



Repairing Standard Enforcement Order

Ordered by the Private Rented Housing Committee

prhp ref: RP/16/0222

Re 22 Dundonald Crescent, Auchengate, Irvine, Ayrshire, KA11 5 AX being the subjects registered in the Land Register of Scotland under title number AYR85278 ('the Property')

The Parties:-

Mr Kenneth Taylor, residing at the Property ('The Tenant')

**G1 Property Investments Limited in Administration), (SC325033)
Grant Thornton UK LLP, Level 8, 110 Queen Street, Glasgow, G1
3BX ('The Landlord') NOTICE TO**

G1 Property Investments Limited (In Administration)

Whereas in terms of their decision dated 16TH August 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 other respects reasonably fit for human habitation, 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, that 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, that the house has satisfactory provision for detecting fires and for giving warning in the event of fire or suspected fire and that the house has satisfactory provision for giving warning if carbon monoxide is present in a concentration that is hazardous to health,

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 the 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 provide to the Committee a certificate from a qualified Gas Safe Registered Engineer confirming that the installations in the Property for the supply of gas are in a reasonable state of repair and in proper working order.

(Section 13 (1) (c) of the 2006 Act).

b) The Landlord requires to repair or replace the toilet to ensure that it functions properly and also to properly secure the cistern to the wall.

(Section 13 (1) (c) of the Act).

c) The Landlord requires to ensure that heat and smoke alarms comply with the requirements of the revised Domestic Technical Handbook issued by Scottish Government's Building Standards Division (Technical Handbooks 2013:- Domestic-Fire)

(Section 13 (1) (f) of the Act).

d) The Landlord requires to repair the roof and replace missing roof and ridge tiles.

(Section 13 (1) (a) of the Act).

e) The Landlord requires to ensure that the rainwater goods are in efficient working order and to repair or replace where necessary.

(Section 13 (1) (a) of the Act).

f) The landlord requires to repair or renew the external waste pipe from the kitchen 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 twenty eight days 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

M. MCALLISTER

Date 16th August 2016

Martin J. McAllister

Chairperson

A. NEIL

Witness: Alistair Neil Green, 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/16/0222

Re 22 Dundonald Crescent, Auchengate, Irvine, Ayrshire, KA11 5 AX being the subjects registered in the Land Register of Scotland under title number AYR85278 ('the Property')

The Parties:-

Mr Kenneth Taylor, residing at the Property ("The Tenant")

G1 Property Investments Limited (in Administration) (SC325033), Grant Thornton UK LLP, Level 8, 110 Queen Street, Glasgow, G1 3BX ("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 21ST June 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 he 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 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, that 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, that any furnishings provided by the landlord under the tenancy are capable of being used safely for the purpose for which they are designed, that the house has

satisfactory provision for detecting fires and for giving warning in the event of fire or suspected fire and that the house has satisfactory provision for giving warning if carbon monoxide is present in a concentration that is hazardous to health. The application made specific reference to tiles missing from the roof, loose gutters and downpipes, toilet not flushing properly and no gas safety certificate being in place for approximately 4/5 years. The application also stated that the tenant had potential issues with the provisions for fire detection and for carbon monoxide detection.

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. The Committee comprises of Martin McAllister (Chairperson) and Kingsley Bruce (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 22nd June 2016.

5. Solicitors acting upon behalf of the Landlord submitted written representations by a letter dated 28th July 2016.

6. The Committee attended at the Property on 8th August 2016 for an inspection. The Tenant was present. The Landlord was represented by Mr Colin Maciver of Messrs HBJ Gately, solicitors. The Tenant indicated that he was not happy with the attendance of Mr Maciver and wanted this to be noted. The Property comprises a terraced house. A schedule of external and internal photographs is attached to this Determination. The committee found the following:-

7. Findings on Inspection

7.1 There is a functioning battery operated carbon monoxide detector.

7.2 There are hard wired smoke detectors in the lower and upper hall which are not functioning.

7.3 There is no heat detector in the kitchen.

7.4 The WC does not flush effectively and the cistern is not properly secured to the wall.

7.5 There are missing roof and ridge tiles.

7.6 Downpipes to the front and rear of the property are not properly secured or connected. The gutter at the front of the house has vegetation in it.

