



**Decisions of Private Rented Housing Committee
under Sections 25, and 26 (1) and (2) of the Housing (Scotland) Act 2006**

Statement of Decisions of the Private Rented Housing Committee

(Hereinafter referred to as "the Committee")

Under Sections 25 and 26(1) and (2) of the Housing (Scotland) Act 2006

PRHP Reference : PRHP/RP/14/0294

Re: Property at 63/11 Bread Street, Edinburgh EH3 9AH ("the Property")

The Parties :

Alvaro Carrasco, 12/6 Moncrieff Terrace, Edinburgh EH9 1NA ("the Applicant")

Jamie McKenzie Davidson, 'Eldermount' 110 Church Street, Tranent, East Lothian EH33 1BZ ("the Landlord")

The Committee comprised:-

Mr David Bartos - Chairperson
Ms Irene Kitson - Housing member

Decisions

1. The Committee decides that the Landlord has failed to comply with the Repairing Standard Enforcement Order relating to the Property dated 30 June 2015.
2. The Committee decides not to vary the said Order and not to make a rent relief order.

Background:-

1. The Committee issued a Repairing Standard Enforcement Order ("RSEO") in respect of the Property dated 30 June 2015. The works in the RSEO required to be completed by three months from the date of service of the RSEO on the Landlord. The RSEO was served on the Landlord on or about 2 July 2015.
2. By e-mail of 2 July 2015 to the Private Rented Housing Panel ("PRHP") the Landlord advised that the required works had been completed. The surveyor member of the Committee having resigned from the PRHP another surveyor member of the PRHP, Mr Robert Buchan carried out a reinspection of the Property on 19 August 2015. Mr Buchan's findings

were put into a Re-inspection Report which was intimated to the Landlord on or about 4 September. Together with the report the Landlord was invited to make representations on whether the work was complete.

3. The Landlord responded with written representations dated 11 September 2015 stating that his joiner was to revisit the Property in the week commencing 14 September 2015 and carry out the work found to be incomplete by Mr Buchan. He did not seek a hearing on the question of compliance.
4. By letter to the Landlord issued on or about 24 September 2015 the Committee's clerk asked the Landlord to produce documentation confirming that the outstanding work described in the Re-inspection Report had been carried out. The letter was issued by recorded delivery post and by e-mail. The lease with the Applicant having terminated on 16 April 2015 there was no intimation to the Applicant who had vacated the premises. There has been no response by the Landlord to the letter of 24 September.
5. The Committee have taken account of the following evidence:
 - Photographs taken by the Landlord's joiner attached to the e-mail of 2 July 2015
 - Re-inspection Report dated 19 August 2015
 - Written representations from Landlord dated 11 September 2015
 - Letter from the PRHP to the Landlord dated 24 September 2015
6. The Committee decided that in the light of the evidence before it and the absence of any request for a hearing that a hearing was unnecessary.

Findings in fact

7. Having considered all the evidence, the Committee found the following facts to be established:-
 - (a) The Committee issued a RSEO dated 30 June 2015 which was served on the Landlord on or about 2 July 2015. The Landlord had 3 months from the date of service of the RSEO to carry out and complete the works stated in the RSEO.
 - (b) The Landlord has carried out the works set out as having been carried out in the Re-inspection Report dated 19 August 2015. By that date a wooden skirting board had been fitted along the rear wall in the kitchen area behind the cooker and washing machine.
 - (c) The works set out as outstanding in the Re-inspection Report remain to be carried out.

Reasons for Decision

8. The Committee accepted the re-inspection report with which the Landlord has not taken issue.
9. The Landlord has failed to provide any evidence that the work set out as outstanding in the Re-inspection report has been carried out. In these circumstances it is reasonable for the Committee to infer that there has not been compliance with the RSEO to the extent set out in the Re-inspection Report and the Committee makes that inference.
10. Despite the non-compliance, if the Committee considers that satisfactory progress has been made in carrying out the work required by the RSEO, the Committee must vary the RSEO so as to extend the period within which the work must be completed and in any other manner as it thinks fit.
11. Has satisfactory progress been made in carrying out the work required by the RSEO ? Whether progress has been satisfactory must be assessed in relation to the work required by the RSEO. The work in the RSEO was not unduly burdensome and has to some extent been carried out. It is however a mystery as to why the further work alluded to in the Re-inspection report has not been carried out. That is something that could have been carried out well within the time limit in the RSEO. It is in no way burdensome on the Landlord. Given that that time limit expired on or about 2 October 2015 and that by the date of this decision the Committee still awaits any evidence of full completion, the Committee cannot consider the work done up to the date of the Re-inspection as amounting to satisfactory progress in the carrying out of the works required by the RSEO. In these circumstances the Committee is not obliged to vary the RSEO under section 25(2) of the 2006 Act.
12. On the basis of the above factual findings the Committee finds that the Landlord has failed to comply with the RSEO. The Committee will serve notice of this non-compliance on City of Edinburgh Council.
13. Once a Committee has decided that a landlord has failed to comply with an RSEO it must decide whether to make a rent relief order and if so the extent or rent to be deduced under the order (Section 26(2)(b) of the 2006 Act).
14. The Committee is unable to make a rent relief order in relation to the tenancy that had triggered the application because it terminated in April 2015.
15. The Committee observes that on the face of it any re-letting of the Property would appear to be a criminal offence in terms of section 28(5) of the 2006 Act.

Decisions

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

Rights of Appeal

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

18. 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 Private Rented Housing Panel whose Committee which made the decision.

Effects of Section 63 of the 2006 Act

19. Where such an appeal is made, the effect of the decisions, including any Rent Relief Order is suspended until the appeal is abandoned or finally determined.

20. Where the appeal is abandoned or finally determined by confirming the decision, the decisions, including any Rent Relief Order are to be treated as having effect from the day on which the appeal is abandoned or so determined.

D BARTOS

Signed Date: 5 November
2015.....

David Bartos, Chairperson

L GALLOWAY

Signature of Witness.... Date: 5 November 2015

Name ... LUCY GALLOWAY

Address... 7... WHITEDALES, EDINBURGH, EH10 7JQ

Occupation ... SOLICITOR