



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

PRHP Ref: PRHP/RP/16/0251

Property at: 7 Philpingstone Road, Bo'ness, EH51 9JJ

Title No: WLN36195

The Parties

Mrs Jennene Calha, residing at 7 Philpingstone Road, Bo'ness, EH51 9JJ
("the tenant")

and

Iain Cruickshank, residing at 3 Oak Hill View, Maddiston, Falkirk, FK2 0DB

and

David Hogg, residing at Hutton School, Hutton, Berwick-Upon-Tweed, TD15 1TS

("the landlord")

Decision

The Committee, having made such enquiries as it sought fit for the purposes of determining whether the landlord has complied with the duty imposed by Section 14(1)(b) of the Housing (Scotland) Act 2006 in relation to the property concerned and taking account of all of the evidence available to the Committee, determined that the landlord has breached the duty imposed by Section 14(1)(b) of the 2006 Act.

Background

- 1 By application received on 21 July 2016, the tenant applied to the Private Rented Housing Panel to determine whether the landlord has failed to comply with the duties imposed by Section 14 of the Housing (Scotland) Act 2006 ("the 2006 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, in term of Section 13(1)(c) of the 2006 Act

- (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, in terms of Section 13(1)(c) of the 2006 Act.

- 3 By interlocutor dated 25 August 2016, the President of the Private Rented Housing Panel intimated a decision to refer the application under Section 23(1) of the 2006 Act to a Private Rented Housing Committee. The Committee was made up of:

Paul Doyle
Susan Napier

Chairperson
Surveyor Member

- 4 The Private Rented Housing Panel served notice of referral under and in terms of Schedule 2 Paragraph 1 of the 2006 Act on the landlord and the tenant on 8 September 2016. Following service of referral, neither party made any further written representations to the Private Rented Housing Panel.
- 5 The Committee inspected the property at 10am on 14 October 2016. The tenant was present and welcomed committee members into the property. The landlord was neither present nor represented.
- 6 Following inspection of the property, the Private Rented Housing Committee held a hearing at Linlithgow Burgh Halls, Linlithgow. The tenant was present and answered Committee members' questions. The landlord was neither present nor represented.
- 7 The tenant's position is that there has been a carbon monoxide leak from a gas fire in the living room of the property, and that the external side wall of the property has allowed penetrating damp to infest the two bedrooms in the property.
- 8 The landlord's position is that the defects complained of by the tenant exist, and will be fixed soon.

Summary of Issues

- 9 The issues to be determined are whether or not the house complies with the repairing standard set out at Sections 13 and 14 of the 2006 Act.

Findings in Fact

10. (a) On 8 December 2008 the landlord let the property to the tenant. The tenant has lived in the property since then. After the tenant submitted her application to the Private Rented Housing Panel, the landlord served a notice to quit on the tenant. The tenant is now looking for alternative accommodation.

(b) The property is a ground floor flatted dwelling-house forming part of a four in a block. The property has two bedrooms, a bathroom, a living room and kitchen, with gardens to the front, side and rear. The front door of the property opens onto a central hallway, which provides access to the bathroom, both bedrooms and the living room. The kitchen is entered from the living room. The rear door from the kitchen opens onto the rear garden. The property benefits from gas-fired central heating and double glazing.

(c) Since 2011 the property has been affected by penetrating damp. Since 2011 the tenant has complained to the landlord about damp. On a number of occasions the landlord has sent tradesmen to inspect the damp, who have tried to remove mould staining from the walls of each bedroom. Their efforts have been ineffective.

(d) The bedroom to the rear of the property has a press cupboard. The press cupboard wall has damp mould staining rising from the floor to approximately 1 m in height. High damp meter readings were obtained on the wall around the press cupboard.

(e) The bedroom to the front of the property has damp staining on the wall. High damp meter readings were obtained from the interior face of the external side wall of the house.

(f) The property does not have a carbon monoxide detector. The landlord has not fitted a smoke detector. The tenant has fitted one battery operated smoke detector to the hall ceiling.

