



**Determination by Private Rented Housing Committee**

**Statement of Decision of the Private Rented Housing Committee**

**(Hereinafter referred to as “the committee”)**

**Under Section 26(1) of the Housing (Scotland) Act 2006 (“the Act”)**

**Case Reference Number: PRHP/RP/15/0314**

**Re: 30 Clifford Street, Glasgow G51 1PA (“the property”)**

**Land Register Title No: GLA40116**

**The Parties:-**

**Mr Sayed Gillani, formerly residing at the property (“the tenant”)**

**Mr Wahsaka Singh Pall, 22 Eaglesham Road, Newton Mearns Glasgow G77 5BU (“the landlord”)**

**The committee: – Sarah O’Neill (Chairperson); Ian Mowatt (Surveyor Member)**

**Decision**

The committee determined that the landlord has failed to comply with the Repairing Standard Enforcement Order.

The committee’s decision was unanimous.

**Background**

1. On 19 April 2016, the committee issued a determination that the landlord had failed to comply with his duties under Section 14(1) (b) of the Housing (Scotland) Act 2006 (“the Act”). On the same date, the committee issued a Repairing Standard Enforcement Order (RSEO) in respect of the property.

2. The RSEO made by the committee required the landlord to:

1. Repair or replace the control valves on the radiators throughout the property to ensure that these are in a reasonable state of repair and in proper working order.
2. Provide an up to date gas safety certificate in respect of the property by a Gas Safe registered engineer, showing that all gas installations and appliances, including in particular the radiators, have been checked and are working safely.
3. Repair or replace the defective electrical sockets in bedroom 1, the kitchen and the living room as necessary in order to ensure that these are in a reasonable state of repair and in proper working order.
4. Provide an up to date Electrical Installation Condition Report (EICR) in respect of the property by a suitably qualified and registered SELECT or NICEIC electrical contractor, showing that all electrical installations, fixtures and fittings – including in particular the electrical sockets mentioned at 3 above and the fridge freezer - and all appliances have been checked and are working safely.
5. Should the above EICR show that the fridge freezer is not working safely, repair or replace the fridge freezer as necessary to ensure that it is in a reasonable state of repair and in proper working order.
6. Provide an appropriate key or keys which are capable of locking the windows throughout the property in order to ensure that they are in a reasonable state of repair and in proper working order.
7. Securely fix an appropriate cover to the front of the wall vent in bedroom 1 in order to ensure that the vent is in a reasonable state of repair and in proper working order.
8. Repair or replace the bathroom door as necessary in order to ensure that it is in a reasonable state of repair and in proper working order.
9. Repair or replace the vinyl flooring in the kitchen as necessary in order to ensure that it is safe and secure, and is in a reasonable state of repair and in proper working order.
10. Repair or replace the kitchen drawer which is not functioning correctly in order to ensure that it is in a reasonable state of repair and in proper working order.
11. Remove the gas fire in the living room from the property and repair the wall behind it to ensure that this is safe.
12. Replace and fix securely to the living room wall above the bay window the curtain rail and curtain, ensuring that the rail is capable of holding the curtain securely and is in a reasonable state of repair and in proper working order.
13. On completion of all the above works, ensure that all affected finishes and decoration are restored to an acceptable standard.

3. The Private Rented Housing Committee ordered that the works specified in the RSEO were to be carried out and completed within the period of four weeks from the date of service of the RSEO.
4. On 7 June 2016, the surveyor member of the committee carried out a re-inspection of the property for the purpose of ascertaining whether the repairs required by the RSEO had been completed. The tenant's wife was present at the re-inspection. The landlord was not present or represented at the re-inspection. A copy of the re-inspection report is attached as an annex to this decision. The surveyor member determined that none of the repairs required by the RSEO had been undertaken.

