



Statement of decision of the Private Rented Housing Committee under Section 26(1) of the Housing (Scotland) Act 2006

prhp Ref: PRHP/FK2/50/10

Re: Property at 8 Farm Street, Falkirk, FK2 7SS ("the Property")

The Parties:-

Mrs Kirsty Black residing at 8 Farm Street, Falkirk, FK2 7SS ("the Tenant")

Mr Mohammed Aslam residing at 10 Emmas Way, Bonnybridge, FK4 1GF ("the Landlord")

Background

1. On 18 June 2010 the Private Rented Housing Committee ("the Committee") issued a Determination which determined that the Landlord had failed to comply with the duty imposed by Section 14(1) of the Housing (Scotland) Act 2006. On the same date the Committee issued a Repairing Standard Enforcement Order ("RSEO") in respect of the Property. The RSEO made by the Committee required the Landlord to carry out such works as were necessary:-

- a. To repair or replace the front right cooker ring element and to ensure that it is in proper working order.
- b. To repair or replace the oven door forming part of the cooker and to ensure that it is in proper working order.
- c. To replace the lounge heater with one capable of being thermostatically controlled by the Tenant.
- d. To either repair the hall heater by the provision of replacement thermostatic and timing control switches failing which by the replacement of the hall heater itself.
- e. To properly fix the girl's bedroom heater to the wall and to repair or replace as appropriate the melted cover for the control panel and the missing on/off switch.
- f. To replace the cracked bath panel.
- g. To replace the missing laminate flooring in the hallway and to install a space bar between the hallway and bedroom

- h. To repair the door handle to ensure it is no longer loose and to carry out such repair works as are necessary to allow the front door to open and shut smoothly.
- 2. The Committee ordered in the RSEO that the works specified were to be carried out and completed within 28 days from the date of service of the Notice.
- 3. On 22nd June 2010 the Committee comprising Mr E K Miller (Chairman and Legal Member) and Mr Ian Mowatt (Surveyor Member) accompanied by the Clerk Mr Robert Shea carried out a further inspection of the Property for the purpose of ascertaining whether the repairs required by the RSEO had been completed.

During the course of the inspection the Tenant's husband was present as was Mr Craig Beatt of the Private Sector Housing Unit of Falkirk Council. The Landlord was not present during the inspection.

A reconvened Hearing of the Committee had been arranged for the same day. The Hearing was held at the Best Western Park Hotel in Falkirk. The purpose of the Hearing was to decide whether the Landlord had complied with the RSEO made by the Committee in terms of Section 26(1) of the Act. During the inspection the Tenant's husband and Mr Beatt had advised that they did not intend to appear at the Hearing. They were satisfied that the Committee had had the opportunity to inspect the Property and were content to leave the decision as to further procedure to the Committee. The Landlord did not appear at the Hearing either.

In the absence of any other attendance or representations from the parties the Committee considered the inspection that they had carried out. They noted that the Landlord had not carried out any works in relation to items (a) and (b) of the RSEO. The Tenant's husband had advised that the Landlord was intending to simply replace the cooker but this had not yet occurred. The Committee noted that the lounge heater referred to in item (c) of the RSEO had not been replaced. The Committee noted that no works had been carried out to the heater in the hall in terms of item (d) of the RSEO. The Tenant's husband had advised during the course of the reinspection that a workman had attended at the Property but had been unable to source any parts for this. The Tenant's husband understood the Landlord would now replace this at some point. In relation to item (e) of the RSEO the Committee noted that the heater in the girl's bedroom had now been properly affixed to the wall. However there did not appear to be any works carried out to the melted cover of the control panel or the missing on/off switch.

The Committee noted that item (f) of the RSEO had been dealt with satisfactorily. The Committee noted that item (g) had not been dealt with at all. In relation to item (h) of the RSEO no repair had been carried out to the door handle (although the Tenant's husband advised that the Landlord's workman had had a look at this and was intending to carry out further works). The door had been planed by the Landlord's workman. The Committee noted that whilst it did open and shut a little better it still stuck to a fairly high degree. In the winter the Committee were of no doubt that the

door would again prove very difficult to open and shut in any reasonable fashion.

