



**Decisions of Private Rented Housing Committee  
under Sections 25, and 26 (1) and (2) of the Housing (Scotland) Act 2006**

**Statement of Decisions of the Private Rented Housing Committee**

**(Hereinafter referred to as "the Committee")**

**Under Sections 25 and 26(1) and (2) of the Housing (Scotland) Act 2006**

**Case Reference Number: PRHP/RP/14/0162**

**Re : Eastmost ground floor flat, 68 Bedford Road, Aberdeen AB24 3LP ("the Property")**

**Title No: ABN96747**

**The Parties:-**

**Miss Temitope Adewuyi, 68 Bedford Road, Aberdeen AB24 3LP ("the Former Tenant")**

**Richard Bean ("the Landlord") care of his agents Grampian Accommodation Agency, 24-26 Marischal Street, Aberdeen AB11 5AJ**

**The Committee comprised:-**

Mr David Bartos	- Chairperson
Mr Angus Anderson	- Surveyor member

**Decisions**

1. The Committee refuses to vary or revoke the Repairing Standard Enforcement Order dated 11 November and issued on or about 19 November 2014.
2. The Committee decides that the Landlord has failed to comply with the said Repairing Standard Enforcement Order.
3. The Committee decides not to make a rent relief order.

**Background:-**

1. The Committee issued a Repairing Standard Enforcement Order ("RSEO") in respect of the Property dated 11 November 2014. The works in the RSEO required to be completed by 21 days from the date of service of the RSEO on the Landlord. The RSEO was served on the Landlord on or about 19 November 2014. On 20 January 2015 the Surveyor member of

the Committee carried out a reinspection of the Property. He found that the work set out in the RSEO had not been carried out. He produced a Re-inspection Report which is referred to for its terms. There was a new tenant resident in the premises. He was informed that this new lease had commenced on or about 23 December 2014.

2. By letter to the Landlord's agents issued on or about 19 March 2015 the Committee's clerk intimated to the Landlord's agents the said re-inspection report, and invited the Landlord to comment on whether there had been failure to comply with the RSEO and to seek a hearing on the matter. The lease with the Former Tenant having terminated on 30 November 2014, there was no intimation to the Former Tenant who had vacated the premises by the time of the re-inspection.
3. By letter dated 25 March 2015 the Landlord's agents sought to provide an explanation for the apparent non-compliance with the RSEO and applied for a variation or revocation of the RSEO. They did not seek a hearing. They enclosed the following documents in support of their explanation and application:
  - Short assured tenancy agreement with the Former Tenant
  - Inventory relative to said tenancy agreement
  - Application to PRHP by Former Tenant dated 24 June 2014
  - Invoice from DC Garden Services dated 15 December 2014
  - Invoice from R Nicol & Son, painters and decorators dated 17 December 2014
  - Delivery notification document valid from 17 December 2014
4. The Committee decided that in the light of the evidence before it and the absence of any request for a hearing that a hearing was unnecessary.

### **Findings in fact**

5. Having considered all the evidence, the Committee found the following facts to be established:-
  - (a) The Committee issued a RSEO dated 11 November 2014 which was served on the Landlord on or about 19 November 2014. The Landlord had 21 days from the date of service of the RSEO to carry out and complete the works stated in the RSEO.
  - (b) The tenancy with the Former Tenant terminated on 30 November.
  - (c) On or about 15 December 2014 the Landlord removed the double sofa bed present during the Former Tenant's tenancy. On or about 23 December 2014 the Landlord replaced it with a new sofa. It is not designed and cannot be used as a sofa bed.

(d) The Property comprises a front room and a kitchen together with a bathroom.

(e) The Landlord re-let the Property with effect from on or about 23 December 2014. The RSEO was still in effect at that time.

### **Reasons for Decisions**

6. The Committee accepted the re-inspection report which indicated that the Landlord's agents had replaced the sofa bed with a sofa which was not designed for and could not be used as a sofa bed. This finding was further supported by the DC Garden invoice and the delivery notification.
7. The Landlord's agents do not appear to contend that the RSEO has been complied with. Rather they submit that –
  - (1) they replaced with sofa bed with a sofa as the tenancy with the Former Tenant had been for single occupation and it had never been intended that the sofa bed be used other than for seating purposes;
  - (2) they should have contested the RSEO on that basis;
  - (3) that the Former Tenant had only requested "the sofa" to be replaced and not a "sofa bed"; and
  - (4) they had replaced with sofa bed with a sofa in good faith on this basis.
8. For these reasons the agents seek a variation or revocation of the RSEO. Given that a variation or revocation could render a decision on failure to comply unnecessary the Committee considered those issues first.
9. The Committee may at any time vary an RSEO in such manner as it considers reasonable or where it considers that the work required by the RSEO is no longer necessary, revoke the RSEO. In addition, if the Committee considers the work required by the RSEO has not been completed during the period within which it was required to be completed and the Committee considers that satisfactory progress has been made in carrying out the work required, the Committee must vary the RSEO so as to extend the period within which the work must be completed and in any other manner as it thinks fit.
10. Is the work no longer necessary ? Nothing that the Committee have been presented with indicates that it is not necessary to replace the sofa bed with another sofa bed. However the Landlord's agents may seek to present matters, the fact remains that the tenancy of the Former Tenant included a sofa bed rather than a mere sofa. The inventory for that tenancy makes this quite clear. This is something of value for even a single tenant of such a small dwellinghouse as the Property. The intention of the Landlord or his agents as to the use of the sofa bed was immaterial. It was quite open for the Former Tenant or an overnight visitor or guest to use the sofa bed.