### **Reasons for the decision**

5. Following the surveyor's re-inspection of the property, the re-inspection report was sent to the parties. The parties were asked to confirm whether they agreed with the findings of the report, and whether they wished to attend a further hearing, or if they were content for the committee to make a decision without an oral hearing. No response was received from the landlord or his agent. A response dated 30 June was received from the tenant, stating that he agreed with the report, that the works had not been done; that he wished to attend a hearing; and that he thought a rent relief order reducing the rent by 50% should be issued. No response was received from the landlord.
6. A further hearing was therefore arranged for 1 September, in accordance with regulation 16(1) of the Private Rented Housing Panel (Tenant and Third Party Applications) (Scotland) Regulations 2015. On 29 August, an email was received from the landlord's agent, which stated as follows:

*'As per work order list items*

- 1- radiators working*
- 2- the house was given a clean at the start of the tenancy*
- 3- there are keys provided for windows*
- 4- they were removed but delayed due to access (initially the tenant did not want items removed as he said he might use them, but once he moved in he changed his mind)*
- 5- new gas cooker been installed*
- 6- there is no dampness apparent at the moment*
- 7- bedroom 1 socket has been replaced.*
- 8- at the start of the tenancy, the tenant was advised no window curtains will be provided as there is a netting in place*
- 9- bathroom door has been fixed (this was also broken by the tenant)*
- 10-lobby carpet was given clean at the beginning of the tenancy*

- 11-kitchen floor has been repaired and also drawers are fixed and socket has been repaired*
- 12-the fridge was checked and is in good working order and also passed pat test as well*
- 13-carpet in living room was given clean at start of tenancy (it is the tenants responsibility to maintain it)*
- 14-sockets in living room have been replaced*
- 15-gas fire has been disconnected and removed*
- 16-wall above lounge window has been repaired in living room*
- 17-holes in living room have been repaired.*

*Please also find attached the relevant certificates.'*

7. An EICR, PAT test certificate and a gas safety certificate were attached to the email. The 17 items in the list appeared to relate to the 17 repairing standard complaints which were considered by the committee in its decision. Some of these complaints had not been upheld by the committee. Nevertheless, it appeared from the email that the landlord's agent was stating that all of the works required by the RSEO had been carried out.
8. On or around the same date as the email was received, the tenant telephoned the panel offices to say that he had moved out from the property and new tenants had moved in.
9. Further to the email received from the landlord's agent, the committee decided to cancel the hearing fixed for 1 September, and arranged a further re-inspection of the property on 20 September. On that date, the surveyor member of the committee attended at the property at the time arranged, but was unable to gain access to the property. The surveyor waited at the property for half an hour after the arranged inspection time, during which time a member of panel staff attempted to contact the landlord's agent by telephone without success.
10. The committee was satisfied that the landlord's agent had been given sufficient notice of the date and time of the inspection, in terms of regulation 14 (4) of the Private Rented Housing Panel (Tenant and Third Party Applications) (Scotland) Regulations 2015 (the regulations').
11. The committee issued a direction to the landlord on 10 October 2016, stating that the committee was unable to confirm whether the works had been done, unless it was able to gain access to the property to carry out an inspection. The direction stated that the committee would therefore fix a date for a further re-inspection and hearing, which would be duly notified to the landlord and his agent. Following the re-inspection and hearing, the committee would consider whether on the basis of all the evidence before it, the landlord had complied

with the RSEO. The direction then stated that if the committee considered that the landlord has failed to comply with the RSEO, it may issue a failure to comply decision. If the committee was unable to gain access to carry out a re-inspection of the property, it may reach the conclusion that the works had not been carried out.

12. The direction also required the landlord to provide an up to date EICR and an up to date gas safety certificate in respect of the property, as required by the RSEO, as the certificates which had been provided by the landlord's agent with its email of 29 August were not compliant with the RSEO. The EICR provided was dated prior to the date of the RSEO. It did not therefore make any reference to the electrical sockets which the committee identified as defective and required the landlord to replace, and which the landlord's agent said had been replaced. Also, the EICR did not include a registered SELECT or NICEIC contractor number, or the address of the contractor. The committee therefore required the landlord to provide an EICR dated after the date of the RSEO and provided by a suitably qualified and registered contractor, as set out in the RSEO.
13. The gas safety certificate provided made reference only to the cooker, and did not appear to cover any other gas appliances or installations within the property. The committee required a certificate by a Gas Safe registered engineer showing that all gas installations and appliances had been checked, including in particular the radiators, and were working safely.
14. The committee required the landlord to provide these documents by 31 October 2016, but no response was received from the landlord.
15. A further re-inspection and hearing were arranged for 24 November 2016. One week prior to that date, the panel sent a letter to the landlord's agent asking them to confirm that access would be provided on that date for the re-inspection. No response was received, and a member of panel staff contacted the landlord's agent by telephone several times on the day prior to the re-inspection, advising them that the committee would attend at the house as arranged, and would proceed with the hearing as arranged. The agent was also advised that, if he committee could not get access, it was likely to draw the conclusion that the work had not been done and issue a failure to comply decision.
16. On 24 November, the committee attended at the property at the time arranged, but were unable to gain access to the property. They waited at the property for twenty-five minutes after the arranged inspection time, during which time a member of panel staff attempted to contact the landlord's agent by telephone without success.

