



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 3/L 37 Provost Road, Dundee DD3 8AF
(hereinafter referred to as "the house")

Mr. Richard De Goth, residing at the house ("the Tenant")

Mr. Ian Grant Cumming and Mrs. Helen Narracott, residing at Alewater, Lilliesleaf, Melrose TD6 9EL, who were represented by an agent Mr. Ryan Monks, CGR Properties, DIA Business Properties, West Hendersons Wynd, Dundee DD1 5BY ("the Landlord")

Reference PRHP/RP/14/0038

BACKGROUND

1. Reference is made to the Determination of the Private Rented Housing Committee ("the Committee") dated 18 August 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 28 August 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; 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; 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 repair and make good the plasterwork in the bedroom ceiling and at the junction of the front elevation and party wall in the bedroom to ensure the ceiling and walls are in a reasonable state of repair,*
- (b) to repair and make good the plasterwork in the ceiling of the lounge to ensure that it is in a reasonable state of repair,*
- (c) to replace the bath tap in the bathroom so that it is in proper working order,*
- (d) to repair or replace the kitchen windows including the window frames and sills to ensure that they are in a reasonable state of repair and in proper working order,*
- (e) to identify the source of water penetration which is causing damage to the ceilings in the lounge and bedroom and to carry out such works as required to the external fabric of the tenement to ensure that there is no water ingress into the house and the house is wind and watertight, and*
- (f) to repair the boiler to ensure that it is in a reasonable state of repair and in proper working order and to provide to the committee a satisfactory and up to date landlord gas safe certificate in respect of the gas installation and gas boiler.*

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

The said repairs were to be carried out and completed within a period of 3 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 4 September 2014.

2. On 9 December 2014 the Landlord advised by e-mail that the Tenant had left the house and the house was to be repossessed and the responsibility for repairs would become the lenders. It is normal practice for the house to be re-inspected by the Surveyor Member of the Committee following upon expiry of the timescale for completion of works specified in the RSEO. The Committee intimated that the Surveyor Member, Mr. David Godfrey, would re-inspect the house on 3 February 2015 and intimation of this was sent to the Landlord on 22 January 2015. Within this letter the Committee explained that if the works had not been satisfactorily completed the Committee would consider the further action to take. That action may be referral to the local authority, if there is no good reason for the failure to carry out works, and a report to the police for prosecution in terms of Section 28 of the Housing (Scotland) Act 2006. The Landlord was given an opportunity to comment on whether the works had or had not been completed and whether a variation/ revocation of the RSEO are appropriate. In reply the Landlord (Mrs. Helen Narracott) e-mailed the Panel on 27 January 2015 and 2

February 2015 acknowledging receipt of the letter of 22 January 2015 and requesting a variation of the RSEO. The basis of her request for the variation was that the house was empty and due for re-possession within weeks. Accordingly, no work on the house would be carried out. She stated that she failed to see the point of a further inspection on 3 February as the house was in the same condition. She considered a further inspection of the house to be no more than a box-ticking exercise and a waste of public funds. Given the admission from the Landlord that no work had been carried out on the house, the Committee agreed that a re-inspection was unnecessary and intimated this to the Landlord on 2 February 2015. The Committee indicated within the e-mail of 2 February 2015 that they would consider this request for a variation and invited the Landlord if she wished to provide further information or documentation which would support this request. No further communication has been received from the Landlord.

In the absence of any further documentation or information from the Landlord, the Committee considered the information before them and the Landlord's representations.

The Committee comprised Mrs. Aileen Devanny, Chairperson, Mr. David Godfrey, Surveyor Member, and Mr. Mike Scott, Housing Member.

DETERMINATION AND REASONS

3. The Committee considered the evidence and the Landlord's e-mails of 9 December 2014 and 2 February 2015 which accepted that the works remain outstanding and have not been carried out. The Landlord did not specify the variation sought to the RSEO. The intention of a variation request may have been to extend the time for completion of works to a period when the Landlord was not the owner, thus allowing the Landlord to avoid liability. However, the Committee would view a variation for such a reason as inappropriate. The Landlord's request for a variation could be interpreted as a request for the RSEO to be revoked on the basis that the house was empty and was to be re-possessed by the lender. Although not articulated the implication is that the RSEO is unnecessary as there was no longer a tenant in occupation and a change of owner would occur at some time following upon repossession.

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 on 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 the Landlord possesses rights for access under Section 181(4) of the Act and by at least 9 December 2014 the house was vacant and so works could be completed without any issue of them being carried out with a tenant in occupation. The Landlord has had ample opportunity to carry out works but had not done so. The Landlord accepts that she has failed to carry out the works in the RSEO. The Committee has powers to make inquiries and a check of the Land Register on 19 March 2015 disclosed that the Landlord remained the registered proprietor of the house and there were no pending applications for registration.

The Committee considered whether or not a variation of the RSEO was appropriate but discounted this option given the evidence before them that the Landlord had already had sufficient time to complete the works and an extension of time to do so would not result in completion of the required works. In terms of Section 25 (1) (b) of the Act, the Committee considered if a revocation of the RSEO was appropriate and if the works detailed within the RSEO remained necessary. The Committee was not persuaded that the RSEO should be revoked. The works remain necessary as the house does not meet the repairing standard. The house is not wind and watertight and the gas boiler does not meet the required standard. This raises health and safety issues for future occupiers of the house and potential tenants of the house and has a detrimental effect for the fabric of the tenement and for neighbouring proprietors. The RSEO is a burden on the title on the house and, although the effect of this order is that it does not prevent a sale of the house for owner occupation, it does mean that the house cannot be legally re-let until the required works are completed or consent is obtained from the Committee.

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.

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.

A. Devanny

Chairperson,
19th March 2015