



**STATEMENT OF DECISION OF THE PRIVATE RENTED HOUSING COMMITTEE
UNDER SECTION 26(1) OF THE HOUSING (SCOTLAND) ACT 2006**

In connection with

**Property at Flat 7, 16 Shepherds Court, Buchanan Street, Balfour G63
(hereinafter referred to as "the house")**

**Ms. Agnieszka Czajkowska and Krzysztof Koszanski, Flat 7, 16 Shepherds Court,
Buchanan Street, Balfour ("the Tenant")**

**Mr. Robert Stevenson and Mrs. Janice Barclay Stevenson, Spouses, 2 Earls Hill
Drive, Bannockburn (represented by Mr. Daniel Gibson, Letting Manager, Martin &
Co. (Stirling) Limited, 13/15 Upper Craigs, Stirling FK8 2DG) ("the Landlord")**

PRHP REFERENCE- G63/117/09

BACKGROUND

Reference is made to the Determination of the Private Rented Housing Committee ("the Committee") dated 22 March 2010 which decided that the Landlord had failed to comply with the duty imposed by Section 14(1)(b) of the Housing (Scotland) Act 2006 ("the Act") and the Repairing Standard Enforcement Order ("RSEO") made by the Committee which required the Landlord to carry out such work as is necessary for the purposes of ensuring that the house meets the repairing standard and that any damage caused by the carrying out of any work in terms of the RSEO is made good. In particular the Committee required the Landlord to carry out the following works:-

- (a) to carry out works (including those works identified in the report of Richardson and Starling, Damp Specialists) to eliminate/ reduce dampness in the house and to ensure that the house is reasonably fit for human habitation,
- (b) to carry out works to the external fabric of the tenement or block as identified in the said report of the Damp Specialists to ensure that the structure and exterior of the house (including drains, gutters and external pipes) are in a reasonable state of repair and in proper working order;

(which works are hereinafter collectively known as "the said repairs").

Said repairs to be carried out and completed within a period of 56 days from the date of service of the Notice of the RSEO. Service of the Notice of the RSEO was effected on the Landlord on 13 April 2010.

INSPECTION AND HEARING

On 15 July 2010, the Committee carried out an inspection of the house for the purpose of ascertaining if the said repairs in the RSEO had been completed. The Committee was accompanied by Mr. Robert Shea, Clerk to the Committee. It was observed from the inspection that none of the said repairs had been undertaken. There was still evidence of significant dampness/ condensation in the house. A hearing before the Committee was arranged for after the inspection to allow the parties to make representations to the Committee. The purpose of the hearing was to decide whether the Landlord had complied with the RSEO made by the Committee in terms of Section 26(1) of the Act.

The hearing took place in the Black Bull Hotel, Killearn, and the Landlord who was absent was represented by his agent, Mr. Daniel Gibson. The Tenant, Mr. Koszanski, was present with an interpreter, Mr. Kolugh Remiguiz.

The Landlord's agent, Mr. Gibson explained that after the RSEO was issued he had continued to try to persuade the Factor to carry out the common roofing repairs. He expressed frustration at the lack of progress but felt that it would be unfair to expect one owner to instruct the repairs and reclaim the costs from the other proprietors. On 3 June 2010 he had instructed a local roofing firm to carry out an inspection and to investigate the need for external repairs to the building. He hoped that their report when it was issued would persuade the Factor to instruct repairs and he proposed to continue to negotiate with the Factor. No attempts had been made to carry out internal works to the house to reduce dampness/condensation such as improving the insulation as suggested by the damp specialists, Richardson and Starling. Mr. Gibson suggested that it was appropriate to start with the external works to the building first before considering internal works although gave no specific reason for this view. He submitted that the Committee should revoke the RSEO as the lack of progress is due to the Factor. If the Committee did not consider revocation of the RSEO appropriate, then he submitted that the Committee should vary the RSEO to extend the period for completion of the works. He could not estimate how long it would take to carry out the works. He accepted that no works had been carried out following the issue of the RSEO. He stated that the Tenants had issued notice to the Landlord that they were vacating the house and terminating the lease on 2 August 2010 so that a Rent Relief Order was not appropriate as the lease would very shortly be terminated. He said that the Landlord did not intend to re-let the house whilst there were outstanding works needed to the house.

