st May 2016. A Notice of Referral was also served on Neil Stevenson, 18 Holly Place, Kilmarnock, KA1 2JU on the same date. The Title Sheet of the Property discloses Neil Stevenson to be the owner.

5. On 3rd June the Committee issued a Notice of Direction requiring the Landlord to produce any reports provided by CMS Structural Design in connection with the Property as well as any reports provided by architects, surveyors or structural engineers relating to the Property and received since 1st January 2016. In response to the Notice of Direction the Landlord's representative lodged a report by Mr Jim Adams, structural engineer, of Prime Structural Solutions dated 17th February 2016.

6. On 14th June 2016 the Landlord's representative completed and submitted a pro forma declaration indicating that the Landlord did not want to make representations or to attend a Hearing.

7. On 2nd June 2016 the Tenant indicated that she intended to attend a Hearing and also submitted written representations. In the representations the Tenant stated that the landlord's agents had told her on 25th May 2016 that the inspection report and architect's report had been received and that extensive work needed to be carried out to the Property. The Tenant stated that she had been told that she could leave the Property but the Landlord was happy for her to stay. The representations disclosed that the Landlord had offered to reduce the rent by £100 per month and that if the Tenant withheld rent a Notice to Quit would be served. The representations also stated that the Tenant had been told that work would be carried out but that no timeframe had been given. The Tenant stated that she was concerned because it had been six months since she had reported the water ingress.

8. The Tenant submitted a copy of a Notice to Quit dated 24th June 2016.

9. The Committee attended at the Property on 11th July 2016 for an inspection. The Tenant was present. The Property comprises a purpose built semi detached house. A schedule of external and internal photographs is attached to this Determination. The committee found the following:-

7. Findings on Inspection

7.1 The lounge has a large UPVC window which is bowed and there is evidence of water ingress. Externally there is evidence that the brickwork above the window has dropped and the brickwork between the windows and the adjacent semi-detached house has significantly bulged outwards over the height of the window.

7.2 There are gaps behind the kitchen cupboards. No evidence of draughts from the gaps was found.

8. The Hearing.

Following the Inspection, a Hearing took place at Greenwood Conference Centre, Dreghorn, Irvine. The Tenant was present and gave evidence. Mr Thomas Telfer of Innovative Space Solutions, the Landlord's agents, was present and gave evidence. The Committee had before it the application and the representations of the Tenant and Landlord previously referred to. The Committee also had a copy of a tenancy agreement dated 29th May 2015 which indicated that the tenancy commenced on that date. The Committee also had a copy of the report of Mr Jim Adams, structural engineer, of Prime Structural Solutions dated 17th February 2016.

9. Preliminary issues

The Committee noted with concern that the Notice of Direction dated 3rd June 2016 had not been complied with because the Report of Prime Structural Solutions referred to appendices and these had not been lodged along with the Report. Mr Telfer stated that the Report as lodged was all that he had been given by the Landlord. Mr Telfer was unable to say whether or not any other Reports had been provided to the Landlord.

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.*

Mr Telfer and the Tenant agreed that significant structural work required to be carried out to the Property. Mr Telfer referred to the Report of Prime Structural Solutions and the options for resolution of the issues as detailed in the Report. He pointed out to the Committee that the Report referred to the brick panel between

both ground floor lounge windows of the Property and the adjacent house having bulged outwards due to the movement which has occurred to the masonry panel above the lounge window. Mr Telfer said that the repairs to be carried out would involve the neighbouring house and that matters had been somewhat delayed because of the death of the owner of that house. Mr Telfer said that, as far as he knows, the landlord has written to the family of the deceased owner. The Tenant said that she had spoken to the daughter of the deceased neighbour the previous week who told her that she had received no communication from the Landlord.

Mr Telfer said that he had no idea how long the work would take and what disruption would be caused. He said that it had been decided that the Tenant would be served with a Notice to Quit. He said that it was unreasonable for someone to remain living in the property until the repairs had been concluded.

The Tenant said that she would be sad to leave the Property because she liked the house and the area. Mr Telfer said that, although the Notice required the Tenant to vacate the Property on 29th August 2016, the Landlord was prepared to allow earlier vacation without penalty if the Tenant found alternative accommodation.

The Committee noted the terms of the Report of Prime Structural Solutions dated 17th February 2016. Mr Adams concluded that the water ingress to the lounge has directly resulted from sagging of the external facing brick panel over the lounge window. The Report states " This has been caused by the original timber window frames having been taken out, there being no lintel which has allowed the brick panel above to sag downwards. The new UPVC frames are not capable of supporting the brick wall load from above." The Report goes on to state that the settlement has caused tearing of the damp proof membrane allowing water penetration.

Mr Adams' Report suggested two options to resolve the issue. One option involved renewing the external brick from ground level and the other involved cutting out selective brickwork, installing new lintels and replacing the brickwork.

The Tenant said that there were draughts coming from behind the kitchen units. Mr Telfer said that a contractor had carried out work but the Tenant said that the issue had not been resolved. Mr Telfer explained that the Property has a cellar and that it was possible that draughts were coming from the cellar through expansion joints at the walls. He said that he had been present when it was windy and that he had not found draughts.

11. Findings

11.1 The Committee finds that there are structural defects in the Property and that the window in the lounge is defective. The Committee finds that there is water ingress and that there are defects in the brickwork above and around the lounge window.

11.2 The Committee made no finding with regard to draughts in the kitchen.

12. The Committee arrived at its findings from what it found on inspection and had regard to the contents of the Report of Prime Structural Solutions. The Committee also had regard to the helpful evidence of the Tenant and Mr Telfer in respect of the

structural issue. It could come to no view with regard to matter of alleged draughts in the kitchen.

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 considered that the Property is not wind and watertight and in all other respects reasonably fit for human habitation. The Committee did not consider that the structure and exterior of the Property are in a reasonable state of repair and in proper working order.

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 three months 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:

**The Landlord requires to resolve the water ingress and structural defects at the rear of the Property as outlined in the Report of Prime Structural Solutions dated 17th February 2016.
(Section 13 (1) (a) and 13 (1) (b) 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 three months 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.

M McAllister
Signed Date 12th July 2016
Martin J. McAllister
Chairperson