



DETERMINATION BY PRIVATE RENTED HOUSING SUB-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 106 Stenhouse Street, Cowdenbeath, Fife, KY4 9DH ("the House")

The Parties:

Steven John Penny ("the Tenant")

Mr Chatterpal Singh, 65 Peasehill Gait, Rosyth, Fife, KY11 2BD ("the Landlord")

PRHP REFERENCE PRHP/RP/14/0129

Decision

The Private Rented Housing Sub-Committee comprising the Chairman and surveyor member of the original Committee ("the Sub-Committee") has now determined that the Landlord has **failed to comply** with the requirements of the Repairing Standard Enforcement Order ("RSEO") issued further to a decision of the Committee dated 4 June 2015 and further determined that notice of that failure should be served on the Local Authority in whose area the property is situated. The Sub-Committee determined not to make a Rent Relief Order in this matter, the Tenant having terminated the lease and vacated the House and further re-letting therefore being a criminal offence in terms of s 28(5) of the Act.

Background

1. On 4 June 2015, following an inspection of the House on 27 May 2015, the original Committee made a determination which stated that the Landlord had failed to comply with the duties imposed by section 14(1)(b) of the 2006 Act. On 9 June 2015, the Committee issued a RSEO in respect of the House.

2. The RSEO issued by the Committee required the Landlord to carry out such works as are necessary to ensure that the House meets the Repairing Standard as required by the Act, further to which to carry out the following:-
 - i. Obtain an expert report from a suitably qualified and certified firm or individual specialising in building works aimed at eliminating damp within residential properties. Said report to detail such works as are necessary to ensure that the House is watertight and in all other respects reasonably fit for human habitation and to follow the recommendations of such a report in full within 28 days of the receipt thereof;
 - ii. Install a dehumidifier and at his own expense to ensure heating and ventilation as are necessary to eliminate all dampness within the House;
 - iii. Replace the weather strips and seals at the threshold of the front door as appropriate to ensure that it is draft proof;
 - iv. Repair the vent on the outside wall at the location of the bathroom and replace the two cracked window panes on that wall;
 - v. Obtain an Electrical Safety Certificate covering all installations and appliances within the House and to carry out such works as are necessary to ensure that all such appliances and installations are safe, in accordance with current safety requirements and in proper working order;
 - vi. Install adequate fixed permanent heating in the House to ensure that the kitchen and living area may be adequately heated at a reasonable cost to the tenants there;
 - vii. Repair the insulating jacket on the hot water storage cylinder so that the door to the cylinder housing may be closed properly;
 - viii. Replace the door to the WC and shower area with one that fits the door frame correctly and ensure that the door may close properly;
 - ix. Repair the handle to the living room door so that it may be closed properly;
 - x. Replace the back-up battery in the mains smoke alarm in the living area and ensure that it functions correctly;
 - xi. On completion of the works, obtain an up to date Energy Performance Certificate and to exhibit both the existing and the new certificates to demonstrate the improvement in the energy performance of the house as a result of the works undertaken.
3. The RSEO specified that the works required by that Order required to be completed within twenty eight days of the service of the RSEO.
4. A re-inspection of the House was carried out by the surveyor member of the Committee on 11 August 2015.
5. The re-inspection revealed that the following works had been undertaken:
 - a. A report from Messrs K R Building Preservation, dated 3rd August 2015, quoting for damp proofing work required had been obtained.
 - b. The Landlord had delivered a letter dated 3rd August 2015 to the neighbouring occupiers advising that repair to the common stair is required to prevent dampness penetrating the subject flat.

- c. The insulating jacket had been suitably adjusted to enable the door to the hot water cylinder to be closed.
 - d. The bathroom door had been replaced with a door that fits the frame and closes properly.
 - e. An energy performance certificate dated 6th August 2015 had been obtained.
6. The re-inspection revealed that the following works had yet to be undertaken:
- a. A dehumidifier has not been employed and no effort has been made to dry out the interior; No damp proofing work has been undertaken.
 - b. The weather strip and door seal has not been replaced.
 - c. The broken vent and cracked window panes have not been replaced.
 - d. A Periodic Inspection Report has not been obtained and no work regarding the electrical installations and appliances has been carried out.
 - e. No fixed permanent heating has been installed.
 - f. The living-room door handle has not been repaired.
 - g. The back up battery on the smoke detector has not been replaced.

Photographs detailing the above outstanding works were taken at the time of the re-inspection by the surveyor member of the Committee and were attached to the said report of re-inspection.

