



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

Re : 30 Templeton Crescent, Prestwick, KA9 1JA being the subjects described in the disposition by Liliias Anne Hunter Martin in favour of John Menzies recorded in the Division of the General Register of Sasines for the County of Ayr on 30th August 1988 ('the Property')

The Parties:-

Anne Frances O'Connor ('The Tenant')

John Menzies, 20 Bellevue Road, Prestwick, KA9 1NN per J C Roxburgh Properties Limited ('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) in relation to the house concerned, and taking account of the evidence led by the Tenant at the hearing, determined that the Landlord had failed to comply with the duty imposed by Section 14 (1)(b) of the Act.

Background

1. By application dated 14th August 2010 the Tenant applied to the Private Rented Housing Panel for a determination of whether the Landlord had 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 Tenant considered that the Landlord had failed to comply with his duty to ensure that the house meets the repairing standard. In particular she advised:-
 - 2.1 The windows are draughty and are not water tight. They need to be repaired throughout.
 - 2.2 The back door needs to be repaired.
 - 2.3 The front door needs adjustment to enable it to close properly.
 - 2.4 The gas appliances are not checked annually.
 - 2.5 The fire in the living room and cooker are both unsafe.
 - 2.6 The electrical appliances not checked annually.
 - 2.7 There is only one battery operated smoke alarm in the property and it is not annually checked.
 - 2.8 There is no carbon monoxide detector in the property.
 - 2.9 There is insufficient insulation in the loft and cavity wall.
 - 2.10 The shower door is faulty.

- 2.11 The bathroom tiles need to be re-grouted and the shower unit needs to be resealed.
 - 2.12 Painting/ decoration required throughout.
 - 2.13 The floor coverings are worn and stained.
 - 2.14 The gutters need to be cleaned as debris has gathered in them.
 - 2.15 A few slates are missing from the roof.
 - 2.16 The garden hut is not wind or watertight.
 - 2.17 The bushes in garden are too tall.
 - 2.18 The garden wall has collapsed.
3. The President of the Private Rented Housing Panel, having considered the application, referred the application under Section 22 (1) of the Act to a Private Rented Housing Committee.
4. The Private Rented Housing Committee served Notice of Referral under and in terms of Schedule 2, Paragraph 1 of the Act upon both the Landlord and the Tenant.
5. Following service of the Notice of referral the Tenant made written representations to the Committee advising *inter alia*
- The following issues have now been dealt with:-
- o Hedges and shrubs cut back.
 - o New gas cooker installed.
 - o Windows and doors repaired.
 - o Hut roof repaired.
6. Following service of the Notice of referral the Landlord's agents J C Roxburgh made written representations to the Committee advising that the landlord is attending to the repairs himself.
7. The Committee attended at the Property on 15th February 2011. The Tenant was present. The Committee inspected the alleged defects and found as follows:-

The windows are draughty and are not water tight. They need to be repaired throughout.

The windows throughout the property had been repaired.

The back door needs to be repaired.

The back door had been repaired.

The front door needs adjustment to enable it to close properly.

The front door had been repaired.

The gas appliances are not checked annually.

There was no gas safety record for the gas fire or the gas cooker.

The fire in the living room and cooker are both unsafe.

The Tenant had blocked up the flue to prevent the draughts. She advised the Committee that she had tried to use the gas fire before she had blocked up the flue, but it was not working correctly as it only ignited on one side.

The electrical appliances not checked annually.

The Committee advised the Tenant that whilst it is desirable for the Landlord to have the appliances regularly checked, and whilst the Repairing Standard requires that they must be in a reasonable state of repair and proper working order, there is no legal requirement to have them annually inspected.

There is only one battery operated smoke alarm in the property and it is not annually checked.

The smoke alarm was tested and it was working.

There is no carbon monoxide detector in the property.

The Committee advised the Tenant that there is no legal requirement on the Landlord to instal a carbon monoxide detector in the property.

There is insufficient insulation in the loft and cavity wall.

Access to the loft was not available.

The shower door is faulty.

The Tenant had repaired the magnetic strip on the shower door, which was now working.

The bathroom tiles need to be re-grouted and the shower unit needs to be resealed.

There was some mould around the tiles in the shower cubicle. The Tenant advised that the shower cubicle leaks when she uses the shower.

Painting/ decoration required throughout.

The Tenant advised that she had refreshed the paint work but was unable to reach the ceilings.

The floor coverings are worn and stained.

There were some small stains to the carpets in the lounge and bedroom.

The gutters need to be cleaned as debris has gathered in them.

The gutters appeared to be clear. There was no evidence of debris accumulating in the gutters.

A few slates are missing from the roof.

There were several slates in the garden. It was not apparent where the slates had come from.

The Tenant confirmed that as far as she was aware the roof was not leaking

The garden hut is not wind or watertight.

The roof of the garden hut had been repaired. However the side wall of the hut was rotten and there was a hole in the wall.

The bushes in garden are too tall.

The bushes had been trimmed.

The garden wall has collapsed.

The rear boundary wall was a brick wall retaining wall which forms the boundary between the Property and an area of open grassland, believed to be owned by the Local Authority. The wall had partly collapsed. Historic repairs had been carried out by the insertion of metal tie rods into the adjoining wall. However a crack had developed in the side boundary wall. The rear boundary wall was leaning outwards towards the area of open grassland.

8. Following the inspection of the Property the Private Rented Housing Committee held a hearing in the Lochgreen Hotel, Troon. They heard from the Tenant, in relation to the alleged defects she advised as follows:-

The windows are draughty and are not water tight. They need to be repaired throughout.

The windows have been repaired.

The back door needs to be repaired.

The back door has been repaired.

