



**Notice of Variation
of
A Repairing Standard Enforcement Order**

Ordered by the Private Rented Housing Committee

prhp Ref: Prhp/EH54/119/11

Re : Property at 185 Clement Rise, Dedridge, Livingston EH54 6LP ("the house")

Title No: MID34869

The Parties:-

Mohsan Javaid Syed, 15 Clova Drive, Livingston EH54 9HD (represented by his agent J & C Property Lettings, 13 Onslow Street, Craigshill, Livingston EH54 5HR) ("the Landlord")

Vanessa Garner, 185 Clement Rise, Dedridge, Livingston EH54 9HD ("the Tenant")

NOTICE TO The Parties

The Private Rented Housing Committee having determined on 27 April 2012 that the **Repairing Standard Enforcement Order** relative to the house dated 23 September and served on 30 September 2011 and previously varied on or about 7th November 2011 should be varied, the said **Repairing Standard Enforcement Order is hereby further varied** with effect from the date of service of this Notice in the following respects:-

1. in part (c) of the Order -
 - (a) Immediately after "electrician" where it first occurs inserting "of a contractor";
 - (b) Immediately after "(NICEIC)" inserting the following,

"to obtain from such electrician (a) a report confirming that there are no items in the house adversely affecting electrical safety and in particular that none of the items listed 1 to 14 on page 2 of the Domestic Electrical Installation Condition Report from R. Smith of Livingston Property Maintenance Ltd dated 6th February 2012 continue to adversely affect electrical safety; failing which in whole or in part; (b)"

2. The period allowed for the completion of the work required by the order is extended to 21 days from the date of service of this Notice.

Subsection 25(3) of the Housing (Scotland) Act 2006 does not apply in this case.

A landlord or a tenant aggrieved by this 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 variation is suspended until the appeal is abandoned or finally determined, and where the appeal is abandoned or finally determined by confirming the decision, the variation will be treated as having effect from the day on which the appeal is abandoned or so determined.

In witness whereof these presents typewritten on this and the preceding page(s) are executed by David Bartos, Advocate, Parliament House, Parliament Square, Edinburgh EH1 1RF, chairperson of the Private Rented Housing Committee at Glasgow on 27th April 2012 before this witness:-

D Bartos

chairman

I MacLean

witness

IAIN MACLEAN

name in full

EUROPA BUILDING

Address

450 ARGYLE STREET

GLASGOW G2 4TZ

PANEL CLERK

Occupation



**Decision of Private Rented Housing Committee
under Section 25 (1) of the Housing (Scotland) Act 2006**

Statement of Reasons for Decision of the Private Rented Housing Committee

(Hereinafter referred to as "the Committee")

Under Section 25(1) of the Housing (Scotland) Act 2006

Case Reference Number: Prhp /EH54/119/11

Re : Property at 185 Clement Rise, Dedridge, Livingston EH54 6LP ("the house")

Title No: MID34869

The Parties:-

Vanessa Garner, 185 Clement Rise, Dedridge, Livingston EH54 6LP ("the Tenant")

**Mohsan Javaid Syed, 15 Clova Drive, Livingston EH54 9HD ("the Landlord"),
(care of his agent Laverne Hastie, 36 Argyll Wynd, Carfin, Motherwell ML1 1GJ)**

The Committee comprised:-

Mr David Bartos	- Chairperson
Mr Ian Mowatt	- Surveyor member
Mrs Christine Anderson	- Housing member

Decision

The Committee varied part (c) of the Repairing Standard Enforcement Order dated 23 September 2011 as varied, by in part (c) -

1. Immediately after "electrician" where it first occurs inserting "of a contractor"
 2. Immediately after "(NICEIC)" inserting the following,
"to obtain from such electrician (a) a report confirming that there are no items in the house adversely affecting electrical safety and in particular that none of the items listed 1 to 14 on page 2 of the Domestic Electrical Installation Condition Report from R. Smith of Livingston Property Maintenance Ltd dated 6th February 2012 continue to adversely affect electrical safety; failing which in whole or in part; (b)"
 3. allowing 21 days for any outstanding works to be done in the Order
- and otherwise refused to vary the Order.