(g) In the living room there is a gas fire. In 2015 the tenant discovered that carbon monoxide was leaking from the gas fire. She reported that carbon monoxide leak to the landlord, who sent a Gas Safe registered engineer to repair the gas fire in July 2015. No inspection of the gas central heating, the gas fire, has been carried out since then. There has been no inspection of the electrical installation in the last 12 months.

(h) On 5 October 2016 the property was inspected by the environmental and regulatory services of Falkirk Council. Their inspector found severe dampness extending the length of the external side wall rising to approximately 1 m from the floor, across both bedrooms in the property. Falkirk Council have decided that the property fails to meet the tolerable standard set out in the Housing (Scotland) Act 2006.

(i) A schedule of photographs taken by the surveyor member of the committee during the inspection is attached hereto.

(j) The property fails to meet the repairing standard set out in the Housing (Scotland) Act 2006. The committee therefore make a repairing standard enforcement order requiring the landlord to

- (i) Carry out investigation works to find the source of damp I the external side wall of the property, and thereafter carry out works to eradicate damp from the property
- (ii) Provide the PRHP with a Gas Safety Record from a suitably qualified, and Gas Safe registered heating engineer on the safety of the gas central

heating boiler and all other gas appliances in the property, &, if necessary, carry out any further repairs or replacement to ensure that all gas appliances are safe to use.

The committee requires the works to be carried out within three months of service of the Repairing Standard Enforcement Order.

Reasons for decision

11. (a) The committee inspected this property during the morning of 14 October 2016. It was a dull damp early autumn morning. The tenant welcomed committee members into the property. The landlord was neither present nor represented.

(b) The tenant showed committee members into the bedroom and invited committee members to inspect the external side wall. The surveyor member of the committee took damp meter readings, all of which were in the high range. Both committee members could see damp staining particularly in the press cupboards of each bedroom.

(c) Committee members inspected the living room of the property and could see a gas fire. The tenant told committee members that a carbon monoxide leak from that fire was detected in the summer of 2015, and that the landlord sent a Gas Saferegistered plumber to fix the fire in July 2015. The tenant told committee members that no tradesmen had been to inspect either the gas or electrical system since then.

(d) Committee members inspected the exterior of the property and could see that whilst the other three properties in this block have had the external render renewed, there is no external render to this property. In the centre of the external side wall there is a flight of steps leading to the entrance to the property immediately above this property. The steps are cracked and crumbling. There are signs of damp penetration around those steps. There are also signs of damp penetration along the face of the external side wall.

(e) Committee members could see when standing in the hallway this property only has a battery operated smoke alarm.

(d) The hearing took place within Linlithgow Borough Hall at 11:30 AM on 14 October 2016. The tenant was present and was accompanied by her son. The landlord was neither present nor represented. The hearing was brief because committee members observations at the inspection had confirmed that the appellant's application is well founded. Committee members could see that the external side wall of this property is affected by damp.

(e) The tenant confirmed to committee members that there has been no inspection of the gas installation since repairs were carried out to the gas fire in the living room in July 2015. The tenant told committee members that she had fitted herself the solitary battery operated smoke alarm.

(f) The absence of carbon monoxide detectors and Mains wired smoke detectors does not form part of the application. If it did form part of the application, then it would be a

requirement of the repairing standard enforcement order to fit interconnected carbon monoxide detectors, heat detectors and mains wired smoke detectors in the property. The committee recommends that the landlord attends to that work without delay. If the landlord chooses not to carry out these work voluntarily, another tenant may lodge a successful application to the PRHP.

(g) The weight of reliable evidence indicates that electrical installation check has not been carried out in the last 12 months. There is no complaint about the electrical installation before this committee but the landlord will know that it is part of their duty as a landlord to carry out electrical installation checks each year. The landlord will want to ensure that the electrical installation checks are brought up to date.

(h) Placing reliance on the committee's observations & on the evidence provided by the tenant, the committee make a repairing standard enforcement order because this property cannot therefore meet the repairing standard set out in section 13(1)(a) &(c) of the 2006 act

Decision

12 The committee accordingly determined that the landlord has failed to comply with the duty imposed by Section 14(1)(b) of the Act.

