



## **NOTICE TO LOCAL AUTHORITY**

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

**RE: Property at 25 Scott Street, Larkhall ML9 2QH ("the house")**

**The Parties:-**

**Miss. Catherine Karen Telfer, now former tenant of 25 Scott Street, Larkhall ML9 2QH ("the former Tenant")**

**Mr. Peter Ross Munro, 7 Earls Hill, Cumbernauld G68 9ET, whose agents are the firm of Munro, Neil and Osborne, Estate Agents and Mortgage Consultants, 82 Union Street, Larkhall ML9 1DR ("the Landlord")**

**Reference PRHP/ML9/69/11**

Notice is hereby given to South Lanarkshire 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 15 August 2012.

A Devanny

.....  
Chairperson

Date 27th July 2012



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

In connection with

Property at 25 Scott Street, Larkhall ML9 2QH ("the house")

The Parties:-

Miss. Catherine Karen Telfer, now former tenant of 25 Scott Street, Larkhall ML9 2QH ("the former Tenant")

Mr. Peter Ross Munro, 7 Earls Hill, Cumbernauld G68 9ET, whose agents are the firm of Munro, Neil and Osborne, Estate Agents and Mortgage Consultants, 82 Union Street, Larkhall ML9 1DR ("the Landlord")

Reference PRHP/ML9/69/11

**BACKGROUND**

1. Reference is made to the Determination of the Private Rented Housing Committee ("the Committee") dated 17 November 2011 which decided that the Landlord had failed to comply with the duty imposed by Section 14(1)(b) of the Housing (Scotland) Act ("the Act") and to the Repairing Standard Enforcement Order ("the RSEO") dated 30 November 2011 which confirmed that the Landlord had failed to ensure that the house is wind and watertight and in all other respects reasonably fit for human habitation; 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; and that the installations in the house for the supply of water, gas and electricity and for sanitation, space heating and heating water are in a reasonable state of repair and in proper working order. The RSEO required the Landlord to undertake works as specified in the Order, namely :-
  - a) *To repair or renew the pathway from the gate to the back door to provide a satisfactory access route which is in a reasonable state of repair.*
  - b) *To provide a report from a competent contractor who is licensed under the Waste Management Regulations on the structure and condition of the garage and to*

- carry out any works identified as necessary in that report (including the removal/ replacement of said garage if that is identified as the appropriate option and the suitable disposal of materials following any dismantling of the garage).*
- c) To carry out works to the water duct to provide a suitable and safe covering for the duct.*
  - d) To repair the roughcast at the exposed brickwork on the rear elevation of the house to a reasonable state of repair.*
  - e) To complete repairs to the walls in the kitchen, front bedroom, stairway and back bedroom to ensure that they are reinstated to a reasonable state of repair, and*
  - f) To instruct a periodic electrical inspection report from a qualified electrician and to carry out any works identified as necessary in that report to a satisfactory standard*

(Hereinafter the works detailed at (a) to (f) inclusive, are collectively known as "the said repairs").

The said repairs were to be carried out and completed within a period of 28 days from the date of service of the Notice of the RSEO. Service of the Notice of the RSEO was served on the Landlord on 1 December 2011.

2. Following upon expiry of the timescale for completion of works specified in the RSEO, the Surveyor Member, Ms. Carol Jones, re-inspected the house on 11 January 2012. The former Tenant Ms Catherine Telfer was present but advised that she was due to vacate the house on 15 January 2012 as she had secured another tenancy.

The Re-inspection findings indicated that no works had been carried out since the Committee's inspection of the house on 17 November 2011 and none of the works in the RSEO had been completed.

The Re-inspection report from the Surveyor Member detailing her findings was submitted to the parties and in response both parties agreed that the works in the RSEO were outstanding although there was a suggestion made by the Landlord, which suggestion was disputed by the former Tenant, that the delay in carrying out works was due to access problems encountered with the Tenant, Ms. Telfer, and her family.

The Landlord in e-mails of 10 January 2012, 24 February 2012 and 6 March 2012 indicated that the internal works were almost finished and there were new front and back doors and new fences and the external works were ongoing.

On 16 March 2012 the Committee considered, on the basis of the Landlord's written representations, that works were being carried out to the house and the Committee agreed to vary and extend the RSEO for 28 days to allow a further chance for the Landlord to complete the works detailed in the RSEO. By that date it was agreed by the parties that the tenancy had been lawfully terminated and the former Tenant had vacated the house, therefore, there would be no access issues for the Landlord.

3. On 17 April 2012 Ms. Carol Jones, Surveyor Member of the Committee, in the presence of the Landlord's tradesman Mr. James Love, carried out a further inspection of the house for the purpose of ascertaining if the said works in the RSEO had been completed following expiry of the extended period for works in the decision to vary the RSEO. A written report of her findings was submitted to the Committee and to the Landlord indicating that the only repair carried out was to the front bedroom. The documentation was not served on the former Tenant as she had vacated the house. In response to this written report the Landlord sent a letter to the Committee by fax on 24 May 2012 in the following terms,

"I can confirm that the above property is currently undergoing renovation and refurbishment with the intention that in the future it will be marketed for sale. The garage on this property will also be removed. However, if circumstances change and I decide to rent it out again, I will certainly contact you to enable you to inspect the property."