11. Equally whether or not the Landlord should have contested the RSEO, or whether or not the replacement with a sofa was done in good faith is immaterial. The Committee is surprised to see the Landlord's agents relying on the Former's Tenant's use of the word "sofa" rather than "sofa bed". This point was not raised by the agents at the hearing in October 2014 where there was no dispute that the item of furniture in question was the sofa bed seen by the Committee during its inspection and referred to in the inventory. In conclusion, the Committee has not been persuaded of any reason why it is not necessary to replace the sofa bed with a sofa bed. Accordingly the Committee refuses to revoke the RSEO.
12. Has satisfactory progress been made in carrying out the work required ? Whether progress has been satisfactory must be assessed in relation to the work required by the RSEO. In this case the work required the removal of the existing sofa bed and its replacement with another sofa bed. This requires the purchase and order of a new sofa bed. That is something that could have been carried out well within the time limit in the RSEO. It is in no way burdensome on the Landlord. Given that that time limit expired on or about 10 December 2014, and by March or April 2015 still no purchase or order of a new sofa bed has been made, the Committee cannot consider the mere removal of the old sofa bed as amounting to satisfactory progress in the carrying out of the works required by the RSEO. In these circumstances the Committee is not obliged to vary the RSEO under section 25(2) of the 2006 Act.
13. The Committee has a residual discretion to order the RSEO to be varied in such manner as it considers reasonable (2006 Act, section 25(1)). Nothing in the submission for the Landlord set out above indicates to the Committee that the RSEO should be varied. In particular nothing indicates that the Landlord intends to comply with the RSEO. Accordingly the Committee refuses the application to vary the RSEO.
14. Next, the Committee must consider whether the Landlord has failed to comply with the RSEO (2006 Act, section 26(1)). As already observed the Landlord's agents do not appear to contest the re-inspection report. They do not claim that the sofa amounts to a sofa bed. In these circumstances on the above factual findings the Committee finds that the Landlord has failed to comply with the RSEO. The Committee will serve notice of this non-compliance on Aberdeen City Council.
15. Once a Committee has decided that a landlord has failed to comply with an RSEO it must decide whether to make a rent relief order and if so the extent or rent to be deduced under the order (Section 26(2)(b) of the 2006 Act).
16. The Committee is unable to make a rent relief order in relation to the tenancy that had triggered the application because it had terminated at the end of November 2014. Unfortunately nowhere in the existing legislation is there provision to allow a committee to make a rent relief order in respect of a new tenancy which has been created in breach of the prohibition on

re-letting contained in section 28(5) of the 2006 Act. In addition it had no details of the new tenancy. This is an area where the existing legislation could be tightened up in the future.

17. The Committee observes that on the face of it the re-letting of the Property appears to be a criminal offence in terms of section 28(5) of the 2006 Act. If so, it seems inequitable that the Landlord should profit from such conduct and it is conceivable that the existing tenant could have a remedy of recompense or reimbursement from the Landlord in respect of whole or part of the rent. However that is not something over which the Committee has any power or jurisdiction.

### Decisions

18. The decisions of the Committee set out above were unanimous.

### Rights of Appeal

19. A landlord or tenant aggrieved by these decisions of the Committee may appeal to the Sheriff by summary application within 21 days of being notified of that decision.
20. Unless the lease or tenancy between the parties has been brought to an end, the appropriate respondent in such appeal proceedings is the other party to the proceedings and not the Private Rented Housing Panel whose Committee which made the decision.

### Effects of Section 63 of the 2006 Act

21. Where such an appeal is made, the effect of the decisions, including any Rent Relief Order is suspended until the appeal is abandoned or finally determined.
22. Where the appeal is abandoned or finally determined by confirming the decision, the decisions, including any Rent Relief Order are to be treated as having effect from the day on which the appeal is abandoned or so determined.

Signed **D. Bartos** ..... Date: 17 April  
2015.....

David Bartos, Chairperson

Signature of Witness **J. Kane** .....

..... Date: 17-4-2015 .....

Name Janet Kane .....

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