7.7 The external waste pipe from the kitchen sink is broken.

8. The Hearing

Following the Inspection, a Hearing took place at Greenwood Resource Centre, Irvine. The Tenant and Mr Maciver were present. The Committee had before it the application, representations of the Landlord's agents dated 28th July 2016, a copy of the Land Certificate for the Property and a copy of the form R2.38 (Administrator's progress report) dated 1st June 2016 which had been lodged at Companies House. This report and the Land Certificate are public documents and had been obtained by the Committee. The Committee had a copy of the tenancy agreement dated 23rd August 2008 which indicated that the tenancy had commenced on that date. The

Committee also had copies of two letters sent by the letting agent and one letter sent by the Tenant to the letting agent.

9. Preliminary issues

9.1 The Committee noted the terms of the Mr Maciver's representations of 28th July 2016. They state that the opposition to the Committee dealing with the application is based on two matters: that it is considered that the tenancy has been terminated and the failure of the Tenant to provide the Landlord with an opportunity to inspect the Property to ensure that it met and meets the Repairing Standard. They also state that the Landlord "presently intends to obtain vacant possession of the property and market it for sale with vacant possession, rather than sell it as an investment property suitable for letting." The representations also stated that it would be inappropriate for the application to proceed straight to the Hearing without the Landlord being given the opportunity to inspect the Property and, if appropriate, carry out repairs.

The Committee noted the representations regarding the possible termination of the Tenancy and determined that this was an issue that required to be considered before hearing any evidence.

Mr Maciver stated that his reasons for submitting that the tenancy had been terminated were set out in his letter of representations but he expanded on them. He explained that the tenancy was an assured tenancy and that a Notice to Quit had been served and a Notice of Proceedings of Possession had been served in terms of Sections 18 and 19 of the Housing (Scotland) Act 1988. Mr Maciver stated that he considered that the contractual tenancy had come to an end in November 2015 and that it then became a statutory tenancy. He set out the history of the court action and said that the Court had granted a decree for possession on 20th July 2016 in terms of Section 18 of the Housing (Scotland) Act 1988 and that the statutory tenancy had then come to an end.

The Tenant said that he had been bullied in the court process and he said that he did not consider that the tenancy had come to an end. He explained that he had tried to lodge an appeal and produced a letter from the Sheriff Clerk which stated that he could not appeal because the decree was not final until the Diet of Assessment for expenses had been dealt with. Mr Maciver conceded that the expenses issue still had to be determined and said that he did not believe the Tenant had grounds for appeal. He also conceded that the eviction process cannot be commenced until the decree had been extracted. Mr Maciver said that he did not consider that the Tenant had a lawful basis for occupying the Property. Mr Maciver asked the Committee to find the tenancy to be at an end on the basis of the determination of the Sheriff on 20th July 2016.

The Committee adjourned to consider the matter. It considered firstly the terms of Paragraph 7(1) of Schedule 3 of the Act:

A tenant may withdraw an application under Section 22(1) at any time (and the tenant is to be treated as having withdrawn it if the tenancy concerned is lawfully terminated).

The Committee noted that the Sheriff had made an order for possession on 20th July 2016. It was still capable of being appealed and the Tenant could not be evicted at present but the Sheriff had, nevertheless, determined the matter and granted an

order for possession. The Committee determined that the tenancy had been lawfully terminated and that the application was considered to be withdrawn.

The Hearing reconvened and the Committee gave its decision.

The Committee explained to the Tenant that he was no longer a Party but that if the Hearing continued it may want to hear evidence from him.

