



Repairing Standard Enforcement Order

Ordered by the Private Rented Housing Committee

Case reference number : PRHP/RP/16/0119

Re:- Property at Flat 101, 38 Boyd Street, Largs, KA30 8LE ("**the property**")

Land Register Title No: AYR79158

The Parties:-

Ms John Cameron residing at Flat 101, 38 Boyd Street, Largs, KA30 8LE ("**the tenant**")

And

Mrs Eva Ohnesorge, residing at 62 Ashford Road, Eastbourne, BN21 3TD represented by her letting agent Robert Smith of Property Management Options, 6 Robert Street, Port Glasgow, PA14 5NU ("**the landlord**")

Notice to Mrs Eva Ohnesorge

Whereas in terms of the decision dated 15 September 2016 the Private Rented Housing Committee determined that the landlord had failed to comply with the duty imposed by Section 14(1)(b) of the Housing (Scotland) Act 2006 and in particular the landlords had failed to ensure that:-

- (a) the house is wind and watertight and in all 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

The Private Rented Housing Committee now requires the landlords to carry out such work as is necessary for the purpose of ensuring that the house concerned meets the repairing standard and that any damage caused by the carrying out of the works in terms of the order is made good.

In particular the Private Rented Housing Committee requires the landlords to carry out the following work

- Provide hard wired smoke, heat and carbon monoxide alarms within the property to fully comply with current standards.
- Repair or replace flushing mechanism in cistern
- Replace or refit toilet seat
- Replace kitchen flooring
- Produce and provide a valid gas safety certificate as required in terms of the Gas Safety (Installation and Use Regulations) 1998
- Obtain appropriate reports from a recognised specialist company to establish the extent of the works required to eradicate dampness in the property and in particular within the living room and bedrooms of the property and to carry out these works including internal redecoration
- Provide an energy performance certificate in respect of the property in terms of the appropriate regulations.
- Provide a valid and up to date Electrical Installation Condition Report.
- Remove vegetation and clear gutters so that they function properly.

The Private Rented Housing Committee orders that the works specified in this order must be carried out within three months of the date of this Order.

A landlord or tenant aggrieved by the decision of the 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 PRHP or the Committee which made the decision.

Where such an appeal is made the effect of the decision or of the order is suspended until the appeal is abandoned or finally determined. Where the appeal is abandoned or finally determined by confirming the decision, the decision and the order are to be treated as having effect from the day on which the appeal is abandoned or so determined.

In witness whereof these presents type written on this page and the two preceding pages are executed by James Bauld solicitor, chairperson of the Private Rented Housing Committee at Glasgow on 15 September 2016 before this witness:-

J Bauld

Signed.....

James Bauld, Chairperson

R King

Signature of Witness.....

Name: Robina King

Address: 7 West George Street, Glasgow, G2 1BA

Designation: Legal Secretary



Determination by Private Rented Housing Committee

Statement of Decision of the Private Rented Housing Committee

(Hereinafter referred to as "the Committee")

Under Section 24(1) of the Housing (Scotland) Act 2006

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The Parties:-

Mr John Cameron residing at Flat 101, 38 Boyd Street, Largs, KA30 8LE ("**the tenant**")

And

Mrs Eva Ohnesorge, residing at 62 Ashford Road, Eastbourne, BN21 3TD represented by her letting agent Robert Smith of Property Management Options, 6 Robert Street, Port Glasgow, PA14 5NU ("**the landlord**")

The Committee comprised:-

Mr James Bauld - Chairperson

Mr George Campbell - Surveyor member

Decision:-

The Committee unanimously decided that the landlord had failed to comply with the duties imposed by Section 14(1)(b) of the Housing (Scotland) Act 2006 ("the 2006 Act"). The Committee accordingly proceeded to make a Repairing Standard Enforcement Order (RSEO) as required by Section 24 of the 2006 Act.

