



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

prhp Ref: PRHP/RP/14/0050

Re : Property at 8 Ugie Road, Peterhead, AB42 1NR ("the Property")

The Parties:-

Jillian Munro, formerly residing at 8 Ugie Road, Peterhead, AB42 1NR ("the Tenant")

Mrs Carol Anne Wiseman, 22 Damfield Road, Fraserburgh, AB43 9SJ ("the Landlord")

Background

1. On 11 November 2014, the Private Rented Housing Committee ("the Committee") issued a determination which decided that the Landlord had failed to comply with the duty imposed by Section 14(1) of the Housing (Scotland) Act 2006 ("the Act"). 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:-
 1. To repair or replace the kitchen window at the Property to ensure it is properly wind and water tight and otherwise in proper working order and compliant with the repairing standard.
 2. To replace the cracked pane in the hall landing.
 3. To carry out such works of repair or replacement to the skylights to ensure that they are properly wind and water tight and comply with the repairing standard.
 4. To repair or replace those double glazed units where the unit has failed and condensation/misting is occurring between the panes.
 5. To carry out such works or repair or replacement to the front door and surrounding frame as are necessary to render it properly wind and water tight and capable of being opened and closed smoothly. Also to carry out such works or repair or replacement to the lock on the front door as are necessary to ensure it is in proper working order.
 6. To carry out such works of repair or replacement to the rear door and surrounding frame as are necessary to render it properly wind and water tight and capable of opening and closing smoothly.
 7. To install an extractor fan within the bathroom.
 8. To replace the side and end panels of the bath.
 9. To replace the wash hand basin.
 10. To install a proper shower rail and curtain compliant with the repairing standard.
 11. To fix the leak from the kitchen tap.
 12. To replace the unit surrounding and underneath the kitchen sink.

13. To produce an electrical installation condition report from a suitably qualified electrical engineer confirming that there are no items marked C1 and C2 on the report and to carry out any works necessary to allow the issue of such a report to the Committee.
 14. To repair the leak to the radiator in the kitchen.
 15. To install suitable installation within the attic space.
 16. To replace the broken floor board outside the eastmost first floor bedroom.
 17. To refit the westmost bedroom door to the frame and to ensure it is in proper working order and compliant with the repairing standard.
 18. To carry out such works as are necessary to identify the cause of the water ingress to the Property and to carry out such works as are necessary to prevent further water ingress. Thereafter to carry out such works as are necessary to eradicate the existing damp within the Property and thereafter such works of redecoration as may be required.
 19. To repair or replace the shed roof sufficient to render it properly wind and water tight.
 20. To cap the external vents to the front of the Property.
2. The Committee ordered in the RSEO that the works specified were to be carried out and completed within a period of 4 months. A reinspection of the Property was arranged in due course at the expiry of this period. However, when the Surveyor Member of the Committee, Mr C Hepburn, attended, no access was given and the Landlord had not made any arrangements in this regard. The Landlord had, during the course of the proceedings to date, given little or no input to the process and appeared to have a disregard for the Committee. She appeared not to appreciate the importance of complying with decisions and directions of the Committee.
 3. In due course a further reinspection was organised. Again, the Surveyor Member of the Committee Mr Colin Hepburn attended on 3 September 2015. The Landlord's partner was present on this occasion and gave access to the Surveyor Member.

The Surveyor Member reported to the Committee that the Property was now vacant and unfurnished. The majority of the works required by the RSEO had not yet been carried out. The Landlord's partner indicated that the chimneys had been capped and was of the opinion that this addressed the damp ingress issues noted at point 18 of Paragraph 1 above. However the Surveyor Member took damp meter readings within the Property and these still indicated that there were ongoing damp penetration issues within the Property. The WC within the bathroom had been replaced but this was not an item covered by the RSEO. In relation to point 14, the leak to the radiator in the kitchen was not apparent. In essence the Landlord had failed to act upon the works set out in the RSEO.

There had been a suggestion previously from the Landlord that a lot of the works required to the Property were as a result of damage caused by the previous tenant. The Committee was not satisfied that that was correct. A lot of the problems arose from more substantive defects within the Property, particularly in relation to damp penetration. These could not have been caused by the Tenant. The Landlord had failed to act upon the requirements of the RSEO within the timescales required by it. No particular explanation or reason had been given for this failure.

The Committee (comprising Mr E K Miller, Chairman and Legal Member, Mr C Hepburn, Surveyor Member and Mrs L Robertson, Housing Member) then considered what steps to take. In terms of Section 26(1) of the Act, it was for the Committee to decide whether a

landlord has complied with an RSEO made by the Committee. In terms of sub-section (2) where the Committee decides that the Landlord has failed to comply with an RSEO, the Committee must (a) serve notice of the failure on the Local Authority; and (b) decide whether to make a Rent Relief Order ("RRO").

4. The Committee, after discussion, accepted it was clear, given that no material works had been undertaken, that the Landlord had failed to comply with the RSEO. Accordingly the Committee was obliged to serve notice of the failure on the Local Authority and resolved to do so. The Committee then considered whether an RRO was an appropriate option. The Tenant had now left the Property and accordingly the Landlord was receiving no rent for the Property. Accordingly it was not relevant or appropriate to serve an RRO on the Property. The Committee would highlight to the Landlord that it is a criminal offence to re-let a property whilst an RSEO is in place and, accordingly, until the Landlord had carried out all the works required by the RSEO she would not be able to receive an income from the Property.

The Committee also considered the terms of Section 28 of the Act. Sub-section (1) specifies that a landlord who, without reasonable excuse, fails to comply with an RSEO commits an offence. The Landlord had not provided any explanation to the Committee as to why she had not carried out the works or what her intentions were in relation to the Property. At the time of the inspection, the Property had been in poor condition and there was extensive damp penetration in it. The Landlord appeared to have failed to have paid any heed to the requirements of the Act and to the standard to which she is required to maintain the Property. It was apparent there had been ongoing failure for a significant period of time to maintain the Property to the appropriate standard. Some of the repairs required were not issues that would have arisen only recently. Accordingly in the circumstances, the Committee was of the view that Section 28(1) had been breached. The Committee also resolved to report the matter to the Police for consideration for prosecution.

Decision

13. The Committee determined that in terms of the Act the Landlord had failed to comply with the RSEO. The Committee determined to serve a Notice of Failure to Comply with the RSEO on the relevant Local Authority within which the Property was situated and to report the matter to the Police for consideration for prosecution.
14. The decision of the Committee was unanimous.

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

Signed .
Chairperson

E K Miller

Date.....

30/11/15