



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

Case Reference Number: PRHP/RP/15/0249

**Re : Property at 21D Balunie Avenue, Dundee DD4 8QW ("the Property")**

**Title No: ANG6366**

**The Parties:-**

**Lorraine Scrimgeour, 21D Balunie Avenue, Dundee DD4 8QW ("the Tenant")  
(care of her agents Positive Steps, Swan House, 2 Explorer Road, Dundee DD2  
1DX)**

**David Sturrock, 22 Dunmore Gardens, Dundee DD2 1PP ("the Landlord")**

**The Committee comprised:-**

Mr David Bartos	- Chairperson
Ms Carol Jones	- Surveyor member

**Decisions**

1. The Committee decides that the Landlord has failed to comply with the Repairing Standard Enforcement Order dated 22 December 2015.
2. The Committee decides to make a rent relief order reducing the rent payable under the lease of the Property between the Landlord and the Tenant in force at the present date by fifty per cent (50%).

**Background:-**

1. The Committee issued a Repairing Standard Enforcement Order ("RSEO") in respect of the Property dated 22 December 2015. The works in the RSEO required to be completed by 28 days from the date of service of the RSEO on the Landlord. The RSEO was served on the Landlords on or about 7 January 2016. On 29 February the Committee's Surveyor member carried out a reinspection of the Property. She found that other than in the production of the gas safety record none of the work set out in the RSEO

had been carried out. She produced a Re-inspection Report dated 3 March 2016 which is referred to for its terms.

2. By letters to the Landlord and Tenant issued on or about 7 March 2016 the Committee's clerk intimated to the Landlord and to the Tenant the said re-inspection report, and invited them to comment on whether there had been failure to comply with the RSEO.
3. The Tenant sent a written response dated 15 March 2016 stating that she agreed with the Re-inspection Report, that no work had been carried out and no attempt had been made to schedule the work. The Landlord responded with his letter to the clerk dated 18 March 2016 in which he stated that certain work had by then been carried out. He stated that he had e-mailed photographs of that work but that had not occurred by the time that the clerk received his letter on 21 March.
4. The Committee decided that in the light of the evidence before it and the apparent disagreement between the parties on whether the works had been carried out, a further re-inspection and hearing were necessary to determine whether there had been a failure to comply with the RSEO and whether a rent relief order should be made. Furthermore both parties requested a further hearing in their written representations.
5. After this there was further correspondence between the PRHP and the parties with a view to fixing this further re-inspection and hearing. Due to the unavailability of parties the re-inspections and hearings fixed for 23 May and 14 July required to be postponed. By letters to Landlord and Tenant sent on or about 26 July 2016 the further re-inspection and hearing was fixed for 9 September 2016 at 10 a.m. and 11.30 a.m. respectively. The parties were informed that the hearing would take place at Caledonian House, Greenmarket, Dundee.

#### **The Further Re-inspection**

6. The Committee inspected the Property on the date and time fixed. The Tenant was present. She was accompanied by Gillian Anderson and Sara Tracey of Positive Steps who had agreed to provide support to her. The Landlord was present. He was accompanied by his wife Lesley Sturrock. The weather was dry, bright and sunny. The Committee carefully inspected the matters which were the subject of the RSEO.
7. The evidence before the Committee consisted of: -
  - The RSEO
  - Landlord/Home Owner Gas Safety Record serial No. : B3677776 dated 30 January 2016 from B. Peters
  - E-mail from the Landlord to PRHP dated 14 February 2016
  - The re-inspection report dated 3 March 2016
  - 2 No. Written representations from the Tenant dated 15 March 2016
  - Letter from the Landlord to PRHP dated 18 March 2016

- E-mail from Ricky Williamson of Discoverin' Families to PRHP dated 6 May 2016
- Photographs supplied by the Landlord to PRHP on or about 19 April 2016
- The oral evidence of the Tenant
- The oral evidence of the Landlord
- The oral evidence of Mrs Lesley Duffus or Sturrock
- Its members' observations on inspection

