



Repairing Standard Enforcement Order

Ordered by the Private Rented Housing Committee

PRHP Ref: PRHP/RP/15/0029

Property at: 43 Princes Crescent, Dollar, Clackmannanshire, FK14 7BW
(Land Title number: CLK7170)

The Parties

Francis Ferguson, residing at 43 Princes Crescent, Dollar, Clackmannanshire, FK14 7BW ("the tenant")

and

Timothy Allen, residing at Side Head Farm, Westgate, Bishop Auckland, County Durham, DL13 1LE ("the landlord")

NOTICE TO Timothy Allen, residing at Side Head Farm, Westgate, Bishop Auckland, County Durham, DL13 1LE ("the landlord")

Whereas in terms of their decision dated 28 May 2015, 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:

- (a) The steps (front and rear) to the exterior of the house are not in a reasonable state of repair and in proper working order in terms of section 13(1)(b) of the Act
- (b) The appliances provide by the landlord under the tenancy are capable of being used safely for the purpose for which it is designed in terms of section 13(1)(d) of the Act.
- (c) The house has satisfactory provision for detecting fires and for giving warning in the event of fire or suspected fire.

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 landlord:-

- (1) Add a third smoke detector (in the living-room of the property) to the existing network of hard wired smoke alarms. In addition, a heat detector and a CO2 alarm must be fixed in the kitchen of the property.
- (2) Repair the exterior steps to the front and rear of the property; and

(3) Remove the gas fire from the living room and board up of the fireplace.

The works specified in this Order must be carried out and completed within six weeks 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 are executed by Paul Doyle, solicitor, 24 Haddington Place, Edinburgh, chairperson of the Private Rented Housing Committee at Edinburgh on 4 June 2015 before this witness:-

K Boettcher

witness

P Doyle

chairman

Kirsten Boettcher
Secretary
24 Haddington Place
Edinburgh



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

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The Parties

Francis Ferguson, residing at 43 Princes Crescent, Dollar, Clackmannanshire, FK14 7BW ("the tenant")

and

Timothy Allen, residing at Side Head Farm, Westgate, Bishop Auckland, County Durham, DL13 1LE ("the landlord")

Decision

The committee, having made such enquires 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 concerned and taking account of all of the evidence available to the committee, determined that the landlord has failed to comply with the duty imposed by Section 14(1)(b) of the 2006 Act.

Background

- 1 By application dated 26 January 2015, the tenant applied to the Private Rented Housing Panel to determine whether or not the landlord had failed to comply with the duties imposed by Section 14(1)(b) of the Housing (Scotland) Act 2006 ("the 2006 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 and in particular that the landlord had failed to ensure:
 - (a) That 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 in terms of Section 13(1)(b) of the 2006 Act.

- (b) That the installations in the house for the supply of water, gas and electricity, and for space heating and heating water were in a reasonable state of repair and in proper working order, in terms of Section 13(1)(c) of the 2006 Act, and
- (c) That the property has satisfactory provision for detecting fires and for giving warning in the event of fire or suspected fire in terms of Section 13(1)(f) of the 2006 Act

3 By letter dated 18 March 2015, the president of the Private Rented Housing Panel intimated a decision to refer the application under Section 22(1) of the 2006 Act to a Private Rented Housing Committee. The committee was made up of three members:

Paul Doyle	Chairperson
Kingsley Bruce	Surveyor Member
Irene Kitson	Housing Member

4 The Private Rented Housing Committee served notice of referral under and in terms of Schedule 2 Paragraph 1 of the 2006 Act to the landlord and the tenant.

5 Following service of the notice of referral, neither party made any further representations to the committee.

6 The Private Rented Housing Committee inspected the property at 10.30am on 13 May 2015. Both the landlord and the tenant were present and accompanied committee members throughout the inspection.

7 Following inspection of the property, the Private Rented Housing Committee held a hearing at the Ben Cleuch Centre, Tillicoultry. Both the tenant and the landlord attended the hearing. Both the tenant and the landlord answered questions from committee members.

8 The tenant's position is that the house is plagued by draughts because of faults in the seals around both front and back doors, defects in the windows and an open flue in the living room; that the steps to the front and rear of the house are damaged and dangerous and the garden shed has a missing window; that the shower-room is infested with mould; that the living room fire is defective and needs to be replaced, and that there is inadequate provision of smoke alarms and fire detectors in the property.

9 The landlord's position is that he has entrusted the property to a management agency and trusts them to ensure that the property meets the repairing standard.

