



Rent Relief Order

Ordered by the Private Rented Housing Committee

Case Reference Number: PRHP/RP/14/0289

Re : 13A Hunterhill Road, Paisley PA2 6SR ("the Property")

The Parties:-

Anthony Waish, 13A Hunterhill Road, Paisley PA2 6SR ("the Tenant")

Kirsteen Mabel Ainsley Hunter, otherwise known as Kirsten Mabel Ainsley Hunter, 13 Hunterhill Road, Paisley PA2 6SR ("the Landlord")

NOTICE TO ("the Landlord")

Whereas in terms of their decision dated 23 December 2015 the Private Rented Housing Committee ("the Committee") decided in terms of section 26(1) of the Housing (Scotland) Act 2006 (the "said Act") that the Landlord had failed to comply with the Repairing Standard Enforcement Order in relation to the Property made by the Committee;

the Committee decided to make a Rent Relief Order in terms of section 27 of the said Act reducing the rent payable under the tenancy for the house by an amount of 20% of the rent which would, but for the order and the Rent Relief Order dated 29 May 2014 under reference RP/13/0038, be payable. The rent reduction will take effect 28 days after the last date on which the decision to make the Rent Relief Order may be appealed under section 64 of the said Act.

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. Where the appeal is abandoned or finally determined by confirming the decision, the Rent Relief Order will take effect 28 days after the date on which the appeal is abandoned or the decision is confirmed.

In witness whereof this document type-written on this page is executed by David Bartos, advocate, Advocates' Library, Parliament House, Parliament Square, Edinburgh EH1 1RF chairperson of the Private Rented Housing Committee at Edinburgh on 23 December 2015 before this witness:-

J P Hudson

D Bartos

_____ witness

_____ chairman

JILL PENELOPE HUDSON name in full

100 ELIZABETH ROAD Address

SUTTON COLDFIELD
WEST MIDLANDS, B73 5AS

RETIRED Occupation



**Decision of Private Rented Housing Committee
under Sections 26 and 27 of the Housing (Scotland) Act 2006**

Statement of Reasons for Decision of the Private Rented Housing Committee

(Hereinafter referred to as "the Committee")

Case Reference Number: PRHP/RP/14/0289

Re : 13A Hunterhill Road, Paisley PA2 6SR ("the Property")

Title No: REN59411

The Parties:-

Anthony Walsh, 13A Hunterhill Road, Paisley PA2 6SR ("the Tenant")

Kirsteen Mabel Ainsley Hunter, otherwise known as Kirsten Mabel Ainsley Hunter, 13 Hunterhill Road, Paisley PA2 6SR ("the Landlord")

The Committee comprised:-

Mr David Bartos	- Chairperson
Ms Sara Hesp	- Surveyor member
Ms Elizabeth Dickson	- Housing member

Decisions

The Committee, having made such enquiries as it saw fit for the purposes of determining whether the Landlord has complied with the Repairing Standard Enforcement Order dated 15 May 2015 and taking account of the evidence before it, determined that the Landlord had not complied with the said Order.

The Committee decided to make a Rent Relief Order reducing the rent payable under the lease between the Landlord and the Tenant in force at the present date, (excluding any deduction by virtue of the Rent Relief Order dated 29 May 2014) by twenty per cent (20 %).

Background:-

1. On 14 May 2015 the Committee determined that the Landlord had failed to comply with the duty imposed by section 14(1)(b) of the Housing (Scotland) Act 2006 ("the 2006 Act") in respect of the Property. On the same date the Committee made a Repairing Standard Enforcement Order ("RSEO") in respect of the Property.

2. The RSEO required the Landlord to:
 - (1) carry out all work necessary to eliminate rising damp from the north-east (garden) wall of the Property;
 - (2) carry out such subsequent works as are necessary to reinstate any part of the Property including the wallpapering of the living room of the Property and making good.

The RSEO required the works to be carried out within 8 weeks of the date of service of the RSEO. The RSEO and accompanying determination and statement of reasons was served on the parties on or about 19 May 2015.