### **The Hearing**

8. At the conclusion of the inspection the Committee held a hearing at the time and place fixed. The Tenant appeared accompanied by the two ladies from Positive Steps. The Landlord appeared accompanied by his wife. At the hearing the Tenant confirmed to the Committee that she would wish to be represented for the hearing by Ms Anderson. During the course of the hearing Ms Anderson put forward the evidence of the Tenant in relation to various factual matters. The Landlord put forward his own evidence and on occasion the of his wife was also heard by the Committee.
9. With regard to the bathroom complaint the Tenant stated that the work had been done. When the Committee advised parties that in their inspection they had observed a lack of sealing of the bath at the external wall end and there was a gap between the wall and the wet walling which adjoined the bath at the internal wall to the side of the bath, she accepted that she had overlooked the missing sealing. The Landlord accepted that the sealing was not complete and indicated that he would "do up" the whole bathroom. Parties agreed that the shower curtain with rail had been installed.
10. Parties agreed that the electrical socket had been made secure.
11. With regard to the gas meter the Tenant stated that she had used the hot water heated by the gas-powered boiler despite the labels. She had used the heating despite the first label. She could not remember when the further label had been put in. The gas had always been left turned on.
12. The Landlord stated that the handle of the meter falls to the "on" position when it should fall to the "off" position. He had been told this by "his" gas engineer Barry Peters. He explained that on the Gas safe website not all gas engineers were qualified to repair meters. Scottish Gas Network (SGN) and Keir were the only ones. Certification to install meters was necessary. He had phoned E.On, the electricity supplier on 29 January 2016 who had agreed to come but when the Tenant had waited for them, she had phoned him to say they had not come. Eventually E.On did visit the Property but went away having done nothing and sent in SGN. He had spoken to E.On again on the phone with the help of the Tenant and been told that a safety bracket was needed. He had then spoken to E.On again on behalf of the Tenant but nothing further had been done.

13. The Landlord said that he couldn't be responsible for gas coming into the building. He presumed that SGN would have let E.On know and said that the Committee needed to speak to E.On. He did not know what had happened since. He had left the situation in the hands of E.On. He couldn't remember when he had last spoken to them but it was probably in February. His gas engineer Mr Peters might not be competent to remedy the situation.
14. While somebody had come in and put in the fresh label, he could not say when this had occurred. He presumed that all the necessary work would have been done by now.
15. Mrs Sturrock said that the reason the meter had not been repaired was because it was the responsibility of the gas supplier to carry out the repair. It was not Barry Peter's meter. Her husband's involvement had been as a favour for the Tenant.
16. With regard to the smoke alarms and heat alarm, the Tenant said that the Landlord had been in and done work to them. One of them had been installed yesterday. The Landlord had put the grey wire up and connected it to the smoke alarm. They had been tested and made a loud noise.
17. The Landlord said that he had put up trunking yesterday to hide the cables. The cabling for the smoke alarm in the lounge came from the ceiling. It had been present originally as it had been a council property. The wiring in the hallway had been put in at the end of February, after the first re-inspection. He has now completed the installation of hardwired and interlinked smoke alarms in the hall and living room and a heat detector in the kitchen.
18. The Committee found the evidence of the Tenant credible and reliable. It found the evidence of the Landlord also credible and reliable in relation to the work that he had actually done. Given that the Landlord is not a gas engineer and therefore an expert the Committee was not prepared to accept his evidence as to the defects in the meter or what qualifications are required to repair it. Mrs Sturrock's evidence while honestly given was not of any real assistance.

### **Findings in fact**

19. Having considered all the evidence, the Committee found the following facts to be established:-
  - (a) The Committee issued a RSEO dated 22 December 2015 which was served on the Landlord on or about 7 January 2016. The Landlord had 28 days from the date of service to carry out and complete the works stated in the RSEO.
  - (b) The terms and photographs of the re-inspection report (apart from the "Comments") dated 3 March 2016 are adopted and incorporated herein. They describe the situation at the Property as at 29 February 2016.

