



Repairing Standard Enforcement Order

Ordered by the Private Rented Housing Committee

Re: Subjects at 30 Hamilton Drive, Airdrie, ML6 6HH within the land edged red on the Title Plan being the upper floor house tinted blue on the said plan of the block 18 REID STREET and 26 to 30 (even numbers inclusive) HAMILTON DRIVE with the garden ground tinted pink on the said plan, all as more particularly described in Land Certificate Title number LAN 99457 (hereinafter referred to as "the house")

PRHP Reference: PRHP/RP/15/0274

The Parties:

Miss Ashleigh Gillespie, 30 Hamilton Drive, Airdrie, North Lanarkshire, ML6 6HH 2PF ("the tenant")

Scott MacColl, c/o Professional Letting, Murray House, 17 Murray Street, Paisley, PA3 1QG ("the landlord")

Notice to Scott MacColl ("the landlord")

Whereas in terms of its decision of 23rd March 2016, the Private Rented Housing Committee determined that the landlord has failed to comply with the duty imposed by section 14 (1) (b) of the Housing (Scotland) Act 2006 and in particular that the landlord has failed to ensure that the house meets the repairing standard in 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,

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,

any fixtures, fittings and appliances provided by the landlord under the tenancy are in a reasonable state of repair and in proper working order

The Private Rented Housing Committee now requires the landlord to carry out such work as is necessary for the purposes of ensuring that the house concerned meets the repairing standard and that any damage caused by the carrying out of any work in terms of this Order is made good.

In particular the Private Rented Housing Committee requires the landlord:

- (i) To carry out such works as are required to ensure that the tilt and turn mechanism of the living room windows are operating effectively and that the windows are in proper working order ;
- (ii) To replace the existing carpet in the living room;
- (iii) To carry out such works as are required to ensure that the W.C. is fixed securely to the floor of the bathroom;
- (iv) At the exterior of the property, to fill in the hole on the asphalt path at the base of the external rainwater downpipe and to make sure that the pathway is safe and free from any hazards likely to cause someone to slip, trip or fall.
- (v) To repair or replace the cast iron rainwater downpipe at the damaged joint;
- (vi) Within the kitchen, to carry out such works as are required to ensure that the kitchen drawer unit operates correctly and is in proper working order;
- (vii) To attach the carbon monoxide detector to the wall of the kitchen and ensure that this is compliant with the statutory guidance of the Scottish Government which applies to the provision of carbon monoxide alarms in private rented properties.
- (viii) To produce to the PRHP a Domestic Electrical Installation Certificate in respect of the recently installed smoke alarms;
- (ix) To carry out all ancillary works necessitated by the above works to and make good all decoration.



The Private Rented Housing Committee order that the works specified in this Order must be carried out and completed within a period of 4 weeks from the date of service of this Notice.

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.

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 determined.

IN WITNESS WHEREOF these presents typewritten on this are signed by Simone Sweeney, Chairperson of the Private Rented Housing Committee, at Glasgow, on 23rd day of March, Two Thousand and Sixteen in the presence of the undernoted witness:


 S Sweeney Chairperson
 Support Officer
 Witness
support office, Wheatley Group, Wheatley House, 25 Cochrane Street, Glasgow, G1 1HL



DETERMINATION BY PRIVATE RENTED HOUSING COMMITTEE

STATEMENT OF DECISION OF THE PRIVATE RENTED HOUSING COMMITTEE UNDER SECTION 24(1) OF THE HOUSING (SCOTLAND) ACT 2006

In connection with

Property at 30 Hamilton Drive, Airdrie, North Lanarkshire, ML6 6HH 2PF ("the property")

Miss Ashleigh Gillespie, 30 Hamilton Drive, Airdrie, North Lanarkshire, ML6 6HH 2PF ("the tenant")

Scott MacColl, c/o Professional Letting, Murray House, 17 Murray Street, Paisley, PA3 1QG ("the landlord")

Reference number: PRHP/RP/15/0274

Decision

Having made such enquiries as is fit for the purposes of determining whether the landlord has complied with the duty imposed by Section 14 (1) (b) of the Housing (Scotland) Act 2006 ("the Act") in relation to the property concerned and taking into account the evidence led from the tenant and the landlord at the hearing and the documentation submitted to the Private Rented Housing Panel ("PRHP") by the parties, the Private Rented Housing Committee ("the committee") determine that there has been a failure on the part of the landlord to comply with the duty imposed by Section 14 (1) (b) of the Act.

