



Repairing Standard Enforcement Order

Ordered by the Private Rented Housing Committee

prhp Ref: PRHP/RP/15/0032

Re : Property at 32 Ivanhoe Place, Stirling, FK8 1QE

Title No: STG59022

The Parties:-

Scott Buchanan and Paul Buchanan (per their agents Martin and Co 14 King Street Stirling)(as successors in title to Janet Williamson deceased) (“the Landlord”)

NOTICE TO Scott Buchanan and Paul Buchanan c/o 14 King Street Stirling (“the Landlord”)

Whereas in terms of their decision dated 21st April 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 (“The Act”) and in particular that the landlord has failed to ensure that

- (a) the property is wind and water tight and in all other respects reasonably fit for human habitation.
- (b) The installations in the house for ...space heating ...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 landlord:-

- (a) To instruct a damp proof specialist member of the Property care Association to carry out a full inspection of the property with a view to reporting on the extent and treatment required of the dampness in the building. All recommended works including satisfactory re-instatement of the interior plasterwork to be carried out. The report, invoices and confirmation that the work has been carried out should be submitted to the committee
- (b) To obtain a report from a gas safe registered Engineer on the operation of the boiler and heating system and thereafter to carry out any and all of the recommendations contained in that report and to submit the said report along with an up to date gas safety record to the Committee

The Private Rented Housing Committee order that the works specified in this Order must be carried out and completed within the period of 10 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.

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 Anne McCamley, chairperson of the Private Rented Housing Committee at Edinburgh on the twenty fourth day of April Two thousand and fifteen in the presence of Murdoch Mccamley Chartered Accountant of 5b Wester Coates Terrace Edinburgh

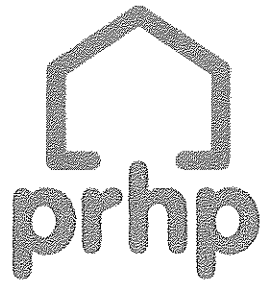
M. MCCAMLEY

A. MCCAMLEY

(witness)

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Chairman, Private Rented
Housing Committee



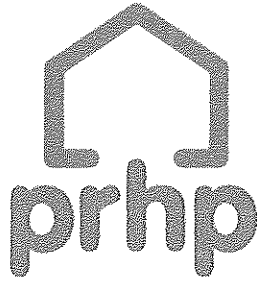
**DETERMINATION BY THE PRIVATE RENTED HOUSING
COMMITTEE**

HOUSING (SCOTLAND) ACT 2006 SECTION 24(1)

PROPERTY AT 32 IVANHOE PLACE, STIRLING.

**SCOTT BUCHANAN AND PAUL BUCHANAN, (LANDLORD)
C/O MARTIN & CO, 14 KING STREET STIRLING.**

REFERENCE PRHP/RP/15/0032



DECISION:

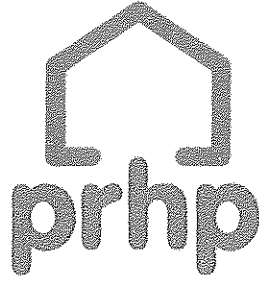
The Committee, having made such enquiry as it sees fit for the purposes of determining whether the landlord has complied with the duty imposed by section 14(1)(b) of the Housing (Scotland) Act 2006 in relation to the property concerned, and having taken account of the whole written evidence and after an inspection of the property hereby determines that the landlord has failed to comply with the duty imposed by section 14(1)(b) of the said Act.

BACKGROUND:

1. By application dated 27th January 2015 the tenant applied to the Private Rented Housing Panel for a determination as to whether the landlord had failed to comply with the duties imposed by section 14(1)(b) of the aforesaid Act.

2. The application by the tenant stated he considered the landlord had failed to comply with the duty to ensure the house meets the repairing standard and brought forward the following alleged breaches:-

- a. Dampness in the bedrooms living room and hallway.
- b. Heating system inadequate, radiators not heating the rooms.
- c. Fire alarm outdated.



d. Ill fitting front door allowing dampness to penetrate.

3. The Private Rented Housing Committee served a Notice of Referral dated 5th March 2015 under and in terms of Schedule 2, Paragraph 1 of the Act on both the landlord and tenant.

4. Subsequently, after the application had been referred to this Committee, but before the application could be determined, the tenant lawfully terminated the tenancy. In terms of Schedule 2, paragraph 7(1) of the Act, the application is treated as having been withdrawn by the tenant if the tenancy has been lawfully terminated. This event has occurred and the application is therefore deemed to be withdrawn.