Background:-

1. The Committee issued a Repairing Standard Enforcement Order ("RSEO") in respect of the house dated 23 September 2011. The Committee issued a variation of the RSEO on or about 4 November 2011. In terms of that variation the works in the RSEO required to be completed by 25 November 2011. On 30th November 2011 Mr Mowatt carried out a reinspection of the house. He found that the work remained uncompleted in material respects. Owing to uncertainty over whether the tenancy was continuing and any continuing interest of the Tenant, and that the works were continuing the Committee took no decision on failure to comply with the RSEO at that stage. On 2nd February 2012 Mike Links, a surveyor instructed by the Committee carried out a reinspection of the house. He found that the works had been completed apart from those in parts (c), (k) and (l) of the RSEO. He produced a Re-inspection Report dated 3rd February 2012 which is referred to for its terms. He was told by the Landlord's then agent, Stephen Kerr of J & C Property Lettings that an electric certificate had been obtained in respect of part (c) of the RSEO. He was also advised by the agent that part (l) (smoke alarms) would be attended to as soon as possible.
2. The Landlord's agents thereafter forwarded to the Committee :
 - (1) pages 1 and 2 of a 7 page "Domestic Electrical Installation Condition Report" from an R. Smith of Livingston Property Maintenance Ltd dated 6th February 2012;
 - (2) "Domestic Periodic Inspection Report for an Electrical Installation" from an Alex Boyd of A.C. Electrical Services dated 12th February 2012.
3. Following receipt of this information, the Committee enquired with the National Inspection Council for Electrical Installation Contracting ("NICEIC") whether any of the said individuals' firms were registered with them. By e-mail dated 12th March 2012 addressed to the Clerk of the Committee the NICEIC confirmed that neither of the firms were registered with the NICEIC.
4. The Livingston Property report made no reference to the part (c) of the RSEO. It stated that the purpose for which it was required was "change of occupancy and installation of new consumer board, upgrading earthing to gas and water and installation of two mains smoke detectors".
5. It found the overall assessment of the electrical installation to be unsatisfactory in terms of its suitability for continued use. It referred the reader to page 3 for a summary of the general condition of the installation in terms of electrical safety but the Committee were not supplied with pages 3 to 7 of the report. On page 2 of the Livingston Property report, two items were found to present danger and risk of injury and requiring immediate remedial action. Some further 7 items were found to be potentially dangerous requiring urgent remedial action and some 5 items were found to be recommended for improvement.

6. The AC Electrical report made no reference to the Livingston Property report whatever and there was nothing in it to indicate that Mr Boyd, the author, had regardless of the qualification of his firm, even seen the Livingston Property report. The Livingston Property report had written on it by an unknown hand, a statement that the faults on page 2 had been "repaired by second electrician company".
7. By letter to the Landlord's agents issued on or about 2nd April 2012 the Committee's clerk intimated to the Landlord the said re-inspection report, the e-mail from the NICEIC and the Scottish Government guidance on smoke alarms and invited the Landlord to comment on whether there had been failure to comply with the RSEO.
8. By e-mail of 16th April 2012 the Landlord's new property manager Laverne Hastie informed the Committee that she had taken over the management of the house from J & C Property Lettings. The e-mail is referred to for its terms. In it she narrates that the change from the first to the second electricians was because Mr Kerr had advised the Landlord that the PRHP would not accept work from the first electricians, and that the second electricians did any work required after looking over the house. In the same e-mail Ms Hastie stated,

"I can advise that all electrical works have been fully completed by a qualified electrician, both from Livingston Property Maintenance Ltd and A.C. Electrical Services. I am however aware that these company's [sic] are not approved NICEIC contractors. Again we were never made aware that this was the case, otherwise I would have researched into having the work carried out as requested by NICEIC contractor. I only hope and ask that under the circumstances you may re-consider that it has to be carried out by NICEIC due to the fact that the work has definitely been undertaken by qualified companies."