Pre Re-inspection procedure

3. A re-inspection of the Property was intimated to the Tenant and to the Landlord. By e-mail to the Private Rented Housing Panel dated 22 July 2015 the Tenant indicated that he would be available to give access for the re-inspection between 24 and 29 August but not in September 2015 other than on 1 September. A date for re-inspection was fixed for 28 August and intimated to the parties. On or about 20 August the Tenant telephoned the Panel to say that the Property would not be open for inspection on that date. The Panel's clerk fixed a hearing date of 9 September. By e-mail of 24 August 2015 to the Panel the Tenant requested a period of 24 to 48 hours to allow him to intimate alternative suitable dates for inspection. He did not intimate any suitable dates.
4. Accordingly on 30 September 2015 the Committee obtained a warrant for entry to the Property if necessary using reasonable force. By letters from the Panel's clerk dated 2 October 2015 to the parties they were informed that the warrant had been obtained. A date of 23 October 2015 was fixed for the re-inspection and this was intimated to the parties.

The Re-inspection

5. The Committee's surveyor member re-inspected the Property on that date and time. She attended with a sheriff officer and a locksmith *and a clerk*. The Tenant was not present. The Landlord was present and enabled access to the Property. The weather was dry, cloudy and warm for the time of year. She found that the work set out in the RSEO had not been carried out. She produced a Re-inspection Report which is referred to for its terms.

Post Re-inspection procedure

6. By letters to the parties issued on or about 27 October 2015 the Panel's clerk intimated the said re-inspection report, and invited the parties to comment on whether there had been failure to comply with the RSEO and whether they wished a hearing on the matter. The parties were also invited to make representations on whether, should there have been such a failure, there should be a rent relief order ("RRO").

7. By a written response dated 2 November 2015 the Tenant stated that he accepted the re-inspection report. He also stated that there should not be an RRO on the grounds that the Landlord already had an RRO outstanding against her and that "she should receive some rent". He also sought a hearing. There was no response from the Landlord.
8. A hearing at Wellington House, 134-136 Wellington Street, Glasgow G2 2XL was fixed for 17 December 2015 at 10.00 a.m.. The date, time and place of the hearing were intimated to the parties by letters of the Panel's clerk dated 20 November 2015.
9. By a note dated 25 November 2015 and received by the Panel on 30 November the Tenant stated that he would be unable to attend the hearing because he would be taking his grandfather to hospital for an operation as an out-patient. He also stated that he would be unavailable from 4 to 18 December inclusive. The Committee considered carefully whether the hearing should be adjourned. There was no representation from the Landlord on the Tenant's position. She had not sought a hearing in any event.
10. The Committee noted that the Tenant had sought the hearing in order to argue that an RRO should not be made against the Landlord so as to deprive her of rent entirely. Both Tenant and Landlord were at one that no work under the RSEO had been carried out. The only issue in dispute at the hearing would be as to the level of rent relief there should be. An RRO would always leave the landlord with at least 10% of the rent. In addition the level of rent relief would be fixed by reference to the loss of amenity caused to a tenant by the absence of the work rather than by reference to the personal circumstances of landlord or tenant. The Committee was unable to see what prejudice the Tenant would have in not being able to elaborate on his written submission at the hearing.
11. If moreover the matter was of such vital importance to the Tenant that his attendance at the hearing was essential, the Committee could see no reason why the Tenant could not attempt alternative arrangements to allow him to attend. There is no absolute obligation on the Committee to hold a hearing in any event.
12. Finally the works required by the RSEO were significant and it was important that these be carried out as soon as possible for the benefit of the Property itself and any future tenant. The Tenant had not shown any willingness to co-operate in the fixing of an alternative date and had already delayed the carrying out of the re-inspection. Committees have a public function and are not the mere servants of the parties. It is important that Committees are not delayed in the carrying out of their functions by a lack of co-operation from the parties.
13. In all the circumstances on 3 December 2015 the Committee decided that the interests of justice required the hearing to be continued and this was

intimated to the Tenant. By an e-mail dated 15 December 2015 to the Panel the Tenant protested at the decision. He submitted that his father's absence necessitated him requiring to attend to his grandfather. However he did not offer any alternative dates. The Committee re-considered the matter. However the Committee remained unable to see what prejudice the Tenant would be liable to suffer if he was unable to attend the hearing given his apparent *opposition* to any rent relief at all on the grounds that the landlord should have some rent. In addition no alternative dates had been offered by the Tenant. Accordingly the Committee remained of the view that the interests of justice merited the hearing going ahead and adhered to its decision to continue with the hearing.