The Committee fixed a further inspection of the house and hearing for 27 July 2012 and cited the Landlord to attend.

4. On 27 July 2012 the Committee carried out a further inspection of the house in the presence of the Landlord, and in the course of that inspection, the Landlord and the Housing Member recognised each other from a previous mediation which they both attended. There was thereafter a hearing at Hamilton House, Hamilton Business Park, Caird Park, Hamilton which the Landlord attended. At the start of the hearing proceedings the Housing Member declared that he recognised the Landlord and realised that he had attended a mediation at which the Landlord was present and he felt that he should withdraw from the Committee and the decision making process. The Landlord indicated that it would be his preference that the Housing Member continues to be part of the Committee and be involved in the decision process. In view of the Landlord's request the Housing Member did not stand down from the Committee.

The Committee comprised Mrs. Aileen Devanny, Chairperson, Ms. Carol Jones, Surveyor Member, and Mr. Chris Harvey, Housing Member.

The Landlord agreed that the works in the RSEO had not been completed. This was due to a number of issues - the ill health of a partner in the Landlord's estate agency business; a belief that he did not have to undertake works as the house was empty; and his intention not to re-let the house as instead he was planning to market it for sale but had no timetable for this and had not commissioned a Home Report. On being asked for a timescale for marketing the house he indicated that he did not propose to market the house in the immediate future due to the downturn in the housing market and he did not know when he would market the house for sale. The timescale would depend on the market and he was waiting for house prices to recover. He also indicated that the house had been in better condition before the Tenant took entry and the Tenant had been responsible for damage to the house during the tenancy. He produced particulars for

rent material which was undated but he indicated that this documentation showed some pictures of the house before it was let. He was asked why this material had not been previously made available to the Committee at the first hearing when this issue could have been raised with the former Tenant. He could provide no explanation for this. He indicated that originally after receiving complaints from the former Tenant about the condition of the house, he had sent workmen to the house on several occasions but the repairs could not proceed due to the former Tenant's refusal to cooperate to provide access. Since the former Tenant left the house in February 2012 it was pointed out by the Committee that this did not explain the problems with carrying out works after the house was vacated but he indicated that he was now suffering a lack of funds to refurbish the house for sale. He did not consider himself to be a bad landlord but considered the former Tenant to be at fault.

The Committee pointed out that the RSEO did not require a full refurbishment of the house and that the Committee was only concerned with the works required in the RSEO. It was put to him that the external works required to the paths, unsecure garage and slab over the manhole cover and the condition of the internal electrics, raised potential health and safety issues for neighbours and persons attending at the house. He indicated that works would be done when the house was to be marketed but could give no timescale.

## **DETERMINATION AND REASONS**

5. The Committee considered the evidence and the Landlord's representations. The Committee unanimously decided in terms of Section 26(1) of the Act that the Landlord had 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 did not consider that the failure to comply with the RSEO was due to a lack of necessary rights of access or otherwise as the Landlord possesses rights for access under Section 181(4) of the Act and since February 2012 the house has been vacant. The Landlord's argument that the former Tenant is responsible for damage was not raised at the earlier stage when the Committee was considering whether or not the Landlord had complied with his duties under Section 14(1) (b) of the Act and does not explain the nature of the external repairs required in the RSEO and the internal works in the RSEO. In any event this is an issue which should have been raised at the original hearing.

The Committee has provided the Landlord with ample opportunity to carry out works which he originally indicated that he was undertaking. He has failed to carry out most the works in the RSEO as is detailed in the two previous re-inspection reports which are referred to for their terms and that was confirmed again at the most recent Committee's inspection. The external works and the internal electrical repairs raise health and safety concerns. The garage is lying open to the elements and has old mattresses and other items visible from the road. The paths are used by persons for access to the house and the slab over the manhole cover is a trip hazard with the potential if removed to expose a manhole. The internal electrics and in particular the trunking and socket at the stairs

are a possible danger. Pictures from the re-inspection on 27 July 2012 are appended to this decision as are the two previous re-inspection reports referred to in this decision. The Committee had considered whether or not a variation or revocation of the RSEO was appropriate but discounted these options given the health and safety concerns and the lack of works which may impact on others; that the Landlord had already had sufficient time to complete the works; the Landlord's previous assurances that works were being done which had not been implemented; and the possibility that the Landlord could change his mind about not re-letting the house if the RSEO is revoked.

It is not appropriate for the Committee to make a Rent Relief Order in terms of Section 27 of the Act as the tenancy to which the application relates has been terminated.

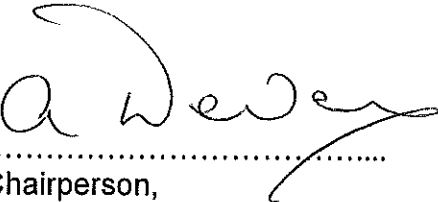
### **RIGHT OF APPEAL**

**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.**

**The appropriate respondent in such appeal proceedings is the other Party to the proceedings and not the Private Rented Housing Panel or the Committee which made the decision.**

### **Effect of Section 63**

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 28 days from the day on which the appeal is abandoned or so determined.



.....  
Chairperson,  
27th July 2012

