



**DETERMINATION BY PRIVATE RENTED HOUSING COMMITTEE re RENT  
RELIEF ORDER**

**STATEMENT OF DECISION OF THE PRIVATE RENTED HOUSING COMMITTEE  
UNDER SECTION 26(1) OF THE HOUSING (SCOTLAND) ACT 2006**

**In connection with**

**Property at 3 West Harwood Crofts, Harburn near West Calder EH55 8LT  
(hereinafter referred to as “the house”)**

**MRS JAY BONGIOVANNI, residing at 3 West Harwood Crofts, Harburn near  
West Calder EH55 8LT (“the Tenant”)**

**GEORGE CHONG LEE LIM and KAREN DAWN MARGARET LIM, c/o Home  
Lettings Scotland, 4 Polton Road, Lasswade EH18 1AA (“the Landlords”)**

**Reference PRHP/RP/15/0268**

**Committee - Richard Mill (Chairman) and Ian Murning (Surveyor Member)**

**Sasine Register Sheet Number: 235717**

**FACTUAL BACKGROUND**

The committee makes reference to the facts, circumstances and their decision and reasons in the corresponding determination by the committee of even date regarding the Landlords' failure to comply with the Repairing Standard Enforcement Order dated 15 February 2016. Said determination is referred to for its terms and held to be incorporated herein for the sake of brevity. The committee unanimously decided that in terms of Section 26(1) of the Act that the Landlord has failed to comply with the Repairing Standard Enforcement Order and the committee has directed that a Notice of Failure be served on the Local Authority in which the house is situated. The committee does not consider that the failure to comply with the Repairing Standard Enforcement Order is due to a lack of necessary rights of access or otherwise. Ample opportunity has been provided to the Landlord to carry out the works. The Landlord's actions throughout this process and prior to it have been dilatory.

**DETERMINATION AND REASONS**

Having determined that the Landlord has failed to comply with the Repairing Standard Enforcement Order, the committee has proceeded to consider if a reduction in rent is appropriate and, if so, the appropriate level of reduction. The committee has considered all correspondence received from both parties to date including their submissions on the re inspection report by the surveyor member of the committee. Given the delays in carrying out the works in the Repairing Standard Enforcement Order, the inconvenience and disruption to the Tenant of ongoing

works and, the impact of the defects of the Tenant's enjoyment of the property, the committee considers that a reduction in the rental due for the property by 90% is appropriate in the circumstances. The committee makes a Rent Relief Order in terms of Section 27 of the Act.

## **RIGHT OF APPEAL**

**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.**

**The appropriate respondent in such appeal proceedings is the other Party to the proceedings and not the Private Rented Housing Panel or the Committee which made the decision.**

## **Effect of Section 63**

Whereas 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 28 days from the day on which the appeal is abandoned or so determined.

In witness whereof these presents typewritten on this and the preceding page(s) are executed by Richard Mill, Solicitor, chairperson of the Private Rented Housing Committee at Edinburgh on the Twenty-eighth day of July Two Thousand and Sixteen before this witness:-

**M Murray**

witness

**R Mill**

chairman

Margaret Johnstone Murray  
21 Stafford Street  
Edinburgh  
EH3 7BJ

Legal Secretary



**DETERMINATION BY PRIVATE RENTED HOUSING COMMITTEE re FAILURE  
TO COMPLY**

**STATEMENT OF DECISION OF THE PRIVATE RENTED HOUSING COMMITTEE  
UNDER SECTION 26(1) OF THE HOUSING (SCOTLAND) ACT 2006**

**In connection with**

**Property at 3 West Harwood Crofts, Harburn near West Calder EH55 8LT  
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**Reference PRHP/RP/15/0268**

**Committee - Richard Mill (Chairman) and Ian Murning (Surveyor Member)**

**BACKGROUND**

1. Reference is made to the Determination of the Private Rented Housing Committee ("the Committee") dated 15 February 2016, which decided that the Landlords had failed to comply with the duty imposed by Section 14(1)(b) of the Housing (Scotland) Act ("the Act"), and to the Repairing Standard Enforcement Order ("the RSEO") dated 15 February 2016 confirming that the Landlords had failed to ensure the property meets the repairing standard in respect of Sections 13(1)(a), (b), (c) and (d) of the Act.

The RSEO required the Landlords to undertake works as is necessary for the purposes of ensuring that the property concerned meets the Repairing Standard and that any damage caused by the carrying out of any work in terms of the said Order is made good.

In particular the Private Rented Housing Committee requires the Landlords:-

1. To instruct a full written report from a suitably qualified engineer on the condition of the oil fired boiler situated within the garage of the

Property. The Report must be made available to the committee. Any recommendations contained within the Report to ensure that the boiler is working safely and satisfactorily for the provision of both heating and hot water requires to be instructed and completed.

2. To instruct a full written Report from suitably qualified engineer on the condition of the whole hot water and heating system to include a full assessment of the underfloor heating system within the Property, the main control programmer situated in the kitchen and all the individual room thermostat controls. The Report must be made available to the committee. Any recommendations contained within the Report to ensure that the system is working satisfactorily for the provision of both heating and hot water requires to be instructed and completed.
3. To instruct an up-to-date Electrical Installation Condition Report (EICR). The Report must be made available to the committee. A written Report from the electrician upon the loose wiring contained around the consumer unit and the defective pendant light fitting in the utility room of the Property should be sought together with comments upon the issues identified by D Houston electrician and author of the report dated 16/11/15 instructed by the Tenant. Any recommended electrical work requires to be instructed and completed.
4. To instruct repair, adjustment or replacement of (a) the locking mechanism in the multipoint locking door exiting the Property from the utility room to ensure that the lock is capable of being used without difficulty; and (b) the sliding patio doors in the garage annex to ensure that the doors operate and can be locked securely.
5. To instruct a suitably qualified tradesman to repair or replace the defective flooring in the end bedroom of the lower ground annex of the property to eradicate any loose flooring and trip hazards.
6. To instruct a suitably qualified tradesman to survey and assess the external decorative wall around the front step area of the main entrance to the Property and to repair or replace as necessary.

