



## **Repairing Standard Enforcement Order**

**Ordered by the Private Rented Housing Committee**

**PRHP Ref: PRHP/RP/16/0113**

**Re: Property at 16 Rice Way, Motherwell, ML1 2JL (“the Property”)**

**Title No: LAN 108408**

**The Parties:-**

**Christopher Kerr 56 Queens Parade, Bangor, Antrim, BT20 3BH and Sean Longstaff 52 Ballyholme Esplanade, Bangor, Antrim, BT20 5NJ; Christopher Kerr and Sean Longstaff c/o Penny Lane Homes, 67 High Street, Johnstone PA5 8QG (“the Landlord”)**

**Carolyn Anderson 16 Rice Way, Motherwell ML1 2JL (“the Tenant”)**

### **NOTICE TO Mr Christopher Kerr and Mr Sean Longstaff (“the Landlord”)**

Whereas in terms of their decision dated 8 June 2016 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 house is wind and watertight and in all other respects reasonably fit for human habitation; and
- (b) any fixtures, fittings and appliances provided by the landlord under the tenancy 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 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:-

1. To instruct a suitably qualified window contractor to inspect the windows and carry out such repairs as are recommended to prevent the buildup of condensation and ensure that there is no cavity between the glass and the frame into which condensation and mould can accumulate,
2. To repair or replace the extractor fan in the bathroom.
3. To carry out such repairs as are necessary to the back and front doors to ensure that the property is wind and watertight.
4. To repair the boundary fence and gate in the garden between the property and number 18 Rice Way or to replace it with a new boundary fence.

The Private Rented Housing Committee orders that the works specified in this Order must be carried out and completed within the period of four 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 are executed by Josephine Bonnar, Solicitor, Chairperson of the Private Rented Housing Committee at Motherwell on 8 June 2016 before this witness:-

J Bonnar

Chairperson

✓ G Bonnar \_\_\_\_\_ Witness

Gerard Bonnar \_\_\_\_\_ Name in full

Buchanan House \_\_\_\_\_ Address

58 Port Dundas Road \_\_\_\_\_

Glasgow \_\_\_\_\_

Solicitor \_\_\_\_\_ Occupation



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

**PRHP Ref: RP/16/0113**

**Re: Property at 16 Rice Way, Motherwell ML1 2JL (“the Property”)**

**Title No: LAN 108408**

**The Parties:-**

**Carolyn Anderson (“the Tenant”)**

**Christopher Kerr 56 Queens Parade, Bangor, Antrim and Sean Longstaff  
52 Ballyholme Esplanade, Bangor, Antrim; Penny Lane Homes, 67 High  
Street, Johnstone, PA5 8QG (“the Landlords”)**

**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 (“the Act”) in relation to the property, and taking account of the evidence led by the Tenant at the hearing and the written representations by the Landlord determined that the Landlord had failed to comply with the duty imposed by Section 14 (1)(b) of the Act.**

**The Committee comprised:-**

**Mrs Josephine Bonnar, Chairperson**

**Mr Ian Murning, Surveyor Member**

**Background**

1. By application dated 23 March 2016 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 and in particular that the Landlord had failed to ensure that the house is wind and watertight and in all other respects reasonably fit for human habitation. Specifically the Tenant complained that there was no seal between

the glass and the wooden window frames and that mould formed in the gap, the windows were old and needed to be replaced, there were draughts from the back and front doors, a problem with the wall behind the washing machine and a damaged garden fence.

3. 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 on 12 April 2016.
4. Following service of the Notice of Referral the Landlord Christopher Kerr made written representations. He advised however that as he lived in Ireland he would be unable to attend the hearing. The Tenant made no written representations but confirmed she would attend the hearing.
5. The Private Rented Housing Committee inspected the property on the morning of 24 May 2016. Only the Tenant was present during the inspection.
6. Following the inspection of the property the Private Rented Housing Committee held a hearing at Brandon Gate, 1 Leechlee Road, Hamilton. The Tenant was present and gave evidence. Neither the Landlord nor the letting agent attended the hearing.

### **The Inspection**

7. At the time of the inspection the weather was warm and sunny. The Committee were able to inspect the whole property. The property is a two bedroomed mid-terraced house in a development of similar properties. The property comprises a living room and kitchen downstairs and 2 bedrooms and a bathroom upstairs. The exterior and interior of the property are generally in a reasonable state of repair. The Committee inspected the windows both upstairs and downstairs and noted that they are old style double glazed units with a narrow gap between the glass panes. The frames are wooden. The substance used to seal the space between the glass and the frames has partially worn away leaving a gap or gutter. The Tenant advised that the windows are often badly affected by condensation and mould forms in this gap particularly in relation to the upstairs windows. This occurs mainly in colder weather. No condensation or mould was noted at the inspection. The wooden frames are old but the windows themselves open and close effectively. There was no complaint of water ingress or evidence of same. Upstairs the Committee noted that the 2 bedrooms are separated by a small landing with the bathroom in between. The three rooms are in very close proximity to each other. The bathroom has no window, only a small extractor fan activated by a switch outside which is separate from the light switch. There was dust covering the extractor fan. There was no evidence of condensation or dampness in any of the rooms including the bathroom. In the kitchen the Committee noted

