



Repairing Standard Enforcement Order

Ordered by the Private Rented Housing Committee

Reference Number:- PRHP/RP/16/0224

Re: Property known as ALL and WHOLE the dwelling house known as and forming 101 Angus Road, Scone, Perth, PH2 6RD, all as more particularly described in the Disposition to Jean Christie recorded in the General Register of Sasines on 17 July 1954 (hereinafter referred to as "the property").

The Parties:-

Mr Douglas Gillespie and Mrs Alison Gillespie ("the Tenants")

Mr. David Clark Graham Anderson, Newton Gray Farm, Abernyte, Inchtute, Perth, PH14 9SY ("the Landlord")

NOTICE TO

Mr. David Clark Graham Anderson, Newton Gray Farm, Abernyte, Inchtute, Perth, PH14 9SY ("the Landlord")

Whereas in terms of their decision dated 4 September 2016, 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 ("the Act") and in particular the Landlord has failed to ensure that: the house is wind and watertight and in all other respects fit for human habitation, the structure and exterior of the house are in a reasonable state of repair and in proper working order, 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, that the fixtures, fittings and appliances provided by the Landlord under the tenancy are in a reasonable state of repair and in proper working order and that the house does not have satisfactory provision for detecting fires and for giving warning in the event of fire or of suspected fire.

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:-

- (a) To repair or replace the front doorstep to ensure that it is reasonably fit for human habitation, in a reasonable state of repair and in proper working order.

- (b) To repair or replace the gutters to ensure that they are in a reasonable state of repair and in proper working order.
- (c) To repair or replace the slates on the roof to ensure that they are in a reasonable state of repair and in proper working order and to provide written confirmation that this work has been undertaken satisfactorily.
- (d) To instruct a drainage contractor to carry out a full inspection of the drains and to carry out such works that are necessary to ensure that the drains are in a reasonable state of repair and in proper working order and to provide written confirmation that this work has been undertaken satisfactorily.
- (e) To repair or replace the loose and uneven flooring to ensure that it is in a reasonable state of repair and in proper working order.
- (f) To carry out external decoration of the recently repaired woodwork of the conservatory.
- (g) To carry out all works identified as C1 and C2 classifications within the EICR and to provide a further report from a suitably qualified and registered electrician to confirm that said works have been carried out.
- (h) To repair or replace the Positive Input Ventilation system so that is in a reasonable state of repair and in proper working order.
- (i) To provide and install appropriately placed and number of smoke detection devices within the property.
- (j) To provide and install a heat detector in an appropriate location within the kitchen.

The Private Rented Housing Committee order that the works specified in this Order must be carried out and completed within the period of 21 days 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.

Please note that in terms of Section 28(1) of the Act, a landlord who, without reasonable excuse, fails to comply with an RSEO commits an offence liable on summary conviction to a fine not exceeding level 3 on the standard scale. A landlord (and that includes any landlord's successor in title) also commits an offence if he or she enters into a tenancy or occupancy arrangement in relation to a house at any time during which an RSEO has effect in relations to the house. This is in terms of Section 28(5) of the Act.

In witness whereof these presents type written on this page and the preceding page are executed by Patricia Anne Pryce, Chairperson of the Private Rented Housing Committee at Glasgow 4 September 2016 before this witness:-

Signed

Patricia Anne Pryce, Chairperson

Date 4 September 2016

WITNESS

NICHOLAS PRYCE
55 BLYTHSWOOD ST, GLASGOW
ACCOUNTANT



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

Reference Number: PRHP/RP/16/0224

Re: Property at 101 Angus Road, Scone, Perth, PH2 6RD ("the Property ")

The Parties:-

Mr Douglas Gillespie and Mrs Alison Gillespie ("the Tenants")

**Mr. David Clark Graham Anderson, Newton Gray Farm, Abernyte, Inchtute,
Perth, PH14 9SY ("the Landlord")**

Decision

The Committee, having made such enquiries as it saw fit for the purpose of determining whether the Landlord has complied with the duty imposed by Section 14 (1) (b) of the Housing (Scotland) Act 2006 ("the Act") in relation to the property concerned and, taking account of the evidence submitted by the Landlord, the Tenant, Mrs. Gillespie, and the application by the Tenants, determined that the Landlord has failed to comply with the duty imposed by Section 14 (1) (b) of the Act.

