



Statement of decision of the Private Rented Housing Committee under Section 26 & 27 of the Housing (Scotland) Act 2006

prhp Ref: PRHP/RP/14/0134

Re: Property at 7 Merkland Road East, Aberdeen, AB24 5PS ("the Property")

The Parties:-

MISS SUMRAH AL-BAGHDADI ("the Tenant")

MR JOSEPH LEWSLEY and DEBORAH LEWSLEY, 15 Buckles Road, Finstown, Orkney, KW17 2UE ("the Landlord")

Background

1. On 29 October 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:-
 - (a) to carry out such works as are necessary to prevent water ingress and damp occurring in the Property;
 - (b) to repair any areas of damaged plasterwork arising as a result of the said water ingress/damp and to redecorate the flat as appropriate;
 - (c) to obtain a clear electrical installation condition report by a suitably qualified electrician and to carry out any works necessary to allow the issue of the said report;
 - (d) to repair the broken flush mechanism on the toilet in the Property;
 - (e) to repair the external door entry/buzzer mechanism;
 - (f) to carry out such works as are necessary to ensure a proper supply of hot water to the Property for use by the Tenant; and
 - (g) to install a hardwired interlinked heat detector to the kitchen area in the sitting room to connect into the existing smoke detection system.
2. The Committee had ordered in the RSEO that the works specified were to be carried out and completed within a period of 2 months.
3. On 6 March 2015, a reinspection of the Property was organised. The Surveyor Member of the Committee attended at the Property. No access was given to the Surveyor Member. A neighbour advised that the Tenant had vacated the Property. The Landlord had not provided access, despite having been notified of the reinspection by Recorded Delivery letter.

Further attempts to contact the Landlord were made and, on 23 March 2015, the Landlord advised the Committee via email that due to the cost of repairs to the flat it had been removed from the letting market and no one had been in the flat since November 2014.

At the time of the reinspection the Surveyor Member had viewed the Property from the exterior through the window insofar as he was able. It did not appear that any works had been carried out. The door entry system was also still broken at the date of the Surveyor's reinspection. The lack of works appeared to be verified by the email from the Landlord as well. In July 2015 the Committee again tried to make contact with the Landlord to find out if any works had been done. No response was received from the Landlord.

4. The Committee then considered matters. The Committee was satisfied from the external inspection and the email response from the Landlord of 23 March 2015, that no works had been carried out to the Property. Whilst the Committee appreciated that the Landlord may have financial difficulties that was not, in their opinion, a reasonable excuse for failing to carry out the works.
5. The Committee then considered what steps to take. In terms of Section 26(1) of the Act, it was for the Committee to decide whether the Landlord had complied with an RSEO made by the Committee. In terms of sub-section (2), where the Committee decides that a 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").
6. The Committee, after discussion, accepted that it was clear that no works had been undertaken and that the Landlord had failed, without reasonable excuse, 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.
7. The Committee then considered whether or not to make an RRO. Given that the tenancy had terminated, there was no current tenancy on which to place an RRO. It was a criminal offence to re-let the Property whilst the RSEO was in place and accordingly there was no benefit in serving an RRO on the Property.
8. 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 indication from the Landlord was that he was unable to carry out the works due to a lack of funds. Whilst the Committee accepted this may be the reason why the Landlord was not capable of doing the works, it was not a reasonable excuse. The Landlord had collected significant rental sums from the tenant during her period of occupation and had clearly failed to apply any of this to maintaining the Property. Accordingly, in the circumstances, the Committee was of the view that Section 28(1) had been breached and therefore also resolved to report the matter to the Police for consideration for prosecution.

Decision

9. 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 and to report the matter to the Police for consideration for prosecution. The Committee determined not to grant an RRO.
10. The decision of the Committee was unanimous.

Right of Appeal

11. **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

12. 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.

E MILLER

Signed
Chairperson

..... Date 7/18/15