Mr. Koszanski stated that the condensation problems were notified to the Landlord's agents two years previously and since then there had been a reluctance on the part of the letting agents to deal with the problem and it was only after an application was submitted to Prhp that the letting agents were trying to deal with the issues but there

had been no progress to date. He confirmed that he and his partner had issued notice to the Landlord that they were terminating the tenancy on 2 August 2010 as they could not continue to tolerate the damp condition of the house.

DETERMINATION AND REASONS

The Committee considered the evidence and representations. The evidence was clear from the inspection that the said repairs had not been carried out and this was admitted by the Landlord's agent. Issues about the liability of the Landlord to execute common repairs where the Factor refuses or delays to carry them out were dealt with in the original determination. If necessary to comply with the RSEO, the Landlord must carry out works to ensure he complies with his duties to the Tenant and he then can seek to recover any contributions due from other owners. It is not appropriate to revoke the RSEO in this case as the works are still required. For the Committee to consider a variation of the RSEO to extend the time-limit for completion of works, they would expect the Landlord to demonstrate that satisfactory progress had been made in carrying out works but in this case no progress has been made nor has the Landlord provided a written undertaking to complete the works by a date which the Committee consider satisfactory. The Landlord has been aware of the dampness problem for sometime and obtained his own damp specialist report in December 2009 which highlighted insufficient insulation as the most likely cause of the dampness/condensation and yet the Landlord has made no attempt to address this issue. His only attempt at carrying out works has been to instruct a roofing firm on 3 June 2010 to prepare a report on the external repairs required in an attempt to persuade the Factor to carry out works. The Committee unanimously decided in terms of Section 26(1) of the Act that the Landlord has failed to comply with the RSEO and directed that a Notice of the failure be served on the Local Authority on which the house is situated.

The Committee considered whether or not a Rent Relief Order should be made in terms of Section 27 of the Act and determined that there would be no point issuing such an Order given the termination of the tenancy on 2 August 2010. The tenancy will be terminated before a Rent Relief Order would take effect.

The Landlord is reminded that he cannot enter into a new tenancy or occupancy agreement for the house whilst a RSEO applies over the house otherwise he commits an offence in terms of Section 28(5) of the Housing (Scotland) Act 2006.

DECISION

The Committee, having made such enquiries as is fit for the purposes of determining whether the Landlord has complied with the repairing standard enforcement order (hereinafter referred to as "the RSEO") in relation to the house concerned, and taking account of the evidence led by the Landlord and the Tenant at the hearing, determined

that the Landlord had failed to comply with the RSEO in terms of Section 26(1) of the Housing (Scotland) Act 2006 and that a notice of the failure be served on the Local Authority in which the house is situated.

The decision of the Committee was unanimous.

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

Where such an appeal is made, the effect of the decision 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 will be treated as having effect from the day on which the appeal is abandoned or so determined.

A Devanny

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Chairperson,
15th July 2010



NOTICE TO LOCAL AUTHORITY

ISSUED BY THE PRIVATE RENTED HOUSING COMMITTEE UNDER SECTION 26(2) OF THE HOUSING (SCOTLAND) ACT 2006

RE: PROPERTY AT Flat 7, 16 Shepherds Court, Buchanan Street, Balfron G63 (hereinafter referred to as "the house")

PRHP REFERENCE- G63/117/09

THE PARTIES:

Ms. Agnieszka Czajkowska and Krzysztof Koszanski, Flat 7, 16 Shepherds Court, Buchanan Street, Balfron ("the Tenant")

Mr. Robert Stevenson and Mrs. Janice Barclay Stevenson, Spouses, 2 Earlshill Drive, Bannockburn (represented by Mr. Daniel Gibson, Letting Manager, Martin & Co. (Stirling) Limited, 13/15 Upper Craigs, Stirling FK8 2DG) ("the Landlord")

Notice is hereby given to Stirling Council, being the local authority in which the house is situated, that there has been a failure by the Landlord to comply with a Repairing Standard Enforcement Order in relation to the house in terms of Section 26(1) of the Housing (Scotland) Act 2006. The Statement of Decision of the Private Rented Housing Committee under Section 26(1) of the said Act is attached hereto and referred to for its terms.

If an appeal against the decision of the Private Rented Housing Committee is made, then the effect of the decision is suspended until the appeal is abandoned or finally determined. In the event that the decision is confirmed, then the decision will be effective from the date on which the appeal is abandoned or so determined. If an appeal is received then the Private Rented Housing Panel will notify you of this and the eventual outcome of the appeal.

The date of service upon the parties of the decision under Section 26 of the Act is hereby certified to be...21st July 2010.

A Devanny

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Chairperson

Date...15 July 2010.....