



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

prhp ref: RP/15/0193

Re Polfern, Craigdews, New Galloway Road, Newton Stewart, DG8 7BL ('the Property')

The Parties:-

Mrs Margaret Wood on behalf of William Alexander Wood, residing at the Property ("The Tenant")

Gauld Properties Limited, 22 Milnpark Street, Glasgow, G41 1BB ('The Landlord')

Background

1. By application dated 26th June 2015 the Tenant applied to the Private Rented Housing Panel for a determination of whether the Landlord has failed to comply with the duties imposed by Section 14 (1) (b) of the Housing (Scotland) (Act) 2006 ("the 2006 Act).
2. On 3rd November 2015 the Private Rented Housing Committee (comprising Martin Joseph McAllister, Chairman and Legal Member and Carol Jones, Surveyor Member) ("the Committee") made a determination that the Landlord had failed to comply with the duty imposed by Section 14 (1) (b) of the 2006 Act in respect of the Property being the subjects registered in the Land Register of Scotland under Title Number **KRK1539**. On the same date the Committee made a repairing Standard Enforcement Order ("RSEO") in respect of the Property. These were served on the Landlord on 6th November 2015. The RSEO was in the following terms:

(One) The Landlord is to repair or replace the external render where there is exposed brickwork, cracking and bossing.

(Section 13(1) (b) of the Act).

(Two) The Landlord is to replace the kitchen sink and base unit (Section 13 (1) (d) of the Act).

(Three) The Landlord is to replace the cold water tank situated in the loft and repair or replace any associated pipework where necessary (Section 13 (1) (c) of the Act).

(Four) The Landlord is to repair the living room fire so that it can be used effectively and safely. (Section 13(1) (c) of the Act).

(Five) The landlord is to replace the Rayburn Stove with a suitable appliance or appliances to provide space heating to the house and heating of water. Such appliance or appliances require to be able to be used safely and effectively. (Sections 13(1) (c) and 13(1) (d) of the Act).

(Six) The Landlord is to install appropriate interlinked heat and smoke alarms to comply with the requirements of the revised Domestic Technical Handbook issued by Scottish Government's Building Standards Division (Technical Handbooks 2013:- Domestic-Fire)

(Section 13(1) (f) of the Act).

The committee determined that the work requiring to be done in terms of the repairing standard enforcement order be completed within twenty eight days of service of the repairing standard enforcement order.

3. On 11th December 2015 Mrs Wood stated that the works required by the RSEO had not been done. She said that a plumber had come to the house on 10th December 2015 to ascertain what work required to be done and said that he would report to the landlord. In her communication Mrs Wood indicated that she wanted the Committee to consider a variation of the RSEO because she thought that the Landlord required more time to do the work.

4. On 7th January 2016 Carol Jones, Surveyor member of the Committee inspected the Property. Ms Jones provided a report on her inspection dated 7th January 2016 and this was copied to the parties. A copy of the report is attached.

5. The report disclosed that in relation to the matters referred to in the RSEO no work had been done and that all works required in the RSEO remained outstanding at the date of reinspection.

6. On 28th January 2016 Ms Joan Johnston who is described as a PA and presumably is an employee of the Landlord emailed the PRHP office stating that "Mr Stanley Gauld, the owner of the above property, has been involved in a bad ski-ing accident in France and will

not be returning to Glasgow in the foreseeable future.” Ms Johnston requested that more time be allowed to carry out the repairs to the property. She said that she had contacted a company in connection with the required work and that it would contact Mrs Wood.

7. The Committee considered matters on 3rd February 2015. It acknowledged that it had to determine whether the landlord has carried out the works required by the RSEO dated 3rd November 2015. The Committee considered it appropriate to amend its Determination of 3rd November 2015 in one respect. The Determination erroneously referred to Mr Wood, party to the lease, as being deceased and this is not correct. The members of the Committee regret this error and express apologies to both Mr and Mrs Wood. The Committee acknowledged that Mrs Wood is representing her husband in the application and is effectively acting as her husband’s agent.

8. The Committee made the following finding in fact:

The RSEO has not been complied with.

9. The Committee’s reasons for the finding in fact are the terms of the surveyor’s inspection report of 7th January 2016.

