



Repairing Standard Enforcement Order

Ordered by the Private Rented Housing Committee

Case Reference Number: PRHP/RP/14/0063

Re : Property at 1 Muirhouse Crescent, Edinburgh EH4 4QF ("the Property")

Title No: MID136552

The Parties:-

Marie Cole, ("the Former Tenant") 1 Muirhouse Crescent, Edinburgh EH4 4QF (care of her agent Pauline Nicol-Bowie, c/o Capital City Partnership, Royston Wardieburn Community Centre, 11 Pilton Drive North, Edinburgh EH15 1NF)

Farah Yousaf or Hussain, ("the Landlord"), 123 Crewe Road South, Edinburgh EH4 2NX (care of her agent Riaz Hussain, c/o Muirhouse Post Office, 55 Muirhouse Gardens, Edinburgh EH4 4TD)

NOTICE TO

Farah Yousaf or Hussain ("the Landlord")

Whereas in terms of their decision dated 29 October 2014, 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 to ensure that the Property meets the repairing standard in that :-

- (a) the door leading from the garden to the grass area adjoining Muirhouse Park did not have a latch or snib on it and so was not 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 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 requires the Landlord:-

- to install an effective snib or latch to the door in the wall separating the garden of the Property from the grass area adjoining Muirhouse Park;

The Private Rented Housing Committee order that the works specified in this Order must be carried out and completed within the period of 21 days from the date of service of this Notice.

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.

In witness whereof these presents typewritten on this and the preceding page(s) are executed by David Bartos, Advocate, Parliament House, Parliament Square, Edinburgh EH1 1RF, Chairperson of the Private Rented Housing Committee at Edinburgh on 29 October 2014 before this witness:-

David Bartos _____ witness
chairperson

GILLIAN GRANT _____ name in full

20 WHITE DALES _____ Address

EDINBURGH _____

EH10 7JQ _____

PUBLISHER _____ Occupation



**Decision of Private Rented Housing Committee
under Section 24 (1) of the Housing (Scotland) Act 2006**

Statement of Reasons for Decision of the Private Rented Housing Committee

(Hereinafter referred to as "the Committee")

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

Case Reference Number: PRHP/RP/14/0063

Re : Property at 1 Muirhouse Crescent, Edinburgh EH4 4QF ("the house")

Title No: MID136552

The Parties:-

**Marie Cole, ("the Former Tenant") 1 Muirhouse Crescent, Edinburgh EH4 4QF
(care of her agent Pauline Nicol-Bowie, c/o Capital City Partnership, Royston
Wardieburn Community Centre, 11 Pilton Drive North, Edinburgh EH15 1NF)**

**Farah Yousaf or Hussain, ("the Landlord"), 123 Crewe Road South, Edinburgh
EH4 2NX (care of her agent Riaz Hussain, c/o Muirhouse Post Office, 55
Muirhouse Gardens, Edinburgh EH4 4TD)**

The Committee comprised:-

Mr David Bartos - Chairperson
Mr Donald Marshall - Surveyor member

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 in relation to the house concerned, and taking account of the evidence led on behalf of the Landlord at the hearing, determined that the Landlord had failed to comply with the said duty in not ensuring that the garden wall door of the Property was in proper working order as required by section 13 (1)(b) of the said Act.

Background:-

1. By application received on 26 February 2014, the Former Tenant applied to the Private Rented Housing Panel ("PRHP") for a determination that the Landlord had failed to comply with the duty to ensure that the Property met

the repairing standard provided for in section 13 of the Housing (Scotland) Act 2006.

