



Repairing Standard Enforcement Order

Ordered by the Private Rented Housing Committee

prhp ref: RP/16/0176

Re 2 Pladda Wynd, Broomlands, Irvine, KA11 1DW being the subjects registered in the Land Register of Scotland under title number AYR20950 ('the Property')

The Parties:-

Mrs Margaret Campbell, residing at the Property ("The Tenant')

Mr Alastair Lygate, residing at 7 The Paddock, Perceton, Irvine, Ka11 2AZ ("The Landlord")

The Committee: Martin J. McAllister, Chairperson and George Campbell, Surveyor Member.

NOTICE TO

Mr Alistair Lygate

Whereas in terms of their decision dated 13th July 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 and, in particular, that the Landlord has failed, in terms of Section 13 of the said Act to ensure that the house is wind and watertight and in all other respects reasonably fit for human habitation and 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 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 in terms of Section 13 of he said Act 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:

a) The Landlord requires to replace the front door.
(Section 13 (1) (b) of the Act).

b) The Landlord requires to repair the bedroom window so that it can be closed effectively and be free of draughts.
(Section 13 (1) (a) and 13 (1) (b) of the Act).

c) The Landlord requires to repair the back door to ensure that it is free from draughts.
(Section 13 (1) (a) of the Act).

d) The Landlord requires to undertake all necessary work to resolve the issue of draughts in the kitchen behind the appliance next to the sink.
(Section 13 (1) (a) of the Act).


In view of the nature of the failure to meet the Repairing Standard as defined in the 2006 Act, the committee determined that the repairing standard enforcement order requires to be complied with by the date eight weeks from service of the repairing standard enforcement order upon the Landlord.

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 at Saltcoats

Date 13th July 2016


Martin J. McAllister
Chairperson

.....witness: Paula Sinclair, paralegal, 51 Hamilton
Street, Saltcoats



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/16/0176

Re 2 Pladda Wynd, Broomlands, Irvine, KA11 1DW being the subjects registered in the Land Register of Scotland under title number AYR20950 ('the Property')

The Parties:-

Mrs Margaret Campbell, residing at the Property ("The Tenant")

Mr Alastair Lygate, residing at 7 The Paddock, Perceton, Irvine, Ka11 2AZ ("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 ("the 2006 Act") in relation to the Property, determined that the Landlord has failed to comply with the duty imposed by Section 14 (1)(b) of the 2006 Act and made a repairing standard enforcement order in terms of Section 24(2) of the said Act.

Background

1. By application received on 3RD May 2016 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 2006 Act.
2. The application by the Tenant states that she considers that the Landlord has failed to comply with his duty to ensure that the Property meets the repairing standard. The application states that the Tenant believes that the Property is not wind and watertight and in other respects reasonably fit for human habitation, that any fixtures, fittings and appliances provided by the landlord under the tenancy are not in a reasonable state of repair and in proper working order and that the house has not satisfactory provision for giving warning if carbon monoxide is present in a concentration that is hazardous to health. In particular, the Tenant states that the front door is in a poor state of repair, is warped and has fungus growing, there is a broken window handle in the second bedroom causing wind and water to come in, there are draughts at the back door and there is no carbon monoxide detector.

3. A legal member of the Private Rented Housing Panel acting under delegated powers, having considered the application, referred the application under Section 22 (1) of the Act to a Private Rented Housing Committee on 18th May 2016. The Committee comprises of Martin McAllister (Chairperson) and George Campbell (Surveyor 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 on 7th June 2016.

5. On 27th June 2016 the Tenant intimated that some repairs had been carried out and stated that a carbon monoxide and new smoke detectors had been fitted. On 4th July 2016 the Tenant said that someone had come to measure the door but that she had heard nothing further and she enclosed two letters from North Ayrshire Council concerning an assessment carried out by an officer of the Council and the letter from the Council dated 18th March stated that, in the view of the officer, the House did not meet the repairing standard.

6. On 27th June 2016 the Landlord submitted representations in which he disputed the claims being made by the Tenant. The Landlord indicated that he did not consider there to be a tenancy agreement in place, that the Tenant was in breach of her obligations and had substantial arrears of rent. He said that the Tenant was now paying rent but that she considered that the arrears did not require to be paid because she had been made bankrupt. He said that the Tenant had failed to advise him of the deteriorating condition of the front door and that, if she had done so, the door could have been painted rather than having to be replaced. The Landlord suggested that any fault with the window handle was due to abuse by the Tenant. The Landlord said that the references to draughts were recent and he considered that the Tenant was trying to get leverage for allocation of a Council house. The Landlord said that a Notice to Quit had been served but that the Council considered that it had been served incorrectly and that the Tenant therefore retains the right to reside in the Property. The Landlord stated in his representations that he considers that the Private Rented Housing Panel should approve a discretionary loan to the Tenant to pay off rent arrears, that the Tenant should contribute towards repair costs and that the Tenant be provided with a Council House.

