

Repairing Standard Enforcement Order

Ordered by the Private Rented Housing Committee

Case reference number : PRHP/PA2/20/11

Re:- Property at Flat 0/1, 3 Mary Street, Paisley, PA2 6JF ("the property")

The Parties:-

Mark Fairman residing at Flat 0/1, 3 Mary Street, Paisley, PA2 6JF
("the tenant")

and

David Henry Jenkins residing at 43b Cautley Avenue, Clapham, London per Castle Residential,
63 Causeyside Street, Paisley, PA1 1YT
("the landlords")

Notice to David Henry Jenkins

Whereas in terms of the decision dated 12 May 2011 the Private Rented Housing Committee determined that the landlord had failed to comply with the duty imposed by Section 14(1)(b) of the Housing (Scotland) Act 2006 and in particular the landlord had failed to ensure that:-

- (a) the house is wind and watertight; and
- (b) the structure and exterior of the house is in a reasonable state of repair.

The Private Rented Housing Committee now requires the landlord to carry out such work as is necessary for the purpose of ensuring that the house concerned meets the repairing standard and that any damage caused by the carrying out of the works in terms of the order is made good.

In particular the Private Rented Housing Committee requires the landlord to carry out the following work

- To carry out repairs to the walls in both bedrooms to identify the causes of dampness and to eradicate the dampness

The Private Rented Housing Committee orders that the works specified in this Order must be carried out within six weeks of the date of this Order.

A landlord or tenant aggrieved by the decision of the Committee may appeal to the Sheriff by summary application within 21 days of being notified of that decision. The appropriate respondent in such appeal proceedings is the other party to the proceedings and not the PRHP or the Committee which made the decision.

Where such an appeal is made the effect of the decision or of the order is suspended until the appeal is abandoned or finally determined. Where the appeal is abandoned or finally determined by confirming the decision, the decision and the order are to be treated as having effect from the day on which the appeal is abandoned or so determined.

Signed **J Bauld**
James Bauld, Chairperson

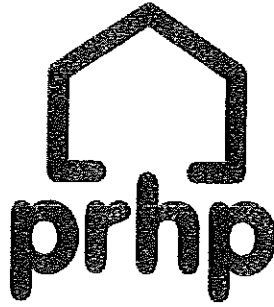
Date *12 May 2011*

Signature of Witness **M Haughton**
Date *12 May 2011*

Name: *MARY HAUGHTON*

Address: 7 West George Street, Glasgow, G2 1BA

Designation: *LEGAL EXECUTIVE*



Determination by Private Rented Housing Committee

Statement of Decision of the Private Rented Housing Committee

(Hereinafter referred to as "the Committee")

Under Section 24(1) of the Housing (Scotland) Act 2006

Case Reference Number: PRHP/PA2/20/11

Re:- Property at Flat 0/1, 3 Mary Street, Paisley, PA2 6JF ("the property")

Land Register Title Number:- REN36113

The Parties:-

Mark Fairman residing at Flat 0/1, 3 Mary Street, Paisley, PA2 6JF ("the tenant")

And

David Henry Jenkins residing at 43b Cautley Avenue, Clapham, London per Castle Residential,
63 Causeyside Street, Paisley, PA1 1YT ("the landlord")

The Committee comprised:-

Mr James Bauld	- Chairperson
Mr Michael Links	- Surveyor member
Mr James Riach	- Housing member

Decision

The Committee unanimously decided that the landlord had failed to comply with the duties imposed by Section 14(1) (b) of the Housing (Scotland) Act 2006 ("the 2006 Act"). The Committee accordingly proceeded to make a repairing standard enforcement order (RSEO) as required by Section 24(2) of the 2006 Act

Background:-

1. By application dated 31st January 2011, the tenant applied to the Private Rented Housing Panel ("PRHP") for a determination that the landlord had failed to comply with the duties imposed by Section 14 (1) (b) of the 2006 Act.

2. In the application made by the tenant, the tenant stated that he considered that the landlord had failed to comply with his duty to ensure that the house met the repairing standard and in particular that the landlord had failed to ensure that:-
 - (a) the house was wind and water tight and in all other respects reasonably fit for human habitation;
 - (b) that the structure and exterior of the house including drains, gutters and external pipes were in a reasonable state of repair and in proper working order;
 - (c) that the installations in the house for the supply of water, gas and electricity and for sanitation, space heating and heating water were in a reasonable state of repair and in proper working order; and
 - (d) that any fixtures or fittings and appliances provided by the landlord under the tenancy were in a reasonable state of repair and in proper working order.
3. The tenant subsequently provided further written information to the Committee dated 22 March 2011.
4. Upon receipt of the application, the tenant was required by the PRHP to produce evidence that intimation of the alleged outstanding repairs had been made upon the landlord. The tenant thereafter sent a letter by recorded delivery on 4 February 2011 to the landlord's agents setting out the alleged outstanding repairs. Evidence of that was produced to the PRHP.
5. By letter dated 15 February 2011, 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.
6. By letter dated 23 March 2011, the Private Rented Housing Committee served notice of referral under and in terms of the 2006 Act upon both the landlord and the tenant indicating that an inspection and hearing would take place on 19 April 2011 at 10 am.
7. The Committee inspected the property on the morning of 19 April 2011. The tenant was present during the inspection. The landlord was neither present nor represented.
8. Following the inspection of the property, the Committee held a hearing at the offices of the Private Rented Housing Panel in Glasgow. At that hearing the tenant was in attendance. The landlord was neither present nor represented at the hearing.