2. In her application the Former Tenant complained that the Landlord had failed to meet the repairing standard in the following respects:
 - (1) the toilet did not fill after flushing
 - (2) the boiler required to be replaced
 - (3) the house had poor and inadequate insulation requiring excessive energy for heating
 - (4) plaster was coming off the walls preventing the hanging of curtain poles
 - (5) the rear garden was not secure
 - (6) a window was not secure in that it could be opened from the outside

Items (1) (3) and (5) related to the matters which had been raised in a letter sent on behalf of the Former Tenant by Robert Pearson and Eileen Carr of Tenants and Residents in Muirhouse (TRIM) to the Landlord dated 5 November 2013. Items (2), (4) and (6) were raised in a letter dated 4 March 2014 and sent on behalf of the Former Tenant by Pauline Nicol-Bowie of Stepping Stones at Royston Wardieburn Community Centre to the Landlord on 5 March 2014.

3. The President of the Private Rented Housing Panel decided under section 23 of the 2006 Act to refer the application to a Private Rented Housing Committee. That decision was intimated to the Former Tenant, to the Landlord's agent R.Hussain and to the Landlord by letter of the Panel's Clerk dated 10 April 2014 and entitled "Notice of Referral". The intimation of the Notice of Referral to the Landlord included a copy of the Tenant's application to the Panel.
5. Following intimation of the Notice of Referral, the Former Tenant's agent Ms Nicol-Bowie informed the Panel that the Former Tenant had left the Property and no longer resided there. It is common ground that the tenancy of the Former Tenant came to an end.
6. The then committee comprising the chairperson Sarah O'Neill and Robert Buchan considered whether their consideration of the application should be abandoned or whether despite the lawful termination of the tenancy, it should be continued. On 6 August 2014 the committee decided that given the nature of the allegations and the potential effect on future tenants were the allegations substantiated, the consideration of the application should be continued.
7. The former committee having stepped down, a successor Committee comprising Mr Bartos, Mr Marshall and Mrs Anderson was appointed by the President of the Private Rented Housing Panel. The date and time of the inspection of the Property and the date, time and place of the hearing was intimated to the Landlord and to her agent. An inspection of the Property and hearing at The Muirhouse Millennium Centre, 7 Muirhouse

Medway, Edinburgh EH4 4RW was fixed for 17 October 2014 at 10.00 a.m. and 11.00 a.m. respectively.

The Inspection

8. Mrs Anderson was unable to attend the inspection and hearing. Mr Bartos and Mr Marshall inspected the Property on that date and time. They formed a quorum of the Committee ("the Committee") and Mrs Anderson took no further part in its deliberations. The Landlord's agent Mr R. Hussain was present. When the Committee arrived persons were present in the Property, including Ms Claire Williamson who stated that she was the new tenant of the Property. The Committee explained their role to those present. Accompanied by Ms Williamson and partly by Mr Hussain the Committee conducted the inspection of the Property. The weather was dry, bright and sunny. The inspection revealed that the Property is an end-terrace house in a terrace of three houses constructed in the 1960s the former Edinburgh Corporation in the Muirhouse area of Edinburgh.

The Evidence

9. The evidence before the Committee consisted of:-
 - The application form
 - Copy Lease between the Landlord's agents Edinlaw Residential and the Former Tenant dated 4 February 2013.
 - Copy letter from Tenants and Residents in Muirhouse (TRIM) to the Landlord's agent R.Hussain dated 8 January 2014
 - Copy letter from the Former Tenant to the Landlord's agent R.Hussain dated 4 March 2014 with recorded delivery certificate of posting dated 5 March 2014
 - Copy e-mail from Pauline Nicol-Bowie to PRHP dated 30 July 2014
 - Copy e-mails from PRHP to Pauline Nicol-Bowie dated 31 July and 2 October 2014
 - Copy letter from PRHP to the Landlord dated 2 October 2014
 - Copy letter from PRHP to the Landlord's agent R.Hussain dated 2 October 2014
 - Copy title sheet for MID136552
 - The oral evidence of the Landlord's agent R.Hussain

The Hearing

10. The Committee held a hearing within the Muirhouse Millennium Centre. The Landlord's agent Mr Riaz Hussain appeared at the hearing and gave evidence.
11. Mr Hussain testified that the Landlord was his daughter-in-law. He confirmed that the Landlord's residence was at 123 Crewe Road South,

Edinburgh EH4 2NX. He acted as the representative or agent of the Landlord in respect of the maintenance of the Property. Edinlaw Residential was his son's business. They had acted for the Landlord in the arrangement of the lease only.