that there is a gap between the door to the garden and the floor with no fitted draught excluder. The front door does not have a gap and is fitted with a draught excluder. The wall behind the washing machine is uneven. A wooden panel has been attached to the wall which is not flush with the wall. It does not affect the use of the washing machine. The wooden boundary fence in the garden between the property and the next door neighbour at number 18 was noted to be in a serious state of disrepair. There are a number of gaps in the fence and the gate which forms part of the fence between the properties has become damaged and detached from the fence. During the inspection the Committee noted that there is a hardwired smoke detector in the upstairs landing. There is no heat detector or CO detector in the kitchen and the Tenant advised that she disconnected the smoke detector in the living room because its proximity to the kitchen means that it is activated whenever she cooks.

### **The Hearing**

8. At the Hearing the Tenant gave evidence. She stated that she has been the Tenant since 31 January 2013 and resides at the property with her 4 year old son. Her son suffers from asthma which has improved now that they no longer have a dog. Her tenancy of the property is continuing and she signed a new agreement in November 2015. She indicated that she first became aware of the problem with the windows during the winter of 2013/14. She herself purchased additional seals on 2 separate occasions and fitted them to the windows. She explained that during cold weather condensation forms on the windows especially upstairs and mould forms in the gap between the glass and the frame. Last year there was also mould on the wall next to the window ledge in both bedrooms which she cleaned and painted over with damp proof paint. She wipes the windows on a daily basis to prevent mould growing and scrubs thoroughly with a toothbrush at least once a week. The problem has been less evident recently because of the warm dry weather. In response to questions by the Committee the Tenant stated that she always uses the extractor fan in the bathroom. She leaves the bathroom door open most of the time. She has not noted moisture or condensation elsewhere in the property at any time. She keeps the property well heated and ventilated. Windows are kept open whenever possible. Although the house is warm there are often draughts from the bottom of both external doors and she has had to purchase her own draught excluders which provide some protection from same. The garden fence has always been in a poor state of repair but the damage to the gate was caused by the neighbour leaning over same and falling through it. The area behind the washing machine is unsightly and she feels needs to be repaired before she can paint it.

9. The Tenant stated that has contacted the Letting Agent on many occasions regarding the various repair issues by email and telephone. She has had no direct contact with the Landlord. In August 2015 the agent sent a window contractor to the property to examine the windows. He advised the Tenant that his recommendation was to replace the windows as they could not be repaired. The Letting agent advised the Tenant that this information had been relayed to the Landlord who said that would arrange his own contractor. The Tenant advised that she was not present when the second contractor inspected the windows. He did not therefore have access to the property to see the windows from inside the property. She further advised the Committee that she has been told that the windows are to be refurbished but she does not know when this is to be carried out. The letting agent also recently sent a joiner to look at the area of wall behind the washing machine and the garden fence. The joiner indicated that he could remove the wooden panel which is currently attached to the wall and replace it with one which would be flush with the wall and re-plaster. He indicated the fence could be repaired. The Tenant also stated at the hearing that her neighbour has indicated that he is willing to replace the fence with a new 6 foot fence if the Landlord is agreeable but she has not yet advised the Letting Agent of this proposal.
10. No evidence was led by or on behalf of the Landlord. The Tenant confirmed that she had received a copy of the written representations. In the representations the Landlord stated that he accepted that the windows required to be refurbished and that he had now instructed this work and also a replacement fence. He also stated that he accepted that this should have been attended to at an earlier stage and that he was very happy with the Tenant.

### **Findings in Fact**

11. The property is a two bedroom mid terraced house in a modern development. The accommodation comprises a living room and kitchen downstairs and a bathroom and 2 bedrooms upstairs.
12. The Tenant has resided at the property since January 2013. She signed a new agreement in November 2015 and her tenancy is continuing.
13. The Tenant notified the Landlord of repairs issues at the property in May 2015 by email to the Letting Agent. Further emails and telephone calls to the Letting Agent have also been made since that time.
14. Window contractors and a joiner have attended at the property in response to the Tenants complaints to the Letting Agent but no repairs have been carried out.

15. Windows at the property are affected by condensation and mould. The property is not otherwise affected by dampness.
16. The extractor fan in the bathroom does not effectively extract moist air.
17. There are draughts from the two external doors.
18. The garden fence is in a serious state of disrepair.
19. The wall behind the washing machine is in need of re-decoration but is not defective.
20. In terms of the Land Certificate the Landlord is jointly liable with the owners of number 18 Rice Way for the maintenance and repair of the boundary fence between the two properties.
21. The property has a hardwired smoke alarm in the upper landing. The smoke alarm downstairs has been disconnected by the Tenant. There is no heat detector or CO detector in the kitchen.