10. The Committee considered what action, if any, it should take in relation to the Landlord’s failure to comply with the RSEO but it considered first whether or not to grant a variation of the RSEO in terms of Section 25 of the 2006 Act. Mrs Wood had stated on 11th December that she thought the Landlord needed a bit more time to do the work. Ms Johnston had advised the Committee of Mr Gauld’s unfortunate accident, described him as the owner of the Property and requested that the Committee grant a variation of the RSEO.

11. In considering whether or not it was appropriate to grant a variation of the RSEO the Committee had regard to the terms of Section 25 of the 2006 Act:

(1) The private rented housing committee which made a repairing standard enforcement order may, at any time-

(a) vary the order in such manner as they consider reasonable, or

(b) where they consider that the work required by the order is no longer necessary revoke it.

(2) where subsection (3) applies, the committee must vary the repairing standard enforcement order in question-

(a) so as to extend, or further extend, the period within which the work required by the order must be completed, and

(b) in such other matter as they think fit.

(3) This subsection applies where-

(a) The committee consider, on the submission of the landlord or otherwise, that the work required by a repairing standard enforcement order has not been, or will not be completed during the period within which the order requires the work to be completed, and

(b) *the committee-*

(i) *consider that satisfactory progress has been made in carrying out the work required, or*

(ii) *have received a written undertaking from the landlord stating that the work required will be completed at a later date which the committee consider satisfactory.*

12. The Committee considered it appropriate to consider first the terms of Section 25 (2) in conjunction with Section 25 (3). The Committee had received representations from the Landlord seeking variation and had representations from the Tenant also seeking a variation. That complies with the requirements of Section 25 (3) (a). Turning to the terms of Section 25 (3) (b) the Committee noted that no progress whatsoever had been made to carry out the work required by the RSEO and that it had received no written undertaking from the Landlord. The Committee did not therefore consider that the requirements of Section 25 (2) had been met.

13. The Committee then considered whether or not it was reasonable to vary the RSEO in accordance with Section 25 (1) (a) of the Act. Both parties had requested that more time be given for implementation of the RSEO. The Committee noted Mrs Wood's position and also the unfortunate position of Mr Gauld.

The Committee noted that the Property is owned by Gauld Properties Ltd and not, as stated by Ms Johnstone, by Mr Gauld. Whilst he may be a Director and indeed may have a shareholding in the limited company, there is at least one employee, Ms Johnstone, who could deal with matters. The Committee considered it significant that in her email of 28th January 2016 Ms Johnstone said that she had contacted a company in connection with the work.

The Committee noted that all the matters which were subject to the RSEO were significant but that some were of a nature that the non implementation of the RSEO has serious consequences for the Tenant. There are safety issues surrounding the use of the stove, the fire and the absence of appropriate sensors for smoke detection. The Property is remote and does not have mains electricity. The Tenant's options for heating the Property are restricted because of the limitations of the generator. The fire in the living room cannot be used effectively and safely and the stove does not effectively provide space heating or heat the water.

The RSEO was served on the Landlord on 6th November and required to be complied with by 8th December. The Landlord did, however, have knowledge of the issues with the Property. The Tenant had intimated these to the Landlord in July 2015 by sending a letter and had sent proof of posting to the private rented housing panel. The Landlord also had the application served on it and should have been aware of the potential issues with the Property.

The Committee determined that, in the particular circumstances of the case, it would be unreasonable to vary the RSEO. The reasons are as stated and centre on the considerable inconvenience to the Tenant, safety issues and the fact that the Committee considers that

the Landlord has had adequate time to deal with matters. The Committee considered it significant that, at the time of inspection, no work whatsoever had been done to deal with the RSEO.

14. The Committee then considered the terms of Section 26 of the Act. It found that the Landlord had not complied with the RSEO and it determined to serve notice of the failure on the local authority.

15. The Committee considered that the fact that the Landlord had not complied with the RSEO has significant implications for the Tenant. The most serious issues are those of safety and the fact that the property does not have adequate heating, has insufficient provision for heating of water and the lack of appropriate heat and smoke detectors.

16. The Committee considered it appropriate that a Rent Relief Order be made in terms of Section 26 (2) (b) of the Act and that the rent be reduced by 50%. The Committee considered that a reduction of this order would fairly reflect the ongoing inconvenience to the Tenant as a result of the Landlord's failure to comply in full with the RSEO.

Right of Appeal

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 of the 2006 Act

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.

Martin McAllister

Signed

Date: 8TH February 2016

Martin J. McAllister

Chairperson