12. Mr Hussain explained that when the Former Tenant initially taken entry she paid rent direct. Following the introduction of the bedroom tax her attitude had changed. Payments of rent had ceased, every window of the house had been smashed and locks of windows broken. This had taken place this year. Tiles in the hall and kitchen had been crushed and holes had been created in the walls. Christmas lights had been installed in place of light bulbs. He had required to go to Morrison's supermarket to buy and install new light bulbs.
13. The Former Tenant had not kept up pre-payments into the meters which measured and regulated electricity and gas consumption. On one occasion he had instructed an oven repair but the repair engineer had been unable to carry out his work due to lack of electricity. Similarly when she complained about the boiler not working, the gas man sent around had reported that there was no gas available.
14. Eventually the tenancy came to an end. He had required to board up all of the windows and replace the panes for the new tenant who was currently in the Property. Holes had been made into the walls and there was graffiti in the front right bedroom. Paint had been spilled in the downstairs bedroom. He did not see any loose plaster that prevented the hanging of curtain poles. Toilet roll had at one time blocked the toilet waste pipe but this had been cleared.
15. Mr Hussain stated that the loft had been insulated. The walls had cavity wall insulation. In August 2014 he had had it checked by contractors offering to install such insulations under the Government scheme. However they had reported that no work required to be done.
16. In the garden, children had pushed out the previous door leading from the garden through the garden wall. He had arranged for a new door to be put in. It had no snib on it but he intended to put a snib on it. The door was to enable garden rubbish to be taken out. As far as he was concerned the door was in a reasonable state of repair and in proper working order. Stones had been put down to jam the door shut.
17. So far as the rear fence was concerned, the owner of 2 Muirhouse Park, a Malcolm Barnes kept pigeons. He, Mr Hussain, did not think that the rear fence needed extension of its panels to the wall. In the last storm the fence had held up.
18. He confirmed that the new tenant and her partner would continue to remove rubbish from the back garden.

19. The Committee (comprising Mr Bartos and Mr Marshall) found Mr Hussain's evidence credible and reliable and accepted it.

Findings of Fact

20. Having considered all the evidence, including their inspection, the Committee found the following facts to be established:-
- (a) On 4 February 2013 the Former Tenant entered into a lease of the Property from the Landlord. The date of entry under the lease was 1 February 2013. The lease was for a duration of 6 months. It was renewed by tacit relocation. It came to an end on or about 31 July 2013. The Former Tenant vacated the Property shortly before that time.
 - (b) The Property is an end terrace house of a terrace of 3 houses constructed in the 1960s for the former Edinburgh Corporation in the Muirhouse area of Edinburgh. It comprises a hallway, four bedrooms, a living room with dining area, kitchen and bathroom. It has UPVC double glazing throughout. The Property also has the benefit of the loft immediately above it. It has a back garden. The garden is bounded on the south by a wall wholly part of the Property, on the west by a solid horizontal plank garden fence and on the north by a ranch style fence with three horizontal planks.
 - (c) The Property has a toilet in the bathroom on the first floor. The toilet flushes normally and following flushing the cistern fills steadily with water. It does not require to be refilled manually with jugs or other water containers.
 - (d) The Property has the benefit of central heating with a boiler on the first floor in a cupboard off the hallway. The boiler is of a Vokera make. Following the Former Tenant's complaint Mr Hussain sent around a gas engineer for an inspection of it. He reported that there was no gas being supplied to the boiler. Both gas and electricity were supplied to the Property following pre-payment into a pre-payment meter.
 - (e) The loft has been insulated. The outside walls of the house have cavity wall insulation.
 - (f) Each bedroom and the living room has a wooden batten above the window for the fitting of curtain rails or poles. The wooden battens in the upper bedrooms and living room have curtain rails or poles fitted to them. There is nothing to indicate that the battens cannot support the curtain poles.
 - (g) The Property has UPVC double glazing throughout. None of the windows on the ground floor are capable of being opened from the outside. There was nothing in the windows on the first floor to suggest that they could not be securely closed.