The Committee considered that the request in the last sentence amounted to an application for a variation of part (c) of the RSEO.
9. By letter dated 18th April 2012 to the PRHP the Landlord confirmed that Ms Hastie was his new property manager and that J & C Property Lettings were no longer his agents. By e-mail received by the Committee on 20th April 2012 the new agent also provided the Committee with an invoice for A.C. Electrical Services (the producers of the AC Electrical report) dated 11th February 2012 which is referred to for its terms.
10. By letters to both the Landlord's former agents and the Tenant dated 14th December 2011 the Committee enquired as to whether the tenancy had been terminated by agreement. There being no reply to those letters from either party the Committee made a further inquiry by means of letters to both the Landlord's former agents and the Tenant dated 8th March 2012. By said letters the Committee intimated that in the absence of a reply by 20th March 2012 they would draw an inference that the tenancy had been lawfully terminated. There was no response to said letters. The Committee

decided that in the light of the evidence before it intimation of the e-mail of 16th April to the Tenant and a hearing was unnecessary.

11. The evidence before the Committee consisted of that mentioned in the previous variation decision and :-

- Letters from the Clerk to the Tenant and J & C Property Lettings dated 14th December 2011
- The Re-inspection report dated 3rd February 2012
- E-mail from PRHP to Mr Kerr of J & C Property Lettings dated 10th February 2012
- E-mail from Mr Kerr of J & C Property Lettings to PRHP dated 13th February 2012
- Domestic Electrical Installation Condition Report from R. Smith of Livingston Property Maintenance Ltd dated 6th February 2012 (page 1 and 2 of 7 pages only)
- Domestic Periodic Inspection Report for an Electrical Installation from Alex Boyd of A.C. Electrical Services dated 12th February 2012
- Letters from the Clerk to the Tenant and J & C Property Lettings dated 8th March 2012
- E-mail dated 12th March 2012 addressed to the Clerk of the Committee from the NICEIC
- Letter from the Committee to J & C Property Lettings dated 2nd April 2012
- E-mail dated 16th April 2012 from Ms Hastie to the Committee
- Letter from the Landlord to the PRHP dated 18th April 2012
- Invoice from A.C. Electrical Services dated 11th February 2012

Findings of Fact

6. Having considered all the evidence, the Committee found the following facts to be established:-

- (a) The RSEO dated 23 September 2011 was served on the Landlord on 30 September 2011. Accordingly the Landlord had until 28 October 2011 to carry out and complete the works required under the RSEO.
- (b) Livingston Property Services Ltd are not registered with the NICEIC
- (c) A.C. Electrical Services Ltd are not registered with the NICEIC
- (d) On 2nd February 2012 the Landlord's agent Mr Kerr informed the Committee's surveyor Mr Links that an electrical certificate had been obtained and that it would be remitted to the PRHP as soon as possible. No such certificate was remitted
- (e) On 6th February 2012 Raymond Smith of Livingston Property Services Ltd reported that there were 14 items in the house which adversely

affected electrical safety. Those items are listed on page 2 of the Livingston Property report.

- (f) By the end of 2011 the tenancy had been mutually renounced and terminated.

