



Determination by Private Rented Housing Committee

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

In connection with

Property at 51 Elizabeth Avenue, Stenhousemuir, Larbert FK5 4BJ being the westmost first floor flat edged blue on the Title Plan of the block 47, 49, 51 and 53 ELIZABETH AVENUE, with the garden ground tinted pink on the said plan, all as more particularly described in Land Certificate Title number STG 46444 ("the house")

The Parties:

MISS MARNIE PARKES, 51 Elizabeth Avenue, Stenhousemuir, Larbert, FK5 4BJ ("the tenant")

MR ANGUS McEWAN, c/o 1 Estate Agents, 244 Stonelaw Road, Burnside, Glasgow, G73 3SA ("the landlord")

Reference number: PRHP/RP/13/0171

Background

1. Reference is made to the determination of the Private Rented Housing Committee (The committee" of 4th August 2015 in which the committee determined that the landlord had failed to comply with the duty imposed by section 14 91) (b) of the Housing (Scotland) Act 2001. Reference is made, also, to the Repairing Standard Enforcement Order ("RSEO") of 4th August 2015.
2. The RSEO required the landlord to undertake works as necessary to ensure that the house meets the repairing standard and that any damage caused by carrying out the works in terms of this Order are made good. In particular the committee required the landlord:
 - (i) *to undertake detailed, specialist investigation to reveal the extent of the issue of condensation within the property; the cause of the condensation; and recommendations on which works are required to remedy the problem of condensation;*
 - (ii) *to produce a report to the PRHP with the findings of these investigations within 28 days of the date of receipt of this order;*
 - (iii) *to carry out such works as may be necessary to eradicate excessive levels of condensation and dampness to ensure 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.*
 - (iv) *the committee requires this work to be completed within 6 weeks of the date of receipt of this order;*
3. Notice of the determination and of the RSEO was served on the landlord and on his representative at 1 Estate Agents, 244 Stonelaw Road, Burnside, Glasgow, G73 3SA by letter from the Private Rented Housing Panel ("PRHP") on 19th August. Acknowledgement of the documents was received from the landlord by email of 23rd August. In that email the landlord

stated that the letter from PRHP had failed to reach him but, in any event, the letting agents had provided him with a copy. The landlord advised that he had made efforts to address the issues at the house. In particular he said,

"I am writing therefore to tell you that: The specialist reports we have arranged have confirmed that the problem is condensation, not dampness. While any expert will tell you that this is difficult to eradicate, we have taken the undernoted steps to try our best to sort this:

- *Extractor fans were installed in the bathroom and kitchen a while ago*
- *Dehumidifiers were provided as soon as the original tenant said there was a problem*
- *A new front door has been fitted*
- *The boiler and heating system has been upgraded. This should, we believe, address the problems with heating AND the condensation....*

....I hope you will agree that we have taken steps necessary to address the problems that the previous tenant made. Also, as our intention is to continue to monitor this problem and we are still investigating the possibility of installing some kind of vents, I hope you will realise that we are still taking this matter seriously....I am hoping that these actions will mean we can put an end to this matter."

4. Given that the RSEO provided a timescale for completion of the works as, "6 weeks of the date of receipt of this order," the final date for completion of the works was 30th August. The committee accept that the landlord may not have received the letter from PRHP intimating a copy of the RSEO to him. However the content of his email of 23rd August confirms that he was aware of the terms of the order by 23rd August 2015. Even if it is accepted that this was the first date on which the landlord knew of the order and what was expected of him was 6 weeks from that date which was, 4th October 2015.
5. Following expiry of the timescale for completion of the works, intimation of a re-inspection date was provided to the landlord and his letting agent by letter of 29th September from the PRHP. The proposed date and time was, 13th October 2015 at 10am. The letter was acknowledged by the landlord in an email to the PRHP dated, 6th October 2015. In that email the landlord stated, that, *"With reference to your letter of 29th September, I attach my reply below. I had also emailed you on 23rd August to say that it is my belief that everything has been attended to."*
6. Attached to the email was a completed form for the PRHP, dated 4th October 2015. In response to the first question on the form, *"Do you agree that the works in the RSEO have been completed?"* the landlord confirmed, *"Yes."* He added, *"As detailed in my email of 23rd August 2015, I believe that we have done what we can: Reports and de-humidifiers were sorted when first complaints made, More reports obtained confirming it is condensation when PRHP involved, New front door installed Extractor fans in kitchen and bathroom were installed a while ago Heating recently upgraded. Also, we are still looking at some kind of vents and monitoring the situation."* The landlord also stated that, *"Work has been completed so would like a notice of completion."*
7. On 13th October 2015, Mr Kingsley Bruce, Surveyor member of the committee, undertook a second inspection of the property. The current tenant was present at the time of the inspection. A visual inspection of the property was undertaken, externally and internally, looking specifically at the issues relevant to the terms of the RSEO. The surveyor made the following findings:

"It was noted and highlighted by the tenant that the gas fired boiler had been replaced, but that the radiators had not been renewed."