7. A further re-inspection of the House was carried out by the Sub-Committee on 5 October 2015 at 11.45am. The Sub-Committee's inspection revealed that although some further work had been undertaken the following works had yet to be carried out:
- a. A dehumidifier has not been employed and no effort has been made to dry out the interior; No effective damp proofing work has been undertaken. Damp meter readings taken near the entrance door, the living room door and in the corner of the living room nearest the fireplace showed dampness was still clearly present. In fact, in some places it was worse than during the initial inspection in May 2015, despite a recent prolonged spell of dry weather.
 - b. Although a new consumer unit has been fitted, an Electrical Safety Certificate covering all installations and appliances within the House has not been made available.
 - c. An EPC report obtained on 4 August 2015 revealed that the House currently has an F rating band, which is unacceptable in a property of that size.
 - d. No fixed permanent heating has been installed so as to ensure that the kitchen and living area may be adequately heated at a reasonable cost to the tenant. An electrical night storage heater has been installed but does not appear to have been properly fixed, wired correctly, or on a low rate tariff. The current tenant advised that it had cost £70 to operate in the space of only two weeks.

Further photographs detailing the above outstanding works were taken at the time of the re-inspection by the Sub-Committee and are attached to the present Notice.

It follows that from the above that requirement (xi) of the RSEO had also not been complied with, which is to say:

- e. On completion of the works, obtain an up to date Energy Performance Certificate and to exhibit both the existing and the new certificates to demonstrate the improvement in the energy performance of the house as a result of the works undertaken.
8. A hearing was subsequently held at 12.30 at the Vine Conference Centre, 131 Garvock Hill, Dunfermline which the Landlord did not attend. The Landlord had been provided with prior notice of both the inspection and the hearing.
9. Accordingly and in terms of section 28(4) of the Act, the Sub-Committee decided on 5 October 2015 that the Landlord has failed to comply with the RSEO.
10. The Sub-Committee are required in terms of section 26(2)(b) of the Act to decide whether to make a Rent Relief Order. In this case, since the Tenant has left the property, the lease under it has been terminated and no rent is payable, it decided not to make a Rent Relief Order. Re-letting of the House while the present RSEO is in force is in any event a criminal offence as noted above.
11. The tenancy in this case has been terminated and, in accordance with section 7(1) and schedule 3 to the Act, the Tenant is accordingly to be treated as having withdrawn the application.
12. In accordance with section 7(3) of schedule 3 to the Act, the Sub-Committee decided to continue to determine the application in accordance with the provisions of that section. The present decision is made accordingly.
13. Therefore in terms of section 26(2)(a) of the Act, the Sub-Committee determined to send a Notice of Failure to the Local Authority in whose area the House is situated.
14. Moreover, access to the House was provided by a new Tenant, a Mr Neil Munro who indicated that he had been in residence for approximately 6 weeks prior to the re-inspection by the Sub-Committee, paying a rent of approximately £350 per calendar month. As it is an offence in terms of section 28(5) of the Act to re-let a property subject to a Repairing Standard Enforcement Order (as clearly indicated in bold script in the RSEO served on 9 June 2015), the Landlord is guilty of a criminal offence. The Sub-Committee therefore also resolved to notify the police and the Procurator Fiscal's Service that an offence had been committed under the Act. This action of the Sub-Committee applies independently of the present Notice.

Right of Appeal

15. A landlord or tenant aggrieved by the decision of the PRHP committee may appeal to the Sheriff by summary application within 21 days of being notified of that decision.
16. Where such an appeal is made, the effect of the decision and 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:

M
M. O'Carroll

Maurice O'Carroll
Chairperson

Date: 6 October 2015

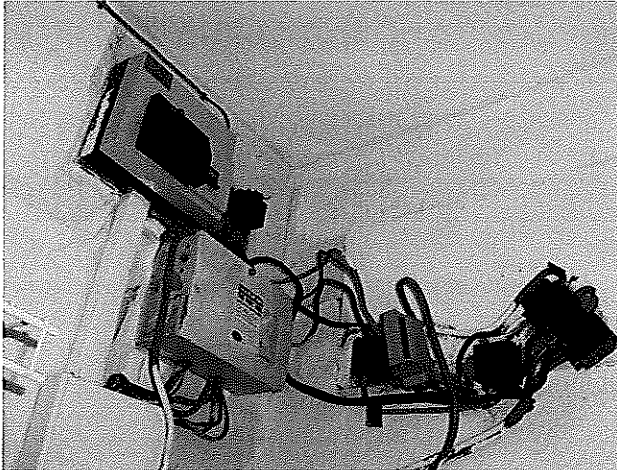
Witness:

T. Whitelaw

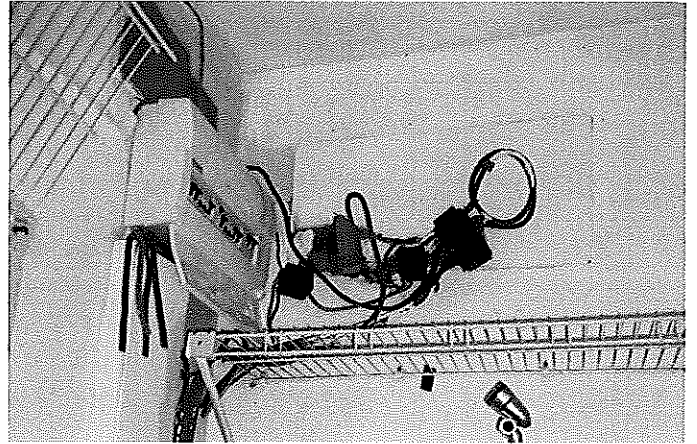
Name and occupation

*TRACY WHITELAW
ADVOCATES CLERK
PARLIAMENT HOUSE
EDINBURGH EH1 1RF*

Schedule of photographs taken during the re-inspection of
106 Stenhouse Street, Cowdenbeath, KY4 9DH
by Robert Buchan, FRICS, surveyor member of the
Private Rented Housing Committee on the 5th October 2015