Background:-

1. By application received on 4th April 2016, the tenant applied to the Private Rented Housing Panel (PRHP) for a determination that the landlord had failed to comply with the duties imposed by Section 14(1)(b) the 2006 Act.
2. The application was accepted by the PRHP and by letter dated 8th June 2016 appropriate notice of referral under and in terms of the 2006 Act was served upon both the landlord and the tenant indicating that an inspection and a hearing would take place on 29th July 2016. Intimation was given to the parties that the inspection would take place at 11.00 a.m. and that the hearing would take place at 12.30 a.m. in Largs on that date.
3. The Committee members attended at the property for the inspection on 29th July 2016. The tenant was not present during the inspection but was represented by his cousin Miss Debbie Walsh. The landlord was not present during the inspection but was represented by her letting agent Robert Smith of Property Management Options, 6 Robert Street, Port Glasgow.

The Inspection

4. At the inspection the Committee had with them a copy of a previous inspection report which had been provided with the application. That inspection report had been prepared by Morven Gourlay of North Ayrshire Council following a visit to the property on 25 November 2015. The report set out the various complaints raised by the tenant. The Committee accordingly in their inspection used the tenant's inspection report as an aide - memoire in carrying out the inspection.
5. The first complaint which had been raised by the tenant was the lack of a smoke detector. The Committee noted that a battery operated smoke detector was lying on a shelf within a unit in the living room and that there was a hard wired smoke detector in the ceiling in the hall but it was not properly fixed to the wall.
6. The next complaint contained in the inspection report related to dampness within the property and in particular within the living room and main bedroom. The surveyor member of the Committee took dampness readings in the living room and observed apparent patches of dampness in the front and rear bedroom. It was not possible to take meter readings in the bedrooms owing to the presence and position of furniture.
7. The inspection report provided by the tenant indicated that the left hand outlet on one of the double sockets in the living room was not working. The accessible sockets were tested by the members of the Committee by plugging in various electrical items and all appeared to be working but not all sockets could be tested owing to the presence and position of furniture.
8. The tenant complained that the bedframe within the bedroom was broken. It was not possible for the Committee to inspect this owing to the presence of mattress and bedding.
9. The tenant complained that the toilet cistern mechanism was faulty and that the cistern would continue to run after flushing. This was tested by the Committee members and was noted by them. The tenant also complained that the toilet seat was broken and again this was noted by the Committee members and observed by them. The tenant also complained that the bath was slow to drain. This was tested by the Committee and observations were made.
10. The tenant also complained that there was a hole in the floor covering in the kitchen. This was observed and noted by the Committee members.

11. The report also raised a number of other issues regarding the provision of relevant certificates in respect of gas safety, energy performance and electrical safety, which were indicated to the tenant and the landlord's representative would be discussed at the hearing.
12. The inspection was then concluded and the Committee members and the tenant's and landlord's representatives travelled to the venue for the hearing.

The Hearing

13. At the hearing the Committee explored with the parties' representatives the various issues which had been raised by the tenant and which had been noted and observed during the inspection. In particular the Committee members questioned the landlord's representative with regard to the various matters which had been raised during the inspection.
14. With regard to the provision of smoke detection equipment the landlord's representative indicated that the smoke detector had last been inspected on 27th November 2014. He indicated it had not been inspected since and that he had last visited the property in November 2015. He also indicated that he had not taken the opportunity to inspect the smoke alarm when he had attended at the inspection that morning. His position was that the smoke alarm had been working in November 2014. On being questioned by the Committee members that the Committee had to determine on what they had found today, he indicated that he had attempted to visit the flat on 8th February 2016 and had not been able to get access. He indicated that he had taken no other steps to obtain access and that he had now been instructed by the landlord to seek repossession of the property.
15. The Committee then turned to the issue of dampness within the property. The landlord's representative indicated that he acknowledged that there was a problem with dampness within the property but the difficulty was he could not get access to carry out the various repairs. He also indicated that he believed this to be a problem which was a common problem to the building and that the costs should be shared between the various owners within the tenement. The landlord's representative was questioned as to whether he had taken any steps to get the permission or agreement of the other owners in the building and he indicated he had not done so. He indicated that the various properties within the building were all under different ownership and that the costs of the repairs may be split in different ways. He was aware that there were commercial properties on the ground floor of the building and that his client owned the flat in question. So far as he was aware the other flat on the first floor was occupied by a tenant and that the two flats on the upper floor were owner occupied although one was currently empty having been damaged by a fire. He indicated that there was no property factor acting in respect of this building and that there appeared to be no plans to attempt to appoint one.
16. The Committee then questioned the parties with regard to the alleged broken bedframe. The landlord's representative's position was that the property was let as furnished and that the bed was in pristine condition when the flat was let in November 2014. Again his position was that he had not had access to be able to check this and had not been allowed access by the tenant.
17. The Committee then raised questions with regard to the toilet and the allegations that the cistern was not working and that the toilet seat was broken. The landlord's representative's position was that he had photos taken prior to the tenancy which showed that the toilet seat was in position and his position was that any damage must have been malicious damage by the tenant. With regard to the cistern he indicated this was the push/siphon type flush and that they were not as good as the old style flushing mechanisms. He indicated it would not be a major problem to rectify it. Again he indicated that there had been problems with obtaining access to the property but on being pressed indicated that he had not made attempts to gain access. He indicated that during the term of the current lease he had been called twice to the flat to carry out

