



Repairing Standard Enforcement Order

Ordered by the Private Rented Housing Committee

Case reference number : PRHP/RP/16/0205

Re:- Property at 3 Millburn Road, Westfield, Bathgate, EH48 3BT ("**the property**")

The Parties:-

Ms Maxine Campbell, residing at 3 Millburn Road, Westfield, Bathgate, EH48 3BT ("**the tenant**")

And

Dr Andrew McFarlane and Dr Elizabeth McFarlane, both residing at Mole House, Blackpark Inverness, IV3 8PW ("**the landlords**")

Notice to Dr Andrew McFarlane and Dr Elizabeth McFarlane

Whereas in terms of the decision dated 4 October 2016 the Private Rented Housing Committee determined that the landlord had failed to comply with the duty imposed by Section 14(1)(b) of the Housing (Scotland) Act 2006 and in particular the landlords had failed to ensure that:-

- (a) the house is wind and watertight and in all respects reasonably fit for human habitation

The Private Rented Housing Committee now requires the landlords to carry out such work as is necessary for the purpose of ensuring that the house concerned meets the repairing standard and that any damage caused by the carrying out of the works in terms of the order is made good.

In particular the Private Rented Housing Committee requires the landlords to carry out the following work

- Repair or replace external back door of the property, including frames, facings, draught stripping, thresholds, ironmongery, weather bars to ensure that the door is wind and water tight, repair crumbling render in and around to backdoor and to carry out all making good and decoration works associated with the above repairs.

The Private Rented Housing Committee orders that the works specified in this order must be carried out within six weeks of the date of this Order.

A landlord or tenant aggrieved by the decision of the Committee may appeal to the Sheriff by summary application within 21 days of being notified of that decision. The appropriate respondent in such appeal proceedings is the other party to the proceedings and not the PRHP or the Committee which made the decision.

Where such an appeal is made the effect of the decision or of the order is suspended until the appeal is abandoned or finally determined. Where the appeal is abandoned or finally determined by confirming the decision, the decision and the order are to 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 page and the preceding page are executed by James Bauld solicitor, chairperson of the Private Rented Housing Committee at Glasgow on 4 October 2016 before this witness:-

Signed..... **J Bauld**

James Bauld, Chairperson

Signature of Witness..... **R King**

Name: Robina King

Address: 7 West George Street, Glasgow, G2 1BA

Designation: Legal Secretary



Determination by Private Rented Housing Committee

Statement of Decision of the Private Rented Housing Committee

(Hereinafter referred to as "the Committee")

Under Section 24(1) of the Housing (Scotland) Act 2006

Case Reference Number: PRHP/RP/16/0205

Re:- Property at 3 Millburn Road, Westfield, Bathgate, EH48 3BT ("**the property**")

The Parties:-

Ms Maxine Campbell, residing at 3 Millburn Road, Westfield, Bathgate, EH48 3BT ("**the tenant**")

And

Dr Andrew McFarlane and Dr Elizabeth McFarlane, both residing at Mole House, Blackpark Inverness, IV3 8PW ("**the landlords**")

The Committee comprised:-

Mr James Bauld - Chairperson

Mr Andrew Taylor - Surveyor member

Decision:-

The Committee unanimously decided that the landlords had failed to comply with the duties imposed by Section 14(1)(b) of the Housing (Scotland) Act 2006 ("the 2006 Act"). The Committee accordingly proceeded to make a Repairing Standard Enforcement Order (RSEO) as required by Section 24 of the Act

Background:-

1. By application received on 1st June 2016, the tenant applied to the Private Rented Housing Panel (PRHP) for a determination that the landlords had failed to comply with the duties imposed by Section 14(1)(b) of the 2006 Act.

2. By Minute of Decision dated 13th June 2016 the president of the PRHP decided that the application should be referred to a Committee for a decision.
3. By letters dated 15th July 2016 intimation was given to the parties that a Private Rented Housing Committee would be convened to deal with the complaint and intimation was given to the parties that an inspection would take place at 10 am on 26th August 2016 and that a hearing would subsequently take place on the same date at 11.30 am.
5. The Committee members attended at the property for the inspection on 26th August 2016. The tenant was present during the inspection. The landlords were neither present nor represented. The landlords had lodged written representations with the Committee prior to the hearing and inspection. The inspection and subsequent hearing were also attended by Mrs Sara Hesp, surveyor member of the PRHP as an observer.