Determination

10 The issues to be determined are:

- (a) Is the house wind and water tight, and in all other respects, reasonably fit for human habitation?
- (b) Is the structure and exterior of the house (including drains, gutters and external pipes) in a reasonable state of repair and in proper working order?
- (c) Are the installations in the house for the supply of water, gas and electricity, for sanitation, space heating and for heating water in a reasonable state of repair and in proper working order?
- (d) Is there satisfactory provision for detecting fires and for giving warning in the event of fire or suspected fire?

Findings in Fact

11 (a) The landlord is the heritable proprietor of the property which is the subject matter of this application. On 23 October 2014, the landlord agreed to rent the property to the tenant for an initial period of six months, and for month to month thereafter. A short assured tenancy was created; the landlord's obligations contained within that short assured tenancy are consistent with the obligations imposed on the landlord to meet the repairing standard set out in the Housing (Scotland) Act 2006.

(b) The property is a detached dwellinghouse with gardens to the front and rear and an integral garage. The internal accommodation is spread over two floors. The front door gives entrance to a hallway providing access to a living room, a dining room and a kitchen (from which access is obtained to the garage). Stairs lead to the first floor where there are four bedrooms, a bathroom and a separate shower room. Three of the bedrooms are to the front of the property. The fourth bedroom is to the rear of the property. The bathroom and shower room are to the rear of the property. The kitchen and dining area on the ground floor are to the rear of the property and the living room is to the front of the property.

(c) The tenant moved into the property (with his family) on 27 October 2014. The landlord had employed letting agents to manage the letting of the property. The letting agents prepared a video inventory and emailed it to the tenant, asking the tenant to provide any comments or adjustments to the inventory within five days. Within five days of receiving the video inventory, the tenant contacted the landlord's agents, raising several matters with them. It is still not clear whether or

not the managing agents passed all of the information provided by the tenant to the landlord.

(d) Entrance to the property is gained through the front door. A weather seal is fitted to the outside of the front doorframe. The weather seal to the exterior of the door appeared adequate. At the foot of the door there was a threshold bar or weather strip, the rubberised seal was noted to be worn or loose, but generally weatherproofing appeared adequate. Whilst a degree of general wear and tear, consistent with age was evident, there is no significant defect to the door and it does not allow an excessive draught to enter the property.

(e) Access to the garden ground at the rear is gained from the rear door situated in the kitchen (on the ground floor of the property). A weather seal is fitted to the outside of the front doorframe. The weather seal to the exterior of the door appeared adequate. At the foot of the door there was a threshold bar or weather strip, the rubberised seal was noted to be worn or loose, but generally weatherproofing appeared adequate. There is no significant defect to the door and it does not allow an excessive draught to enter the property, albeit a degree of wear and tear consistent with age of the installation was evident.

(f) There is a gas fire fitted into the fireplace in the living room of the property. On 14 June 2014 (more than four months before the tenant took entry to the property), a gas safety inspector placed a notice on the gas fire because a steel flue liner had not been fitted. The gas supply to the gas fire was then disconnected. When the tenant took entry, the gas fire had been disconnected from the gas supply. The flue remains open. The tenant has made his own attempts to block the flue to prevent cold draughts from entering the property. The fire is an appliance provided by the landlord under the tenancy.

(g) The garage to the property is served by two fluorescent strip light fittings. The fluorescent light bulbs do not work and need to be replaced.

(h) In the living room to the front of the property and the master bedroom on the first floor to the front of the property, there are double glazed window units. The double glazed window units in both the living room and the master bedroom have a central hopper window, and side opening casements to each side of a central fixed pane. Each of the windows are opened and closed by two handles which, when in the closed position, turn to secure the window. Small plastic guards should be fitted where the two handles for each of the windows connect to the window frame. Some of the plastic frame guards are missing, but the absence of the plastic frame guards does not prevent the windows from opening and closing properly. It does not affect either the operation or the integrity of the windows and does not create additional draughts to the property.

(i) One double glazed window unit in the bedroom to the rear of the property and both of the frosted double glazed window units in each of the bathroom and

the shower room to the rear of the property are defective, but none of those window units form part of this application.

(j) The smallest bedroom on the first floor to the front of the property has one single pane double glazed wooden framed window unit. That window unit opens and closes properly. When it is closed, it is tight. No draught excluder has been fitted around the window frame, but no defect was evident.

(k) When the tenant took entry to the property, he found that the shower room on the first floor to the rear of the property had some mould staining to the walls, ceilings and to a window blind that was there. He drew the mould staining to the attention of the letting agents who removed the window blind and cleaned the walls. There is still some trace of old mould staining to the ceiling of the shower room. That mould staining has not got any worse since the tenant took entry on 27 October 2014. The mould staining has been caused by condensation in the shower room.