Reasons for Decision

7. None of the findings in fact were in dispute. In determining whether to vary part (c) of the RSEO the Committee had regard to the reasons why it was imposed as set out in paragraph 20 of the Statement of Reasons for the RSEO dated 23rd September 2012, and the consequent risks to safety for those in the house. Given the paramount objective of safety and that the Committee do not have technical electrical expertise the Committee took the view that the electrical system of the house should be checked by an electrician registered with the National Inspection Council for Electrical Contracting (NICEIC) which is a body which has been assessing technical standards of electricians for many years and which maintains a guarantee of standards scheme and complaints procedure.
8. The reason for the request for variation was that the work in part (c) of the RSEO had "definitely been done by qualified companies". The work in part (c) comprises the investigation of the whole electrical system of the house, the obtaining of recommendations for all works necessary to make all electrical installations in the house in a reasonable state of repair and in proper working order, and to carry out the recommended remedial work. Leaving aside the need for NICEIC registration, part 3 of their report does not make it self-evident that Livingston Property Services were asked to investigate the whole electrical system of the house. For some reason the full version of the Livingston Property report has not been produced. It is unclear why Livingston Property Services were dispensed with in favour of another non-NICEIC registered contractor. For all of these reasons it is not self-evident that the whole electrical system of the house was investigated by them and that the defects set out in page 2 are fully comprehensive. So far as A.C. Electrical Services are concerned, there is equally no evidence that A.C. Electrical Services saw either part (c) themselves or the full Livingston Property report from Livingston Property Services. It is not clear from the invoice from A.C. Electrical that they remedied the defects set out in the Livingston Property report, or any other work set out on page 1 of that report as claimed by the Landlord's agents. Indeed the minor charges for materials by A.C. Electrical tend to suggest the contrary. In addition the A.C. Electrical report states that estimated age of alterations or additions was 8 years whilst the Livingston Property report states no evidence of alterations or additions. It is also claimed that A.C. Electrical repaired the defects in the Livingston Property report but in their report A.C. Electrical appear to be unaware of the Livingston Property previous inspection. In these circumstances neither of the reports or part of them as supplied to the Committee give it the confidence to conclude that all of the work

required by part (c) has definitely been done and on that basis to vary the requirement for NICEIC registration.

9. The Committee appreciates that registration with the NICEIC is not the only means by which it could be satisfied that a comprehensive and proper inspection had been carried out by a properly qualified electrical contractor. There are other bodies with whom electricians are registered who have a similar function in ensuring quality control. However the Committee has not been given any evidence that either Livingston Property or A.C. Electrical have any such registration at all.
10. Finally if it is the case as is claimed for the Landlord, that the whole electrical system in the house is in a reasonable state of repair and in proper working order, it does not seem to the Committee that it is an undue burden for the Landlord to have an NICEIC registered contractor electrician carry out the necessary inspection in part (c) in the knowledge of both part (c) of the RSEO and the Livingston Property Services report and confirm that no works require to be done. It is unclear to the Committee whether the Landlord was actually aware of the requirement for NICEIC registration before 12th April 2012 but his agent was fully aware of that requirement and the agent's awareness must be imputed as a matter of law to the Landlord. If the Landlord has a complaint in this regard it must lie against his previous agent.
11. To allow for the possibility that no further remedial works are required, the Committee has decided to vary the RSEO to allow for the Landlord to produce a certificate from an NICEIC registered electrical contractor to accord with that possibility.

Decision

12. In the exercise of its discretion the Committee varied the RSEO as set out above and otherwise decided not to vary it. The decision of the Committee was unanimous.

Rights of Appeal

13. A landlord or tenant aggrieved by this decision of the Committee may appeal to the Sheriff by summary application within 21 days of being notified of that decision.
14. Unless the lease or tenancy between the parties has been brought to an end, the appropriate respondent in such appeal proceedings is the other party to the proceedings and not the Private Rented Housing Panel whose Committee which made the decision.

Effects of Section 63 of the 2006 Act

15. Where such an appeal is made, the effect of this decision and of any Order made in consequence of it is suspended until the appeal is abandoned or finally determined.
16. 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.

D Bartos

Signed Date: April 27
2012.....

David Bartos, Chairperson

I MacLean

Signature of Witness

Date.... 27/4/12

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

IAIN MACLEAN
EUROPA BUILDING
450 ARGYLE STREET
GLASGOW G2 4TZ
PANEL CLERK