The Private Rented Housing committee order that the works specified in this Order must be carried out and completed within the period of 6 weeks from the date of service of this Notice and evidenced to the committee. The committee expects item 3. above relative to the electrical system to be instructed **immediately**.

2. A re-inspection was carried out by the surveyor member of the committee on 13 April 2016. The Tenant and the Tenant's representative were present. The Landlords were not present nor represented.

3. Alarming, it was identified that neither the Landlords nor their agent had sought to instruct or complete any of the work required in terms of the Repairing Standard Enforcement Order. The only conclusion to be drawn at that time was that a blatant disregard had been had for the terms of the committee's Order.

4. It was further noted that the Landlords had arranged for all of the external door locks to be replaced on or around 8 April 2016, but had not supplied the Tenant with keys for the replaced door locks. This had resulted in the Tenant requiring to contact the Police for assistance to gain entry to the Property. This also had the consequence of making the committee's surveyor's job impossible at times throughout the re-inspection process as areas of the house and garage were inaccessible.

5. It was also noted at that time that the Tenant had received a Notice to Quit on the grounds of non-payment of rent. The committee were aware in the background that the Tenant had been withholding rent given the condition of the Property but that it was being held in an account pending completion of all the outstanding repair works by the Landlords and payment by the Landlords towards a £3,000 electricity bill incurred by the Tenant whilst the oil boiler and controls were not functioning properly. Whilst these issues are outwith the remit and jurisdiction of the Repairing Standard Enforcement Order the committee noted these circumstances to provide factual context.

6. The Re-inspection Report was issued to parties. It was identified at that time that the Landlords' agent claimed not to have received the initial Repairing Standard Enforcement Order. They also claimed not to have received notification of the re-inspection to be carried out on 13 April 2016. In the circumstances, the committee had no alternative but to re-issue the original Repairing Standard Enforcement Order. This was issued and served by Sheriff Officers on 2 May 2016. This resulted in a fresh compliance date of 13 June 2016.

7. Further representations were received by the committee from the Tenant's representative to the effect that the Repairing Standard Enforcement Order continued to be ignored by the Landlords. In the circumstances, the committee proceeded to arrange a further inspection with an immediate Hearing thereafter. The earliest possible date was identified, namely 28 July 2016.

8. In advance of 28 July 2016, the Landlords' representative advised that Decree of Eviction had been granted against the Tenant at Livingston Sheriff Court. In advance of 28 July 2016, the Tenant's representative in reply advised that the Tenant was still in occupation but had plans to imminently remove herself and her family. The Tenant's representative advised that he would be available to allow entry to the committee for the re-inspection planned.

9. On the morning of the re-inspection the Landlords' agent sought postponement of the re-inspection and hearing on the basis that they were unable to access the Property. The committee refused that application on the basis that the Tenant's representative had already clearly confirmed that access would be given.

## **INSPECTION**

10. The committee attended the Property on 28 July 2016 at 10.00 am. They were invited into the Property by the Tenant's representative. The Landlords were not present nor represented.

11. The committee's inspection revealed that no work had been undertaken in respect of the Repairing Standard Enforcement Order previously issued. All six components of the Repairing Standard Enforcement Order had clearly not been complied with.

## **HEARING**

12. Neither the Tenant nor Landlords nor their agents attended the Hearing.

## **DECISION**

13. The Committee was satisfied based upon all of the information and evidence available that the Landlords have failed to comply with the Repairing Standard Enforcement Order previously issued. The Committee did not consider the failure to comply was due to a lack of necessary rights of access or otherwise. It is abundantly clear to the committee and beyond doubt that the Landlord and, indeed, their agent, have blatantly failed to adhere to the legal requirement to undertake the work required within the Repairing Standard Enforcement Order. No explanation has been forthcoming as to the reasons why the work has not been undertaken. The fact that the work required in part relates to serious safety issues is particularly alarming and, no doubt, will be taken into account in respect of any prosecution to follow this legal process.

14. The Landlords' representative appeared to anticipate that the eviction of the Tenant would lead to a bringing to the end of this legal process. This is not the case. The Repairing Standard Enforcement Order placed formal legal obligations upon the Landlords. These had to be complied with. The anticipated sale of the Property by the Landlords is also irrelevant. The relevant Notice to the Local Authority regarding the Landlords' failure to comply will be issued. If the Landlords or their agent are in any doubt about their legal rights or obligations, they should seek independent legal advice immediately.

15. The Committee considered and determined to issue a Rent Relief Order. The issues outstanding are significant and material and impact not only upon the Tenant's enjoyment and use of the Property but there are serious health and safety concerns. The Committee have been unimpressed by the lack of engagement of the Landlords or their agent in this manner and their approach to the process. The Committee, in the circumstances, had no hesitation in issuing a Rent Relief Order at a level of 90%.

## **DETERMINATION AND REASONS**

The Committee considered the circumstances as earlier set out. The Committee unanimously decided in terms of Section 26(1) of the Act that the Landlords have failed to comply with the RSEO and directed that a notice of the failure be served on the Local Authority for which the property is situated.

## RIGHT OF APPEAL

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