9.2 The Committee invited Mr Maciver to make submissions in relation to Paragraph 7(3) (a) and (b) (i) of the 2006 Act:

Where an application is withdrawn after it has been referred to a private rented housing committee, the committee may-

(a) abandon their consideration of the application, or

(b) despite the withdrawal-

(i) continue to determine the application.

Mr Maciver said that "at the moment" his clients intend to sell the property once it has been recovered and that this would be for owner occupation. He said that if it was sold for letting purposes it would be for the new owner to ensure compliance with the Repairing Standard. He said that any repairing standard enforcement order would be unnecessary. In his written representations of 28th July 2016 Mr Maciver said that in the event that the Landlord decided to relet the Property, it would "be prior to a new lease that the landlord would need to ensure compliance with the Repairing Standard."

Mr Maciver was referred to the Document R2 38 dated 1st June 2016 which had been lodged at Companies House. He accepted that this had been lodged by his clients but said that he was unaware of it and had never seen it. In the document the Administrators state *inter alia*

4.5 Formal eviction proceedings have been brought against the tenant at 22 Dundonald Crescent due to non- payment of rent and vacant possession should be obtained shortly.

4.6 As agreed with Promontoria (the heritable creditor) in October 2015, the remaining properties being 2,3,22 and 23 Dundonald Crescent will now be rented for a priod of time. Significant refurbishment work has taken place in order to get these properties in a suitable condition for rental.

4.7 During the Period, tenants were put in place at 2 and 3 Dundonald crescent. It is now the intention to pursue a portfolio sale of the remaining properties with tenants in place.

The Committee considered whether or not to continue to determine the application. It noted in particular that the application alleged that a gas safety certificate was not in place. If no such certificate there would be significant safety concerns. It also could not know how long the Tenant would continue to live in the Property and how long the eviction process might take or indeed if it would take place at all. Whilst the Committee accepted that Mr Maciver was acting under instructions of his clients and did not know the submissions they had made in the report to Companies House, the credibility of the Landlord's position was questionable. On 1st June 2016 they had indicated the intention to let the four properties in Dundonald Crescent and sell them as a portfolio but had instructed their solicitor to make representations that it is

intended to sell the Property for owner occupation. Whilst it is possible that the Landlord may have taken this decision since 1st June, the Committee was surprised that the Landlord had not informed its solicitor of the whole circumstances. The Landlord had also stated in the report that significant refurbishment works had been carried out to the four properties which included the Property. The Committee had inspected the Property and it was evident that no such works had been done. The Committee had concerns about the safety of persons occupying the Property if it was found that no Gas Safety Certificate is in place and it therefore proceeded to determine the application.

9. The Repairing Standard

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.*

10. Findings

10.1 There are missing roof and ridge tiles.

10.2 Downpipes to the front and rear of the property are not properly secured or connected. The gutter at the front of the house has vegetation in it.

10.3 The WC does not flush effectively and the cistern is not properly secured to the wall.

10.4 There are smoke detectors in the lower and upper hall which are not functioning.

10.5 There is no heat detector in the kitchen.

10.6 The external waste pipe from the kitchen sink is broken.

10.7 There is no Gas Safety Certificate in respect of the Property.

11. Reasons

11.1 Mr Maciver led no evidence in respect of Findings 10.1 to 10.6 inclusive. The Committee made these findings as a result of what had been found on inspection.

11.2 In relation to the Gas Safety Certificate Mr Maciver did not contend that one is in place. He said that the Landlord had had difficulty in getting access to the Property. The Committee noted the copies of letters which had been lodged. These comprised three documents. The first was a letter from Cairn letting agents to the Tenant dated 29th June 2016 seeking access for the annual Gas Safety Inspection. The copy before the Committee showed the letter to be from someone unnamed but identified as "*Property Manager*" but was unsigned. The second letter was from the Tenant and was undated but referred to Cairn's letter of 29th June and stated "*unfortunately the author has not identified himself/herself, under the present circumstances I would ask that the author now identifies himself/herself for my records so we can move forward with your request.*" The third letter was another unsigned letter from Cairn but had the name Sarah Carrell, Property Manager. It sought access.