Determination and Reasons

4. The Committee considered the evidence obtained at their reinspection of the Property. The Committee determined that in terms of Section 26(1) of the Act the Landlord had failed to comply with the RSEO. None of the outstanding items required any complex or expensive repairs and the Landlord should have been able to address these timeously. The Committee were of the view that the Landlord had approached compliance with the RSEO in a piecemeal and minimalistic fashion and had not provided the Committee with any justifiable reasons for not carrying out the said repairs. There had been no contact from the Landlord with the Committee throughout the entire process. Overall, the Committee were satisfied that there was clear and uncontested evidence that the majority of the required repairs had simply not been carried out at all.

The Committee considered whether a Rent Relief Order should be made in terms of Section 27 of the Act and determined that such an order should be made given the Landlord's failure to comply the RSEO without reasonable excuse. The Committee then went on to consider the amount by which any rent payable under the tenancy in question should be reduced. The Committee noted that they were entitled to reduce the rent payable by the Tenant by up to 90%. The Committee considered the impact of the number of repairs which were still required in the Property and the Tenant's reasonable enjoyment of the Property. In coming to their decision the Committee took account of those elements of the RSEO that had been dealt with by the Landlord timeously. Although none of the outstanding items were in themselves significant the Committee were of the view that when these were aggregated they did represent a material nuisance to the Tenant. The Committee were also concerned that the lounge heater continued to be incapable of being thermostatically controlled and the trip hazard represented by the missing flooring. These were both potential safety issues and did require to be attended to swiftly. In the circumstances the Committee determined that an appropriate reduction in rent would be to reduce the rent payable under the tenancy by 40% per month. The Committee considered that the Rent Relief Order should be effective from 28 days after the last date on which the decision to make the Rent Relief Order could be appealed under Section 64 of the Act.

Decision

5. The Committee having made such enquiries as is fit for the purpose of determining whether the Landlords had complied with the Repairing Standard Enforcement Order in relation to the Property concerned, and taking account of the evidence led by both the Landlords and Tenant at the Hearing, determined that the Landlords had failed to comply with the RSEO in terms of Section 26(1) of the Housing (Scotland) Act 2006 and that a notice of the failure be served on the Local Authority in which the Property is situated.

6. The Committee proceeded to make a Rent Relief Order in terms of Section 27 of the Act which Order shall take effect 28 days after the last date on which the decision to make the Rent Relief Order may be appealed under Section 64 of the Act.

The decision of the Committee was unanimous.

Right of Appeal

7. **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

8. 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.

E Miller

Signed Date..... 3/8/2010
Chairperson



Rent Relief Order

Ordered by the Private Rented Housing Committee

prhp Ref: PRHP/FK2/50/10

Re : Property at 8 Farm Street, Falkirk, FK2 7SS (hereinafter referred to as "the house")

The Parties:

Mrs Kirsty Black residing at 8 Farm Street, Falkirk, FK2 7SS ("the Tenant")

Mr Mohammed Aslam residing at 10 Emmas Way, Bonnybridge, FK4 1GF ("the Landlord")

NOTICE TO MOHAMMED ASLAM ("the Landlord")

Whereas in terms of their decision dated 15 June 2010, the Private Rented Housing Committee ("the Committee") determined in terms of Section 26(1) of the Housing (Scotland) Act 2006 (the "said Act") that the Landlord has failed to comply with the Repairing Standard Enforcement Order in relation to the house made by the Committee.

The Committee determined to make a Rent Relief Order in terms of Section 27 of the said Act reducing the rent payable under the tenancy for the house by an amount of 40% of the rent which would, but for the order, be payable. The rent reduction will take effect 28 days after the last date on which the decision to make the Rent Relief Order may be appealed under section 64 of the said Act.

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. Where the appeal is abandoned or finally determined by confirming the decision, the Rent Relief Order will take effect 28 days after the date on which the appeal is abandoned or the decision is confirmed.

In witness whereof these presents type written on this and the preceding page are executed by Ewan Kenneth Miller, Solicitor, Whitehall House, 33 Yeaman Shore, Dundee Chairperson of the Private Rented Housing Committee at Dundee on 3 August 2010.

Before this witness:-

L Johnston

Witness
Lindsay Johnston
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DD1 4BJ
Legal Secretary

E Miller

Chairman