



**Repairing Standard Enforcement Order**

**Ordered by the Private Rented Housing Committee**

**Case Reference Number: PRHP/RP/15/0331**

**Re: 25 Deanburn Walk, Bo'ness EH51 0NB ("the property")**

**Land Register Title No: WLN18328**

**The Parties:-**

**Mrs Pamela Gilfillan, residing at the property ("the tenant")**

**Mr Tony McKeown, 21 Ochilmount, Bannockburn, Stirling FK7 8PE ("the landlord")**

**The committee: – Sarah O'Neill (Chairperson); George Campbell (Surveyor Member)**

**NOTICE TO: Mr Tony McKeown (the landlord)**

Whereas in terms of its decision dated 3rd March 2016, the Private Rented Housing Committee determined that the landlord had failed to comply with the duty imposed on him by Section 14 (1) (b) of the Act, and in particular that the landlord has failed to ensure that the house meets the repairing standard in that:

- the structure and exterior of the house (including drains, gutters and external pipes) are not in a reasonable state of repair and in proper working order.
- 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.

The Private Rented Housing Committee now requires the landlord to carry out such work as is necessary for the purpose of ensuring that the property meets the repairing standard and that any damage caused by the carrying out of any work in terms of this order is made good before the date specified in this order.

In particular the Private Rented Housing Committee requires the landlord to:

1. Repair or replace the carpets throughout the property as necessary in order to ensure that all carpets are in a reasonable state of repair and in proper working order.
2. Repair or replace the garage door as necessary in order to ensure that it is in a reasonable state of repair and in proper working order.
3. On completion of all the above works, ensure that all affected finishes and decoration are restored to an acceptable standard.

The Private Rented Housing Committee orders that the works specified in this order must be carried out and completed within the period of **one month** from the date of service of this notice.

### **Rights of Appeal**

**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.**

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. 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.

**Please note that in terms of section 28(1) of the Act, a landlord who, without reasonable excuse, fails to comply with a 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 a RSEO has effect in relation to the house. This is in terms of Section 28(5) of the Act.**

IN WITNESS WHEREOF these presents typewritten on this and the preceding page are signed by Sarah Frances O'Neill, solicitor, Chairperson of the Private Rented Housing Committee, at Glasgow on the third day of March, Two Thousand and Sixteen before this witness -

