



DETERMINATION BY PRIVATE RENTED HOUSING COMMITTEE

**STATEMENT OF DECISION OF THE PRIVATE RENTED HOUSING COMMITTEE
UNDER SECTION 26(1) OF THE HOUSING (SCOTLAND) ACT 2006**

In connection with

**Property at 47 Calder Avenue, Coatbridge, North Lanarkshire ML5 4HP
(hereinafter referred to as "the house")**

Ms. Barbara Williams, residing formerly at the house ("the Tenant")

**Mr. Gary Commins, residing at 27 Calder Avenue, Coatbridge ML 5 4HP ("the
Landlord")**

Reference PRHP/RP/13/0147

BACKGROUND

1. Reference is made to the Determination of the Private Rented Housing Committee ("the Committee") dated 24 February 2014 which decided that the Landlord had failed to comply with the duty imposed by Section 14(1)(b) of the Housing (Scotland) Act ("the Act") and to the Repairing Standard Enforcement Order ("the RSEO") dated 25 February 2014 which confirmed that the Landlord had failed to ensure that the house is wind and watertight and in all other respects reasonably fit of 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; and any fixtures, fittings and appliances provided by the landlord under the tenancy are in a reasonable state of repair and in proper working order.

The RSEO required the Landlord to undertake works 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 required the Landlord:-

- (a) to eradicate dampness within the house to ensure that the house is wind and watertight and in all other respects reasonably fit for human habitation and the structure of the house is in a reasonable state of repair and in proper working

order; and to carry out any remedial work to the house following the works for the eradication of dampness.

(b) To repair the hall cupboard door to ensure that the door closes properly.

(Hereinafter the works detailed at (a) to (b) inclusive, are collectively known as "the said repairs").

The said repairs were to be carried out and completed within a period of 2 months from the date of service of the Notice of the RSEO. Service of the Notice of the RSEO was served on the Landlord on 27 February 2014.

2. Following upon expiry of the timescale for completion of works specified in the RSEO, the Committee intimated that the Surveyor Member, Mr. George Campbell, would re-inspect the house on 11 June 2014. Following intimation that there was to be a re-inspection of the house, an e-mail was received on 10 June 2014 from the Landlord indicating that he had bought most of the materials to repair the house and that the Landlord intended to carry out more extensive works that were required in the RSEO. Furthermore the Landlord indicated that it was not his intention to re-let the house and the works would be carried out in the next few months.

The Surveyor Member attended the house at the notified time for the re-inspection on 11 June 2014 and did not obtain entry. A neighbour indicated to the Member that someone was staying in the house but that the individual was at work and would not be back until evening.

The Committee wrote to the Landlord on 15 July 2014 by recorded delivery post and using the e-mail he had provided and indicated that the Committee was considering if the RSEO should be revoked or varied or if there had been a failure to comply with the RSEO given that the works had not been completed to date. The Committee invited written representations from the Landlord on any circumstances considered by the Landlord to be relevant to the Committee's decision, and also invited submission of any additional documents the Landlord wished considered before a decision was reached. The Landlord was asked to state if he sought a variation of the RSEO or an extension of the period for works to be completed and, in the latter, the timescale the Landlord proposed was required to complete the works. If no such extension or variation was sought, the Landlord was invited to explain any circumstances which he wished the Committee to consider in relation to their decision as to whether to revoke the RSEO or to make a failure to comply decision. The Landlord was advised of the provisions of Section 28(1) of the 2006 Act if it was determined that he had failed to comply with an RSEO without reasonable excuse, the maximum fine for that offence and he was advised to seek legal advice. The Committee made it clear that failure to provide written representations would lead to the Committee making a decision based on the information presently available to them.

In the absence of any written representations from the Landlord in response to the communication of 15 July 2014, the Committee considered the information before them and the contents of the Landlord's previous communications of 8 April 2014 and 10 June 2014.

The Committee comprised Mrs. Aileen Devanny, Chairperson, Mr. George Campbell, Surveyor Member, and Mrs. Susan Brown, Housing Member.

DETERMINATION AND REASONS

3. The Committee considered the evidence and the Landlord's e-mail of 10 June 2014 which accepted that the works remain outstanding and have not been carried out; and also considered the lack of further representations from the Landlord to the communications sent on 15 July 2014. The Committee unanimously decided in terms of Section 26(1) of the Act that the Landlord had failed to comply with the RSEO and directed that a notice of the failure be served on the Local Authority for which the house is situated. The Committee did not consider that the failure to comply with the RSEO was due to a lack of necessary rights of access or otherwise as no such explanation had been provided by the Landlord. The Committee considered at this time that the Landlord has been provided with ample opportunity to carry out works in the RSEO since issue of their decision and the RSEO at the end of February 2014.

The Committee considered whether or not a variation/ extension or revocation of the RSEO was appropriate but discounted these options given the evidence before them that the Landlord has by the date of this decision already had an extension on the original timescale of some 4 months to complete the works; and the Landlord's previous assurances in communications received on 8 April 2014 and 10 June 2014 that works in the RSEO would be completed have not been implemented. The Committee was mindful that the Landlord could change his stated intention not to re-let the house if the RSEO is revoked.

It is not appropriate for the Committee to make a Rent Relief Order in terms of Section 27 of the Act as the tenancy to which the application relates has been terminated.

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.

The appropriate respondent in such appeal proceedings is the other Party to the proceedings and not the Private Rented Housing Panel or the Committee which made the 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 28 days from the day on which the appeal is abandoned or so determined.

A Devanny

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Chairperson,
11th September 2014