Relevant Statutory Provisions

Section 13: The repairing standard

(1) A house meets the repairing standard if—

- (a) the house is wind and water tight and in all other respects reasonably fit for human habitation,
- (b) 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,
- (c) 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,
- (d) any fixtures, fittings and appliances provided by the landlord under the tenancy are in a reasonable state of repair and in proper working order,

(e) any furnishings provided by the landlord under the tenancy are capable of being used safely for the purpose for which they are designed, and

(f) the house has satisfactory provision for detecting fires and for giving warning in the event of fire or suspected fire.

Section 14: Landlord's duty to repair and maintain

(1) The landlord in a tenancy must ensure that the house meets the repairing standard—

(a) at the start of the tenancy, and

(b) at all times during the tenancy.

Background

1. By application dated 9th November 2015 ("the application") the tenant applied to PRHP seeking a determination of whether or not the landlord had failed to comply with the duties imposed by Section 14 (1) (b) of the Act.
2. In the application the tenant stated that the landlord had failed to comply with section 13 (1) (a) (b) (c) (d) (e) and (f) of the Act ("the repairing standard").
3. In the application, at section 4, the tenant specified how she considered the landlord to have failed to meet the repairing standard:

"the house is not and has not been fit for human habitation. I was assured the repairs etc had not been done before ending the tenancy. This was not the case and I have been trying ever since for letting agency to make good all the repairs that are required."

4. At section 5 of the application, the tenant specified the areas of the property where she considered work to be done, as :

"Bath is cracked. Bath mat has to be used when bathing. Wash hand basin is also badly cracked.

Toilet pan is secured to a plank of wood. Concrete floor requires resurfuring.

Floorboards in lounge sink when walked on.

Carpets are filthy. Promised they were going to be cleaned.

Outside down pipe has large unprotected hole at base.

Child has already caught foot in same.

Kitchen cabinets-doors and drawers falling off."

5. Within a, "Landlord notification letter," of 3rd November 2015, submitted with her application, the tenant provided further detail of the repairs required:

"Smoke detectors do not work. Windows unsafe."

6. In support of the application, the tenant submitted copy tenancy agreement together with the aforementioned copy letter of notification to the landlord's letting agents, Professional Letting ("the letting agents"). A second letter dated 16th December 2015 was provided together with emails between the tenant's legal representative at Citizen's Advice Bureau to the Private Rented Housing Panel ("PRHP") for the period 4th November to 21st December 2015. The title deeds of the property were made available to the committee. The title identified the owner of the property as Scott MacColl.
7. By minute, dated 31st December 2015, the President of PRHP, following her consideration of the application in terms of Section 23 (1) of the Act, referred the application to a Private Rented Housing Committee.
8. An inspection of the property and a hearing before the committee were assigned for 7th March 2016. The committee comprised the following members:
 - (i) Miss Simone Sweeney, Legal member and;
 - (ii) Mr Andrew Taylor, Surveyor member.
9. An inspection of the property took place at 10am on 7th March 2016. The landlord was absent. There was no representative from the letting agents. In attendance were the tenant, her mother and two representatives from the Citizen's Advice Bureau ("CAB").
10. Following the inspection, a hearing of evidence took place at Airdrie Business Centre, Chapel Street, Airdrie, ML6 6GX. The tenant attended, accompanied by her partner, James Burns and two representatives from CAB who identified themselves as, James Melvin and Emma Petit. Also In attendance at the hearing was a representative from the letting agents, Sharleen Keogh. The committee heard representations from the tenant and Mr Melvin and from Ms Keogh for the landlord. The committee considered these together with the application and documentation provided by the parties. At the conclusion of the parties' submissions, the committee adjourned to consider all the evidence presented to them and to make its determination.

Submissions at the hearing

- (i) **Submissions of the tenant**

11. The tenant submitted that some works had been carried out to the property since her application had been submitted. The issues which remained outstanding were: carpets required to be cleaned; the hole at the foot of the external pipe of the property remained; the windows in the living room were not opening properly, specifically, not opening inwards; that there was inadequate provision for smoke detection at the subjects; and the kitchen drawers were not secure.
12. The tenant confirmed that her complaint no longer included the cracked bath or wash hand basin as a new bathroom had been fitted during the preceding week. Whilst she confirmed that new smoke detectors had been fitted at the subjects in the preceding 3 weeks, it was the tenant's complaint that the smoke detectors were not fully operational. The tenant referred to a recent example when she had been cooking and might have expected this to have triggered the smoke detectors but there had been no response from them. Finally the tenant confirmed that two of the drawers in the kitchen remained insecure.
13. The tenant's representative, Mr Melvin produced a letter from North Lanarkshire Council, dated 26th February 2016. He submitted that an environmental officer from the council had inspected the property on 24th February 2016 and found the property to fall below the repairing standard of the Act. The letter provided specification of the areas of the property which did not meet the standard.