(h) The south facing wall of the garden is owned wholly by the Landlord. It has a wooden door leading to an area of grass owned by City of Edinburgh Council and adjoining Muirhouse Park. The door does not have a lock or latch. It is held closed through the wedging of stones between it and the ground. From the wall to the west-facing fence there is gap which is covered by two planks. Behind it the two planks there is a fence separating the garden of the Property from the garden of 2 Muirhouse Park (erroneously described in the title sheet for the Property No. MID136552 as "Muirhouse Crescent").

Reasons for Decision

21. The duty of a landlord to ensure that during a tenancy a house meets the repairing standard in section 13 of the Housing (Scotland) Act 2006 applies only where the tenant notifies the landlord or the landlord otherwise becomes aware that work requires to be carried out for the purposes of complying with it (Housing (Scotland) Act 2006, s.14(3)). In addition no application to the PRHP for a determination of a failure to comply with the repairing standard can be made unless the tenant has notified the landlord that work requires to be carried out for the purpose of making the house meet the repairing standard.
22. Complaints (2), (4) and (6) were not notified by the Former Tenant to the Landlord, prior to the making of her application nor did she notify that work required to be carried out in respect of those complaints to ensure that the repairing standard was met. No application can be made to the Panel unless a tenant has notified that work requires to be done for the purpose of complying with the duty to ensure that the a house meets the repairing standard during the course of the tenancy (2006 Act, s.22(3)). In these circumstances the Committee has no jurisdiction to consider those complaints and for that reason refuses them. This is so despite the absence of any objection by the Landlord to these complaints being dealt with. Given the absence of such objection the Committee will still give its view on them below.
23. Turning to the other complaints, the Committee required to decide whether in respect of any of them the Property failed to meet any aspect of the repairing standard in section 13 of the 2006 Act.
24. Complaint (1) was that the toilet did not fill after flushing and was therefore not in a reasonable state of repair and in proper working order in terms of section 13(1)(c) of the 2006 Act. The Committee found that there was no defect with the toilet flushing system or the filling of the cistern after flushing. In all the circumstances the Committee found that the flushing system was in a reasonable state of repair and in proper working order and rejected this complaint.

25. Complaint (3) was that the Property the house had poor and inadequate insulation requiring excessive energy for heating so as not to be reasonably fit for human habitation (s.13(1)(a) of the 2006 Act). If a dwellinghouse is such that it requires the generation of an inordinate amount of heat to render it habitable, then it may be seen as not being fit to be used with reasonable comfort and so not reasonably fit for human habitation. In this case our findings in relation to the insulation, the nature of the windows, the functioning boiler and the fact that on occasion the Former Tenant had not ensured the supply of gas through the pre-payment system, persuaded us that this complaint was unfounded and that there was no breach of the repairing standard in s.13(1)(a) of the Act.
26. Complaint (5) was that the rear garden was not secure, particularly in relation to the back fence and thus not in a reasonable state of repair and in proper working order (2006 Act, s.13(1)(b)). In determining whether this standard is met the Committee must have regard to -
- (a) the age, character and prospective life of the Property (including, given the definition of "house" in s.194(1) of the Act, any boundary fence or wall or outside door which is capable of being enjoyed as part of the living accommodation), and
 - (b) the locality in which the Property is situated (2006 Act s.13(3)).
27. This complaint could be seen as relating to three aspects of the rear garden. Firstly there is the ranch-style fence separating the garden of the Property from 3 Muirhouse Crescent. Being a ranch-style fence, in its nature the fence has gaps between its horizontal planks. These mean, inevitably, that the fence is not secure in the sense that pets or other animals can jump through the fence and that it can be crossed by persons. However there is nothing to indicate that the fence is not in a reasonable state of repair or in proper working order for the ranch-style fence that it is. There is no obligation on a landlord who lets a garden with a house to have fencing secure enough to prevent intrusion by animals or trespassers. In these circumstances the Committee found that having regard to the character of the fence it could not be said that it was not in a reasonable state of repair and in proper working order and below the repairing standard.
28. Secondly, there is the solid wooden fence at the rear of the garden separating it from the garden of 2 Muirhouse Park. The observations made in relation to the lack of an obligation to secure, apply here also, although the whole rear fence appeared to be secure against animals and trespassers. The only question for the Committee in relation to this fence related to the gap between it and the edge of the boundary wall of the garden. That was filled with two horizontal planks behind which there was a fence apparently on the 2 Muirhouse Park side. Having regard to the character of the fence and the proximate locality of the fence on the 2 Muirhouse Park side which "filled in" the gap between the wall and the fence, the Committee took the view that it was not established that the rear