The Inspection

6. The Committee noted that in the application the tenant had complained that the windows in the house were extremely draughty, that the house suffered from dampness, that the central heating system had recently broken down and that there were problems with the windows, the back door and with an outside wall. The tenant had also complained there was no internal door between the kitchen and the hallway.
7. The Committee in their inspection examined each of these allegations in turn. The Committee noted that the windows within the property that were allegedly causing difficulties to the tenant were contained in the main bedroom. On inspection the Committee took the view that the windows were in a reasonable condition and appeared to open and close properly.
8. The Committee then inspected the back door. The Committee noted there were clear gaps in the door and draughts and water would be able to penetrate the door.
9. The Committee examined the small outside wall in the rear garden. The Committee noted it was worn in places but did not regard it as a significant matter for repair.
10. The Committee noted that repairs had been carried out to the central heating system but that the debris in connection with the repairs had not been cleared from the foot of the cupboard which housed the central heating boiler.
11. With regard to the allegations of dampness, the Committee surveyor member took readings with a damp meter and noticed there were low readings in the living room, kitchen or bedroom but the Committee took the view there was mainly condensation dampness. The Committee noted there was a smoke alarm in the property which was battery operated.

The Hearing

12. After the inspection the Committee attended at the venue for the hearing which was in Bathgate. The hearing was attended by the tenant. The landlords were neither present nor represented. The Committee made the tenant aware that the landlord had lodged significant written representations and the Committee sought the tenant's views on those representations.
13. During the hearing, the Committee questioned the tenant with regard to the evidence which had been obtained at the inspection. With regard to the windows the tenant indicated that in her view the windows were draughty and there was a particular problem in winter. She indicated that when she had renewed the lease and when she had initially taken the lease she had asked that these windows be fixed. She accepted that the

Committee had inspected the windows and that the Committee's view was that generally the windows were in a reasonable state of repair.

14. The tenant was then questioned with regard to the back door. It was her view that the back door was in a horrendous condition. She indicated she had not noticed when she had first moved in but that she had begun to notice water was penetrating and coming through the door and that there were clear gaps in the wood. She did not accept the landlords' written representations that the back door fitted well and was solid mahogany and would require minimal maintenance. The Committee indicated that they had examined the door and that it was clear that there were cracks which would allow both wind and water to penetrate.
15. The tenant was then questioned with regard the small external dwarf wall in the back garden. Reference is made to pictures 4 and 5 in the schedule of photographs attached to this decision. The tenant indicated that the wall was in a poor condition and that when her children were in the garden playing they could fall off the wall and be injured.
16. The tenant was then questioned with regard to the internal kitchen door which was missing. She accepted that this had not been present when she viewed the property or when she moved in. She indicated the door was actually in the garage. She also indicated that this was no longer a problem as her children were now no longer toddlers and she was not so worried about them going back and forth between the living room and the kitchen.
17. The tenant was then questioned with regard to the central heating radiator in the cupboard in the hall. She claimed that the cupboard housing the boiler was affected by dampness. She accepted that the leak in the radiator had been fixed and was referred to at paragraph 4 of the landlords' representations. She advised the Committee that it took the landlord eleven days to fix the problem. She indicated the central heating was generally working and she was able to obtain hot water and heating as required.
18. The Committee then questioned the tenant with regard to the battery operated smoke alarm which had been noted in the property. The tenant indicated she had installed the smoke alarm. It had been done during a fire safety check by the local fire brigade. She indicated there was no carbon monoxide detector within the property. She did accept there was no gas supply within the property either.
19. The tenant also complained at the hearing that she had not been given an Energy Performance Certificate for the tenancy. She indicated she was now aware of the existence of such certificates because she was now considering moving and had noted that these had been mentioned in all adverts which she had looked at for other properties available for rental in the private sector. The tenant concluded by indicating that she was now leaving the property. She had received a notice to quit and would be leaving. The tenant provided the Committee with a forwarding address but has asked that this should not be disclosed to the landlords.