The Committee consisted of:-

Patricia Anne Pryce	-	Chairperson
Robert Buchan	-	Surveyor Member

Background

1. By application comprising of all documents received on 22 June 2016, from the Tenants, the Tenants applied to the Private Rented Housing Panel for a determination as to whether the Landlord had failed to comply with the duties imposed by Section 14 (1) (b) of the Act.
2. The application by the Tenants stated that the Tenants considered that the Landlord had failed to comply with his duty to ensure that the property meets the repairing standard and the Tenants brought forward the following breaches:-

That there was a problem with the electricians in the property and that there were safety issues with the electricians.

That repair work required to be carried out on the tiles of the front door step of the property.

That, although the conservatory windows and timbers had been repaired, the timbers remained unpainted.

That the Nu-Aire ventilator installed in the loft was no longer working causing black mould in the property.

That the electric oven works intermittently.

That the fridge door seal has perished.

That the guttering on the roof of the property is badly rusted and leaking.

That several large slates have fallen from the roof.

That there are loose and sagging floorboards in the property.

That there are no smoke or heat detectors in the property.

That there is no carbon monoxide detector in the property.

That the drains in the front garden of the property are blocked due to root ingress and flood as a result.

The Tenants consider that the Landlord is in breach of his duties under the Housing (Scotland) Act 2006 in relation to the repairing standard and in particular the Landlord has failed to ensure that:-

- (i) The house is wind and watertight and in all other respects reasonably fit for human habitation.**
- (ii) 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.**
- (iii) 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.**
- (iv) Any fixtures, fittings and appliances provided by the Landlord under the tenancy are in a reasonable state of repair and in proper working order.**
- (v) The house has satisfactory provision for detecting fires and for giving warning in the event of fire or of suspected fire.**
- (vi) The house has satisfactory provision for giving warning if carbon monoxide is present in a concentration that is hazardous to health.**

3. By Minute dated 1 July 2016 a Convener with delegated powers under Section 96 of the Housing (Scotland) Act 2014 and Section 21 (8A) of the Act intimated a decision to refer the application under Section 23(1) of the Act to a Private Rented Housing Committee.

4. On 28 July 2016, the Private Rented Housing Committee ("the Committee") wrote to the Landlord, the Landlord's representative, Mr. Ian Lindsay, Solicitor of Messrs. Wylie and Henderson, Solicitors, the Tenants and the Tenant's representative, Mr. John Gillespie Bain to

advise that the Committee intended to inspect the property on 2 September 2016 at 10.30 am. The letter further confirmed that a Hearing had been arranged in relation to the application, which hearing would be held in the MacDonald Arms Hotel, Main Street, Balbeggie, Perth, PH2 6EU commencing at 12 noon. Finally, the letter confirmed that any written submissions had to be received by the Committee by 18 August 2016.

5. On 2 August 2016, the Committee issued a Notice of Direction in terms of Schedule 2 Paragraphs 2(1) and 3(1)(b) of the Housing (Scotland) Act 2006 and Regulation 11 of the Private Rented Housing Panel (Tenant and Third Party Applications)(Scotland) Regulations 2015, which Notice required the Landlord to provide to the Committee an Electrical Installation Condition Report (EICR) by a suitably qualified and registered electrician and a Portable Appliance Test on all portable electrical appliances and equipment supplied by the Landlord and located within the property, a report by a suitably qualified Gas Safe registered engineer to address the state of repair and working order of all gas appliances in the property and an Energy Performance Certificate in respect of the property. The said documents were to be lodged with the PRHP no later than midday on 19 August 2016.

The Inspection

6. On 2 September 2016, the Committee attended at the property for the purposes of inspection of the property. The Tenant, Mrs Gillespie, and her representative, Mr Bain together with the Landlord's representative, Mr Lindsay, were present at the inspection. Mr Gillespie and Mr Anderson did not attend the inspection. There was an observer from the PRHP, Mr Rory Cowan, present at the inspection.

At the inspection the Committee noted the following points:-

- (a) The property comprises a three apartment bungalow located in a residential area. It is constructed of cavity brick and roughcast under a pitched and slated roof. The property is estimated to be around seventy years old or thereby.
- (b) The accommodation comprises all on one level a hallway, two bedrooms, a bathroom, a living room, a kitchen and a conservatory.
- (c) In the kitchen, the Tenant confirmed that the dishwasher, fridge, oven and hob had all been replaced by the Landlord since the present application had been made. The Tenant also confirmed that the boiler located in the kitchen had been replaced as the previous one had been condemned, and that there was a carbon monoxide detector present. The Tenant confirmed that the hob was replaced as the previous one which had formed part of her present complaint had given her electric shocks from the ignition sparker. There was a cupboard located in the

kitchen which housed the electric fuse box for the property. The Tenant confirmed that a new Smart Meter could not be installed at the property as the wiring and electrics were of too old and poor a standard. The flooring at the entrance of the kitchen going into the hallway was uneven.