13. The decision of the Committee was unanimous.

Right of Appeal

14. 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

15. 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 26 October 2016

PRHP Reference PRHP/RP/16/0251

**Property – 7 PHILPINGSTONE ROAD, BONESS EH51 9JJ
PHOTOGRAPHS OF INSPECTION 14 OCTOBER 2016 at 10am**

**Present: Mrs J Calha, Tenant
Mr Paul Doyle, Legal Member PRHP
Mrs Susan Napier, Surveyor Member PRHP**



Front Elevation – Property is east ground floor flat of four in a block unit.

14 October 2016

Interior photographs

Main Bedroom – rear. Windows facing north



Position of cupboard on external wall and adjacent to former location of fireplace.



Dampness and mould in bedroom cupboard on east external wall



Damp reading taken on cupboard wall

14 OCTOBER 2016

Second bedroom – front. Windows facing south.



Dampness on wall behind bedside cabinet (looking down towards floor) – blistering of paint and wallpaper. No damp meter reading as there had been some surface damp treatment applied by tenant.



Dampness in second bedroom cupboard on external wall. No damp meter reading as there had been some surface damp treatment applied by tenant.

Gas fire and boiler



Gas fire with back boiler. No Gas Safe Certificate and no Carbon Monoxide detector.

Exterior photographs



Exterior shot of rear of property (north facing).
Double window on left hand side is the main bedroom.



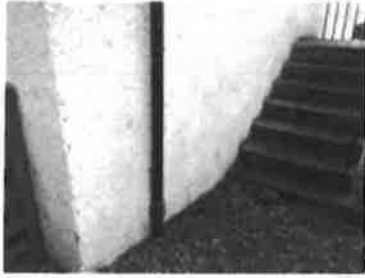
Exterior shot of rear and side of property (north and east facing).



Exterior shot of side of property (east facing)
showing entrance to first floor flat No7A.



Steps to entrance to first floor flat No 7A (East elevation). Junction of steps with main external wall would correspond approximately with dampness in main bedroom cupboard.



Exterior shot of side of property (east facing).
Downpipe and junction of steps to main wall
correspond approximately with dampness in second
bedroom's cupboard along wall to bedside cabinet.

Hard wired smoke detection system and Carbon Monoxide Detector to current standards should be installed.

Susan Napier BSocSc, FRICS
Surveyor Member PRHP
14 October 2016



Repairing Standard Enforcement Order

Ordered by the Private Rented Housing Committee

PRHP Ref: PRHP/RP/16/0251

Property at: 7 Philpingstone Road, Bo'ness, EH51 9JJ

Title No: WLN36195

The Parties

Mrs Jennene Calha, residing at 7 Philpingstone Road, Bo'ness, EH51 9JJ
("the tenant")

and

Iain Cruickshank, residing at 3 Oak Hill View, Maddiston, Falkirk, FK2 0DB

and

David Hogg, residing at Hutton School, Hutton, Berwick-Upon-Tweed, TD15 1TS

("the landlord")

Notice to:

Iain Cruickshank, residing at 3 Oak Hill View, Maddiston, Falkirk, FK2 0DB

and

David Hogg, residing at Hutton School, Hutton, Berwick-Upon-Tweed, TD15 1TS
("the landlord")

Whereas in terms of their decision dated 26 October 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 and in particular that the landlord has failed to ensure that:

(a) The house is wind and water tight and in all other respects reasonably fit for human habitation, in term of Section 13(1)(c) of the 2006 Act

(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, in terms of Section 13(1)(c) of the 2006 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:-

- (i) Carry out investigation works to find the source of damp I the external side wall of the property, and thereafter carry out works to eradicate damp from the property
- (ii) Provide the PRHP with a Gas Safety Record from a suitably qualified, and Gas Safe registered heating engineer on the safety of the gas central heating boiler and all other gas appliances in the property, &, if necessary, carry out any further repairs or replacement to ensure that all gas appliances are safe to use.

All within three months of the date of service of service of this order

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 26 October 2016 before Joseph Doyle, 24 Haddington Place, Edinburgh.

J Doyle witness

P Doyle chairman