



## **Repairing Standard Enforcement Order**

**Ordered by the Private Rented Housing Committee**

**PRHP Ref:** PRHP/RP/15/0297

**Property at:** 138 Glebe Road, Whitburn, West Lothian, EH47 0AU

**Title No:** WLN14232

### **The Parties**

Cheryl Shaw, formerly residing at 138 Glebe Road, Whitburn, West Lothian, EH47 0AU ("the tenant")

and

Janice Iris Leary residing at 50 Sycamore Glade, Livingston, West Lothian ("the landlord")

**NOTICE TO** Janice Iris Leary residing at 50 Sycamore Glade, Livingston, West Lothian  
("the landlord")

Whereas in terms of their decision dated 4<sup>th</sup> 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:

(a) The structure and exterior of the house are in a reasonable state of repair and in proper working order, in terms of Section 13(1)(b) of the 2006 Act;

(b) The installations in the house for the supply of water, gas, electricity, space heating and heating water are in a reasonable state of repair and in proper working order, in terms of Section 13(1)(c) of the 2006 Act;

(c) The fixtures, fittings and appliances provided by the landlord under the tenancy are in a reasonable state of repair and in proper working order, in terms of Section 13(1)(d) of the 2006 Act.

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 to:-

(i) Provide the PRHP with a report from a suitably qualified, and Gas Safe registered heating engineer on the condition of the gas central heating boiler,

&, if necessary, carry out any repairs or replacement to ensure that the boiler is in proper working order.

(ii) repair and replace the missing sections of guttering to the rear of the property.

(ii) refit the living room door.

(iii) repair or replace the electrical socket in the hallway so that it is flush with the wall.

All within 6 weeks of the date of service of service of this order

**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, 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.

In witness whereof these presents are executed by Paul Doyle, solicitor, 24 Haddington Place, Edinburgh, chairperson of the Private Rented Housing Committee, at Edinburgh on 4 March 2016 before Emma Doyle, 24 Haddington Place, Edinburgh.

**E Doyle**<sup>2</sup><sub>witness</sub>

**P Doyle** chairman



**Statement of Decision of the Private Rented Housing Committee under  
Section 24(1) of the Housing (Scotland) Act 2006**

**PRHP Ref:** PRHP/RP/15/0297

**Property at:** 138 Glebe Road, Whitburn, West Lothian, EH47 0AU

**Title No:** WLN14232

**The Parties**

Cheryl Shaw, formerly residing at 138 Glebe Road, Whitburn, West Lothian, EH47 0AU  
("the tenant")

and

Janice Iris Leary residing at 50 Sycamore Glade, Livingston, West Lothian  
("the landlord")

**Decision**

The Committee, having made such enquiries as it sought 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 in relation to the property concerned and taking account of all of the evidence available to the Committee, determined that the landlord has failed to comply with the duty imposed by Section 14(1)(b) of the 2006 Act.

**Background**

- 1 By application dated 26 October 2015, the tenant applied to the Private Rented Housing Panel to determine whether or not the landlord had failed to comply with the duties imposed by Section 14(1)(b) of the Housing (Scotland) Act 2006 ("the 2006 Act").
- 2 The application by the tenant stated that the tenant considered that the landlord had failed to comply with his duty to ensure that the house meets the repairing standard and, in particular that the landlord had failed to ensure that:
  - (a) The house is wind and water tight and in all other respects fit for human habitation, in terms of Section 13(1)(a) of the 2006 Act
  - (b) The structure and exterior of the house is in a reasonable state of repair and in proper working order, in terms of Section 13(1)(b) of the 2006 Act

- (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, in terms of Section 13(1)(c) of the 2006 Act
- (d) The fixtures, fittings and appliances provided by the landlord under the tenancy are in a reasonable state of repair and in proper working order, in terms of Section 13(1)(d) of the 2006 Act;
- (e) The furnishings provided by the landlord under the tenancy are capable of being used safely for the purpose for which they are designed, in terms of Section 13(1)(e) of the 2006 Act; and

3 By interlocutor dated 11 January 2016, the President of the Private Rented Housing Panel intimated a decision to refer the application under Section 23(1) of the 2006 Act to a Private Rented Housing Committee. The Committee was made up of:

Paul Doyle	Chairperson
Kingsley Bruce	Surveyor Member

- 4 The Private Rented Housing Panel served notice of referral under and in terms of Schedule 2 Paragraph 1 of the 2006 Act on the landlord and the tenant on 19 January 2016. Following service of notice of referral, neither the landlord nor the tenant made further representations.
- 5 The tenant removed from the property on 20 January 2016. The Committee resolved to continue determination of the tenant's application because the tenant's application contained complaints which indicated that it would be in the public interest to continue consideration of the application.
- 6 The Committee inspected the property at 10am on 19 February 2016. Only the landlord's agent was present. The tenant was neither present nor represented.
- 7 Following inspection of the property, the Private Rented Housing Committee held a hearing. The hearing was brief and informal because only the landlord's representative, Ms K Gierthy, was present (the tenant was neither present nor represented) and in the inspection had resolved almost all of the issues.
- 8 The tenant's position is that the bathroom and bedroom are damp; the guttering is defective; the gas central heating boiler does not work; that internal doors are damaged and missing; That there are lights which do not work and that electrical sockets are defective.
- 9 The landlord's position is that the tenant has overstated her claim, but that in any event, all of the works required to ensure that the property meets the repairing standard have been carried out.

