



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

Reference Numbers: PRHP/RT/16/0276 and PRHP/RT/16/0277

**Re: Property at 34 Makbrar Road, Calside, Dumfries, DG1 4BA (“the Property
”)**

The Parties:-

Miss Sarah Kerr (“the former Tenant”)

**Mr. Robert Rome, Strategic Housing Services, Dumfries and Galloway
Council, Municipal Chambers, Buccleuch Street, Dumfries, DG1 2AD (“the
Third Party”)**

**Mr. Ian Forth, Fox Hollies, Elmfield, Brampton, CA8 1TF and Mrs. Christine
Lloyd, Oakbank, Carrutherstown, Dumfries, DG1 4LQ (“the Landlords”)**

Decision

The Committee, having made such enquiries as it saw fit for the purpose of determining whether the Landlords have complied with the duty imposed by Section 14 (1) (b) of the Housing (Scotland) Act 2006 (“the Act”) in relation to the property concerned and, taking account of the evidence submitted by the applications by the Third Party and the Landlords, determined that the Landlords have failed to comply with the duty imposed by Section 14 (1) (b) of the Act.

The Committee consisted of:-

Patricia Anne Pryce	-	Chairperson
Kingsley Bruce	-	Surveyor Member

Background

1. By applications comprising of all documents received on/between 23 August 2016 and 19 September 2016, from the Third Party, the Third Party applied to the Private Rented Housing Panel for a determination as to whether the Landlords had failed to comply with the duties imposed by Section 14 (1) (b) of the Act.
2. The applications by the Third Party stated that the Third Party considered that the Landlords had failed to comply with their duty to ensure that the property meets the repairing standard and the Third Party brought forward the following breaches:-

That there were several areas of external rendering missing from the exposed gable and that the remaining rendering appears hollow and detached from brickwork.

That a missing roof tile has left a hole in the roof.

That there was an area of dampness in the child's bedroom with mould growth.

That an external brick has been partially pushed into the cavity and is exposed to the weather which may cause a cold bridge.

That the fence around the back garden is in a poor state of repair.

The Third Party considers that the Landlords are in breach of their duties under the Housing (Scotland) Act 2006 in relation to the repairing standard and in particular the Landlords have failed to ensure:-

- (i) The house is wind and watertight and in all other respects reasonably fit for human habitation.
 - (ii) The structure and exterior of the house (including drains, gutters and external pipes) are in a reasonable state of repair and in proper working order.
3. By Minute dated 27 September 2016 a Convener of the Private Rented Housing Panel with delegated powers under section 96 of the Housing (Scotland) Act 2014 intimated a decision to refer the applications under Section 23(1) of the Act to a Private Rented Housing Committee.
 4. On 13 October 2016, the Private Rented Housing Committee ("the Committee") wrote to the Landlords to advise that the Committee intended to inspect the property on 18 November 2016 at 11.00 hours. The letter further confirmed that a Hearing had been arranged in relation to the application, which Hearing would be held in the Georgetown Community Centre, Lochvale House, Georgetown Road, Dumfries, DG1 4DF commencing at 12.30 hours. Finally, the letter confirmed that any written submissions had to be received by the Committee by 3 November 2016.

5. On 3 November 2016, the Committee received from Administration of the PRHP an email from the Third Party dated 3 November 2016 wherein the Third Party advised that the Tenant had moved out of the property. On the same date, the Committee received representations from both Landlords confirming that Mrs. Lloyd would represent both Landlords at the inspection and hearing. The Landlords requested an extension of time to consider the applications further. The Committee took this to mean a request to postpone the inspection and hearing. The Third Party objected to this and the Committee denied the request. However, the Landlords clarified that they simply wished further time to further consider their representations. The Landlords did not submit any further representations.

The Inspection

6. On 18 November 2016, the Committee attended at the property for the purposes of inspection of the property. Mrs. Lloyd and Mr. Rome were present at the inspection.

At the inspection, the Committee noted the following points: -

- (a) The property comprises a three-apartment semi-detached house. It is assumed to be of traditional brick construction and rendered. It is situated in a residential area of Dumfries and is around thirty-five years old.
- (b) The accommodation comprises on the ground floor, an entrance vestibule, a kitchen and a living room. On the first floor, there are two bedrooms and a bathroom.
- (c) The Committee noted that there was a small amount of black spot mould growth in the corner of the front bedroom (the room referred to as the "child' bedroom" within the applications) but that there was no dampness present in that room.
- (d) The Committee noted that there was render missing on the gable end.
- (e) The depressed brick on the gable end had been repaired.
- (f) The missing roof tile had been replaced.
- (g) The fence to the rear of the property was in a very poor state of repair and was missing in parts.

The surveyor member of the Committee took several photographs which form the Schedule attached to this decision.

The Hearing

7. The Tenant was an interested party in the process but having moved out of the property, was no longer a party to the process and did not attend the hearing. The Landlords were both represented by Mrs.

Lloyd represented at the hearing. Mr. Rome represented the Third Party at the hearing.

Preliminary Issue

The Committee noted that the Third Party had submitted two applications in respect of the same property which were identical in terms other than one application referred to Mr. Forth as the Landlord (case reference number PRHP/RT/16/0276) and the other application referred to Mrs. Lloyd as the Landlord (case reference number PRHP/RT/16/0277). Mr. Rome advised that he had submitted two applications as the Landlords lived at different addresses. He accepted that the two applications were identical in terms and that, with hindsight, only one application required to be submitted. Mrs. Lloyd advised that she had found it confusing as she and Mr. Forth are business partners and run their property business together, AAFM Property Letting Service, and that they were joint owners of the property.