P. STEWART

S. O'NEILL

witness

chairperson

PAUL STEWART

name in full

450 ARGYLE ST Address

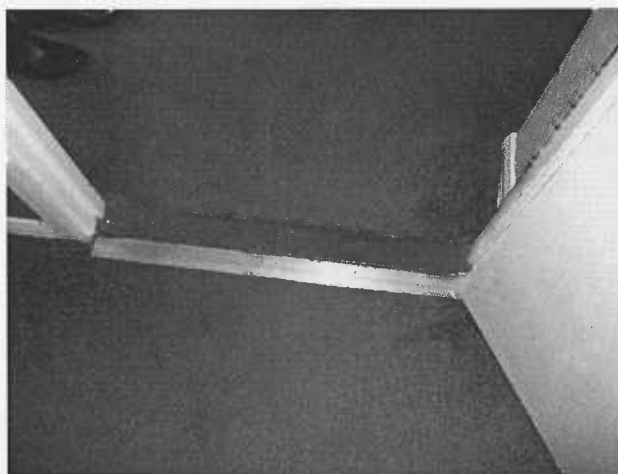
GLASGOW

TEAM LEADER Occupation

Photographs taken at 25 Deanburn Walk, Bo'ness EH51 ONB on 17 February 2016



01- House – front elevation



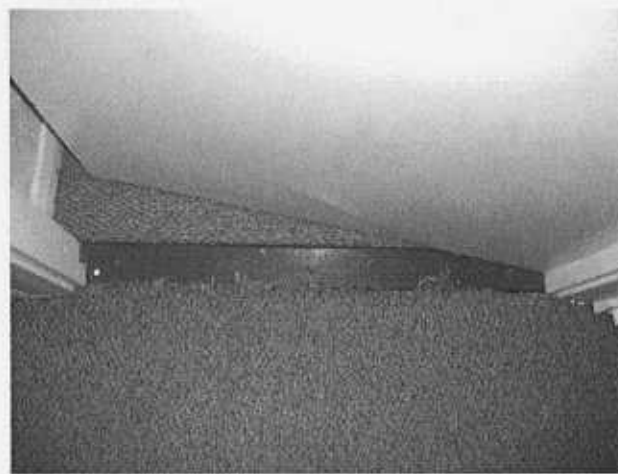
02- Ground floor – living room



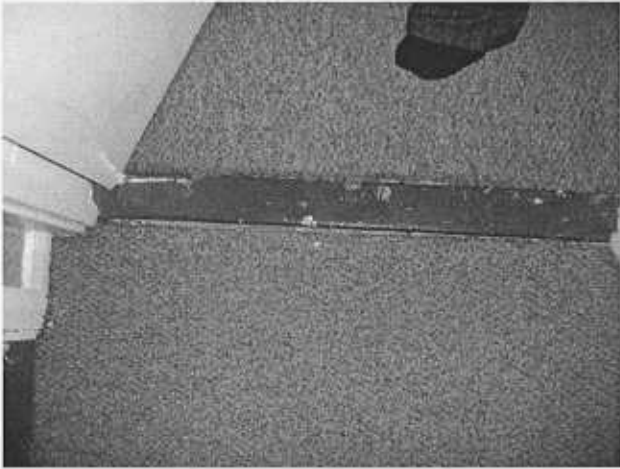
03- Ground floor - kitchen



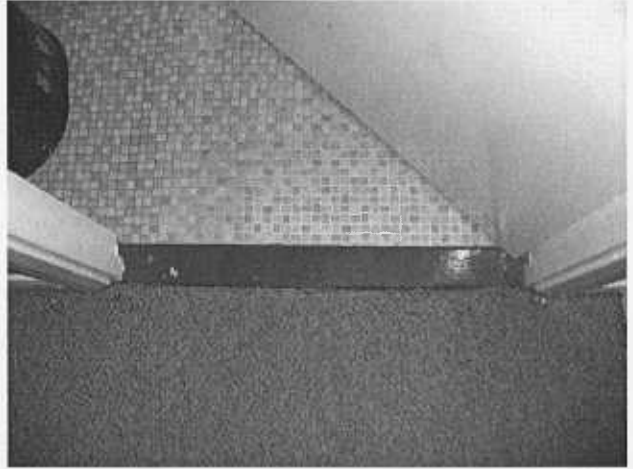
04- Ground floor - cupboard



05- Ground floor – front door



06- First floor - bedroom



07- First floor - bedroom



09 - Garage LHS



10 - Garage RHS



11 - Garage RHS – rotten timber



## **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 ("the Act")

**Case Reference Number: PRHP/RP/15/0331**

**Re: 25 Deanburn Walk, Bo'ness EH51 0NB ("the property")**

**Land Register Title No: WLN18328**

**The Parties:-**

**Mrs Pamela Gilfillan, residing at the property ("the tenant")**

**Mr Tony McKeown, 21 Ochilmount, Bannockburn, Stirling FK7 8PE ("the landlord")**

**The committee: – Sarah O'Neill (Chairperson); George Campbell (Surveyor Member)**

### **Decision**

The committee, having made such enquiries as it saw 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 ("the Act") in relation to the property, and taking account of all the available evidence, determines that the landlord has failed to comply with the duty imposed on him by Section 14 (1) (b) of the Act. The committee therefore issues a Repairing Standard Enforcement Order. The committee's decision is unanimous.

## Background

1. By application received on 4 December 2015, the tenant applied to the Private Rented Housing Panel ("the panel") for a determination that the landlord had failed to comply with his duties under Section 14(1) of the Act.
2. In her application, the tenant stated that she believed the landlord had failed to comply with his duty to ensure that the property met the repairing standard as set out in section 13(1) (d) of the Act. Her application stated that the landlord had failed to ensure that:
  - any fixtures, fittings and appliances provided by the landlord under the tenancy are in a reasonable state of repair and in proper working order
3. The tenant made the following complaints in her application form:
  1. Carpets are too short and grippers are exposed.
  2. Stair light does not work.
  3. Garage door mounts are rotten and springs burst.
  4. Socket at bottom of stairs is not working.
  5. Radiator in bedroom is not working.
  6. Window in bedroom is not working.
  7. Window in bedroom does not close properly.
  8. Window and door in the kitchen are leaking
4. The tenant stated in her application that the following work required to be carried out at the property:
  - Carpets need replaced.
  - Electrician needed to fix electrical issues.
  - New garage door or door repaired.
  - Plumber to fix radiator.
  - Windows and doors fixed.
5. On 14 December 2015, the President of the panel issued a minute of decision stating that she considered that in terms of section 23 (3) of the Act there was no longer a reasonable prospect of the dispute being resolved between the parties at a later date; that she had considered the application paperwork submitted by the tenant, comprising documents received between 4 December 2015 and 14 December 2015; and intimating her decision to refer the application to a panel committee for determination.

