



## Repairing Standard Enforcement Order

Ordered by the Private Rented Housing Committee

**prhp ref: RP/14/0148**

Re 6 Kelvin Court, Troon, KA10 6RD being the subjects registered in the Land Register of Scotland under title number AYR25831 ('the Property')

**The Parties:-**

**Miss Sharon Mill residing at 6 Kelvin Court, Troon, KA10 6RD ("the tenant")**

**Mr Hue Sweeney residing at 4 Chalmers Road, Ayr, KA7 2RQ ('the landlord')**

### **NOTICE TO HUE SWEENEY ("the Landlord")**

Whereas in terms of their decision dated 5<sup>TH</sup> September 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 is wind and water tight and in all other respects reasonably fit for human habitation, that the structure and exterior of the Property (including drains, gutters and external pipes) are in a reasonable state of repair and in proper working order and that installations in the Property 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, the Private Rented Housing Committee now requires the landlord to carry out such work 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 requires the following:-

- 1. The landlord is to repair or renew all windows in the Property with the exception of the one in the bathroom. Any repair must address corroded hinges and fixtures and missing handles and leave the windows freely opening and closing with handles fitted and be wind and water tight.**
- 2. The landlord is to repair the hot water cylinder so that it does not leak or alternatively replace it.**
- 3. The landlord is to repair or replace three night storage heaters**

The Private Rented Housing Committee order that the works specified in this Order must be carried out and completed within the period of forty two 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.

**Please note that in terms of section 28(1) of the Act, a landlord who, without reasonable excuse, fails to comply with a RSEO commits an offence liable on summary conviction to a fine not exceeding level 3 on the standard scale. A landlord (and that includes any landlord's successor in title) also commits an offence if he or she enters into a tenancy or occupancy**

arrangement in relation to a house at any time during which a RSEO has effect in relation to the house. This is in terms of Section 28(5) of the Act.

In witness whereof these presents type written on this and the preceding page(s) are executed by Martin McAllister, solicitor, chairperson of the Private Rented Housing Committee at Saltcoats on 5<sup>th</sup> September 2014 before Andrew Blair, solicitor, 51 Hamilton Street, Saltcoats, KA215DX

A Blair \_\_\_\_\_ witness

M McAllister \_\_\_\_\_ chairman



## **Determination by Private Rented Housing Committee**

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

**prhp ref: RP/14/0148**

**Re 6 Kelvin Court, Troon, KA10 6RD being the subjects registered in the Land Register of Scotland under title number AYR25831 ('the Property')**

#### **The Parties:-**

**Miss Sharon Mill residing at 6 Kelvin Court, Troon, KA10 6RD ("the tenant")**

**Mr Hue Sweeney residing at 4 Chalmers Road, Ayr, KA7 2RQ ("the landlord")**

#### **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 Property, determined that the landlord has failed to comply with the said duty and made a repairing standard enforcement order.**

#### **Background**

1. By application dated 16<sup>th</sup> June 2014 the tenant applied to the Private Rented Housing Panel for a determination of whether the landlord has failed to comply with the duties imposed by Section 14 (1) (b) of the Housing (Scotland) Act 2006 ("the Act").
2. The application by the tenant stated that the landlord had failed to comply with the duty to ensure that the Property meets the repairing standard. The application contended that the Property is not wind and watertight and in all respects reasonably fit for human habitation; that the structure and exterior of the house (including drains, gutters and external pipes are not in a reasonable state of repair and in proper working order and that the installations in the house for the supply of water, gas and electricity and for sanitation, space heating and heating water are not in a reasonable state of repair and in proper working order.  
In particular the application stated that:-
  - 2.1 Windows require to be repaired or replaced and this includes a broken pane of glass in the living room window.
  - 2.2 The central heating system is faulty.
  - 2.3 There is a leak in a water tank.
3. The President of the Private Rented Housing Panel, having considered the application, referred the application under Section 23 (1) of the Act to a Private Rented Housing

Committee. The Committee members are **Martin McAllister (Chairperson), Mike Links (Surveyor Member) and Jim Riach (Housing Member).**

4. The Private Rented Housing Panel served a Notice of Referral under and in terms of Schedule 2, Paragraph 1 of the Act upon both the Landlord and the Tenant, dated 19<sup>th</sup> June 2014.

5. The members of the Private Rented Housing Committee inspected the property on 4<sup>th</sup> September 2014. The tenant was present and was accompanied by Jacqui Gregory from Ayr Housing Aid Centre. The Property is a maisonette entering from the first floor. There is a hall, living room and kitchen on the lower level and two bedrooms and a bathroom on the upper level. In relation to the matters raised by the tenant in her application and with reference to the repairing standard in terms of Section 13 of the Act the members of the Committee found:

6.1 Issue of whether or not the Property is wind and watertight and in all respects reasonably fit for human habitation.

The crack in the living room window has been dealt with and a new pane of glass fitted. The windows with the exception of the one in the bathroom were ill fitting and had corroded hinges and fitments. There are gaps between the frames and the windows.

