



Repairing Standard Enforcement Order

Ordered by the Private Rented Housing Committee

prhp Ref: PRHP/RP/13/0033

Re : 107 Thornton Avenue, Bonnybridge, FK41AP

The Parties:-

Allison Lindsay formerly residing at 107 Thornton Avenue, Bonnybridge, FK4 1AP and now residing at 32 Letham Terrace, Falkirk, FK2 8QR (**"the Tenant"**)

Sayed Abas, 9 Holding, Kilsyth Road, Bonnybridge FK41HD (**"the Landlord"**)

NOTICE TO (**"the Landlord"**)

Whereas in terms of their decision dated 23rd September 2013, 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 to ensure that:-

The property has satisfactory provision for detecting fires and for giving warning in the event of fire or suspected fire in terms of s13(1)(f) of the Act.

the Private Rented Housing Committee now requires the landlord to carry out such work as is necessary for the purposes of ensuring that the house 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:-

To install inter-connected smoke detectors on ground and first floors of the property, and to ensure that the smoke detectors are powered from the mains electrical circuit.

The Private Rented Housing Committee order that the works specified in this Order must be carried out and completed within six 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.

In witness whereof these presents are executed by Paul Doyle, solicitor, 24 Haddington Place, Edinburgh, chairperson of the Private Rented Housing Committee at Edinburgh on 24th September 2013 before this witness:-

G Smith
_____ witness

P Doyle
_____ chairman

GRACE SMITH
Secretary
24 Haddington Place
Edinburgh



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

prhp Ref: PRHP/RP/13/0033

Re : Property at 107 Thornton Avenue, Bonnybridge, FK41AP (“the Property”)

The Parties:-

Allison Lindsay formerly residing at 107 Thornton Avenue, Bonnybridge, FK4 1AP and now residing at 32 Letham Terrace, Falkirk, FK2 8QR (**“the Tenant”**)

Sayed Abas, 9 Holding, Kilsyth Road, Bonnybridge FK41HD (**“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) in relation to the house concerned, and taking account of the oral & documentary evidence presented by both the Landlord and the Tenants at the hearing, determined that the Landlord had failed to comply with the duty imposed by Section 14 (1)(b) of the Act.

Background

1. By application dated 19 April 2013 the tenant applied to the Private Rented Housing Panel to determine whether the landlord had failed to comply with the duties imposed by section 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:-

- a. The house is water tight and in all other respects fit for human habitation.
- b. The installations in the house for the supply of water and electricity are in a reasonable state of repair and in satisfactory working order.

- c. The house has satisfactory provision for detecting fire and for giving warning in the event of fire or suspected fire.

3. By letter dated 26 June 2013 the president of the Private Rented Housing Panel intimated a decision to refer the application under s22(1) of the Act to a Private Rented Housing Committee. The Committee consisted of:

Paul Doyle (Legal Member)
Ian Mowatt (Surveyor Member)
Christine Anderson (Housing Member)

4. 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.

5. Following service of the notice of referral the Tenant did not make any further representations and relied on the original application dated 12 April 2013. The Landlord made no further written representations to the Private Rented Housing Committee.

6. The Private Rented Housing Committee inspected the property at 10am on 5 September 2013. The tenant vacated the property on 7 June 2013, however, by interlocutor dated 24 June 2013 the President of the Private Rented Housing Panel directed that this application should be determined on public interest grounds, because of the nature of the alleged repairs required. The Landlord was present and welcomed Committee members into the property and showed Committee members around the property.

7. Following inspection of the property the Private Rented Housing Committee held a hearing at Bonnybridge Community Centre, Bridge Street, Bonnybridge. The Tenant was neither present nor represented. The Landlord came to the hearing. After Committee members were introduced, the Landlord answered questions from Committee members. The Committee then reserved their determination. The committee take account of observations from the inspection of the property, the Landlord's oral evidence and the documentary evidence placed before the committee.

8. It is the tenant's position that the property does not meet the repairing standards in three respects:

- a. That the house is not wind and water tight and in all other respects fit for human habitation.
- b. That the installations for the supply of water and electricity are not in a state of repair and are not in reasonable working order.
- c. That the property does not have satisfactory provision for detecting fires or for giving warning in the event of a suspected fire.