In light of the foregoing, the Committee decided to conjoin the hearings of both applications in terms of Regulation 10 of the Private Rented Housing Panel (Tenant and Third Party Applications) (Scotland) Regulations 2015. The Parties present were content with this course of action.

Mr. Rome confirmed that the applications were restricted to what was listed within the two forms and that they did not include all of the other matters mentioned in the letter of 20 August 2015 referred to within the applications.

The Committee proceeded to hear the parties.

The Landlord advised that the render had been sealed in as a result of the letter from the Third Party of 20 August 2015. She advised that as there was no water ingress resulting from the missing render she felt that it met the repairing standard. When questioned by the Committee that the purpose of render was to weatherproof the brick work, the Landlord accepted that, to that extent, the render could not do this in its present state and was not in proper working order in that regard. The Landlord helpfully conceded that the render did require to be repaired and that she had obtained quotes for the work to be carried out. She explained that the contractor who was due to carry out the work had taken unwell, hence the delay in the render being fixed.

The Landlord also accepted that the fence was in a poor state of repair. She advised that she had reached agreement with the next door neighbour to replace the fence on that boundary but that the neighbour to the rear of the property wanted to do his own thing. The Committee pointed out that regardless of mutual obligations in terms of common repairs, the Landlords required to ensure that the property reached the repairing standard at all times throughout the tenancy. The Landlord accepted this.

Mr. Rome reiterated that the Landlords required to maintain the property at the repairing standard at the beginning of the tenancy and at all times throughout the tenancy.

In light of the application and what the Committee saw at the inspection, the Committee is satisfied that the property is wind and watertight and in all other aspects reasonably fit for human habitation. The Committee is satisfied that the structure and exterior of the house are not in a reasonable state of repair and in proper working order as a result of the missing render on the gable end together with the broken and missing fence.

Decision

8. The Committee accordingly determines that the Landlords have failed to comply with the duty imposed by Section 14 (1) (b) of the Act. The Committee proceeded to make a Repairing Standard Enforcement Order as required by Section 24 (1) of the Act.
9. The decision of the Committee was unanimous.
10. The Private Rented Housing Committee require the Landlords to carry out such works as are necessary to ensure that the property meets the Repairing Standard.
11. The Committee considered that it would be reasonable to allow a period of 42 days from the date of the RSEO to carry out these works.

Reasons for Decision

12. The Committee considers that the Landlords have had sufficient time to carry out the outstanding repairs.
The Committee considers that the Landlords have failed in their duty under Section 14(1)(b) of the Act and have not complied with the repairing standard in terms of Sections 13 (1) (a) of that Act.

On this occasion, the Committee decided that only one decision was required to be issued after conjoining the hearing of both applications and that the present decision is made in respect of both of the applications before the Committee.

Observations

The Committee noted that, although the missing roof tile had been replaced, there were tiles out of alignment at the edge of the roof above the gable. While not forming part of the present applications, the Committee would strongly advise the Landlords to have this specific issue investigated and have the necessary repairs carried out to the said roof tiles to ensure that the property remain wind and watertight.

Right of Appeal

- 13. 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

- 14. 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

Date 25 November 2016

Patricia Anne Pryce



Repairing Standard Enforcement Order

Ordered by the Private Rented Housing Committee

Reference Numbers:- PRHP/RT/16/0276 and PRHP/RT/16/0277

Re: Property at 34 Makbrar Road, Calside, Dumfries, DG1 4BA all as more particularly described in and registered in Land Certificate DMF14615 (hereinafter referred to as "the property").

The Parties:-

Miss Sarah Kerr ("the former Tenant")

Mr. Robert Rome, Strategic Housing Services, Dumfries and Galloway Council, Municipal Chambers, Buccleuch Street, Dumfries, DG1 2AD ("the Third Party")

Mr. Ian Forth, Fox Hollies, Elmfield, Brampton, CA8 1TF and Mrs. Christine Lloyd, Oakbank, Carrutherstown, Dumfries, DG1 4LQ ("the Landlords")

NOTICE TO

Mr. Ian Forth, Fox Hollies, Elmfield, Brampton, CA8 1TF and Mrs. Christine Lloyd, Oakbank, Carrutherstown, Dumfries, DG1 4LQ ("the Landlords")

Whereas in terms of their decision dated 25 November 2016, the Private Rented Housing Committee determined that the Landlords have failed to comply with the duty imposed by Section 14 (1) (b) of the Housing (Scotland) Act 2006 ("the Act") and in particular the Landlords have failed to ensure that: the structure and exterior of the house are in a reasonable state of repair and in proper working order.

The Private Rented Housing Committee now requires the Landlords 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 Landlords:-

- (a) To reinstate or repair the missing and defective render on the gable wall of the property to ensure that it is in a reasonable state of repair and in proper working order.
- (b) To replace all of the missing or damaged fencing to the rear of the property to ensure that it is in a reasonable state of repair and in proper working order.

The Private Rented Housing Committee order that the works specified in this Order must be carried out and completed within the period of 42 days from the date of service of this Notice.

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.

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

In witness whereof these presents type written on this page and the preceding page are executed by Patricia Anne Pryce, Chairperson of the Private Rented Housing Committee at Glasgow 25 November 2016 before this witness:-

Signed

Date 25 November 2016

Patricia Anne Pryce, Chairperson

.....Witness

B Quinn, Europa Building, 450 Argyle Street, G2 8LH

SCHEDULE OF PHOTOGRAPHS:

34 MAKBRAR CRESCENT, CALSIDE, DUMFRIES

PRHP/RP/16/0276 &0277

DATE: 18 NOVEMBER 2016