repairs, once in respect of a blockage of a toilet and once in respect of a leakage of water from the wash hand basin in the toilet. This had penetrated the commercial premises downstairs. He believed this had occurred in May 2015 and a plumber had been called to deal with matters. The tenant had allowed access to the plumber and the problem had been resolved.

18. The landlord's representative was then questioned by the Committee with regard to his suggestion that the landlord had always had problems in regard to carrying out repairs. He indicated to the Committee that until September 2015 the tenant had paid rent on time. The rent was paid partly by housing benefit and partly by the tenant making a payment in respect of the shortfall. However, in or around September 2015 the tenant decided that he would withhold rent. The landlord's representative indicated he had first become aware of a problem in or around summer 2015. On being pressed by the Committee he indicated that he first became aware in April or May 2015 that the tenant was complaining of dampness within the property and complaining of water ingress within the property. He indicated that he had attempted to get the cooperation of the owners and had spoken to a Mr Pollard who was the owner of flat 2/1 directly above the current premises. He had also spoken to a Mr Khan and a Mr. Bhopari who were the owners of other properties in the building. He indicated he had never got to the stage of obtaining quotations in respect of any work. He then indicated in his view it was unlawful for the tenant to withhold rent and that he had an obligation to pay his rent. He was asked by the Committee whether or not he agreed that it was an appropriate legal remedy for a tenant to withhold rent and he indicated to the Committee it was his position that in law a tenant is not entitled to withhold rent to try to obtain repairs. He then indicated that he had approached Mr Cameron and on 17th November 2015 Mr Cameron had indicated to him that he would not pay the rent until the problem with dampness was solved. He then indicated to the Committee that the rent arrears were now in the region of £2500. On being questioned by the Committee on the calculation of those arrears he indicated that the Council had stopped paying housing benefit approximately two months' ago. Again he was questioned by the Committee on the calculation of those arrears but he indicated his position that the arrears were in the region of £2500. He then indicated that if the tenant paid the arrears and gave access he would have the repairs carried out. Mr Smith then indicated that he was aware that work required to be done and that he would not allow his client to become liable for works which may cost thousands of pounds. Again on being questioned by the Committee he indicated he had not obtained any quotations for the work and accordingly had no real basis for indicating the likely costs. He indicated to the Committee that the landlord now wanted to remove the tenant and that steps were now being taken in this regard.
19. The Committee then raised the question with regard to the hole in the flooring of the kitchen. Mr Smith, the landlord's representative, indicated that the flooring was laminate timber and that it was sound and in good condition when the tenancy had started. He indicated that the hole in the flooring could not have been ordinary wear and tear and must have been caused by the tenant. The Committee members then pointed out to Mr Smith that the flooring in the kitchen was not laminate timber but was either linoleum or vinyl flooring. Not only was there a clear hole in the flooring but it was cracked in other places. Mr Smith indicated that he had not noticed that this flooring was not laminate timber and that he had recorded it as having been laminate timber in his inventory when the tenancy started. He accepted that he was wrong in this regard.
20. The Committee then questioned the landlord's representative with regard to the provision of the relevant gas safety certificate in terms of the Gas Safety (Installation and Use) Regulations 1998. The certificate which had been produced to the Committee was out of date. The landlord's representative indicated that there was an up to date certificate and that he would email to the Committee after the hearing. An email was sent to the committee by Mr Smith after the hearing. The Gas Safety certificate attached to the email was dated 5 January 2015. The certificate clearly indicated that the next safety check was due to be carried out by 5 January 2016. No valid certificate has been produced to the committee.

