



Statement of Decision of the Private Rented Housing Committee under Section 60 of the Housing (Scotland) Act 2006

prhp Ref: PRHP/RP/15/0155

Re : Property at 6 Salutation House, Carsphairn DG7 3TQ ("the Property")

The Parties:-

Miss Zoe Marshall, 6 Salutation House, Carsphairn DG7 3TQ ("the Tenant")

Formerly Ryan Maginess, 32 Masonfield Avenue, Cumbernauld G68 9DU and having a place of business at The Hub, Vicar Street, Falkirk FK1 1LL, now Purple Property Holdings Limited, a British Virgin Islands registered company 1906875 ("the Landlord")

Decision

The Committee, having made such enquiries as it saw fit for the purposes of determining whether the Landlord had carried out the works required by the Repairing Standard Enforcement Order in respect of the Property made on 18 August 2015, and taking account of the evidence led by the Tenant at the hearing, determined that significant works remained outstanding and that it could not, therefore, accede to the landlord's request for certification under Section 60 of the Act that the work had been completed or discharge the Rent Relief Order in respect of the Property made on 16 November 2015 .

Background

1. By application dated 12 May 2015, received on 14 May 2015, 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 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, and
 - (e) the house has satisfactory provision for detecting fires and for giving warning in the event of a fire or suspected fire.

3. By letter dated 10 June 2015, 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. The Private Rented Housing Committee inspected the Property on the morning of 18 August 2015. The Committee comprised George Clark (chairman) and Mike Links (surveyor member).
6. Following the inspection of the Property the Private Rented Housing Committee held a hearing at Kenbridge Hotel, Ayr Road, New Galloway, Castle Douglas and heard from the Tenant. The Landlord was not present or represented at the hearing or at the earlier inspection..
7. Following the inspection and hearing, the Committee made a Repairing Standard Enforcement Order ("the Order") in respect of the Property.
8. The Order required the Landlord:
 - To obtain and exhibit to the Committee an Electrical Installation Condition report in respect of the Property.
 - To instruct suitably qualified electrical and plumbing contractors to complete the installation of the Triton Cara power shower in the bathroom.
 - To instruct a suitably qualified central heating specialist to prepare a report on the central heating system in the Property, including thermostatic valves. The report must, in particular, include confirmation as to whether the boiler is in proper and safe working order, is adequately vented and whether the flue to the external wall of the Property is properly sealed. Any remedial work recommended in the report must be carried out, by suitably qualified tradesmen.
 - To carry out such works as are necessary to bring the system within the Property for detecting fires and for giving warning in the event of fire or suspected fire up to the standard recommended in the Scottish Government's revised statutory guidance for smoke alarms in private lets and to the standard set out in the revised Domestic Technical Handbook.

The Private Rented Housing Committee ordered that the works specified in the Order must be carried out and completed within the period of four weeks from the date of service of the Notice of the Order.

9. The surveyor member of the Committee reinspected the Property on 30 October 2015.
10. The surveyor member reported to the Committee that none of the work required by the Order had been carried out.
11. The Committee proceeded to make a Rent Relief Order in respect of the Property, the amount of rent relief being set at 50%.
12. The Committee reinspected the Property on 9 November 2016. The weather was dry and cold, after an overnight fall of snow. The Tenant was present at the reinspection. The Landlord was neither present nor represented at the reinspection, but had made written submissions to the Committee.
13. Following the reinspection, the Committee held a hearing at Castle Douglas Community Centre, Cotton Street, Castle Douglas DG7 1AJ and heard from the Tenant. The Landlord was neither present nor represented at the hearing.

Summary of the issues

14. The issues to be determined were whether the Landlord had carried out the works required by the Repairing Standard Enforcement Order and whether a Certificate of Completion to that effect should be issued and the Rent Relief Order discharged.

Findings of fact

15. The Committee finds the following facts to be established:-
- The ownership of the Property appears to have changed hands, the present owners being Purple Property Holdings Limited, a British Virgin Islands registered company 1906875.
 - The Managing Director of the company is Mr Marc Tims, who submitted written representations prior to the hearing.
 - A new Short Assured tenancy of the Property was granted to the tenant and her partner, Stewart Brown, in July 2016.
 - The Committee has seen an Electrical Installation Condition Report in respect of the Property.
 - The installation of the power shower in the bathroom has been completed and, when tested at the reinspection, was found to be in working order.
 - Smoke detectors have been fitted in the hallway and living room and a heat detector has been installed in the kitchen. They are mains-wired and interconnected.
 - There is a carbon monoxide detector in the cupboard which houses the central heating boiler.
 - A central heating programmer and room thermostat have been fitted in the Property.
 - The central heating boiler, which also heats the water in the Property, was not switched on at the time of the inspection, as it coincided with a planned power cut to supply in parts of Carsphairn.
 - The tiger loop valve of the central heating system is located within the Property, in the cupboard housing the central heating boiler.
 - A length of flexible oil pipe is visible outside the casing of the central heating boiler.
 - The fuel pipe leading to the central heating boiler is not secured to the wall.

Reasons for the decision

16. The Landlord, in written submissions sent by e-mail on 30 September and 10 October 2016, attached a report from Michael Ross & Son, Gas Safe and OFTEC registered contractors, which was undated, but is thought to have been issued on or shortly prior to 30 September 2016. In that report, the contractors stated that, in order to comply with current OFTEC regulations, the fuel pipe to the boiler would require to be secured and the flexible oil pipe fitted inside the boiler casing. The fuel tank would require to be banded as it is single skinned and it would have to be relocated to at least 1800mm distant from the flue exit. In addition, the tiger loop would have to be fitted externally, rather than being situated within the Property.
17. The Landlord, in the e-mail of 30 September 2016, contended that the outstanding issues were minor and not safety related and advised the Committee that the fuel tank was to be replaced prior to Christmas by a new plastic tank. The Tenant told the Committee that if the support for the replacement tank were lowered, it could be located more than 1800mm from the flue exit.

18. The Committee had no reason to doubt the Landlord's intention to replace the tank and was satisfied that any new plastic tank would be double-skinned, but it did not accept that the remaining matters were not safety-related. The Tenant told the Committee that the fumes which had been the primary reason for making the application in the first place were coming from the internally-located tiger loop and the report from Michael Ross & Son clearly indicated that further works were required to make the installation comply with current OFTEC regulations. The Landlord had provided the Committee with a copy of the OFTEC Information Sheet No 28, which sets out the separation distances required to adequately protect stored fuel from a fire or heat source that may originate nearby, and also the need to minimise the risk of pollution from an oil spill by requiring secondary containment of fuel by means of a bund. Accordingly, the Committee was not prepared to certify that the work required by the Repairing Standard Enforcement Order had been carried out.

Decision

19. The Committee accordingly determined that the Landlord had not carried out all the works required by the Repairing Standard Enforcement Order and that it could not issue a certificate in terms of section 60 of the Act or discharge the Rent Relief Order until the fuel tank had been replaced and all the recommendations set out in the report from Michael Ross & Son had been implemented.
20. The decision of the Committee was unanimous.

Right of Appeal

21. **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

22. 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... 9 November 2016
Chairperson