6. The President of the panel wrote to the parties on 29 December 2015, notifying them under and in terms of the 2006 Act of her decision to refer the application under Section 22(1) of the Act to a private rented housing committee and that an inspection and a hearing would take place on 17 February 2016. Written representations were requested by 19 January 2016. Written representations dated 6 January were received from the landlord's representative. Written representations dated 13 January were received from the tenant. The tenant confirmed in her written representations that all of the issues complained about had now been addressed, aside from the carpets and the garage door. The landlord's agent stated in its written representations that all of the issues had now been addressed, aside from the garage door.

### **The inspection**

7. The committee inspected the property on the afternoon of 17 February 2016. The weather conditions at the time of the committee's inspection were dry and overcast. The tenant was not present at the property during the inspection, but her husband, Mr Ritchie Gilfillan, was present. Mr Asif Arshad, Director, and Ms Lisa Bryce, Letting Agent, of Let Direct, the landlord's agent, were also present at the inspection. Photographs were taken during the inspection and are attached as a schedule to this decision.

### **The property**

8. The property is a two-storey semi-detached house, estimated to be in the region of 40 years old. The property comprises: hallway, living room and kitchen downstairs; and three bedrooms and a bathroom upstairs.

### **The hearing**

9. Following the inspection, the committee held a hearing at Linlithgow Burgh Halls, Cross House, Linlithgow, West Lothian EH49 7AH. The tenant was represented by her husband, Mr Ritchie Gilfillan, who gave evidence on her behalf. The landlord was represented by Mr Arshad, who gave evidence on his behalf.

### **The evidence**

10. The evidence before the committee consisted of:
- The application form completed by the tenant.
  - Registers Direct copy of Land Register title WLN18328



- Short assured tenancy agreement between the parties in respect of the property incorrectly dated 28 January 2015 and signed by the parties on 31 July 2015, together with unsigned and undated notice to quit.
- Inventory report for the property prepared by a relative of the tenant dated 1 August 2015.
- Emails dated 10 August 2015 from the tenant to Let Direct and from Mr Gilfillan dated 1 December 2015 to Let Direct, notifying the landlord of the repairs alleged to be required.
- Email from the tenant to the panel dated 13 January 2016, advising that her husband would represent her at the inspection and hearing.
- The written representations received from both parties.
- Email from the tenant to the panel dated 5 February confirming that all issues had been addressed aside from the carpets and the garage door.
- Email from the letting agent to the panel dated 8 February stating that all issues had been addressed aside from the garage door.
- The committee's inspection of the property.
- The oral representations of the parties' representatives at the hearing.

### **Summary of the issues**

11. The issue to be determined was whether the property meets the repairing standard as set out in Section 13 of the Act, and whether the landlord had complied with the duty imposed on him by section 14 (1) (b). Both the tenant and the landlord had confirmed that all of the issues complained about by the tenant had now been addressed, with the exception of the carpets and the garage door, and this was confirmed again by the tenant's husband at the inspection. Therefore, the committee only considered those two matters, and did not include the other items in its inspection.

### **Findings of fact**

12. The committee made the following findings in fact:
  - The tenant entered into a short assured tenancy agreement with the landlord on 31 July 2015 to rent the property for one year from 1 August 2015.
  - The tenancy agreement is in the tenant's sole name, but her husband also lives at the property.
  - The property is managed on behalf of the landlord by Let Direct, 178 Grahams Road, Falkirk FK2 7BY.