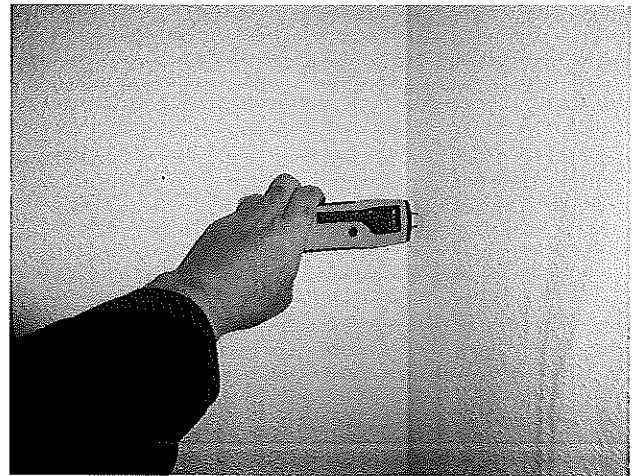
Consumer units 27th May 2015



Consumer unit 5th October 2015

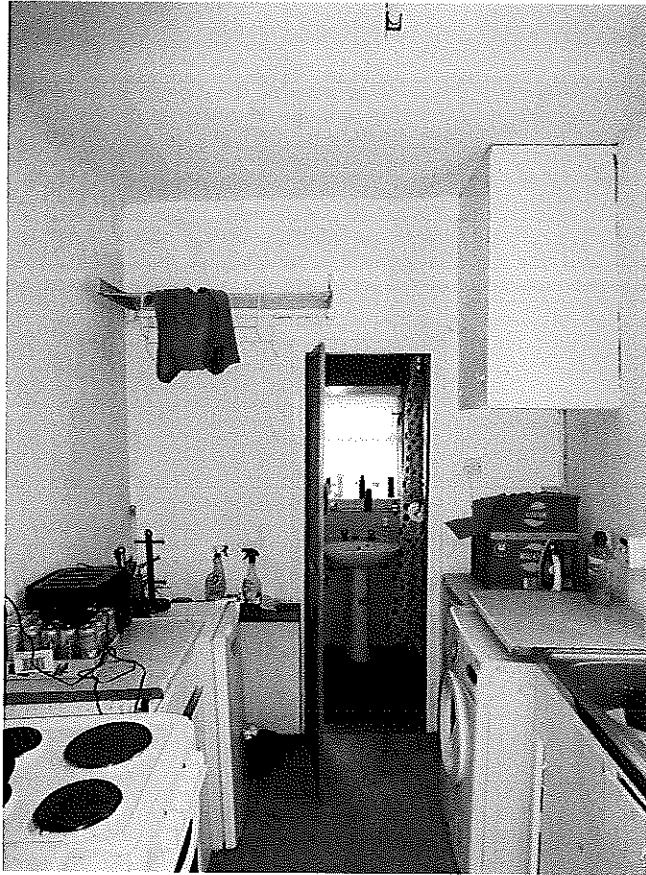


Damp meter reading 27th May 2015

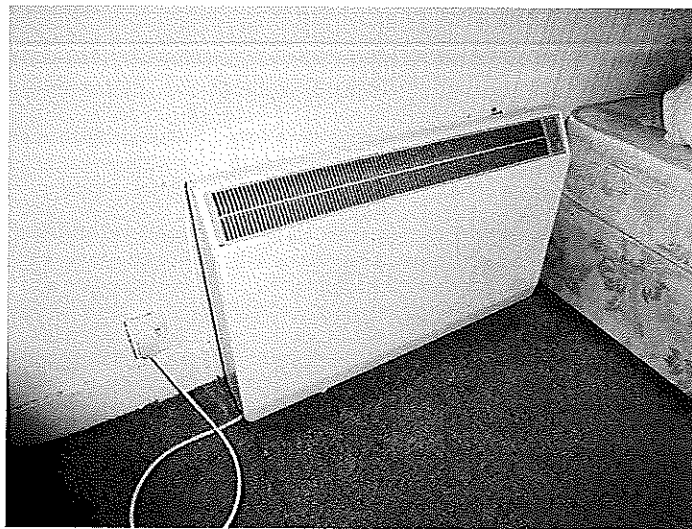


Damp meter reading 5th October 2015

Schedule of photographs taken during the re-inspection of
106 Stenhouse Street, Cowdenbeath, KY4 9DH
by Robert Buchan, FRICS, surveyor member of the
Private Rented Housing Committee on the 5th October 2015



Kitchen with bathroom off



Night storage heater