It is the tenant's position that she made repeated application to the landlord to attend to necessary repairs, but that the landlord refused or delayed to carry out the repairs.

9. The landlord argued that he has done everything in his power to ensure that the property meets the repairing standard and that the tenant is just making a vexatious report against him. The landlord explained that his relationship with the tenant steadily deteriorated and that on occasion he was denied access to carry out repairs. It is the landlord's position that the tenant caused damage to the property herself.

10. The issues to be determined are

- a. Are the installations in the house for the supply of gas, water and electricity, and the space heating in a good state of repair?
- b. Is the house wind and water tight and in all other respects reasonably fit for human habitation?
- c. Does the house have satisfactory provision for detecting fires and for giving warning in the event of fire or suspected fire?

FINDINGS IN FACT

11.(a) The landlord is the heritable proprietor of the subjects known as and forming the semi-detached house, 107 Thornton Avenue, Bonnybridge, FK41AP. The landlord purchased the property in May 2006. The property is a two storey semi-detached house with gardens to front and rear and a drive way to the side. On the ground floor there is a hallway, two public rooms, a kitchen and a bathroom. One flight of stairs leads to the first floor which has two bedrooms, a bathroom and a storage cupboard.

(b) On 28 February 2013 the landlord agreed to let the property at 107 Thornton Avenue, Bonnybridge, FK41AP to the tenant. The parties entered into a lease agreement, providing for entry to the property on 28 March 2013. The lease was to endure until 28 March 2017. The tenancy created is an Assured Tenancy. The tenancy agreement between the parties imposes responsibilities upon the landlord consistent with the repairing standard contained in s14 of the Act.

(c) Before moving in to the property the tenant knew that there was damp staining on the walls of the bedrooms on the first floor of the property. The tenant also knew that a previous tenant had ripped out a fitted wardrobe in the front bedroom of the property, so that there were no skirting boards fixed around the wall in a small recess in the front bedroom of the property, where the fitted wardrobe had been.

(d) In the summer of 2012 the local authority carried out work to the chimney serving the neighbouring property (105 Thornton Avenue) and the property which is the subject of this application. The work to the chimney head was

defective and allowed water to enter through the chimney and run down the party wall separating 105 and 107 Thornton Avenue. As a result, damp staining appeared on the walls of the front and rear bedroom at 107 Thornton Avenue, Bonnybridge.

(e) In April 2013 the tenant contacted the local authority complaining about the damp staining in the property. The local authority investigated and found that the felt roof of the property is in good condition but that there was an area of spalling to the rough cast around the wall head below the coping. It is likely that water was entering the property from there.

(f) Water penetration continued to affect the property until at least the time that the tenant vacated the property on 7 June 2013. Throughout May 2013 the damp staining on wall of the front and rear bedrooms of the property increased and moisture readings were found on the wall and ceiling of both bedrooms.

(g) After the tenant vacated the property the landlord instructed the re-pointing of the chimney head, which stopped the water penetration. He then installed dehumidifiers, and turned the central heating in the property to a high temperature setting. At the date of inspection, both bedrooms had been redecorated. Meter readings in the rear bedroom on the date of inspection did not find any trace of damp. Meter readings in the front bedroom on the date of inspection disclosed that the ceiling was mainly dry but that there were low damp readings taken from the ceiling; however the walls were entirely dry. It is unlikely that there is any need for any further remedial work, and provided the property is heated and ventilated, the walls are likely to be entirely dry within a few days.

(h) There are no longer damp stains nor discolouration in any of the bedrooms of the property.

(i) Battery operated smoke alarms are located on the ceiling of the first floor, in the hall adjacent to the front door, and on the ceiling to the landing on the first floor. They are the only forms of smoke detection within the property; they are not connected to the mains electrical system. In or about May 2013, the landlord was advised by the Private Sector Housing Officer of Falkirk Council of the requirement to install mains wired smoke detectors. The property does not benefit from mains wired smoke detectors.

(j) There is one bathroom on the ground floor, and one bathroom on the first floor of this property. Both bathrooms have a shower fitted and an adequate supply of hot water to both showers. Both showers work properly.

(k) The property benefits from double glazed window units. The bedroom at the front floor of the first floor of the property has windows which open in two different directions. The window units open and close properly; there are no defects with the windows in the front bedroom of the property.