(ii) Submissions of the landlord's agent

14. Ms Keogh provided a response to the application for the landlord. She explained that some works had been completed to the property prior to the tenant taking over the tenancy on 27th July 2015. There first notice which the letting agent received of the tenant's complaint was October 2015.
15. Taking each of the complaints in turn, Ms Keogh stated that the letting agents do not clean carpets as standard when a tenant is in a property. The practice is to clean the carpet prior to the tenant moving into the property but only where and when the letting agents consider it necessary to clean the carpets. Ms Keogh confirmed the carpets in the subjects had not been cleaned prior to 27th July 2015. However Ms Keogh gave an undertaking to the committee and to the tenant that the carpets would be cleaned.
16. With regards to the hole at the foot of the downpipe, Ms Keogh referred to emails between the letting agents and the repairs section at North Lanarkshire Council. She submitted that North Lanarkshire Council has confirmed that all necessary repairs will be carried out and completed by the Council. Ms Keogh explained that this will be part of works which will be carried out to the roof and exterior of the building in which the subjects are located. Ms Keogh was aware that there had been issues of water ingress at the subjects. Water had been coming through

the roof into the main bedroom. Ms Keogh advised the committee that she understood that the tenant and her partner were unable to sleep within the main bedroom and had been sleeping in the living room area. Although the letting agents had agreed with the Council that the works necessary to fill the hole at the foot of the downpipe would be completed at the same time as the Council were carrying out the works addressing the water ingress, the letting agents were providing an undertaking to the committee and to the tenant at the hearing to have the hole filled at the foot of the down pipe by their contractors on 7th March 2016.

17. With regards to the allegation that the windows in the living room were not opening inwards, Ms Keogh submitted that the letting agents had arranged for their contractor to attend the subjects on the date of the hearing to investigate the complaint and to carry out what repairs, if any, were necessary.
18. Ms Keogh disputed any suggestion by the tenant that there was inadequate provision for smoke detection at the property. She explained that a company called McLaren Electrical had fitted new smoke detectors at the subjects in the preceding 3 week period. Ms Keogh was satisfied that these were fully operational and advised the committee that she could produce a full certificate to support this.
19. Further, Ms Keogh submitted that there was a carbon monoxide detector at the property which was fully operational. Ms Keogh had understood that this had already been secured to the subjects.
20. Finally, in relation to the allegation about the kitchen drawers, Ms Keogh submitted that the contractor who was presently at the subjects would be addressing this as part of the repairs he was instructed to complete.

Summary of the issues

21. The issues to be determined are;
 - (i) whether the landlord has complied with the duty imposed by sections 13 (1) (a) (b) and (d) of the Act ("the repairing standard") and;
 - (ii) whether the landlord has complied with the duty imposed by Section 14 (1) (b).

Findings in fact

22. The committee make the following findings in fact:
23. That there was a written tenancy agreement between Scott MacColl and Miss Ashleigh Gillespie and Mr James Burns for the subjects, dated 27th July 2015.

24. That the lease is a short assured tenancy in terms of the Housing (Scotland) Act 1988. The provisions of Chapter 4 of the Act apply.
25. That the property is owned by Scott MacColl and bears the title number LAN99457, having been purchased by him on 24th November 2006.
26. That, by letter of 16th December 2015 and Landlord notification of repair letter of 3rd November 2015, the landlord was made aware of the tenants' complaints as that narrated at paragraph 3, above and that these letters were addressed to the letting agents.
27. That the tenant submitted an application to the PRHP on 9th November 2015.
28. That an inspection of the subjects and a hearing of the parties took place on Monday 7th March 2016 and this was intimated to both parties by letter of 11th January 2016.
29. That, present at the inspection was the tenant, her mother, a contractor from the landlord and two representatives from Citizens Advice Bureau for the tenant.
30. That on the date of the inspection, the weather was dry.
31. That the property is an ex local authority four in a block style upper cottage flat with 3 apartments, kitchen and bathroom.
32. That the windows in the living room were UPVC.
33. That, on inspection, the tilt and turn mechanism of the two windows was not operational.
34. That, on inspection, this failure prevented the windows of the living room being opening inwards; that the property fails to meet the repairing standard of section 13 (1) (b) of the Act in this regard.
35. That, on inspection, there was a large damp stain on the living room carpet; that the property fails to meet the repairing standard of section 13 (1) (e) of the Act in this regard.
36. That, on inspection, the bathroom had received a new bath, sink and W.C.
37. That, on inspection, the W.C was not fixed securely to the floor of the bathroom; that the property fails to meet the repairing standard of section 13 (1) (c) of the Act in this regard.
38. That, on inspection, there was no side panel attached to the bath.

