



## **Repairing Standard Enforcement Order**

**Ordered by the Private Rented Housing Committee**

**Case reference number : PRHP/RP/15/0335**

**Title Number : GLA148707**

Re:- Property at Flat 3/2, 74 Ferry Road, Glasgow, G3 8QX ("the property")

**The Parties:-**

Dr Daniel Short, formerly residing at Flat 3/2, 74 Ferry Road, Glasgow, G3 8QX ("**the former tenant**")

**and**

Mr Duncan McPherson, c/o Edzell Property Management, 1008 Pollokshaws Road, Glasgow, G41 2HG ("**the landlord**")

### **Notice to Mr Duncan McPherson**

Whereas in terms of the decision dated 2 March 2016 the Private Rented Housing Committee determined that the landlord had failed to comply with the duty imposed by Section 14(1)(b) of the Housing (Scotland) Act 2006 and in particular the landlord had failed to ensure that:-

- (a) the house is wind and watertight and in all respects reasonably fit for human habitation

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

In particular the Private Rented Housing Committee requires the landlords to carry out the following work

- Carry out such works as are necessary to make the patio doors in the living room and the window in the main bedroom wind and watertight and, if necessary to replace the said patio doors and the said window.

The Private Rented Housing Committee orders that the works specified in this order must be carried out within two months of the date of this Order.

A landlord or tenant aggrieved by the decision of the 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 PRHP or the Committee which made the decision.

Where such an appeal is made the effect of the decision or of 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.

J Bauld

Signed..

.....

Date.. 2 March 2016

James Bauld, Chairperson

G Williams

Signature of Witness...

/

Date.. 2 March 2016

Name: Gillian Williams

Address: 7 West George Street, Glasgow, G2 1BA

Designation: SENIOR COURT ADMINISTRATOR



**Determination by Private Rented Housing Committee**

Statement of Decision of the Private Rented Housing Committee

(Hereinafter referred to as "the Committee")

Under Section 24(1) of the Housing (Scotland) Act 2006

Case Reference Number: PRHP/RP/15/0335

Re:- Property at Flat 3/2, 74 Ferry Road, Glasgow, G3 8QX ("**the property**")

Land Register Title Number: GLA148707

The Parties:-

Dr Daniel Short, formerly residing at Flat 3/2, 74 Ferry Road, Glasgow, G3 8QX ("**the former tenant**")

And

Mr Duncan McPherson, c/o Edzell Property Management, 1008 Pollokshaws Road, Glasgow, G41 2HG ("**the landlord**")

**The Committee comprised:-**

Mr James Bauld - Chairperson

Mr Mike Links - Surveyor member

**Decision:-**

The Committee unanimously decided that the landlord had failed to comply with the duties imposed by Section 14(1)(b) of the Housing (Scotland) Act 2006 ("the 2006 Act").. The Committee accordingly proceeded to make a Repairing Standard Enforcement Order ("RSEO") as required by Section 24(2) of the 2006 Act.

## **Background:-**

1. By application received on 7<sup>th</sup> December 2015, the tenant applied to the Private Rented Housing Panel ("PRHP") for a determination that the landlord had failed to comply with the duties imposed by Section 14(1)(b) of the 2006 Act. The application was acknowledged by the PRHP by letter dated 7<sup>th</sup> December 2015 and by letter dated 30<sup>th</sup> December 2015 the President of the Panel intimated her decision to refer the application to a Private Rented Housing Committee. In that letter notification was given to the parties that an inspection and hearing would take place on 19<sup>th</sup> February 2016.
2. By email dated 12<sup>th</sup> February 2016, the former tenant indicated he had vacated the property on 1<sup>st</sup> February 2016.
3. The Committee issued a Minute of Continuation dated 17<sup>th</sup> February 2016 indicating they would continue with their consideration of the application. Intimation of that Minute was sent to the landlord's representative.
4. The Committee members attended at the property for the inspection on 19<sup>th</sup> February. Neither the former tenant nor the landlord was personally present. The landlord was represented by Mr Richard Taylor, the solicitor for Edzell Property Management Limited, the landlord's agent.

