



Repairing Standard Enforcement Order

Ordered by the Private Rented Housing Committee

prhp Ref: prhp/FK1/80/13

Re : Property at 57 Anderson Crescent, Shieldhill, Falkirk FK1 2ED ("the Property")

Land Register Title Number: STG49809

The Parties:-

William Moore Clark, sometime 17 Main Street, Redding, Falkirk FK2 9YD, care of Liddle & Anderson, Solicitors, 2 Market Street, Bo'ness, EH51 9AD ("the Landlord")
Ms Margaret Binnie, sometime 57 Anderson Crescent, Shieldhill, Falkirk FK1 2ED ("the Tenant")

NOTICE TO WILLIAM MOORE CLARK ("the Landlord")

Whereas in terms of their decision dated 16 August 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:-

- (a) any fixtures, fittings and appliances provided by the landlord under the tenancy 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 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 either to provide a written report from a suitably qualified engineer, confirming that the tumble dryer in the Property is in proper working order or, alternatively, to replace the tumble dryer in the Property.

The Private Rented Housing Committee order that the works specified in this Order must be carried out and completed within the period of three 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 type written on this and the preceding page) are executed by George Barrie Clark solicitor, Edinburgh, chairperson of the Private Rented Housing Committee at Edinburgh on 19 August 2013 before this witness:-

V Clark

witness

G Clark

chairman

Valerie Elizabeth Jane Clark
7 Newbattle Terrace
Edinburgh



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

prhp Ref: prhp/FK1/80/13

Re : Property at 57 Anderson Crescent, Shieldhill, Falkirk FK1 2ED ("the Property")

The Parties:-

M/s Margaret Binnie, sometime 57 Anderson Crescent, Shieldhill, Falkirk FK1 2ED ("the Tenant")

William Moore Clark, sometime 17 Main Street, Redding, Falkirk (represented by his agents Messrs Liddle & Anderson, Solicitors, 2 Market Street, Bo'ness EH51 9AD ("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 evidence led by both the Landlord and the Tenant 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 25 April 2013, the Tenant applied to the Private Rented Housing Panel for a determination of whether the Landlord had failed to comply with the duties imposed by Section 14 (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 wind and water tight and otherwise fit for human habitation,
 - (b) 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, and
 - (c) any fixtures, fittings and appliances provided by the Landlord under the tenancy are in a reasonable state of repair and in proper working order,
3. By letter dated 30 April 2013, the President of the Private Rented Housing Panel intimated a decision to refer the application under Section 22 (1) of the Act to a Private Rented Housing Committee.
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, the Landlord (by letter dated 13 May 2013), made written representations to the Committee. When a copy of this letter was sent to the Tenant, she made a further representation by e-mail dated 29 May 2013,

advising the Committee that she did not accept the allegations in the landlord's letter that she was responsible for causing some of the damage which was the subject of the application.

6. The Private Rented Housing Committee inspected the Property on the morning of 19 August 2013. The Tenant was not present during the inspection. The Landlord was not present, but was represented at the inspection by Mr William MacRae of Messrs Liddle & Anderson, Solicitors. The Committee comprised George Clark (chairman), Sara Hesp (surveyor member) and John Blackwood (housing member).
7. Following the inspection of the Property the Private Rented Housing Committee held a hearing at Westfield community Centre, Westfield Street, Falkirk and heard from the Landlord's representative, Mr MacRae of Liddle & Anderson, Solicitors. The Tenant was not present or represented at the hearing.
8. The Tenant, in her application, submitted as follows:- the front door was letting water in, a light switch had water coming out of it, a vent was needed in the landing window, the flush button on the upstairs toilet was not working, there was black on the ceiling of the en-suite and the tumble dryer was not working.
9. The Landlord submitted in writing as follows:- there had been difficulty in gaining access to inspect the Property, but, when access had been granted by the Tenant, no evidence of water ingress could be found, so no repair work was required around the front door or to the light switch adjacent to it. There was a vent missing in one of the upstairs windows and the Landlord was trying to source a vent. Given the Tenant's damage to other items within the tenancy and the fact that there were various other ways to dry clothes (a garden with incorporated drying facilities), the Landlord was reluctant to repair the tumble dryer, and the Landlord was still trying to source an alternative flush button for the toilet, but the flush could still be operated and there were two other toilets in the house,

Summary of the issues

10. The issues to be determined were whether the Property met the repairing standard as laid down in Section 13 of the Act and whether the Landlord had complied with the duties imposed on landlords by Section 14(1)(b) of the Act.

Findings of fact

11. The Committee finds the following facts to be established:-
 - The tenancy is presumed to be an assured tenancy or a Short Assured Tenancy.
 - At some time prior to the date of the inspection, the Tenant vacated the Property.
 - The landlord has carried out recent redecoration of parts of the Property, including the hallway and the area around the front door.
 - There is no evidence of water ingress around the front door and a damp meter test did not disclose unusually high levels of moisture in the walls.
 - The light switch adjacent to the front door was functioning at the time of the inspection and there is no evidence of water ingress there.
 - The vent above the landing window has been replaced.
 - There is some evidence of mould/mildew on the ceiling of the shower unit in the en-suite.
 - As advised by the Landlord's agent, no repair work has been carried out to the tumble dryer in the Property. The tumble dryer could be started at the inspection, but it operated very noisily and it was not possible to determine whether it was working effectively.
 - The toilet in the upstairs bathroom could be flushed using the push-button on top of the cistern.

Reasons for the decision

- 12. The Committee determined that it had not been possible to establish whether the tumble-dryer was in proper working order. The Landlord's agent had argued that there were alternative methods of drying clothes, as the garden had drying facilities, and that there was no legal requirement on the Landlord to provide a tumble dryer but the Committee's view was that, as the Landlord had provided a tumble dryer under the tenancy, he had a duty to ensure that it was in a reasonable state of repair and in proper working order. The Landlord had also made no attempt to repair the tumble dryer following the Tenant's complaint or her application to the Private Rented Housing Panel. The Committee decided, therefore, to issue a Repairing Standard Enforcement Order requiring the Landlord to provide a report from a suitably qualified engineer to the effect that the tumble dryer is in proper working order or to install a new tumble dryer in the Property.
- 13. The Committee decided that the mould on the ceiling of the en-suite shower room did not warrant the issuing of a Repairing Standard Enforcement Order.

Decision

- 14. The Committee accordingly determined that the Landlord had failed to comply with the duty imposed by Section 14 (1)(b) of the Act.
- 15. The Committee proceeded to make a Repairing Standard Enforcement Order as required by section 24(1).
- 16. The decision of the Committee was unanimous.

Right of Appeal

- 17. 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

- 18. 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 **G Clark** Date 19 August 2013
Chairperson 