(l) In the front bedroom of the property there is a small recess at the party wall. There is no skirting board around the recess. There was no skirting board around the recess when the tenant moved into the property. The lack of skirting in the recessed area was caused because a fitted wardrobe was removed by a previous tenant.

(m) Access to this property is gained by the front door at ground level which is reached by three small steps leading from the ground to the front door to the front door. The steps are constructed of brick with concreted flagstones on top. The flagstones have been re-pointed. At some point in the past the second step has had a crack in its centre. That crack has been filled and pointed. However, mono-block paving provided at ground level adjacent to the step is loose and missing.

(n) The rear bedroom of the property (situated on the first floor) has a fitted wardrobe unit with two mirrored doorways. There is a gap where, in the past, there may have been a third mirrored doorway. There is no longer a third mirrored doorway so that one section of the cupboard is now made up of open shelving. The two mirrored doors which remain on the cupboard are intact, they are undamaged and they run perfectly on their railings.

(o) The bath within the bathroom of the first floor of this property is enclosed with a properly fitted bath panel.

(p) The electrical circuit in the property is 13 AMP with PVC cables. There is no evidence of any defects in the wiring of the property.

REASONS FOR DECISION

12(a) The Committee inspected this property at 10am on 5 September 2013. Only the landlord was present. The landlord welcomed Committee members into the property and allowed Committee members to inspect the interior of the property.

(b) A hearing took place at Bonnybridge Community Centre, Bonnybridge. The landlord was present. The tenant was neither present nor represented. No application was made for an adjournment. The tenant no longer occupies the property. The Committee proceeded to convene the hearing and take account of the oral evidence given by the landlord together with the Committee's own observations from the inspection carried out earlier that morning.

(c) The landlord told the Committee members that he is a responsible landlord and that he has had trouble from a number of tenants, including the applicant tenant. It is the landlord's position that he has carried out certain works to prepare the property for re-letting & that in any event there were no defects with the property.

(d) In this case Committee members place reliance on the observations made at inspection. The Tenant complains that the property is troubled by damp and

lodges an exchange of emails between the applicant and the local authority Housing department which quite clearly show that in the months leading to May 2013 this property suffered from damp penetration, coming from the chimney stack serving this property and its neighbour 105 Thornton Avenue. It is clear from the terms of the exchange of emails that there is a history (extending for more than a year) of discussion with the landlord concerning the need for repairs to the chimney head serving the property. It is equally clear from the emails that the landlord refused to join in the common repairs and that the local authority took it upon themselves to carry out repairs to the communal chimney. It is clear from the exchange of emails that throughout the period of discussion, there was water penetration. The landlord told the Committee that he had used dehumidifiers in the property to dry out the property. The conclusion that the Committee have come to is that when the applicant made her complaint, her complaint was justified and that there was water damage and damp penetration to both bedrooms in this property. However the problem has now been remedied. The source of water penetration has been found; a repair has been carried out; the bedrooms have been redecorated and no significant damp problems were found when the surveyor member of the Committee used a damp meter on the walls and ceilings of the two properties. The meter readings disclosed that there was no residual damp on the walls and ceilings of the rear bedroom. However, low damp readings were found on the ceiling on the front bedroom. The conclusion that the Committee draws is that there is no need for remedial works however the landlord will want to keep the property properly heated and ventilated to ensure that the low residual damp in the ceiling dries out properly.

(e) The tenant complains that there are problems with the plumbing serving both showers. Committee members walked into both bathrooms and turned the showers on. Water flowed with a good steady force into both baths, and then drained away. Despite inspection, Committee members could not find any defect in the plumbing serving either of the showers in the property.

(f) The tenant complains that the first floor front bedroom window is broken. Committee members inspected the window serving the front bedroom and found that the glazing was entirely intact and that the framing was intact. The window unit is designed to open in two different ways; both window units opened in the ways they are designed to open and closed without difficulty. Committee members could not find any evidence of a fault in the window of the front bedroom on the first floor of the property.