From external approach to the property, heavy condensation to the inside of windows was immediately evident.

Extract fans to kitchen and bathroom have not been fitted with external outlets and appear still to discharge into the roof void area.

Mould growth to the bathroom ceiling had worsened.

In the main bedroom, conditions had not been improved to any notable degree and droplets of water were again visible to the wall surfaces.

One of the requirements of the RSEO was to provide a Specialist's Report, identifying cause and remedy, however this has never been received.

On the basis of my re-inspection, there was no evidence of compliance with the terms of the RSEO".

8. Prior to release of the surveyor's report to the parties, by email of 11th November to the PRHP, the letting agent acknowledged the re-inspection. He stated that,

"I am aware that the panel re inspected the property and we are awaiting communication regarding this however we currently have a issue.

The issue with the wall has come back again, we seem to have kept this at bay for a while now by installing new central heating and extractors ect however the issue has come back in recent days and its extremely bad this time, from a process of elimination we have had roofers out last year and damp specialist who advise its condensation damp and the roof shows no sign of water however the last few days we have had a lot of rain and now the walls on the gable wall is wet to touch leading me to believe from my experience there is a underlying issue with the roof/brick work where water must be penetrating the brick from above and running down the inside wall.

We have instructed Falkirk Council Housing Repairs to attend as the roof comes under a common repair we have been advised they will attend within 24 hours to asses the issue 01324 590590 option 2 We don't seem to be getting anywhere with establishing the underlying issue at hand and instructing the local authority on this occasion is our last resort,"

9. By letter of 16th November the PRHP issued a copy of the surveyor's report of 13th October 2015 to the landlord and to the letting agents. They were invited him to make comments on the findings of the report to the PRHP no later than 30th November 2015. No response was received from either the landlord or letting agent by 30th November 2015.

10. The committee makes the following findings:

- that condensation continues to be an issue at the property and this has not been addressed by the landlord;
- that the landlord has failed to produce a specialist report;
- that the extract fans are not vented to the exterior of the property which means that moisture is retained within the structure of the house;
- that the landlord has failed to address or act on the terms of the RSEO.

11. The committee comprised Ms Simone Sweeney, Chairperson, Mr Kingsley Bruce, Surveyor member and Mrs Brenda Higgins, Housing member.

Determination and reasons for decision

- 12. The committee considered the evidence and unanimously decided in terms of section 26(1) of the Act that no works in terms of the RSEO had been completed. Consequently, the landlord has failed to comply with the RSEO and direct that a notice of this failure be served on the local authority for the area in which the house is located.
- 13. The committee considered whether or not a variation or revocation of the RSEO was appropriate. These options were refused in light of the evidence before the committee, in particular the findings of the second inspection and the absence of anything which revealed that the terms of the RSEO had been completed; the fact that the landlord had already had sufficient time to complete the works; and the landlord's responses in his email of 6th October and attached form to the PRHP dated 4th October 2015. The house is currently occupied by new tenants who came to reside at the property prior to the application before the PRHP having been determined. The RSEO orders works required at the house which address issues of health and safety for current and future occupants and those coming onto the property.
- 14. As the tenant who brought the application before the PRHP has now left the house, the committee did not consider a rent relief order to be appropriate.

Right of Appeal

- 15. **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

- 16. 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 28 days from the day on which the appeal is abandoned or determined.

17. IN WITNESS WHEREOF these presents typewritten on this are signed by Simone Sweeney, Chairperson of the Private Rented Housing Committee, at Glasgow, on 30th day of November, Two Thousand and Fifteen in the presence of the undernoted witness:

Simone Sweeney
..... Chairperson
..... Witness

Barry Divers, Advocate, Faculty of Advocates, Parliament Hall, Edinburgh, EH1 1RF

1st DECEMBER 2015 Date