### **Reason for decision**

22. The Committee considered the issues of disrepair set out in the Application and noted at the inspection and hearing.
23. The Tenants evidence at the Hearing was unchallenged by the Landlord. Furthermore, the Landlord indicated in the written representations that he accepted the complaint about the windows and garden fence. The Tenant gave her evidence in a clear and concise manner and was found to be credible and reliable by the Committee. It was evident that the Tenant takes pride in the property. She has decorated and the property was clean and tidy at the time of the inspection. The Committee accepted her evidence about the condensation and mould at the windows and her efforts to keep the windows free of same by cleaning, painting areas of wall with damp proof paint and by heating and ventilating the property. The Committee was of the view that the accumulation of dust in the vanes of the electric extractor fan in the bathroom seriously limits the efficiency of the fan to extract moist air generated by showering and bathing. The Committee was, however, of the view that the extractor may not be adequate even if dust free and always used and that this may be a contributing factor to the excess of condensation in the upstairs windows. There was nothing to suggest that the use of the property by the Tenant was a factor. The Committee was persuaded in the circumstances that the windows are in need of are in need of repair or possibly replacement.

24. The Tenants evidence regarding draughts from the external doors was also unchallenged. In relation to the back door this was supported by the inspection which revealed the lack of a fitted draught excluder at the bottom of the door leaving a gap. The Committee was of the view that the means of excluding draughts at the front door may not be effective. The garden fence was noted on inspection to be substantially damaged. Her explanation that the fence had always been in a poor state of repair was consistent with its current condition. Her explanation for the recent additional damage caused by her neighbor was plausible. The Committee was not convinced by her evidence in relation to the area of wall behind the washing machine. Although possibly in need of decoration the wall is in no way defective and the washing machine is capable of being used without difficulty
25. The Tenants application did not include a complaint regarding the lack of a smoke or CO detector in the kitchen or a complaint that the location of the smoke detector in the living room is inappropriate. The Committee however is of the view that these matters are of concern and recommends that the landlord takes urgent steps to rectify these matters.
26. The Committee accordingly took the view that the property fails to meet the repairing standard in relation to subsection 13(1)(a) and (d) and that it will require to make a Repairing Standard Enforcement Order in respect of the windows, the extractor fan, the doors and the garden fence.

### **Decision**

27. The Committee accordingly determined that the Landlord had failed to comply with the duty imposed by Section 14 (1)(b) of the Act.
28. The Committee proceeded to make a Repairing Standard Enforcement Order as required by section 24(1)
29. The decision of the Committee was unanimous

### **Right of Appeal**

30. **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**



31. 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.

J Bonnar

Signed...  
Josephine Bonnar, Chairperson

.....Date 8 June 2016

# 16 Rice Way Motherwell ML1 2JL

Photos from inspection  
PRHP/RP/16/0013  
24<sup>th</sup> May 2016  
Surveyor Ian H Murning TD

24/05/2016

1

## Front elevation of house



24/05/2016

2

Rear elevation of house



24/05/2016

3

Threshold of doorway



24/05/2016

4

## Threshold of doorway



24/05/2016

5

## Close up of double glazed window



24/05/2016

6

## Wallboard behind washing machine



24/05/2016

7

## Close up of double glazed window



24/05/2016

8

## Close up of double glazed window



24/05/2016

9

## Cill of window



24/05/2016

10

Cill of window



24/05/2016

11

Close up of upper window frame



24/05/2016

12

Close up of window frame



24/05/2016

13

Bathroom extractor fan-vanes with dust



24/05/2016

14



# AICO smoke alarm



24/05/2016

15

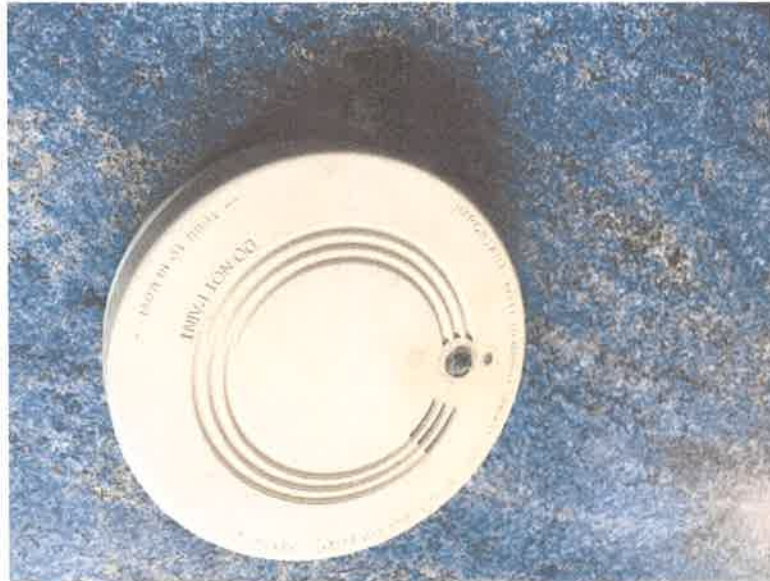
# Base of living room smoke alarm



24/05/2016

15

## Smoke alarm



24/05/2016

17

## Broken fence



24/05/2016

18

## Broken fence



24/05/2016

19

## Dilapidated fence



24/05/2016

20

# Line of fence



24/05/2016

21