



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 6 Windyridge, Silverton Hill, Hamilton, ML3 7PS (“the House”)

Mr David Frew residing at the House (“the Tenant”)

Mr Kevin McAllister and Mrs Shona McAllister, c/o Messrs Slater, Hogg &
Howison, 43 Cadzow Street, Hamilton, ML3 6EE (“the Landlords”)

PRHP REFERENCE PRHP/RP/15/0281

DECISION

The Committee having made such enquiries as are fit for the purposes of determining whether the Landlords have complied with the duty imposed by section 14(1)(b) of the Housing Scotland Act 2006 (“the Act”) in relation to the House, and having taken account of the evidence led at the hearing and of the written documentation attached to the application and submitted by the parties, has made the following decision:

It has determined that the Landlords have failed to comply with the duty imposed by section 14(1)(b) of the Act in terms of section 13(1)(a) of that Act.

The decision was unanimous.

Background

By application dated 30 October 2015 (the “Application”) the Tenant applied to the Private Rented Housing Panel (“PRHP”) for a determination of whether the Landlords had failed to comply with the duties imposed by section 14(1)(b) of the Act.

By letter dated 11 November 2015, the President of the PRHP intimated a decision to refer the Application under section 23(1) of the Act to a Private Rented Housing Committee (hereinafter referred to as "the Committee"). This followed a Minute of Decision to refer made by the President on 5 November 2015.

The Application stated that the Tenant considered that the Landlords had failed to comply with the duty to ensure that the House meets the repairing standard and in particular that the Landlords had failed to ensure compliance with the following paragraphs of section 13(1) of the Act:

*"(a) the house is wind and water tight and in all other respects reasonably fit for human habitation; and
(c) the installations in the house for the supply of water, gas and electricity and for sanitation, space heating and water heating are in a reasonable state of repair and in proper working order..."*

The Tenant contacted the Environmental Services Department of South Lanarkshire Council who wrote a letter to the Landlords dated 14 October 2015. In that letter it was intimated to the Landlords' agent that in the view of that Department, certain works required to be carried out in order to bring the House up to the Repairing Standard. The Tenant also wrote a letter dated 19 July 2015 to the Landlords' agents in order to complain about the defects in the House which gave rise to the current Application.

The Tenant was served with a Notice to Quit on or about 23 December 2015 by the Landlords. The Notice to Quit takes effect on 24 February 2016 being the end of the present period of lease. Accordingly, the Tenant was in occupation at the time of the inspection and provided entry.

The Committee comprised the following members:

Maurice O'Carroll, Chairperson
Susan Napier, Surveyor Member

The Committee inspected the House at 2pm on 5 January 2016. The Tenant was present at the inspection. Mr Hunter on behalf of the Landlords' agent, Slater, Hogg & Howison Lettings was also present at the inspection.

Following the inspection, the Committee held a hearing at the Bothwell Bridge Hotel, Main Street, Bothwell. The Tenant was again present at the hearing as well as Mr Hunter of the Landlords' letting agent. The Committee considered the written evidence submitted by the parties and heard representations from the Tenant and the Landlords' agent.

Evidence at the Hearing

At the hearing, the Committee discussed the background to the Application. The Tenant took occupation of the House in August 2012 when the lease was signed. It was initially for six months but continued by operation of tacit relocation

thereafter until terminated by two months' notice by the Landlords in December 2015 as noted above.

The Tenant gave evidence that he first contacted the Landlords' agents about defects with the window in the kitchen and the sliding doors in the dining room in June 2014, possibly earlier. Shortly thereafter, he complained about not being able to gain access to the garage and in relation to the burglar alarm at the front of the property which was flashing showing it had been activated but could not be switched off.