21. The landlord's representative was then questioned with regard to the lack of an Energy Performance Certificate (EPC) in respect of the property. He indicated to the committee that it was his belief that there was no requirement for this certificate to be produced when this tenancy commenced in November 2014. His position was that an energy performance certificate was only required to be provided with tenancies which had started after 1st December 2015 and would only be required for existing tenancies with effect from 1st December 2016. He was closely questioned by the Committee on this matter and was adamant that his belief was correct. In the email sent by Mr Smith to the committee after the hearing, he also attached an email sent by him to Morven Gourlay dated 11 February 2016. In that email he sets out his belief that the EPC regulations did not become "compulsory" until 1 December 2015 and that as this tenancy had started in November 2014, no EPC was required.
22. The Committee also questioned the landlord's representative with regard to the provision of an electrical installation condition report (EICR). Again the landlord's representative indicated that no certificate was in place and was not required by law in respect of an existing tenancy until 1st December 2016. He indicated this will be obtained and will be carried out. As the committee were unable to test the electrical safety of the property during the inspection, the Committee have decided that an EICR should now be obtained and produced. In any event, if the current tenancy is to be ended, the landlord will be obliged by law to obtain such a report prior to re-letting to any new tenant.
23. While the Committee were dealing with these matters they also obtained views from Ms Walsh the representative of the tenant. Generally her position was that the toilet seat had been broken and had not been damaged maliciously. With regard to the smoke alarm it was her position that this had not been fixed to the ceiling and had not been damaged by the tenant. Her position was the tenant had never refused access for repairs and that when Mr Cameron had first complained in 2015 he was told he would have to wait for repairs to be done in respect of the dampness. She confirmed that housing benefit had now been stopped by the council and that this had been done approximately two months ago.
24. The Committee then asked the parties whether they had anything further they wished to add and the parties indicated they did not. The committee accordingly concluded the hearing and indicated to the parties they would consider the position and would issue a decision in due course.

Findings of Fact

25. Having considered all the evidence the committee found the following facts to be established:-
 - (a) The subjects of let comprise a first floor flat within a tenement building consisting of two storeys plus an attic floor. The tenement building is over one hundred years old. The walls are of masonry construction, painted externally and the roof is pitched and slated. Internally the accommodation comprises of a flat on the first floor consisting of an entrance hall, living room, two bedrooms, kitchen and bathroom.
 - (b) The surveyor member of the Committee took meter readings in various places during the inspection which confirmed the existence of severe dampness levels within the lounge, at the south gable window and at the south west corner. The committee also noted the presence of damp patches in the ceiling at the south gable wall in the lounge and in both the front and rear bedrooms. It was impossible to take meter readings owing to inability to access these areas.
 - (c) The flooring in the kitchen was defective. There was a hole in the vinyl and cracking in the vinyl.
 - (d) Within the toilet, the WC had no seat and the flush mechanism was malfunctioning.