- (c) A gas safety record for the Property including the boiler from B. Peters, a Gas Safe registered engineer had been produced and lodged with the Private Rented Housing Panel ("PRHP"). The record was dated 30 January 2016. It stated that the boiler was safe to use but that the ECV handle needed to be corrected, that the base shelf unit needed to be cut and that there was no meter bracket. The lack of a meter bracket was described as "NCS" meaning "not to current standards".
- (d) As at 9 September 2016 a shower curtain with curtain rail sufficient to prevent the escape of water during showering had been installed. The double electrical socket on the left side of the kitchen adjacent to the copper pipes had been installed. Smoke alarms compliant with requirement (e) of the RSEO have been installed. The Schedule of Photographs taken during the inspection on 9 September 2016 also show the condition of the Property in relation to the requirements of the RSEO. No other written documentation evidencing the carrying out of the works other than the gas safety record has been lodged with the PRHP.
- (e) As at 9 September 2016 there is a lack of sealing of the bath at the external wall end and a gap between the wall and the wet walling which adjoins the bath at the internal wall (shower) and stands away from the wall.
- (f) As at 9 September 2016 the gas meter in the kitchen continues to have a red label attached to it stating that the gas installation has been classified as "AT RISK" and that it is unsafe to use. Next to it, on the gas meter but not fixed to it, is a further label undated and unsigned. This further label was not present at the previous inspection and re-inspection, and stated:  
"SAFETY WARNING  
you are warned that this gas appliance/installation has been classified as AT RISK.  
This appliance/installation is unsafe and has been turned off for YOUR SAFETY. It must not be turned back on until a Gas Safe registered engineer has carried out work on the appliance/installation to ensure it is safe for you to use. It is an offence to continue using an unsafe application/installation.  
DO NOT USE."
- (g) The Landlord phoned E.On the electricity supplier on 29 January 2016 in connection with the gas meter. Eventually E.On did visit the Property but went away having done nothing. The Landlord spoke to E.On again on the phone with the help of the Tenant and had been told that a safety bracket was needed. He had then spoken to E.On again on behalf of the Tenant. He had done nothing further to pursue the matter. He had last spoken to E.On in February 2016. He presumed that the gas meter matter had been dealt with.

### Reasons for Decisions

20. The Committee accepted the re-inspection report in relation to the RSEO dated 3 March 2016. On the basis of its own inspection and the agreement of the parties it accepted that the work to the shower curtain and rail, the electric socket and the work to the smoke alarms and heat alarm had been done. It also accepted that the requirement to produce the gas safety record had been complied with.
21. There was also no dispute that part (a) (i) of the RSEO, namely the duty to seal the bath properly had not been complied with.
22. The principal issue was whether the Committee should find that the Landlord had failed to comply with part (c) of the RSEO which requires the Landlord to:
  - “ . . . ensure that the gas meter and connecting pipework are put into a reasonable state of repair and in proper working order”.
23. The Committee were clear, and there was no real dispute over this, that the gas meter at least was not in a reasonable state of repair or in proper working order. This was evidenced by not merely the continued presence of the original “At risk” label but also the appearance of the further label since February presumably after a visit from E.On or Scottish Gas Network. The question was whether this entitled the Committee to find a failure to comply with the RSEO.
24. However section 26(3)(b) of the Housing (Scotland) Act 2006 provides:
  - “The committee may not decide that a landlord has failed to comply with a repairing standard enforcement order . . . if the committee are satisfied, on the submission of the landlord or otherwise –
  - (i) that the landlord is unable to comply with the order because of a lack of necessary rights (of access or otherwise) despite having taken reasonable steps for the purpose of acquiring those rights...”
25. The Landlord submitted that he was not responsible for either the meter or the gas pipework in the Property leading from the meter to the gas mains outside the Property. This was the responsibility of E.On whose meter it was. As far as he was concerned it was not part of the leased subjects. He was not responsible for the presence of the labels on the meter. He had contacted E.On on two occasions and that was all that was required. He had no right to tamper with the meter or pipework on the mains side of the meter. In short he submitted that he was unable to comply with part (c) of the RSEO because he lacked the necessary rights to do so. He had taken reasonable steps to have E.On carry out the work.
26. Ms Anderson for the Tenant submitted that the Landlord could have done more to have the work carried out. The Tenant could have given permission for him to deal further with E.On had he wished. Something should have

been done between February and now (September). Somebody had to push E.On.