(g) The Tenant complains that skirting board is missing from the front bedroom of the property. The Tenant is correct in so far as there is a small recess area where skirting board is not fitted. The landlord told us that a previous tenant had removed a fitted wardrobe from that property. Relying on the Committee member's own skill, knowledge and experience, we find that the landlord's explanation is the most likely explanation for the absence of skirting board in the recess of the front bedroom to the property. The absence of skirting does not amount to a failure of installation. It does not amount to an installation not being in working order or in a state of repair. It is a cosmetic

defect and no more than that. In any event there was no skirting when the tenant moved in in that area of the first floor bedroom, so that there is not a defect in installation or a fixture in fitting provided by the landlord.

(h) The Tenant complains that there is a "broken front door step". When we examined the steps to the front door step it became quite clear that there had at some point been a break running across the middle of the second step. The steps have been repointed. The break has been filled and sealed. Any damage there might have been to the front door step no longer exists. However the mono block linking the bottom step to the driveway at the solum is loose and missing. The damage to the solum does not form part of the applicant's complaint. However the landlord now has notice that a defect is there. It is a defect that is easily remedied. The landlord has clearly carried out works to the property and the Committee are confident that the landlord will want to repair and repoint the mono block where the steps meet the solum of the driveway to prevent such a minor defect from providing the potential for a further complaint.

(i) The Tenant complains that there is a cupboard door which "*needs hanging*" and a bath panel which "*needs fitting*". Inspection of both bathrooms revealed that the bath panels are properly fitted and, at the date of inspection, no defect to a fixture or fitting was apparent. Committee members noted that there was a large walk in cupboard in first floor landing which is served by a door which is properly fitted. Committee members think that the applicant may have been referring to a cupboard in the rear bedroom of the property, which features two mirrored doors. The two mirrored doors that were there are in perfect working order. However it was clear from the size of the cupboard unit that the unit could be completed by a third mirrored door. There is no trace of a third mirrored door, so that when the mirrored doors are closed there is one section of the wardrobe which forms open shelving. On the evidence presented to us we cannot make a finding in fact that the third mirrored door existed at any point in the duration of the applicant's tenancy. The applicant's choice of words that the door "*needs hanging*" indicate that the door was not there throughout the duration of the tenancy. There was no evidence of a door lying either in this property or in its curtilage, therefore we find that there is no defect with the wardrobe or its two mirrored doors.

(j) The Tenant complains that the electrics need "*looked at*". It is a shame that the Tenant's complaint about a feature which could have great significance is vague and lacks specification. Committee members could not find that there was an evident defect with the electrical circuit in this property. On inspection the Committee found that the property is served by an electrical circuit with 13 AMP PVC cables. All electrical appliances examined by the Committee worked without difficulty. Light switches operated without delay and with no apparent arcing. There was insufficient evidence given to the Committee, or gleaned by the Committee's inspection, to enable the Committee to make a finding that there are any electrical problems with this property.

(k) The only defect found by the Committee member relates to the smoke alarms. The landlord drew Committee member's attention to the smoke alarm

and explained to Committee members that they were battery operated smoke alarms installed by him & approved by the local fire authority. There are two difficulties for the landlord.

(1) It is clear from the exchange of emails placed before us that in May 2013 the landlord was told by a housing officer from the local authority that mains wired smoke detectors are required.

(2) The second and more practical difficulty for the landlord is that the applicant's tenancy commenced on 26 March 2013. At the date of commencement of the tenancy and at the date of the hearing there is no main smoke alarm in the property. In order to have satisfactory provision for detecting fire and giving warning in the event of fire, there must be a mains wired smoke alarm in any dwelling house in which the tenancy commenced after 3 September 2007. In this case the tenancy started four and a half years after 3 September 2007. The landlord does therefore not fulfil the repairing standard set out in s13(1)(f) of the 2006 Act because of the absence of smoke alarms fitted to and powered by the mains electrical circuit.

(m) We accordingly make a Repairing Standard Enforcement Order ordaining the landlord to install adequate inter-connected mains wired smoke alarms throughout this property within six weeks of today's date.

DECISION

13. The Committee accordingly determined that the landlord has failed to comply with the duty imposed by s13(1)(b) of the Act.

14. The Committee proceeded to make a Repairing Standard Enforcement Order as required by s24(1).

15. The decision of the Committee was unanimous.

RIGHT OF APPEAL

16. 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

17. 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.....
Chairperson

P Doyle

..... Date 23rd September 2013