- (e) The hard wired smoke alarm in the hall was not working.
- (f) A schedule of photographs showing these items taken by the surveyor member are attached to this decision.
- (g) The external guttering appeared to be blocked and there appeared to be evidence of vegetation growing from the guttering.
- (h) The committee noted there appeared to be no carbon monoxide detector within the property.
- (i) The committee determined that the bath was draining correctly and there were no problems in that regard.
- (j) The committee could not determine whether the bed frame was broken

Reasons for Decision

- 26. The Committee considered the issues of disrepair set out in the application and noted in the inspection.
- 27. At the hearing the Committee posed various questions to the landlord's representative and the tenant's representative with regard to all of the complaints.
- 28. It seemed to be accepted by all parties that the property was suffering from significant difficulties in respect of dampness. This was a matter which formed part of the subject of the complaint to the Committee and the meter readings taken by the surveyor member indicated that there was a severe problem with dampness and the landlord's representative did not contradict the findings of the Committee. The Committee also noted that the WC within the bathroom did not have a toilet seat upon it and that this appeared to be broken. The Committee did not accept that this damage had been caused maliciously by the tenant. The Committee also noted that the cistern was not functioning properly. There was also a clear disrepair in respect of the flooring within the kitchen.
- 29. The Committee could not come to a view on whether the bed frame was broken. It was not possible to inspect the frame and it appeared to the committee that the bed was being used by the tenant and could be reasonably assumed that it was capable of being used safely in a manner for the purpose for which it was designed. The committee tested the bath by running water into it during the inspection and watching it drain away. The committee took the view that there was no significant problem with the rate of drainage from the bath. It was also agreed between the representatives during the hearing that the fridge freezer had been replaced.
- 30. The Committee took the view that they were accordingly required to make an RSEO in respect of many of these matters. The Committee noted that the landlord's representative accepted that some of the tenant's complaints were correctly founded and that certain repair works were required to the property.
- 31. Accordingly the Committee took the view that the property did not meet the repairing standard in respect of the following:-
 - (a) Dampness within the living room and bedrooms.
 - (b) Damage to the flooring within the kitchen.
 - (c) Repairs required to the cistern and toilet seat within the bathroom.

- (d) Provide hard wired smoke, heat and carbon monoxide alarms within the property to fully comply with current standards.
 - (e) The provision of a valid and up to date Electrical Installation Condition Report
 - (f) The provision of a valid and up to date gas safety certificate.
 - (g) The provision of a valid and up to date energy performance certificate.
 - (h) Clearance of the gutters to remove vegetation and to ensure that they were draining.
32. The Committee accordingly determined to make an RSEO as required in terms of Section 24(2) of the Act.
33. The decision of the Committee was unanimous.

Rights of Appeal

34. A landlord or tenant aggrieved by the decision of the Committee may appeal to the Sheriff by summary application within 21 days of being notified of that decision.
35. The appropriate respondent in such appeal proceedings is the other Party to the proceedings and not the PRHP of the Committee which made the decision.

Effects of Section 63

36. Where such an appeal is made, the effect of the decision and of any Order made in consequence of it is suspended until the appeal is abandoned or finally determined.
37. Where the appeal is abandoned or finally determined by confirming the decision, the decision and the Order made in consequence of it are to be treated as having effect from the day on which the appeal is abandoned or so determined.

In witness whereof these presents type written on this page and the six preceding pages are executed by James Bauld solicitor, chairperson of the Private Rented Housing Committee at Glasgow on 15 September 2016 before this witness:-

J Bauld

Signed.....

James Bauld, Chairperson

R King

Signature of Witness.....

Name: Robina King

Address: 7 West George Street, Glasgow, G2 1BA

Designation: Legal Secretary

**Photographs taken at 38 Boyd Street, Largs KA30 8LE on 29 July 2016
(PRHP/RP/16/0119)**



01 - Front Elevation
(First floor flat, above 24-7 property shop)



02 - Hall - smoke detector
(not working at inspection)



03 - Lounge - battery-operated smoke alarm
(loose unit but working at inspection)



04 - Lounge - dampness at south gable window
(severe dampness levels recorded at inspection)



05 - Lounge - dampness at SW corner
(severe dampness levels recorded at inspection)



06 - Lounge - dampness at ceiling south gable wall
(visible damp stains but not tested or measured at inspection as furniture prevented access)



07 - Front bedroom - dampness above window
(Front gutter is directly above the window)



08 - Rear bedroom - dampness at ceiling
(On internal wall and possibly from the flat above)



09 - WC - no seat
(and flush mechanism malfunction)



10 - Kitchen - defective floor finish
(hole & cracking present in vinyl at inspection)