The Evidence

14. The evidence before the Committee consisted of:-

- The decision of the Committee dated 14 May 2015
- re-inspection report dated 26 October 2015
- Copy letters dated 20 November 2015 from the PRHP to the parties
- Written representations of the Tenant following the re-inspection
- The decision of the Committee dated 29 May 2014 under reference: RP/13/0038

The Hearing

15. The Committee held a hearing at the venue fixed for it. There was no appearance by or on behalf of either the Tenant or the Landlord.

Findings of Fact

16. Having considered all the evidence, including their inspection, the Committee found the following facts to be established:-
- (a) The Committee issued a RSEO dated 14 May 2015 which was served on the Landlord on or about 19 May 2015. The Landlord had 8 weeks from the date of service of the RSEO to carry out and complete the works stated in the RSEO.
 - (b) As at 23 October 2015 the Property was in the condition set out in the Re-inspection Report of the Surveyor Member dated 26 October 2015. None of the work in the RSEO had been carried out. Work is still required as set out in the Re-inspection Report. The living room remains in the condition set out in finding in fact (d) in the Committee's decision of 14 May 2015.

Reasons for Decision

17. The Committee required firstly whether the Landlord had complied with the RSEO.
18. There is no dispute that she has not done so. The facts speak for themselves. Accordingly the Committee found that she has failed to comply with the RSEO.
19. Secondly the Committee required to decide whether to make a rent relief order and if so in what terms.
20. The Committee considered the written submission of the Tenant. It noted that even a rent relief order at the maximum level of 90% would still leave some rent available to the Landlord. The purpose of a rent relief order is to prevent the landlord from gaining rent from an amenity which has been lost due to a failure to comply with a repairing standard enforcement order. Its purpose is not merely to relieve the tenant but also to provide an incentive for the Landlord to comply with the RSEO. In this case even with an RRO the Landlord will still be entitled to some rent on any view. Furthermore the existence of an unrevoked rent relief order in existence under reference RP/13/0038 is immaterial to whether there has been loss of amenity as a result of the current RSEO. In these circumstances notwithstanding the plea of the Tenant effectively on the Landlord's behalf, the Committee decided that an RRO was appropriate.
21. The Committee considered that the ongoing rising damp in the living room caused a loss of amenity which it estimated at 20% of the rental value of the Property. It made an RRO reducing the rent payable under the existing tenancy by 20%.
22. The Committee took the view that the existence of the undischarged rent relief order of 50% was immaterial to the level of the RRO. If the work required to revoke that previous order was carried out, this should have no effect on the need to carry out the work in the RSEO. Equally if the work under the RSEO was carried out and the RRO revoked that should leave the 50% rent relief order unaffected.
23. While both rent relief orders remain in place, the relief will cause a deduction of only 50% of the rent. Perhaps surprisingly the 2006 Act does not enable the variation of an RRO upon the carrying out of some but not all of the work required by it.

Criminal Offence

24. The Landlord is reminded that if without a reasonable excuse she fails to comply with an RSEO she commits a criminal offence (2006 Act, s.28(1)). A report of her failure to comply will be served on the local authority.
25. She is also reminded that if she enters into a tenancy or occupancy arrangement in relation to the Property at any time while the RSEO remains in force she will commit a criminal offence (2006 Act, s.28(5)). She might also be disentitled from retaining rent from any such re-letting.

Decisions

26. The decisions of the Committee set out above were unanimous.

Rights of Appeal

27. A landlord or tenant aggrieved by either decision of the Committee may appeal to the Sheriff by summary application within 21 days of being notified of that decision.

28. Unless the lease or tenancy between the parties has been brought to an end, the appropriate respondent in such appeal proceedings is the other party to the proceedings and not the Committee which made the decision.

Effects of Section 63 of the 2006 Act

29. Where such an appeal is made, the effect of this decision and of any Order made in consequence of it is suspended until the appeal is abandoned or finally determined.

30. Where the appeal is abandoned or finally determined by confirming the decision, the decision and the Order made in consequence of it are to be treated as having effect from the day on which the appeal is abandoned or so determined.

D Bartos

SignedDate: 23 December 2015.....

David Bartos, Chairperson

J P Hudson

Signature of Witness.....Date 23/12/2015

Name of witness: JILL PENELOPE HUDSON

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SUTTON COLDFIELD
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Occupation of witness: RETIRED