### **Summary of Issues**

- 10 The issues to be determined are whether or not the house complies with the repairing standard set out at Sections 13 and 14 of the 2006 Act.

### **Findings in Fact**

11 (a) The landlord is the heritable proprietor of the property which is the subject matter of this application. The landlord let the property to the tenant on 23 July 2013. The tenancy agreement terminated on 20 January 2016 when the tenant vacated the property.

(b) The property is a lower flatted dwelling-house in a brick built "four in a block" with gardens to the front and rear. The front door of the property opens onto a central hallway, which provides access to all of the rooms. The property has two bedrooms, a living-room, bathroom and kitchen. The property benefits from gas fired central heating. There are double glazed UPVC windows throughout the property.

(c) There are mains wired smoke alarms on the ceiling in the hallway and on the ceiling in the living room. There is a heat detector in the kitchen. The mains wired smoke alarms are not interconnected.

(d) The bathroom has an expel air fan which is activated by the light switch. The bathroom has an electric shower. The shower surround has been recently renovated and the seals around the shower replaced. The bathroom has recently been repainted. There are no signs of black mould in the bathroom. At the time of inspection there were some moisture on the floor around the shower, but there is no immediately identifiable source of that moisture.

(e) Damp meter readings taken by the surveyor member of the committee during the inspection will all within the normal range.

(f) The central heating boiler is fixed to the wall above the work surfaces in the kitchen. The central heating boiler was switched off at the start of the inspection. The surveyor member switched the central heating boiler on and ran the hot tap in the kitchen. The pressure in the central heating boiler was far lower than it should be when the boiler was tested. The electrical wall sockets in the kitchen are all properly fitted; there are no defects with the electrical wall sockets in the kitchen.

(g) In the hallway, adjacent to the skirting board close to the kitchen door, there is one electrical socket. There is a gap of approximately 2 cm between the top of the plastic fascia of the socket and the wall finishing. That gap should not be there. The socket should be flush with the wall.

(h) In April each year the landlord obtains electrical and gas safety certificates. Neither the electrical system nor the gas installation and appliances have been tested in the 10 months to the date of inspection.

(i) The electrical consumer unit is located within a cupboard in the hallway. It is a comparatively modern consumer unit with circuit breakers. The lights throughout the property work properly.

(j) There are internal doors separating each of the rooms from the central hallway. The living room door has come loose from its hinges and, at the date of inspection, was held in place by a piece of carpet. There is no damage to each of the internal doors. The interior of the house has been recently decorated.

(k) To the rear of the property there are two sections of guttering missing. The landlord's agents have been in correspondence with West Lothian Council because repairs to the guttering are a common repair for which neighbouring proprietors share responsibility. Despite those discussions, no work has been undertaken to replace the guttering

(l) Because the gas central heating boiler does not reach the minimum safe pressure when tested, it requires to be serviced and repaired or replaced. The gas central heating boiler is an installation for the supply of gas, for space heating and for heating water. The Boiler is not in a reasonable state of repair. For that reason the property fails to meet the repairing standard in terms of section 13(1)(c) of the 2006 Act.

(m) The gutters form part of the structure and exterior of the house. Two sections of guttering are missing. For that reason, the house fails to meet the repairing standard in terms of section 13(1)(b) of the 2006 Act.

(n) The living room door is a fixture and fitting provided by the landlord. Because it is off its hinges, the property does not meet the repairing standard terms of section 13(1)(d) of the 2006 Act.

(o) If the tenant had complained about the provision for detecting fires and for giving warning in the event of fire or suspected fire, the committee would have to find that the house does not meet the repairing standard in terms of section 13(1)(f) of the 2006 Act. That complaint has not been made by the tenant, but because the mains wired smoke detectors are not interlinked the house does not meet the requirements of section 13(1)(f) of the 2006 Act. The committee will make a repairing standard enforcement order but, solely because the landlord has not been given fair notice about the engagement of section 13(1)(f) of the 2006 Act, the requirement to ensure that the smoke detectors are interlinked will not form part of the repairing standard enforcement order. However, the committee suggests that (as the landlord will be undertaking work to ensure that this property meets the repairing standard) the landlord will want to carry out the small amount of work necessary to ensure that smoke detectors are interlinked.

(p) One electrical socket in the hallway is not properly fitted. There is a noticeable gap between the top of the plastic fascia of the electrical socket and the finishing of the wall. The electrical socket is an installation for the supply of electricity. Repairs are required to ensure that there is no gap between the plastic fascia of the electrical socket and the wall finishing. The presence of the gap at the electrical sockets means that the property does not meet the repairing standard set out in s. 13(1)(c) of the 2006 Act.