- The committee in its inspection carefully checked the outstanding items which were the subject of the complaint. The committee observed the following:
  - i. The carpets throughout the house appeared to be slightly too short for the rooms, and everywhere in the house where a carpeted area joined with another room, wooden carpet edge strips had been put in place to fill the gaps. The wooden strips appeared to be too narrow, and gaps and poorly finished edges were still visible in places. The edge of the carpet in the upper landing, where it was joined by a carpet edge strip with the carpet in one of the bedrooms was frayed at the edges.
  - ii. The garage door was incapable of being opened, and could not therefore be used.

### **Reasons for decision**

13. Following its inspection and the hearing, the committee determined that:
  - the structure and exterior of the house (including drains, gutters and external pipes) are not in a reasonable state of repair and in proper working order.
  - 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.
14. The outstanding complaints before the committee as set out in the tenant's application and the committee's determinations in relation to each of these are set out below.
  1. *Carpets*
15. Mr Ritchie told the committee that when he and the tenant had first agreed to rent the property, they had noticed that the carpets throughout were too short, and had been told that this would be dealt with before they moved in. The letting agent's handyman had stapled and then glued the carpets, but the tenant was still unhappy about the standard of the carpets. The letting agent had then bought carpet edge strips to fill the gaps and had installed these, but the tenant was still unhappy about these. Mr Ritchie said that the staples were showing in some places and the carpet was fraying in others. He admitted that part of the tenant's concern was cosmetic, but also said that standing on the gripper rods was uncomfortable. He said that ideally the tenant would like to have new correctly fitting carpets installed, but conceded that perhaps wider carpet edge strips would resolve the issue.

16. Mr Arshad said that he had been aware of the issues with gaps and that these had first been raised by the tenant when she and Mr Ritchie had moved in. He said that the carpet edge strips had been installed in order to make the carpets more stable and address the gaps. He said that he would discuss what to do about the carpets with the landlord.
17. During its inspection, the committee observed that the carpets throughout the house did not fit well and that there were gaps and some poorly finished and/or frayed edges in some rooms. The committee considered this to be a safety issue, which requires to be addressed. On the basis of its inspection and all the evidence before it, the committee determines that the carpets are fixtures or fittings provided by the landlord under the tenancy which are not in a reasonable state of repair and in proper working order.

## *2. Garage door*

18. Mr Ritchie told the committee that he and the tenant were unable to use the garage, because the door could not be opened. The committee also observed at its inspection that the garage door was incapable of being opened, and could not therefore be used. Mr Ritchie said that the garage roof had been repaired in October 2015, but that shortly afterwards the springs in the door had broken, which meant that they had not been able to use the garage for some months.
19. Mr Arshad accepted that the door was not working. He said that both he and the landlord had been aware of the problem for some time, and were in the process of arranging quotations for a replacement. He was, however, unable to go ahead with the work until the landlord, who often worked abroad, approved this.. The tenant said that a contractor had come out on 14 January to look at the door, but that he and the tenant had heard nothing further since then.
20. While not explicitly referred to in the tenancy agreement between the parties, it is clear from the land certificate and title plan that the garage forms part of the property. In terms of section 194 of the 2006 Act, a 'house' to which the repairing standard duty applies includes 'a garage which 'is, or which is capable of being, occupied or enjoyed together with the living accommodation (solely or in common with others). The committee therefore determines, on the basis of its inspection and all the evidence before it, that the garage is part of the property. It also determines that the garage door is part of the structure and exterior of the garage, which is not in a reasonable state of repair and in proper working order.

### Summary of decision

21. The committee determines that the landlord has failed to comply with the duty imposed by Section 14 (1) (b) of the Act, and in particular that the landlord has failed to ensure that the house meets the repairing standard in that 1) the structure and exterior of the house (including drains, gutters and external pipes) are not in a reasonable state of repair and in proper working order and 2) 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
22. The committee therefore makes a Repairing Standard Enforcement Order as required by section 24 (2) of the Act.

### Rights of Appeal

23. 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.
24. The appropriate respondent in such appeal proceedings is the other party to the proceedings and not the panel or the committee which made the decision.

### Effects of Section 63 of the 2006 Act

25. 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. 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.

S. O'NEILL

Signed.....

.....Date..... 31/3/16

Sarah O'Neill, Chairperson