17. The committee was satisfied that the landlord's agent had been given sufficient notice of the date and time of the inspection, in terms of regulation 14 (4) of the regulations.
18. Following the attempted re-inspection, the committee held a hearing at Wellington House, 134-136 Wellington Street, Glasgow G2 2XL. The landlord was not present or represented at the hearing. The committee was satisfied that in terms of regulation 15 of the regulations, the requirements regarding the giving of notice of a hearing had been complied with.
19. At the hearing, the committee considered whether the landlord had complied with the RSEO. The committee noted that the landlord had failed on more than one occasion to provide the Electrical Installation Condition Report (EICR) and gas safety certificates which met with the requirements set out in the RSEO. The landlord had failed to provide these in response to the committee's first direction of 2 February 2016, prior to the original inspection and hearing. While it had provided an EICR and a gas safety certificate in respect of the property with its email of 29 August, these did not comply with the requirements of the RSEO, for the reasons set out above. The committee then required the landlord to provide these in its second direction, and again the landlord failed to comply with the direction. The committee is therefore satisfied that the landlord has failed to comply with items 2 and 4 of the RSEO.
20. The committee also notes that refusal or failure to provide the committee with any document or information required by the committee, without reasonable excuse, is an offence in terms of Schedule 2 Paragraph 3(3) (c) of the Act.
21. With regard to the remaining items in the RSEO, the surveyor found at his re-inspection on 7 June that none of the repairs required by the RSEO had been undertaken. The tenant confirmed this on 30 June, before he moved out. The only evidence before the committee that the repairs have been undertaken is the email received from the landlord's agent of 29 August, which essentially states that the repairs had been carried out. The committee has not had sight of any photographs of the property or contractors' invoices to confirm that the works have been undertaken. There has been no further contact with the panel from either the landlord or his agent since 29 August.
22. Despite two further attempts to re-inspect the property after that date, of which the landlord's agent was duly notified, the committee has been unable to gain access to re-inspect the property in order to ascertain whether the works have been done. The landlord did not attend either inspection or the hearing fixed for 24 November. In the circumstances, the committee draws the inference that, on the balance of probabilities, the works have not been carried out. In any case,

the landlord has failed to comply with items 2 and 4 of the RSEO as set out above.

23. The committee, having made such enquiries as are fit for the purposes of determining whether the landlord has complied with the RSEO, in relation to the property concerned, therefore determines that the landlord has failed to comply with the RSEO in terms of section 26(1) of the Housing (Scotland) Act 2006, and that a notice of this failure should be served on the local authority in whose area the property is situated.
24. The committee considered whether a Rent Relief Order should be made in terms of section 27 of the Act. As the tenant who made the application has now moved out of the property, the committee determined that it was unable to make such an order.
25. The committee also notes that there appear to be new tenants living in the property. It is an offence in terms of section 28 (5) of the Act to enter 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. The panel has accordingly notified Police Scotland that there are believed to be new tenants living in the property while there is an RSEO in place in relation to the property.

### **Right of Appeal**

26. A landlord or tenant aggrieved by the decision of a Private Rented Housing Committee may appeal to the sheriff by summary application within 21 days of being notified of that decision.
27. The appropriate respondent in such appeal proceedings is the other party to the proceedings and not the panel or the committee which made the decision.

### **Effects of Section 63 of the 2006 Act**

28. Where such an appeal is made, the effect of the decision and the order is suspended until the appeal is abandoned or finally determined. Where the appeal is abandoned or finally determined by confirming the decision, the decision and the order are to be treated as having effect from the day on which the appeal is abandoned or so determined.

S O'Neill

Signed..

Chairperson

Date.....30/11/16.....