(l) Prior to inspection on 13 May 2015, the landlord's agents repaired a leak from the bathroom sink plug assembly, repaired the toilet flush serving the WC in the shower room and repaired a fault with the TV aerial within the property.

(m) In the garden ground to the rear of the property, there is a garden shed. It has three window openings. The windows are made of sheets of plastic. The central window is open. There is no plastic fitted to the window panel there.

(n) To the front of the property, leading to the front door, there are three steps. The brickwork below the first of the steps is spalling and some debris has gathered on the ground leading to that first step.

(o) In the back garden, there are four steps leading to the side of the property where there is a gate providing access to the front of the property. The first step (from ground level) has a number of loose treads resting, unsecured, on the step.

(p) There are hard wired fire alarms fitted to the ceiling in the hallway on the ground floor of the property and fitted to the ceiling on the landing of the property. Those two smoke alarms are the only smoke alarms in the property. They are linked to each other. There is no heat detector in the kitchen of the property. There is no smoke alarm in the living room of the property. There is no CO2 detector in the property. In order to comply with the repairing standard, the network of hard wired fire alarms in this property has to be extended so that they are connected to a heat detector in the kitchen, a CO2 detector and a third fire alarm in the living room of the property.

Reasons for Decision

12 (a) Committee members inspected this property during the morning of 13 May 2015. Both the landlord and tenant were present throughout the inspection. The tenant welcomed committee members into the property and allowed committee members to carry out their inspection.

(b) A hearing took place at 11am in the Ben Cleuch Centre, Tillicoultry. Both the tenant and the landlord attended the hearing. Both the tenant and the landlord answered questions from committee members who then reserved their determination.

(c) On 12 January 2015, the tenant emailed the landlord's agents, providing a list of 13 items which he believed to be defects in the property and breaches of the repairing standard. The tenant referred committee members to that list and advised committee members that three of the items on the list had been attended to and no longer formed part of his complaint. Those items were:

- (i) A leak from the bathroom sink plug assembly,
- (ii) a problem with the flushing mechanism of the toilet in the shower room, and
- (iii) a problem with the TV aerial.

(d) Committee members inspected the front door of the property and the rear door of the property. Committee members could see rubber seals around the interior of the doorframes of both the front and the rear doors, and that both the rubber seals were displaying signs of wear and tears. There were sections of rubber missing in parts of the doorframe. However, committee members could also see that a weather bar had been fitted at the front door and at the back door. Committee members opened and closed both doors and found that the doors fitted snugly and that there was no difficulty with opening or closing the doors. There was no reliable evidence available to committee members of an excessive draught in either of the doors. Committee members' observations drew them to conclude that both doors fitted properly and were in good condition, so that the property is not troubled by excessive draughts. The tenant does not complain that the house is not wind and watertight. He focuses on Section 13(1)(b) of the Act which requires the structure and exterior of the house to be in a reasonable state of repair and in proper working order. The doors are in a reasonable state of repair and in proper working order. For the sake of completeness, committee members considered whether or not the doors and wind and watertight and come to the conclusion that they are. The doors in this property meet the repairing standard.

(e) The tenant complains that there is a defect in the windows to the front in the living room on the ground floor and the master bedroom on the first floor. His complaint about each of the window units is the same. The window units are metal framed, double glazed window units containing four window panes, one fixed central window pane, an opening window pane to each side and a popper window above the fixed window pane. The windows are secured with a twisting handle. When the handle is in a closed position, it should come to rest on a

plastic fitting which guards the frames from scrapes which could be caused by manipulation of the window handle. In the master bedroom on the first floor of the property, the plastic guard fittings are missing from the right hand opening window and from the popper window. In the living room, the plastic frame guards are missing from the popper window. The tenant claims that because those small plastic fittings are missing, the windows cannot be closed "*...properly which creates a draught*" and the absence of the plastic guards "*...stops the windows being tightly closed*".

(f) Committee members opened and closed the windows and found that the absence of the plastic fittings made no difference to the operation of the windows. The windows opened and closed properly; there was no evidence that excessive draughts were caused, nor that any movement was caused in the closed windows by the absence of the small pieces of plastic. Once again, committee members note that the tenant does not complain that the house is not wind and watertight, but consider Section 13(1)(a) of the Act in relation to the windows and find that the house is wind and watertight and find that excessive draughts do not come through the window. Committee members find that the absence of the small pieces of plastic from the catch mechanism of the windows do not affect the operation or the integrity of the windows.