39. That, on inspection, new ceramic tiles had been fitted to the floor of the bathroom.
40. That, on inspection of the exterior of the subjects, a cast iron rainwater downpipe attached to the exterior wall.
41. That at the base of the pipe a hole was identified in the asphalt path, measuring approximately half a metre wide.
42. That this hole in the path at the base of the pipe creates a walking hazard; that the property fails to meet the repairing standard of section 13 (1) (b) of the Act in this regard.
43. That smoke detectors were identified to be attached to the ceilings of the living room and hallway.
44. That the smoke detectors were not tested to establish whether or not they were in working order.
45. That no evidence was before the committee to confirm that the recently installed smoke detectors were operational and in proper working order.
46. That, on inspection of the kitchen, a carbon monoxide detector was identified positioned on top of the fridge freezer; that the detector was free standing and should be attached to a wall of the property and that the property fails to meet the repairing standard of section 13 (1) (d) of the Act in this regard.
47. That, on inspection of the roller mechanism of a drawer which formed part of the kitchen units was not operating effectively to enable the drawer to be opened and closed; that the property fails to meet the repairing standard of section 13 (1) (d) of the Act in this regard.
48. That, on inspection of the kitchen, new doors appeared to have been fitted to the cupboards.
49. That an installation certificate, relating to the smoke detectors, was to be produced by Ms Keogh after the hearing.
50. That the property had been inspected by an environmental health officer at North Lanarkshire Council on 24th February 2016.
51. That a letter from North Lanarkshire Council to the tenant, dated 26th February 2016 was placed before the committee by the tenant's representative at the hearing, that this letter states, inter alia, *"During my inspection the above property...does not meet the "repairing standard" in terms of the above legislation."*

52. The letter listed four issues which the officer had identified at the property. These included issues with the fire, the system for fire detection, the window frames and materials found within the roof space.

Reasons for decision

53. The committee inspected the carpet covering the floor of the living room and found a large dark stain, the source of which was not identified. The carpet was unhygienic and requires cleaning. The committee take the view that the furnishings provided are not capable of being used safely for the purpose for which they are designed in light of the unhygienic state of the carpet. Therefore the committee determine that the property does not meet the repairing standard of section 13 (1) (e) of the Act therefore.

54. Having inspected the windows in the living room and having attempted to open them and found the tilt and turn mechanism on each of the two windows were not operational, the committee determine that the property does not meet the repairing standard of section 13 (1) (b) of the Act therefore.

55. The committee inspected the bathroom of the property and having identified that the W.C was not fixed securely to the floor of the bathroom, the committee determines that the property fails to meet the repairing standard of section 13 (1) (c) of the Act.

56. The committee identified a hole in the path at the base of the external rainwater downpipe. The committee found this hole to be a hazard given its location on the main pathway leading from the front door of the property to the garden at the rear. The committee determines that the property fails to meet the repairing standard of section 13 (1) (b) of the Act.

57. Having inspected the kitchen, the committee found that the roller mechanism of the kitchen drawer was not operational which prohibited the tenant from using the drawer for its purpose. Therefore the committee determines that the property fails to meet the repairing standard of section 13 (1) (d) of the Act.

58. Although on inspection of the kitchen, the committee found that there was provision for detecting carbon monoxide, the detector was free standing and the committee determine that this should be attached to a wall for it to be compliant with the Scottish Government statutory guidance on carbon monoxide alarms in private rented properties. Therefore the committee determines that the property fails to meet the repairing standard of section 13 (1) (d) of the Act.

59. The committee identified two smoke alarms fitted at the property. The committee accepted the evidence of both the tenant and Ms Keogh that the smoke alarms had been installed very recently. In the absence of any tests or certification before the committee to confirm that the smoke alarms are fully operational, the committee cannot be satisfied that the property has adequate provision for detecting fires and for giving warning in the event of fire or suspected fire. Therefore the committee determines that the property fails to meet the repairing standard of section 13 (1) (f) of the Act.

Decision

60. The committee determined that the landlord has failed to comply with the duties imposed by sections 13 (1) (b) (c) (d) (e) and (f) 14 of the Act.

61. The committee proceeded to make a Repairing Standard Enforcement Order as required by Section 24 (1). The Repairing Standard Enforcement Order has a time limit of 4 weeks from the date of service of the Order for the landlord to carry out works necessary to ensure that the property meets the repairing standard.

62. The decision of the committee was unanimous.

Right of Appeal

63. 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.

64. 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 determined.



S Sweeney

Chair

At Glasgow on 23rd March 2016