27. The first issue for the Committee was whether the Landlord was unable to comply with part (c) because of a lack of necessary rights of access or otherwise to allow him to do so.
28. The Committee was not satisfied that he was unable to comply with part (c) because of a lack of necessary rights of access or otherwise. The Committee observe at the outset that a Landlord can comply with an RSEO through the work of others. It is quite common for landlords to rely on the services of others to ensure compliance with an RSEO.
29. Even if one accepted that the meter and relevant pipework did not belong to the Landlord (and the Committee made no decision on this one way or the other), there was no evidence that the Landlord was unable to carry out the work because of a lack of necessary rights. There was evidence, which the Committee accepted, which showed that the Landlord was able to contact E.On with the co-operation of the Tenant. For reasons which remain unexplained the Landlord decided that despite the terms of part (c) of the Order he would cease to pursue the matter with E.On. Had he done so there was no reason to believe that the Tenant would not have co-operated to allow any work to be done. Nor was there any reason to believe that given the seriousness of the matter as set out on the labels, E.On (or SGN) would not have rectified any defect by September 2016. The Committee were unable to see why nothing was done by the Landlord in this regard after February 2016.
30. The Landlord merely presumed that the work would be done despite the duty to ensure that the work was done resting on him in terms of part (c). It was the lack of the Landlord's attempts to push E.On or SGN to attend to the work which was the cause of the meter and pipe defects remaining rather than any inability to comply because of a lack of necessary rights.
31. Even if the Committee were wrong on that, and lack of necessary rights to repair the meter or relevant pipework was the cause of an "inability" to carry out the repair (for example due to them being owned by E.On) the Committee were not persuaded that the Landlord had taken reasonable steps to acquire the rights to carry out the repairs. He had been entirely passive on the matter in the 6 months after February 2016 despite letting out a property with a gas connection that had been classified as "AT RISK".
32. It follows that section 26(3)(b) did not prevent the Committee from finding that the Landlord had failed to comply with part (c) of the RSEO. Given that the gas meter and connecting pipework continued to be not in a reasonable state of repair and not in proper working order the Committee decided to find that the Landlord had failed to comply with part (c) of the RSEO.
33. Where 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 (Sections 26(1) and 27(1) of the 2006 Act).

34. The failure to remedy the gas meter and pipework situation as set out in the labels attached to or on the gas meter relates to the heating and hot water provision for the Property and may also affect its safety. This is a serious matter for which the Landlord is responsible in terms of part (c) of the RSEO. Whether the Landlord let or did not let the meter is immaterial as the RSEO has already been made. The Committee notes that no such argument was made to it before the making of the RSEO and it is too late at this stage. The Landlord chose not to participate in the hearing before the RSEO was made.
35. In addition the Landlord has not carried out any of the sealing works in part (a)(i) of the RSEO.
36. In written submissions the Tenant sought an order to the extent of a 90% reduction of rent although Ms Anderson departed from this to some extent at the hearing. With the agreement of the Tenant, she invited the Committee to reach a "realistic" figure. The Landlord opposed 90% on the basis that this would render him unable to pay the mortgage over the flat and the Tenant would be evicted following repossession by the mortgage lender. Given E.On were responsible for the meter the figure should be 0%.
37. The terms of the labels on or at the meter are self-explanatory. Given that the Tenant relies on the gas for her hot water and heating the condition of the meter and connecting pipework is a serious loss of amenity and a potential health and safety risk. There was also the lack of sealing at the bath and both these matters have remained outstanding since the committee's original inspection on 14 December 2015. Looking at the matter in the round, the Committee made a rent relief order reducing the rent by 50%. The Committee will serve notice of this non-compliance on Dundee City Council.
38. The Committee emphasize that there appears to be no reason why the Landlord should not secure the necessary repairs to allow the rent relief order to be lifted and for the mortgage payments to be made. There appears to be no objective reason why the Rent Relief Order should lead to the Tenant's eviction.
39. The Landlord is reminded that it is an offence to enter into a new tenancy or occupancy arrangement for the Property while the RSEO continues to have effect.