In June 2015, the central heating system broke down. He contacted the letting agents but got no satisfaction. Thereafter, he wrote to them but it was denied that his complaint had been received. After contacting PRHP, the Tenant was advised to send a complaint via Recorded Delivery mail which he did in September 2015. As noted above, the Tenant made a specific complaint to the Landlords' agents on 19 July 2015 in relation to all five of these issues. His complaint was not addressed. He stated that when he contacted the Landlord, Mr McAllister, he denied knowledge of the issues but when he contacted the agents he was told that nothing could be done without the Landlords' authorisation. Accordingly, he considered that one or other of those parties were being untruthful to him. Again as noted above, the Tenant obtained the assistance of the Environmental Department of the local authority who indicated that the constant flashing light on the faulty alarm could constitute a statutory nuisance if it was not remedied. Fortunately, a neighbour opposite the Tenant was an alarms expert and he was able to remove the fuse to the alarm which prevented it from operating.

Between June and November 2015, the Tenant was without hot water or heating due to the fault with the central heating system which was not remedied despite complaints having been made. His only source of hot water was the electric kettle in the kitchen and the electric shower in the bathroom. The only source of heating during that time was the fire in the living room. The remainder of the rooms in the house were unheated during that time. Shortly after the Application was lodged and about four to six weeks prior to the inspection, the Landlord, Mr McAllister attended the property with workmen and fixed the central heating. The garage door problem was also remedied at that time but not the issue with the window in the kitchen or the sliding patio doors in the dining room.

For the Landlords, Mr Hunter did not take issue with any of the statements of fact made by the Tenant. He had only been in post since July 2015 and had undertaken a review of the office records prior to attending the hearing. From his searches, he saw that the garage door had been complained about in February 2015. The patio door and kitchen window only flagged up as being problems in July 2015. He accepted that none of the repairs had not been carried out promptly. He accepted that a complaint had been registered during 2014 but obviously nothing had been done at that time. He produced a note produced by the Landlord Mr McAllister which stated that the patio doors had been fixed on 22 December 2015. It also stated, erroneously, that the handle on the kitchen window had been replaced on 17 December 2015.

Mr Hunter explained that when he became personally aware of the issues in August 2015, he could not do anything without the Landlords' permission, which presumably was not forthcoming at that time. Mr Hunter provided the Committee with sight of an up to date Gas Safety Certificate and undertook to provide a hard copy to the office immediately after the hearing.

Summary of the Issues

The issues to be determined are: whether (1) the House meets the repairing standard as laid down in section 13(1)(a) and (c) of the Act; and therefore (2) whether the Landlords have complied with the duty imposed by section 14 (1)(b).

Findings in Fact

The Committee made the following findings in fact:

The Landlords and the Tenant entered into a Tenancy agreement in respect of the House on 24 August 2012 when the Tenant took entry. The duration of the lease was for six months but the lease continued by operation of tacit relocation for successive periods of 6 months. The rent payable was originally £595 per calendar month.

The Landlords are the registered owners of the House. They have title by virtue of a disposition in their favour registered in the Land Register on 18 September 2007 under Title Number LAN33421.

The provisions of Chapter 4 of Part I of the Act apply to the tenancy.

The Tenant formally notified the Landlords of the defects in the house which are now the subject of the Application on 19 July 2015, although he had previously informally complained about what they considered to be defects more than a year prior to that date.

The repairs to the garage door, central heating and alarm system were carried out approximately four to six weeks prior to the inspection.

The inspection on 5 January 2016 revealed:

The House is a two storey, three bedroom dwelling house in a quiet residential area. The main front door is accessed from a path. To the rear of the House there is also entry from the street through the garden area and a garage to which tenants have access.

On entry through the front door to the House, there is a central hallway giving access to the staircase, kitchen and lounge. The kitchen is at the rear of the House. Adjacent to the kitchen is the dining area which is accessed via the lounge. The dining area has two large french window doors which would, if functional, give access to the rear garden. The french windows/patio doors do not have any handles attached and cannot therefore

be opened. There are holes where the handles are supposed to be allowing an external draught to enter the House.

At the end of the kitchen, there is a back door entrance with two windows to the left hand side of it as one is facing from the inside. The smaller of the two windows higher up, is missing a proper closer or latch and does not fully close. There was a gap of approximately one centimetre between the window and the edge of the frame noted during the inspection. Accordingly, an exterior draught was able to enter the House from this location in addition to the patio doors.