7. The Committee attended at the Property on 11th May 2016 for an inspection. The Tenant and Landlord were present. The Property comprises a purpose built terraced house. A schedule of external and internal photographs is attached to this Determination. The committee found the following:-

8. Findings on Inspection

8.1 The front door is warped and is in poor condition.

8.2 There is a carbon monoxide detector in the upstairs hallway outside a cupboard containing the gas boiler.

8.3 The window of a bedroom does not have a handle and cannot be closed securely.

8.4 The door to the rear garden has part of a rubber seal missing.

8.5. There is a gap at piping behind the kitchen appliance next to the sink.

At the conclusion of the Inspection the Tenant advised that she had to return to work and would be unable to attend the Hearing. She said that the carbon monoxide detector had been fitted and she indicated that she wanted to amend her application to withdraw any reference to it. The Tenant said that there were draughts from the area in the kitchen behind the appliance and that there were draughts from the front and back doors.

9. The Hearing

Following the Inspection, a Hearing took place at Greenwood Conference Centre, Dreghorn, Irvine. The Landlord was present. The Committee had before it the application and the representations of the Tenant and Landlord previously referred to. The Committee also had a copy of a tenancy agreement dated 5th March 2013 which indicated that the tenancy commenced on that date. The Committee also had copies of various documents relating to the Tenant's bankruptcy and a letter from the Tenant to the PRHP dated 29th April 2016 which stated that the Landlord had indicated that if the Tenant gave him £1000 he would fix the door and that he was not writing off the arrears of rent.

10. Preliminary issues

The Chairperson of the Committee explained to Mr Lygate the procedures that would be adopted in connection with consideration of the application. It was also explained the statutory framework that the PRHP operated within and the limitations in what it could do. Mr Lygate was advised that it could not order any financial compensation to the Landlord and, in response to a query from Mr Lygate, the Chairperson confirmed that it could not hold a tenant responsible for payment of any repairs. The Landlord acknowledged that repairs are requiring to be done.

The Committee confirmed that it would not require to deal with the part of the application relating to the carbon monoxide detector.

11. The Issues and evidence

The repairing standard is set out in Section 13 of the 2006 Act as amended:
A house meets the repairing standard if—

- (a) the house is wind and water tight and in all other respects reasonably fit for human habitation,*
- (b) 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,*
- (c) 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,*
- (d) any fixtures, fittings and appliances provided by the landlord under the tenancy are in a reasonable state of repair and in proper working order,*
- (e) any furnishings provided by the landlord under the tenancy are capable of being used safely for the purpose for which they are designed, and*
- (f) the house has satisfactory provision for detecting fires and for giving warning in the event of fire or suspected fire.*

(g) The house has satisfactory provision for giving warning if carbon monoxide is present in a concentration that is hazardous to health.

Mr Lygate said that the Tenant had substantial arrears of rent and had been made bankrupt. He said that he had been told that most of the arrears would be irrecoverable. He said that he accepted that the front door would require to be replaced but he contended that the Tenant had allowed a fungal growth which had caused the door to deteriorate. He said that if the Tenant had advised him sooner of the problems with the door it might have been possible to repair it rather than replace it.

Mr Lygate said that he accepted that the handle of the bedroom window required to be replaced but he did not consider that the handle would fall off of its own accord. He believed that the fact that it had become detached from the window must have been due to misuse by a member of the Tenant's family.

12. Findings

12.1 The Committee finds that the front door is not in a satisfactory condition and requires to be replaced.

12.2 The Committee finds that the rear door is not in a satisfactory condition and has missing and defective seals.

12.3 The Committee finds that there is a gap at pipework behind the appliance next to the sink.

12.4 The Committee finds that there is a handle missing from the window of the second bedroom.

13. The Committee arrived at its findings from what it found on inspection, the documentation produced to it and the evidence of the Landlord. It also accepted what the Tenant had said at the Inspection with regard to draughts.

14. The Committee considered whether or not any defects it found established brought the Property below the repairing standard in terms of the 2006 Act as amended.

In respect of the Findings it had made, the Committee considered that a repairing standard enforcement order should be made and proceeded to do so. The Committee considered that it is reasonable for the Landlord to be given eight weeks for the works to be completed.

15. Decision

The Committee accordingly determined that the Landlord has failed to comply with the duties imposed by Section 14(1)(b), of the Act, as stated.

The Committee proceeded to make a Repairing Standard Enforcement Order as required by section 24(1) and 24(2) of the 2006 Act in the following terms:

- a) **The Landlord requires to replace the front door.
(Section 13 (1) (b) of the Act).**
- b) **The Landlord requires to repair the bedroom window so that it can be closed effectively and be free of draughts.
(Section 13 (1) (a) and 13 (1) (b) of the Act).**
- c) **The Landlord requires to repair the back door to ensure that it is free from draughts.
(Section 13 (1) (a) of the Act).**
- d) **The Landlord requires to undertake all necessary work to resolve the issue of draughts in the kitchen behind the appliance next to the sink.
(Section 13 (1) (a) of the Act).**

In view of the nature of the failure to meet the Repairing Standard as defined in the 2006 Act, the committee determined that the repairing standard enforcement order requires to be complied with by the date eight weeks from service of the repairing standard enforcement order upon the Landlord.

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.

Signed
Martin J. McAllister
Chairperson

..... Date 13th July 2016

Photographs taken at 2 Pladda Wynd, Irvine KA11 1DW on 11 July 2016 (PRHP/RP/16/0176)



01 - Front door (open)



02 - Front door (closed)



03 - Kitchen (gap behind appliance)



04 - Rear door (closed)



05 - Rear door (open)



06 - Rear door (damaged seal)



07 - Bedroom window – missing handle



08 - Bedroom window



09 - Carbon Monoxide detector