The front door needs adjustment to enable it to close properly.

The front door has been repaired.

The gas appliances are not checked annually.

She showed the Committee a gas safety certificate dated 25th June 2010. The certificate did not cover the cooker or the gas fire.

The fire in the living room and cooker are both unsafe.

The gas fire in the lounge had been condemned and the cooker had been replaced and was now in proper working order.

The electrical appliances not checked annually

The Committee advised the tenant that whilst it was desirable to have the appliances tested regularly there was no legal requirement to do so.

There is only one battery operated smoke alarm in the property and it is not annually checked

The Tenant advised the Committee that the smoke alarm had been replaced after she had moved into the property, in approximately 2008.

There is no carbon monoxide detector in the property.

The Committee advised the Tenant that there was no legal requirement to install a carbon monoxide detector.

There is insufficient insulation in the loft and cavity wall.

She advised the Committee that the insulation was not sufficient.

The shower door is faulty.

She confirmed that she had repaired the shower door herself and it now worked properly.

The bathroom tiles need to be re-grouted and the shower unit needs to be resealed.

There was evidence of mould on the tiles and the grouting and the shower leaked whenever it was used.

Painting/ decoration required throughout.

She had refreshed sections of the paintwork throughout the property but she was unable to reach the ceilings, which had not been repainted since she moved into the property.

The floor coverings are worn and stained.

The Committee advised the Tenant that this was not a matter within the Repairing Standard as the Repairing Standard requires that they are capable of being used safely for the purpose for which they are designed.

The gutters need to be cleaned as debris has gathered in them.

The Tenant confirmed that from her examination of the gutters at the inspection they appeared to have been cleaned, although she was not aware of this having been done.

A few slates are missing from the roof.

The Tenant advised that there were several slates in the garden. She was not certain where they had come from and she was unaware of there being any leaks in the roof.

The garden hut is not wind or watertight.

The Tenant confirmed that the roof of the hut had been repaired but the side wall was rotten and there was a hole in it and it was not wind and watertight.

The bushes in garden are too tall.

The bushes had been cut back,

The garden wall has collapsed.

She was concerned that the wall may be unsafe and could be a danger if it was to fall down, especially as it adjoins a common area of open ground.

Findings of Fact and Summary of the issues

8. The windows, the back door, the front door, the shower door, the gutters and the bushes in garden had been repaired satisfactorily and complied with the Repairing Standard. The gas appliances are not checked annually and no gas safety certificate was available to confirm if the gas fire, the cooker and the central heating boiler were in a safe condition. The battery operated smoke alarm had been replaced after 3rd September 2007 and therefore a hardwired smoke alarm was required. The shower unit appeared to be in a reasonable state of repair and proper working order. Whilst the Committee had no reason to disbelieve the Tenant they did not see it leaking at the inspection. The garden hut is not wind or water tight and the garden boundary wall is not in a reasonable state of repair and proper working order. The following matters are out with the repairing standard:- The painting/ decoration, the loft insulation, cavity wall insulation and the re-grouting of the bathroom tiles.

Decision

9. The Committee accordingly determined that the Landlord had failed to comply with the duties imposed by Sections 14 (1)(a) and 14(1)(b) of the Act in respect of the following matters:-
- 9.1 As no gas safety certificate had been produced it had not been demonstrated that the gas fire, the cooker and the central heating boiler were in a reasonable state of repair and proper working order.
 - 9.2 The smoke alarm had been replaced after 3rd September 2007. In terms of the regulations it was a requirement that the replacement smoke alarm was hardwired and not battery operated.
 - 9.3 The garden hut is not wind and water tight and
 - 9.4 The boundary garden wall is not in a reasonable state of repair and proper working order.
10. The Committee proceeded to make a Repairing Standard Enforcement Order as required by section 24(1).

11. The decision of the Committee was unanimous.

Right of Appeal

12. 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

13. 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.

Signed **J Taylor** Date 23rd February 2011
Chairperson 



Repairing Standard Enforcement Order

Ordered by the Private Rented Housing Committee

Re : 30 Templeton Crescent, Prestwick, KA9 1JA being the subjects described in the disposition by Liliás Anne Hunter Martin in favour of John Menzies recorded in the Division of the General Register of Sasines for the County of Ayr on 30th August 1988 ('the Property')

The Parties:-

Anne Frances O'Connor ('The Tenant')

John Menzies, 20 Bellevue Road, Prestwick, KA9 1NN per J C Roxburgh Properties Limited ('The Landlord')

NOTICE TO

The said John Menzies

Whereas in terms of their decision dated 23rd February 2011, 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:-

The Landlord has failed to ensure that the garden hut, which forms part of the Property, is wind and water tight and in all other respects reasonably fit for human habitation; the structure and exterior of the Property are in a reasonable state of repair and in proper working order; the fixtures, fittings and appliances provided by the Landlord under the tenancy are in a reasonable state of repair and proper working order and the Property has satisfactory provision for detecting fires and for giving warning in the event of fire or suspected fire (Section 13(1) paragraphs (b),(d) and (e) of The Housing (Scotland) Act 2006).

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 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:-

- (1) Produce a current gas safety record for all gas appliances in the Property namely the cooker, the gas fire and the central heating boiler confirming that the appliances pass.
- (2) Instal a hardwired mains operated smoke alarm.
- (3) Repair the garden hut to render it wind and water tight.
- (4) Repair and make safe the boundary wall in the garden to render it in a reasonable state of repair and proper working order.

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

Signed..... **J Taylor** Date 23rd February 2011

Chairperson

... **E SHedden**

... witness: ELIZABETH GIFFEN SHEDDEN, 65, High Street, Irvine