The House is generally in good decorative order throughout. The central heating system was operational at the time of inspection. The alarm system to the front of the House had been disconnected and therefore its internal light was no longer flashing. The Tenant confirmed that the garage door to the rear of the House had been repaired and now opens. The gas fire in the living room was operational.

The House has mains smoke detectors in the hallway and upper landing.

Photographs of the House were taken at the time of inspection and are appended to the present decision and Repairing Standard Enforcement Order (“RSEO”).

Decision of the Committee and reasons

In light of the evidence heard and what was noted at the inspection, the Committee concluded that the House fails to meet the Repairing Standard in relation to subsection 13(1)(a) only. That finding is in relation to the french windows/patio doors off the dining room and the small window next to the rear door in the kitchen. In view of the repairs recently carried out, there was no longer a breach of the Repairing Standard in relation to subsection 13(1)(c) of the Act.

The Committee was therefore of the view that it was necessary for it to make a RSEO in terms of section 24(2) of the Act in relation to the kitchen window and patio doors.

Although not part of the Application made and therefore not included within the RSEO, the Committee recommends that the kitchen be fitted with a mains operated heat sensor which is connected to the smoke alarms in the hallway and upper landing. All three detectors thereafter require to be inter-connected. The Committee also notes that as the alarm system forms part of the House, it requires to be in proper working order for any future tenancies.

The decision of the Committee was unanimous.

Right of Appeal

Section 64 of the Act provides a right of appeal to a landlord or tenant aggrieved by a decision of a private rented housing committee. An appeal may

be made to the Sheriff within 21 days of the Landlord or Tenant being informed of the decision.

Where such an appeal is made, the effect of the decision and 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.

M O'Carroll

Maurice O'Carroll
Chairperson

Date: 7 January 2016



REPAIRING STANDARD ENFORCEMENT ORDER
Ordered by the Private Rented Housing Committee

Re: Property at 6 Windyridge, Silverton Hill, Hamilton, ML3 7PS, more particularly described in the Disposition in favour of the Landlords and registered in the Land Register on 18 September 2007 under Title Number LAN33421 ("the House")

The Parties:

Mr David Frew residing at the House ("the Tenant")

and

Mr Kevin McAllister and Mrs Shona McAllister, c/o Messrs Slater, Hogg & Howison, 43 Cadzow Street, Hamilton, ML3 6EE ("the Landlords")

PRHP REFERENCE PRHP/RP/15/0281

NOTICE TO Mr Kevin McAllister and Mrs Shona McAllister, Landlords

WHEREAS in terms of their decision dated 7 January 2016 the 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 respect that:

"(a) the house is wind and water tight and in all other respects reasonably fit for human habitation"

The Committee now requires 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 this Order is made good.

In particular, the Committee requires the Landlord:

1. To repair the french windows/patio doors in the dining room of the House so that they are wind and watertight, in a reasonable state of repair and in proper working order.

2. To repair the upper window in the kitchen next to the back door of the House so that it is wind and watertight, in a reasonable state of repair and in proper working order.

The Committee orders that the works specified in this Order must be carried out and completed within two calendar months from the date of service of this Notice and for written proof of having done so to be supplied to the Private Rented Housing Panel.

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 the decision.

Where such an appeal is made, the effect of the decision and 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.

Please note that in terms of section 28(1) of the Act, a landlord who, without reasonable excuse, fails to comply with a RSEO commits an offence liable on summary conviction to a fine not exceeding level 3 on the standard scale. A landlord (and that includes any landlord's successor in title) also commits an offence if he or she enters into a tenancy or occupancy arrangement in relation to a house at any time during which a RSEO has effect in relation to the house. This is in terms of Section 28(5) of the Act.

IN WITNESS WHEREOF these presents typewritten on this and the preceding page are signed by Maurice O'Carroll, Chairperson of the Private Rented Housing Committee at Edinburgh on the eighth day of January, Two Thousand and Sixteen in the presence of the undernoted witness:

M O'Carroll

Chairperson

J R Morland

Witness

Name in full: *John Ross Morland*

Occupation and address: *Faculty Officer, Advocates' Library
Parliament House, Edinburgh EH1 1RF*