(q) The committee will therefore make a repairing standard enforcement order requiring the landlord to

(i) Provide the PRHP with a report from a suitably qualified, and Gas Safe registered heating engineer on the condition of the gas central heating boiler, & if necessary, carry out any repairs or replacement to ensure that the boiler is in proper working order.

(ii) repair and replace the missing sections of guttering to the rear of the property.

(ii) refit the living room door.

(iii) repair or replace the electrical socket in the hallway so that it is flush with the wall.

All within six weeks of the date of service of the order.

(s) During the inspection the surveyor member took photographs of the property. Those photographs are reproduced in the annex attached hereto.

### **Reasons for Decision**

12 (a) Committee members inspected this property at 2pm on 19 February 2016. It was a cold, wet, February afternoon. Ms Kim Gierthy, from the landlord's agents, welcomed committee members into the property. The tenant vacated this property in January 2016. She was neither present nor represented at the inspection.

(b) It was immediately obvious to committee members that repair, refurbishment and decoration works have recently been carried out to this property. Within the property, the walls and ceilings and woodwork obviously been recently painted. There was no furniture at all in the property.

(c) The surveyor member of the committee took damp meter readings throughout the property. The damp meter readings were within the normal range. Because the meter readings are within the normal range throughout this property and because there are no signs of water ingress to the ceilings, or windowsills, committee members find that the house is wind and watertight and is not infested with damp. On the date of inspection there was no evidence of water penetration, black mould or penetrating damp throughout the property.

(d) Committee members could see that there are mains wired smoke detectors fitted to the ceilings in the hall and the living-room. The surveyor member of the committee tested the smoke alarms and found that they worked, but only independently of each other. That is a clear indication that the smoke alarms are not linked. Committee members could see a heat detector fitted to the ceiling in the kitchen. It is not part of the application that the provision for the detection of fire (or suspected fire) is defective, but as a matter of fact the smoke alarm system does not meet the repairing standard. The Landlord will want to ensure that the mains wired smoke alarms are interconnected so that this property does meet the requirements of s. 13(1)(f) of the 2006 Act.

(e) It was obvious to committee members that the door leading from the wall to the living room is hanging off its hinges. The door is a fixture provided by the landlord under the tenancy. It cannot be safely opened and closed in its current condition. Because it is hanging off the hinges, it cannot be said to be in a reasonable state of repair and in proper working order. The defect to the door prevents this property from meeting the repairing standard in turn to s.13(1)(b) of the 2006 Act.

(f) The gas central heating boiler is old. At the hearing, the landlord's representative told committee members that every April gas safety certificates and electrical safety certificates are obtained by the landlord. The surveyor member tested the boiler by switching it on running the hot tap in the kitchen. When that test was carried out the pressure on the boiler should have reached the normal level. Although the boiler fired up and hot water was produced, the pressure was noticeably low. That finding is entirely consistent with the tenant's complaint about the gas central heating boiler. The gas central heating boiler requires proper testing & servicing. It should be repaired or replaced in order to meet s.13(1)(c) of the 2006 Act.

(g) Committee members inspected the electrical wall sockets throughout the property. In the hall there is an electrical socket at skirting board level, adjacent to the kitchen door. There is a significant gap between the top of the plastic fascia of the electrical socket and the start of the wall finishing. That gap should not be there. The presence of that gap prevents the property from meeting s.13(1)(c) of the 2006 Act, and so a repairing standard enforcement order is necessary.

(h) Committee members inspected the exterior of the property and could see that two sections of guttering were missing. That fact was immediately obvious when committee members raise their eyes to the roof of the property and could see that the guttering comes to an abrupt end in the section of the roof of the above one of the bedrooms of the property. Committee members' observations were confirmed when they returned their gaze to ground level and saw two sections of guttering lying there.

(i) S.13(1)(b) of the 2006 Act requires the structure of the house to be in a reasonable state of repair and in proper working order. The structure of the house includes the gutters. The gutters are obviously not in proper working order. The house cannot meet the requirements of s.13(1)(b) of the 2006 Act, and so a repairing standard enforcement order is necessary.

(j) After the inspection, a hearing took place. Mr Gierthy, for the landlord, attended the hearing and discussed committee members' observations with them. Mr Gierthy explained that the landlord wants to carry out repairs to the guttering, but agreement has not been reached with neighbouring proprietors about allocation of costs. She explained that the landlord had instructed a programme of repairs, cleaning and redecoration to be carried out as soon as the tenant vacated the property.

(k) Committee members' observations and the weight of reliable evidence indicates that, despite the landlord's efforts, a repairing standard enforcement order is necessary.



## **Decision**

13 The committee accordingly determined that the landlord has not complied with the duty imposed by Section 14(1)(b) of the Act.

14. The decision of the Committee was unanimous.

## **Right of Appeal**

15. 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**

16. 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 so determined.

Signed..... **P Doyle**  
Chairperson

..... Date..... 4/3/2016

