fence was not in a reasonable state of repair and in proper working order. The complaint, in so far as founded on the rear fence, was rejected.

29. Thirdly, there is the door leading from garden through the garden wall. This wooden door is an open door with no lock or latch. Nothing about its appearance indicates that it ever had a lock or latch. However the Landlord's agent has confirmed that he will act to insert a snib into it. It is secured by the wedging of stones. Having regard to the character of the door and its role in securing the entry into the garden from the publicly accessible area of grass adjoining Muirhouse Park, the Committee took the view that without a snib or latch the door was not in proper working order. For this reason the door fell below the repairing standard in section 13(1)(b) of the 2006 Act. To that extent they find complaint (5) is upheld.
30. Given the agent's readiness to have the latch or snib inserted, the Committee would encourage the Landlord or her agent to intimate to the Panel that the work has been done with supporting invoice or statement signed by the current tenant and Landlord or agent confirming this.
31. Complaint (2) related to the boiler requiring to be replaced. The Committee, on the basis of its findings found nothing to indicate that the boiler was not in a reasonable state of repair or not in proper working order. Therefore, even were this complaint admissible, there was no breach of the repairing standard in section 13(1)(c) of the 2006 Act.
32. Compliant (4) related to plaster allegedly coming off the walls and preventing the hanging of curtain poles. The Committee, on the basis of its findings found nothing to indicate that this was the case. Therefore, even were this complaint admissible, there was no breach of the repairing standard in section 13(1)(b) of the 2006 Act.
33. Compliant (6) related to a window allegedly being secure in that it could be opened from the outside. The Committee, on the basis of its findings found nothing to indicate that this was the case. Therefore, even were this complaint admissible, there was no breach of the repairing standard in section 13(1)(b) of the 2006 Act.

Decision

34. The Committee found that the Landlord had failed to comply with the said duty in respect of the absence of a latch or snib on the door leading from the garden through the garden wall to the ground adjacent to Muirhouse Park. In all other respects the Committee determined that the Landlord had not failed to comply with the duty imposed by section 14 (1) (b), of the 2006 Act in respect of the matters (1), (3) and (5) complained of in the application. The Committee determined that it did not have jurisdiction to decide the matters (2), (4), and (6) complained of in the application but that if it did have jurisdiction, the Landlord had not failed to comply with the said duty in respect of those matters.

Rights of Appeal

- 35. A landlord or tenant aggrieved by this decision of the Committee may appeal to the Sheriff by summary application within 21 days of being notified of that decision.
- 36. 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 Committee which made the decision.

Effects of Section 63 of the 2006 Act

- 37. Where such an appeal is made, the effect of this decision and of any Order made in consequence of it is suspended until the appeal is abandoned or finally determined.
- 38. 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.

David Bartos

Signed Date: 29 October 2014.....

David Bartos, Chairperson

Signature of Witness.Date 29 October 2014

Name of witness: GILLIAN GRANT

Address: 20 WHITE DALES
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EH10 7JQ

Occupation of witness: PUBLISHER