Summary of issues

9. The issues complained of by the tenant in his application before the Committee can be summarised as follows:-
 - Dampness in the bathroom, main bedroom and second bedroom
 - Condensation throughout the house
 - Fridge freezer , cooker hob and electric oven not working properly
 - Gas fire in living room not working properly

During the inspection, the tenant indicated that he no longer wished to insist upon the elements of his application relating to the various appliances and to the gas fire. He indicated that these matters had been resolved to his satisfaction.

The Hearing

10. The Committee members had noted during the inspection that there appeared to be evidence of dampness in both bedrooms within the property.
11. On entering the property through the main door, the 2 bedrooms are situated to the left hand side. Each bedroom faces the front of the property. The first bedroom on the left upon entering the house is a smaller bedroom. There is evidence of a damp patch on the wall to the left of the window frame within this bedroom. In the larger bedroom there is presence of dampness on the wall which forms the gable wall of the property. The existence of the dampness was noted both visually by the members of the Committee and confirmed by protimeter meter readings.
12. There were also patches of black staining within each of the bedrooms. Protimeter readings on these patches did not produce evidence of ongoing dampness. At the hearing, the tenant was questioned with regard to the areas of dampness within the property. He indicated that he had moved into the property in October 2010 and that there had been substantial problems in the property with condensation over the winter months. He did concede that the condensation was now improving as the weather was improving. He indicated that he had taken advice from the Council Environmental Health Department who had advised him that with regard to the condensation problem he required to ventilate the property and had been told to open windows. The tenant also confirmed that he tended not to use the gas central heating system within the property as he found this too expensive to run. He tended to use electric fires in the bedroom and a gas fire within the living room. The tenant indicated that he had previously been a council tenant for over 20 years and that he had never had similar problems with his council tenancy as he had in this one. The tenant confirmed that he was aware of the damp patch on the wall in the small bedroom. He indicated that at times he could almost hear running water within that room. He had no idea of the source of any such running water. He also confirmed there appeared to be no broken guttering outside the property. He also confirmed that so far as he was aware, there was no plumbing in the room above him in the tenement block. He assumed that the room above his bedroom was also used as a bedroom by his upstairs neighbour.
13. The tenant also confirmed during the hearing that the gas fire had been repaired the previous week and that the Gas Safety Certificate had been issued. He produced the certificate to the Committee at the hearing. He confirmed that he did not wish to pursue the element of his application which related to the gas fire nor the element of his application which related to the various kitchen appliances.

Findings of Fact

14. Having considered all the evidence the Committee found the following facts to be established:-
 - a) The subjects of let comprised a ground floor flat in a 2 storey tenement building. The building is of stone construction and has a concrete tiled roof. The individual flat consists of a hall, living room, 2 bedrooms, kitchenette and shower room. The windows throughout the property are UPVC double glazed units. The property has a gas central heating system. The property has shared access to garden grounds to the front, side and rear of the property.

- (b) There was evidence of dampness on the wall of the first bedroom on the left as you entered the property. There was a damp patch which was clearly visible on the wall to the left of the window frame. A photograph of the damp patch will be attached to this decision. Protimeter readings confirmed the existence of dampness.
- (c) Within the second bedroom, there was evidence of dampness on the wall which forms the gable wall of the property. The dampness was in the gap underneath the fitted units close to electrical sockets. Again dampness was confirmed by protimeter readings.
- (d) There were also areas within both bedrooms and the bathroom of black staining on the walls which the Committee believe were caused by condensation. However these areas did not show active dampness and the Committee believed them to be superficial and cosmetic.

Reasons for Decision

- 15. The Committee considered the issues of disrepair set out as above and reached the following conclusions:-
 - The damp patches in the two bedrooms indicated the property was not water tight and was not reasonably fit for human habitation. The Committee were satisfied this failure constituted a clear breach of Section 13(1) of the 2006 Act. The Committee were not satisfied that the black staining on the walls in the bedrooms and bathroom constituted a failure on the part of the landlord in respect of Section 13(1) of the Act. The Committee took the view that these patches of black staining were simply cosmetic and superficial and did not show evidence of dampness. The Committee determined that the two areas of dampness both required to be attended to before the house could be said to meet the repairing standard.
- 16. The decision of the Committee was unanimous.

Rights of Appeal

- 17. A landlord or tenant aggrieved by the decision of the Committee may appeal to the Sheriff by summary application within 21 days of being notified of that decision.
- 18. The appropriate respondent in such appeal proceedings is the other Party to the proceedings and not the PRHP of the Committee which made the decision.

Effects of Section 63

- 19. Where such an appeal is made, the effect of the decision and of any Order made in consequence of it is suspended until the appeal is abandoned or finally determined.

20. Where the appeal is abandoned or finally determined by confirming the decision, the decision and the Order made in consequence of it are to be treated as having effect from the day on which the appeal is abandoned or so determined.

Signed **J Bauld**

Date *12 May 2011*

James Bauld, Chairperson

Signature of Witness.. **M Haughton** Date... *12 May 2011*

Name, address and occupation of the witness (please print):-

MARY HAUGHTON, LEGAL EXECUTIVE
7 West George Street Glasgow G2 1BA

Certified a true copy	
J Bauld	Legal Member
Private Rented Housing Panel	
Date: <i>12 May 2011</i>	