- (d) The Tenant advised that the rear bedroom was beginning to suffer from black mould once again despite her efforts to use dehumidifiers in the rooms of the property.
- (e) There was a vent in the ceiling of the hallway which formed part of the Positive Input Ventilation System (referred to by the Tenants as the Nu-Aire ventilator in their application). Mr. Lindsay and the Tenant confirmed that this did not function and had not functioned for some years.
- (f) The front bedroom contained a dehumidifier which the Tenant advised she had put on around two and half hours before the inspection. This machine contained around half a litre of water at the time of inspection. The Surveyor Member stumbled and nearly fell over due to the uneven nature of the flooring in this room where it appeared that there was a hole in the flooring.
- (g) There were no smoke or heat detection devices located anywhere within the property.
- (h) The timber frame of the conservatory had obviously been repaired but had been left unpainted.
- (i) The guttering of the property was rusting and failing in parts.
- (j) There was a flue located at the side of the property which had been replaced.
- (k) There were obvious missing and cracked slates on the roof.
- (l) The front door step of the property was in such a poor state of repair due to missing and cracked tiles that it rendered the front door entrance of the property unusable. The Tenant advised that the postman had complained to her that it was dangerous and therefore the Tenants had placed a sign on the front door of the property advising visitors to come to the back of the house.
- (m) The Tenant and Mr. Lindsay agreed that there had been flooding to the front garden of the property due to blocked drains. Mr. Lindsay advised that the Landlord was going to instruct a CCTV survey of these drains. The Tenant advised that the problems were caused due to root ingress from trees.

The surveyor member of the Committee took several photographs which form the Schedule attached to this decision.

The Hearing

7. The Tenant, Mrs. Gillespie, attended at the hearing with Mr. Bain who confirmed that he was there in a representative capacity and to support Mrs. Gillespie but that she wanted to give evidence herself. Mrs. Gillespie advised that her husband was not in attendance as his health could not support this as he is 78 years old, has high blood

pressure and has suffered two mini-strokes. Mr. Lindsay attended on behalf of the Landlord. He explained that the Landlord was presently in hospital.

Preliminary Issue

The Committee asked Mr. Lindsay why the Landlord had not complied with the Notice of Direction issued by the Committee on 2 August 2016. The Committee reminded Mr. Lindsay that failure to comply with such a Notice is an offence. Mr. Lindsay proffered his apologies to the Committee and advised that it was his fault that he had not forwarded the principal documents to the Committee, having only sent a facsimile copy to the Committee by letter dated 17 August 2016. However, the Committee confirmed that his said letter had not contained the PAT Certificate, this only having been handed to the Committee for the first time at the inspection of the property on 2 September 2016. Mr. Lindsay advised that he had thought that this had been included in his letter of 17 August but his had been an oversight on his part and that his client was not to blame.

The Committee thanked Mr. Lindsay for his honesty. In all of the circumstances, it appeared to the Committee that this had been a genuine oversight on the part of Mr. Lindsay. The Committee are prepared to accept his explanation. In all of the circumstances, the Committee would not recommend that the Landlord is reported to Police Scotland in respect of the failure to comply with the Notice.

The Committee heard evidence from the Tenant. She confirmed that she and her husband had lived in the property for twelve years. She advised that most of the repairs had been outstanding for a number of years.

The Committee noted and agreed that the Tenants' application contained correspondence going back over two years with the Landlord's representative requesting that the repairs be carried out. Mr. Lindsay helpfully agreed that the repairs had been outstanding for some time.

The Tenant advised that it was out of sheer desperation that she and her husband had made the present application. She advised that they had a friendly relationship with the Landlord and that he would visit the property and have tea with them. However, the Tenant felt that as she and her husband had required to take the present application, they were fearful that this friendly relationship would now break down and they had now sourced another rented property and had advised the Landlord that they would be leaving the property at the end of September. Further, she advised that she did not think her husband's health could withstand the upheaval of all of the repairs required. She confirmed that the Landlord had not offered them alternative accommodation while the repairs would be carried out. She also advised that she really had not wanted to move from the property but that she felt that she had no choice as it was only the present application which had made the Landlord start to do repairs despite being aware of the repairs for a number of years.