(g) The tenant took committee members to the garage of the property and operated the light switch. As he did so, committee members could see that there are two fluorescent light fittings in the garage. The fluorescent light fittings did no more than flicker and did not come on. The light bulbs need to be changed. The landlord told us that the light bulbs would be changed that afternoon. Committee members considered the repairing standard and Section 13 of the Act. The light bulbs are not part of the structure or exterior of the house. The light bulbs are not installations for the supply of water, gas or electricity. It is on those two areas that Section 13(1)(b) and 13(1)(c) that the tenant's complaint focuses. The committee members note that the tenant has chosen to live in a property which requires light bulbs to be changed since October 2014. Committee members come to the conclusion that the repairing standard is not engaged in relation to the lights in the garage. The light fittings are fixtures and fittings which could not be tested, were not found to be defective.

(h) From the tenant's comments during the inspection, it is clear that the landlord's agents have sent out two window contractors to examine this property. Those window contractors have drawn the tenant's attention to defects in the windows to the rear of the property. Committee members could see that the frosted windows in the shower room and bathroom, and one of the double glazed windows in the bedroom to the rear of the property, are compromised - but none of those windows form part of this application so committee members cannot consider those windows any further.

(i) The tenant complains that a small bedroom to the front of the property has a defective window because it "...has no seals which allows a draught even when closed". Committee members inspected that window. It is a wooden frame double glazed unit which opens and closes adequately. It has not had a draught excluder or sealant around it throughout the period of the tenant's tenancy. In any event, the window closes properly without a gap. There is no reliable evidence that a draught comes through that window.

(j) In the living room, there is a gas fire appliance fitted into the fireplace. That gas fire appliance has a "condemned" label attached to it. The label clearly indicates that it was placed there on 5 June 2014, nearly five months before the tenant's tenancy commenced. In oral evidence, it was a matter of agreement between the parties that the fire was disconnected before the applicant moved into the property and has not worked at all throughout the period of tenancy. The landlord explained that it was during an annual gas safety check that he was told that the gas fire must be disconnected because it does not have a steel flue liner connected - but that, since then, he has had conflicting advice as to whether or not a steel flue liner is required. The landlord told committee members that he was willing to remove the heater and board up the flue so that there would not be a draught.

(k) Committee members consider this matter carefully. Committee members note that the landlord has taken responsible steps to ensure that a gas fire which might not be safe is disconnected, so that there is no risk to the tenant or the other occupants of the property. However, Section 13(1)(d) of the Act requires that all appliances provided by the landlord under the tenancy are in a reasonable state of repair and in proper working order. What the committee cannot close its eyes to is that the gas fire is an appliance provided by the landlord under the tenancy which does not work. A repairing standard enforcement order is therefore necessary because the landlord has (inadvertently) failed to meet the requirements of Section 13(1)(d) of the Act.

(l) Committee members turn their attention to the exterior of the property. There are three small steps which lead to the front door of the property. The brickwork on the face of one of those steps is spalling. There is some brick debris on the ground. To the rear and the side of the property, there is a series of four steps. It was clear that one of those steps has loose treads. The landlord volunteered that he would repair the loose treads and repair the cosmetic damage to the front step on the day of the inspection. Committee members accept that the landlord will carry out those works but have to take account of the state of the property at the time of inspection and hearing. The committee therefore, as part of the repairing standard enforcement order, require repairs to the steps to the front and rear of the property. The committee believes that part of the repairing standard enforcement order will be academic by the time it is issued.

(m) The final issue is the method for detecting fires. It is beyond dispute that this house has hard wired smoke detectors in the hallway on the ground floor and in the landing on the first floor. It is unfortunate that the landlord has been let down his agents who have not properly advised him that the provisions for detecting fires and for giving warning in the event of fire or suspected fire changed in October 2013. In order to meet the current requirements, a third smoke detector must be added to the existing network of hard wired smoke alarms and should be located in the living room. In addition, a heat detector and a CO2 alarm must be fixed in the kitchen of the property.

(n) The committee therefore make a repairing standard enforcement order requiring the landlord to:

- (1) Upgrade the system for detecting fire or suspected fire;
- (2) Repair the exterior steps to the front and rear of the property; and
- (3) Remove the gas fire from the living room and board up of the fireplace.

Decision

13. The Committee accordingly determined that the Landlord has failed to comply with the duty imposed by Section 14 (1)(b) of the Act.

14. The Committee proceeded to make a Repairing Standard Enforcement Order as required by section 24(1).

15. The decision of the Committee is unanimous.

Right of Appeal

16. 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

17. 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.

P Doyle

Signed....
Chairpers

..... Date..... 28/5/2015