5. In terms of Schedule 2, paragraph 7(3) of the Act, where the application is withdrawn, the Committee may either abandon its consideration of the application or may, despite the withdrawal, continue to determine the application. In terms of Minute of Continuation dated 27/3/2015 the Committee notified parties the application would be determined by the Committee because it is in the public interest to do so.

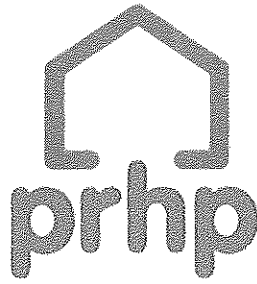


6.The Committee comprising Mrs. Anne McCamley (Chairman) and Mr. Robert Buchan (Surveyor) inspected the property on the morning of 9th April 2015. The landlord had earlier advised he did not wish to attend but would ensure access for the Committee via his letting agents. A member of staff from the letting agency accompanied the Committee during the inspection.

7.Following the inspection of the property the Committee convened a hearing at Stirling Enterprise Park. The landlord had indicated he would not be attending and no members of the public sought entry. Accordingly the Committee determined the application on the basis of the whole written evidence available along with the findings from the visual inspection.

8.In the written application the tenant complained of dampness in the property which, the tenant believed, had had an adverse impact on the health of himself and his wife. He advised the Local Authority Environmental Health Department inspectors had confirmed a problem with dampness in the property.

As part of the Committee's inspection, an electronic moisture meter was deployed and revealed extremely high readings in the external walls of the bedrooms, sitting room and hallway. The Committee found there to be significant rising dampness. The Committee considered whether the



extent of the dampness was to a level which made the house not 'reasonably fit for human habitation'. In relation to this issue, the Committee considered the guidance laid down in the cases of *Gunn v City of Glasgow District Council* 1992 SCLR 1018 and *Fyfe v Scottish Homes* 1995 SCLR 209 and *Summers v Salford Corporation* 1943 AC 283. These cases approve the proposition that the comfort in which the tenant can live in the house is relevant to its fitness for habitation. A landlord has a duty to provide a house which in respect of ventilation and heating could be reasonably heated to such an extent that there would be no dampness. In this case significant rising dampness has been measured by the Committee (and by the Local Authority), and the tenant, in representation, contends there has been injury to their health caused by dampness.

Accordingly, having considered the whole written evidence, the findings from Committee inspection and thereafter applying the balance of probabilities and Committee members' own expertise it is the decision of the Committee that the landlord has failed in his duty to ensure the property meets the repairing standard detailed in section 13(1)(a) of the Act.

9. The tenant also complained of a dysfunctional heating system, stating the radiators do not heat the rooms and the Baxi Bermuda back boiler is not in working order. On inspection (and even with the help of the



letting agent) the Committee was unable to start up the boiler which is decades old. The Committee noted the radiator in the bedroom was small in relation to the size of the room. In his representations the landlord states he remembers the house being very warm when his grandmother lived in it. We have no doubt that this is true, however it is the functioning of the heating system as of today which is of relevance in deciding this application. On balance of probabilities, having regard to the up to date information from the tenant, the Committee's visual inspection today and exercising its own expertise, the Committee determines the landlord has failed in his duty to ensure the property meets the repairing standard detailed in section 13(1)(b) of the Act.

10. On inspection, the Committee noted the landlord had installed a modern hard wired smoke /fire detection alarm system in the property. Accordingly the property currently meets the terms of the repairing standard detailed in section 13(1)(f) of the Act.

11. The Committee inspected the front door of the property and while some dampness was noted at the bottom of the door the Committee was unable to conclude this was as a result of a poorly fitting door and on balance took the view it was part of the whole rising damp problem which pervades the property and as such is covered by para 8 above.



12. While the following matters do not form part of the application the landlord should note that as part of its inspection the Committee determined the extractor fan in the kitchen is not in a reasonable state of repair and there is no evidence of an isolation switch for the bathroom shower.

13. In light of the foregoing findings the Committee determines the landlord has failed to comply with the duty imposed by section 14(1)(b) of the Act and makes a Repairing Standard Enforcement Order as required by section 24(1) of the Act.

14. A landlord or tenant aggrieved by this decision may appeal to the Sheriff by summary application within 21 days of being notified of the decision.

15. 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 date on which the appeal is abandoned or so determined.

A. MCCAMLEY

*Chairman Inmate Rented Housing Committee
21st April 2015*