The Committee then heard from Mr. Lindsay. The Committee asked Mr. Lindsay why no repairs had been carried out to the electrics in the property despite the terms of the EICR dated 16 August 2016 which clearly demonstrated that there were three C1 classification violations identified within the property, that is, that there was danger present with risk of injury and immediate action required. Mr. Lindsay advised that he wanted to minimise the disruption to the Tenants. He confirmed that he understood what a C1 meant and that he had spoken to the electrician and that he had been advised that the repairs could wait.

The Committee advised Mr. Lindsay that this was not an acceptable course of action and that by doing nothing, the Landlord was placing the Tenants' lives at risk. Mr. Lindsay advised that he would instruct the electrical repairs as soon as the hearing had finished.

However, the Committee is grateful that Mr. Lindsay accepted that all of the repairs remained outstanding in terms of the present application, apart from the appliances which had been replaced in the kitchen.

The Committee was therefore at a loss to understand why there had been a delay in carrying out the repairs when it was accepted that they were required.

Mr. Lindsay explained that he did not think that his client had realised how serious the present situation was.

The Committee questioned if there was an issue with the capacity of his client but Mr. Lindsay confirmed that there was no issue with capacity. He advised that he has now received instructions to carry out the electrical works. He provided the Committee with a copy of the report by Alliance Timber Preservation dated 17 August 2016 wherein the repairs to the flooring in the property were identified along with the repairs required to the front door step and to the Positive Pressure Ventilation System. He confirmed that he has instructions to have the works identified in this report carried out.

Mr. Lindsay advised that he would obtain a quote to fix the slates on the roof, the painting of the timber of the conservatory and fixing the gutters. He advised that the blocked drain in the front garden was going to be investigated by way of a CCTV inspection.

Despite all of the foregoing and the acceptance of the repairs that are outstanding, Mr. Lindsay could not provide a satisfactory reason as to why his client, the Landlord, had allowed these repairs to remain outstanding for such a long time.

When questioned about the requirement for smoke detectors being in place since 2007, Mr. Lindsay could not explain why none had ever been fitted in the property. He accepted the Committee's concern that three C1 classification issues with the electrics of the property together with a lack of

any kind of smoke or heat detection devices left the Tenants in a very vulnerable and precarious position while living in the property.

Given all of the circumstances, the Committee is satisfied that the property is not wind and watertight and in all other aspects reasonably fit for human habitation as a result of the extremely poor state of the front door step of the property resulting in the front door access being incapable of being used safely. The Committee is satisfied that the structure and exterior of the house are not in a reasonable state of repair and in proper working order as a result of the rusting and failing gutters, the blocked drains in the front garden, the cracked, fallen and loose slates of the roof together with the unpainted timbers of the conservatory and the dangerously uneven flooring in the property. The Committee is satisfied that the installations in the house for the supply of water, gas and electricity and for sanitation, space heating and heating water are not in a reasonable state of repair and in proper working order as a result of the findings and dangerous issues identified within the EICR. The Committee is satisfied that the fixtures, fittings and appliances provided by the Landlord under the tenancy are not in a reasonable state of repair and in proper working order as a result of the lack of function of the Positive Input Ventilation System. The Committee is satisfied that the house does not have satisfactory provision for detecting fires and for giving warning in the event of a suspected fire.

The Committee is satisfied that the house has satisfactory provision for giving warning if carbon monoxide is present in a concentration that is hazardous to health.

Decision

8. The Committee accordingly determines that the Landlord has failed to comply with the duty imposed by Section 14 (1) (b) of the Act. The Committee proceeded to make a Repairing Standard Enforcement Order ("RSEO") as required by Section 24 (1) of the Act.
9. The decision of the Committee was unanimous.
10. The Private Rented Housing Committee require the Landlord to carry out such works as are necessary to ensure that the property meets the Repairing Standard.
11. The Committee considered that it would be reasonable to allow a period of 21 days from the date of the RSEO to carry out these works.

Reasons for Decision

12. The Committee considers that the Landlord has had sufficient time to carry out the outstanding repairs.

The Committee considers that the Landlord has failed in his duty under Section 14(1)(b) of the Act and has not complied with the repairing standard in terms of Sections 13 (1) (a) of that Act.

Observations


The Committee is appalled that it has taken this length of time for the Landlord to start carrying out repairs to the property. The Committee notes that the Landlord has been aware of the outstanding repairs for at least two years. The Committee is appalled that, despite being in possession of an EICR which clearly identified three class C1 problems with the electrics within the property, the Landlord has not carried out any repairs to eradicate these issues. The Committee would strongly urge the Landlord to carry out the repairs immediately and without further delay.

Right of Appeal

13. 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

14. 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

Date 4 September 2016

Patricia Anne Pryce