6.2 Issue of whether or not 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 windows had corroded hinges and fitments. It appeared that the windows in all rooms apart from the bathroom were faulty. Committee members attempted to open the windows. Some opened with difficulty, others opened so far and then attempts to open them were discontinued because there was fear that they might fall out of the frames and one window was permanently locked because it was too dangerous to open. The tenant advised that she had been told by the landlord to keep it locked.

6.3 Issue of whether or not 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.

There are three night storage heaters in the hall and living room. It was found that the heaters were not working.

The water is heated by an immersion heater and the cylinder is in an upstairs cupboard. There is leak from the seal where the immersion unit is attached to the cylinder. A receptacle was observed below the immersion unit to collect any water. The water in the receptacle and moisture on the cylinder below the immersion unit was warm. A substance which might have been silicon was noted at the seal where the immersion unit is attached to the cylinder.

**NOTE**

The Committee noted that there were no functioning smoke detectors in the property and that there was a cracked double glazed unit in the bathroom.

7. Following the inspection of the Property the Private Rented Housing Committee held a hearing at the Piersland House Hotel, Troon.

The Tenant attended the hearing and was accompanied by her nephew Alan Murray and Jacqui Gregory of Ayr Housing Aid Centre. The landlord was not present.

## **Preliminary Matter**

The tenant confirmed that the landlord had attended the property the previous day and the cracked glass in the living room window had been repaired.

## **8. Summary of the issues**

Sections 13(1) (a) (b) and (c) of The Act provide that the Property must be wind and watertight and in all respects reasonably fit for human habitation, the structure of the house (including drains, gutters and external pipes) must be in a reasonable state of repair and in proper working order and 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.

The specific issues to be addressed are:

Draughty windows, faulty windows, non functioning central heating system and leak from a water tank.

## **9. Evidence**

The tenant said that the windows were extremely draughty in the winter and that she had to use cardboard to try and reduce the draughts. The tenant said that she had complained to the landlord about the windows and had been told that he could not afford to fix them.

The tenant said that the windows cannot open properly and that she could not therefore properly ventilate the Property. She said that with some of the windows she was afraid to try and force them open in case she injured herself or broke the hinges causing the window to fall to the common area below where children often played. The tenant said that the landlord had used WD 40 and Vaseline to lubricate the hinges but that this had not helped.

The tenant said that when she had first moved into the Property the three storage heaters had functioned but that gradually they had all failed to work. She said that there had never been heating units in the upstairs accommodation. She said that she had asked the landlord to repair the heaters but that he had suggested that she obtain her own heaters. She said that steps had been taken to apply for a grant for a central heating system to be installed but that this could not be progressed because of the poor condition of the windows.

The tenant said that the day previous to the Hearing the landlord had applied silicon sealant to the immersion unit. She said that this had been ineffective and that she had still to place something underneath the unit to collect the moisture leaking from the cylinder.

The tenant said that the immersion heater does work although the timeclock is inoperative

## **10. Findings in fact**

The Committee found

10.1 All windows in the Property with the exception of the one in the bathroom are faulty. There are corroded hinges and fixtures. There are missing handles. Some windows have hinges so corroded that there is danger in trying to force them open.

10.2 Windows are ill fitting and, as a consequence, cause draughts.

10.3 Three night storage heaters supplied by the landlord do not work.

10.4 There is a leak at the immersion unit where it is attached to the hot water cylinder.

## **11 Reasons**

11.1 The committee accepted the evidence of the tenant with regard to the windows, night storage heaters and the hot water cylinder leak.

The defects in the windows, the non operational night storage heaters and the leak at the hot water cylinder were observed by the Committee at the inspection of the Property.

### **Decision**

The committee had to determine whether or not there are any of its findings in fact that constituted a failure by the landlord to ensure that the property meets the repairing standard in terms of the duty imposed by Section 14 (1) (b) of the Act.

**The Committee accordingly determined that the Landlord has not complied with the duties imposed by Section 13(1)(a), 13(1)(b) and 13(1)(c) of the Act and determined that a repairing standard enforcement order be made in the following terms:**

- 1. The landlord is to repair or renew all windows in the Property with the exception of the one in the bathroom. Any repair must address corroded hinges and fixtures and missing handles and leave the windows freely opening and closing with handles fitted and be wind and water tight.**
- 2. The landlord is to repair the hot water cylinder so that it does not leak or alternatively replace it.**
- 3. The landlord is to repair or replace three night storage heaters**

**The landlord is required to carry out the work within forty two days of intimation of the repairing standard enforcement order.**

The decision of the Committee was unanimous.

### **NOTE**

Although the tenant had omitted from her application the fact that there are no functioning smoke detectors in the Property, the members of the Committee were concerned that the landlord had not ensured that the Property met the current regulations in this regard and the fact that he is under a legal obligation to comply with these regulations by fitting two hard wired linked smoke detectors, one on each level of the property. The members of the Committee hoped that this issue would be addressed by the landlord with some urgency.

### **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.

**M McAllister**

Signe ..... 5<sup>th</sup> September 2014  
Martin J. McAllister  
Chairperson