### **Decisions**

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

### **Rights of Appeal**



- 41. 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.
- 42. 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**

- 43. Where such an appeal is made, the effect of the decisions, including the Rent Relief Order is suspended until the appeal is abandoned or finally determined.
- 44. Where the appeal is abandoned or finally determined by confirming the decision, the decisions, including the Rent Relief Order are to be treated as having effect from the day on which the appeal is abandoned or so determined.

**David Bartos**

Signed ... Date: 16 September  
2016.....

David Bartos, Chairperson

Signature of Witness.. Andrew Veitch.. Date..... 16.09.2016.....

Name ... ANDREW VEITCH .....

Address ... % FACULTY OF ADVOCATES .....

Occupation ... ADVOCATES' CLERK .....



## Rent Relief Order

Ordered by the Private Rented Housing Committee

prhp Ref: PRHP/RP/15/0249

Re : 21D Balunie Avenue, Dundee DD4 8QW (hereinafter referred to as "the Property")

Title No: ANG6366

**The Parties:**

Lorraine Scrimgeour, 21D Balunie Avenue, Dundee DD4 8QW ("the Tenant") (care of her agents Positive Steps, Swan House, 2 Explorer Road, Dundee DD2 1DX)

David Sturrock, 22 Dunmore Gardens, Dundee DD2 1PP ("the Landlord")

### NOTICE TO ("the Landlord")

Whereas in terms of their decision dated 16 September 2016 the Private Rented Housing Committee ("the Committee") determined in terms of Section 26(1) of the Housing (Scotland) Act 2006 (the "said Act") that the Landlord has failed to comply with the Repairing Standard Enforcement Order in relation to the Property made by the Committee.

The Committee determined to make a Rent Relief Order in terms of Section 27 of the said Act reducing the rent payable under the tenancy for the Property by an amount of 50% of the rent which would, but for the order, 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 these presents 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 16 September 2016 before this witness:-

Andrew Veitch \_\_\_\_\_ witness

David Bartos \_\_\_\_\_ chairperson

ANDREW VEITCH \_\_\_\_\_ name in full

CG FACULTY OF \_\_\_\_\_ Address

ADVOCATES \_\_\_\_\_

ADVOCATES' CLERK \_\_\_\_\_ Occupation



Schedule of photographs taken during the inspection of 21D, Balunie Avenue, Dundee  
DD4 8QW  
by the Private Rented Housing Committee on the 9 September 2016.

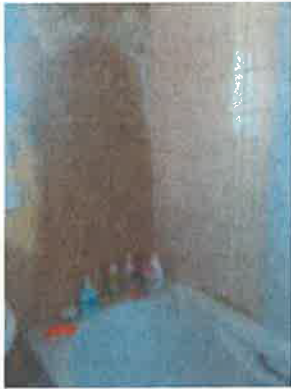
Reference Number : PRHP/RP/15/0249



External view - Front elevation of property

This is the Schedule of Photographs referred to  
in the Decision of the Private Rented Housing  
Committee for the above property dated  
16th September 2016

David Bartos



Bathroom



Bathroom -side wall



Bathroom - end of bath at external wall



Bathroom - end of bath at external wall



Bathroom - New shower curtain and rail



Kitchen - double socket on left side wall

2 This is part of the Schedule of Photographs  
 referred to in the Decisions of the Private  
 Rented Housing Committee for 21 D Balmie  
 Avenue, Dundee dated 16th September 2016  
 David Bartos



Gas Meter - 2 warning labels



New warning label on Gas Meter



Kitchen - heat detector



Living Room - smoke alarm



Hall - smoke alarm

This is part of the Schedule of Photographs referred to in the decision of the Private Rental Housing Committee for 21 D Balmie Avenue, Dundee dated 16th September 2016