Findings of Fact

20. Having considered all the evidence obtained at the inspection and at the hearing the Committee found the following facts to be established:-
 - (a) The subjects of let are a semi-detached building consisting of two storeys plus an attic. The building is approximately eighty years old. The walls are of brick construction rendered externally. The roof is pitched and slated. Internally the accommodation comprises of a ground floor which has living room, bathroom and kitchen and on the first floor are three bedrooms.

- (b) During the inspection the surveyor member of the Committee took meter readings in various places which did not evidence the existence of dampness.
- (c) The back door of the property was not wind and water tight and the wood was split. The external render at the ingo was crumbling
- (d) The central heating system within the property is an electric central heating system. At the date of inspection the system was working in a reasonable and satisfactory manner.
- (e) The garden of the property contains a garage. The path leading to the garage is bounded by a small dwarf wall. The wall is worn in places but does not create any significant danger nor does it fall short of any necessary repairing standard.
- (f) During the course of the inspection it was observed that the provision for fire detection is not in accordance with current standards. It is suggested that the landlord should provide and install smoke detection and alarm equipment in accordance with the British Standard on the Design of Fire and Detection Installations for Dwellings (BS5389 part 6) in conjunction with the Scottish Government's Technical Handbook 2013 Domestic under Section 2-Fire, Sub-section 2.11 Communication.

21. A schedule of photographs showing the property and the matters inspected during the inspection are attached to this decision.

Reasons for Decision

- 22. The Committee considered the issues of disrepair set out in the application and noted at the inspection.
- 23. At the hearing the Committee posed various questions to the tenant and noted her responses. The Committee accepted that the tenant gave her responses in an open and honest fashion and found her to be a credible and reliable witness.
- 24. The Committee took the view that the property was currently in a generally reasonable state of repair. Recent repairs had been carried out to the electric central heating system to bring it back into a proper state of repair. The only extant problem from the tenant's application was the back door. The Committee took the view that this door was not wind and water tight. There were clear gaps in the back door. From the inside of the kitchen light could be seen coming through the door. The Committee also noted that externally the frames and ingo at the door required repair. The Committee accordingly decided that the back door did not meet the repairing standard and determined that a Repairing Standard Enforcement Order should be made in respect of this issue.
- 25. The Committee also noted the lack of provision of any smoke alarm or fire detection as required by the repairing standard. However, as this had not been raised by the tenant in her application, the Committee are unable to make a Repairing Standard Enforcement Order in this regard. Reference is however made to the Committee's observations above with regard to the lack of smoke alarms and fire detection.
- 26. Accordingly the Committee took the view that the property failed to meet the repairing standard only in respect of the back door and the back door was clearly not wind and water tight. The Committee accordingly determined that a Repairing Standard Enforcement Order should be made.
- 27. The decision of the Committee was unanimous.

Rights of Appeal

28. A landlord or tenant aggrieved by the decision of the Committee may appeal to the Sheriff by summary application within 21 days of being notified of that decision.
29. The appropriate respondent in such appeal proceedings is the other Party to the proceedings and not the PRHP of the Committee which made the decision.

Effects of Section 63

30. Where such an appeal is made, the effect of the decision and of any Order made in consequence of it is suspended until the appeal is abandoned or finally determined.
31. Where the appeal is abandoned or finally determined by confirming the decision, the decision and the Order made in consequence of it are to 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 page and the four preceding pages are executed by James Bauld solicitor, chairperson of the Private Rented Housing Committee at Glasgow on 4 October 2016 before this witness:-

Signed..... **J Bauld**

James Bauld, Chairperson

Signature of Witness.. **R King**

Name: Robina King

Address: 7 West George Street, Glasgow, G2 1BA

Designation: Legal Secretary



3 Millburn Road, Westfield, Bathgate, EH48 3BT
PRHP/RP/16/0205
Schedule of Photographs - Inspection Date 26/08/2016
Weather – Dry, sunny.



1. The property



2. Side Elevation



3. Rear Elevation



4. Dwarf wall rear garden



5. Dwarf wall rear garden



6. Back door



7. Render ingo and surround at back door



8. Back door showing splits in panels



9. Rear bedroom window



10. Rear bedroom window



11. Front bedroom window



12. Front bedroom window



13. Damp meter check bedroom wall



14. Floor of boiler cupboard