11.3 The Tenant said that as far as he was concerned there had not been a Gas Safety Certificate in place for four or five years. When pressed on this he said that he was ninety percent sure that was the case. When pressed further he said that there was not one for the current year, the previous year or the year before that and that he was ninety percent sure that there had not been one for four or five years. The Tenant said that since the Administrators took control he had been bombarded with all sorts of documents "from all sorts of people." He said that during this period he had been quite ill.

11.4 Mr Maciver submitted that the provision of a Gas Safety Certificate by landlords was part of regulations/ requirements not connected with the repairing standard and that the Committee should not consider its absence a failure to maintain the house to a repairing standard. He also said that if a repairing standard enforcement order were to be granted that his clients be given sufficient time to comply and specifically after the Tenant has been evicted.

11.5 The Committee noted that it is accepted by the Landlords that there is not a Gas Safety Certificate.

11.6 The Committee considered the issue of access to the Property. The Landlords had led no evidence with regards to difficulties in gaining access other than the correspondence from June/ July 2016. The Administrators were appointed in 2012. The Committee considered it significant that the Landlords' agents had entered into the correspondence with the Tenant in June 2016 after the Tenant had submitted the application. It may be that the Tenant could have been more accommodating in June/ July 2016 but this was not considered to be a matter the Committee required

to determine. It also considered it reasonable since the Landlords had not made representations to the contrary that there has not been a Certificate in place for some years. The Committee also noted that since 1st December 2015 there have been statutory provisions in place for a landlord to apply to the private rented housing panel for assistance in getting access to a property. The Landlord had not availed itself of these provisions in relation to the Property.

11.7 The Committee had no difficulty in dismissing Mr Maciver's submission with regard to whether or not it was a failure in the repairing standard for there not to be a Gas Safety Certificate. Section 13 (1)(c) of the 2006 Act states that "*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..*" In the absence of the Landlords providing any other evidence a Gas Safety Certificate was necessary to satisfy the Committee that the Property meets the repairing standard. In any event a landlord is obliged to carry out annual gas safety checks. The Committee was somewhat surprised at the submission made and the Landlord's apparent disregard for issues of gas safety. The Committee considered that the possible eviction of the Tenant was not a relevant consideration in it determining any time limit for compliance with a repairing standard enforcement order.

12. 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 twenty eight days for the works to be completed.

14. 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 provide to the Committee a certificate from a qualified Gas Safe Registered Engineer confirming that the installations in the Property for the supply of gas are in a reasonable state of repair and in proper working order.
(Section 13 (1) (c) of the 2006 Act).**
- b) **The Landlord requires to repair or replace the toilet to ensure that it functions properly and also to properly secure the cistern to the wall.
(Section 13 (1) (c) of the Act).**

- c) **The Landlord requires to ensure that heat and smoke alarms comply with the requirements of the revised Domestic Technical Handbook issued by Scottish Government's Building Standards Division (Technical Handbooks 2013:- Domestic-Fire) (Section 13 (1) (f) of the Act).**
- d) **The Landlord requires to repair the roof and replace missing roof and ridge tiles.
(Section 13 (1) (a) of the Act).**
- e) **The Landlord requires to ensure that the rainwater goods are in efficient working order and to repair or replace where necessary.
(Section 13 (1) (a) of the Act).**
- f) **The landlord requires to repair or renew the external waste pipe from the kitchen 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 twenty eight days 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.

M. MCALLISTER

Signed
Martin J. MCALLISTER
Chairperson

Date 16th August 2016



Schedule of Photographs: 22 Dundonald Crescent, Irvine
Date 9 August 2016



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Date 9 August 2016