## **The Inspection**

5. During the inspection the Committee members were able to examine the areas of complaint raised by the tenant. The tenant's complaint was that the patio doors within the living room of the property were not wind and watertight and that the window within the main bedroom of the property was not wind nor watertight. The tenant also complained that the carpets within the property were worn and should be replaced.
6. During the inspection, the Committee members examined the patio doors within the living room and the window within the bedroom. It was clear at the inspection that the patio doors did not close properly. There was a clear gap at the foot. Photographs were taken by the surveyor member and a schedule of photographs is attached to this decision. The chairperson was also able to place a folded sheet of A4 paper through the gap in the patio doors. The window in the bedroom was also clearly distorted and also had a clear gap between the window frame and the window sill. Attempts had been made to fill this gap with sealant.
7. The inspection was concluded and the Committee members travelled to the venue for the hearing.

## **The Hearing**

8. The hearing took place in Wellington House, Wellington Street, Glasgow. The landlord was again represented by Mr Richard Taylor who had been present at the inspection. The former tenant was neither present nor represented.
9. The Committee questioned the landlord's representative with regard to the condition of the Patio doors and the window. The Committee members asked the representative whether he accepted that both the patio doors and the window in the bedroom were not wind and watertight. The landlord's representative accepted that there was a gap in the doors when they were apparently closed and that the analysis that they were not wind and watertight was fair.
10. Discussion then centred around whether the Panel were obliged to make an RSEO should they find that the property did not meet the repairing standard. Mr Taylor

suggested that it was open to the Committee to continue matters and not make an RSEO. It was his position that the landlord was already intending to carry out a full refurbishment of this property and that the property would not be re-let until the works were done. He indicated that Edzell Property Management would certainly not re-let the property unless these works were completed. He suggested that the imposition of an RSEO would have an impact upon a landlord and suggested that this was a landlord who had looked after his properties and that this was a one off incident.

11. The Committee then questioned Mr Taylor with regard to the apparent lack of action by his landlord. It was clear that the former tenant had made complaints with regard to the condition of the Patio doors and the windows in September 2015 and had continued to raise the issue with the letting agent. It was suggested to Mr Taylor that the landlord had already had a period of over five months to carry out the necessary repairs to the windows and doors and that he had failed to do so. Again, this suggestion was accepted by Mr Taylor as being a reasonable summary of the position. It was also suggested to Mr Taylor that his undertaking that Edzell would not take this property back to re-let it if the repairs were not done, would not preclude the landlord instructing another letting agent. It was indicated to the Committee that the landlord owned not only the particular flat at 74 Ferry Road, but the whole block.
12. Mr Taylor concluded by again asking the Committee to consider continuing the application without making an order and indicated that he would obtain clear instructions from his client confirming that works would be undertaken and indicating a time scale when they would be done. Mr Taylor indicated that he would attempt to obtain an email from his client and send that to the PRHP office that afternoon. The hearing was then concluded and the Committee indicated they would consider matters and make a decision.
13. The Committee note that an email was sent by Mr Taylor to the Committee offices dated 19<sup>th</sup> February 2016 and timed at 13.03. In that email Mr Taylor encloses an email which bears to be from his client and addressed to him indicating "we have commenced work on this flat which includes renewal of windows. We will adjust our programme and have this section of work brought forward. As soon as this has been done we will invite you to re-inspect. I expect the timescale to be 2 – 3 weeks."

### **Findings of Fact**

14. Having considered all the evidence the Committee found the following facts to be established:-
  - (a) The subjects of let comprise part of the top floor within a four storey end terrace block of flats, containing 8 flats in total and constructed about 15 years ago. The outer walls appear to be of timber framed construction with an outer skin of facing brick and the roof is pitched and tiled. The accommodation comprises an entrance hall, living room, two bedroom, kitchen and bathroom.
  - (b) The living room within the property has patio doors which lead onto a small balcony. There was a clear and visible gap between the two doors where they met at the foot of the door frame.
  - (c) Within the main bedroom, the window was not wind and watertight. The window frame appeared to be bowed and distorted and there was a gap between the bottom of the window frame and the window sill. The gap had been filled with sealant but the window was neither wind nor watertight.

## Reasons for Decision

15. The Committee considered the issues of disrepair set out in the application and noted at the inspection and hearing.
16. At the hearing the Committee posed questions directly to the landlord's agent with regard to complaints.
17. It was apparent to the Committee during their inspection that the Patio doors in the living room and the window in the bedroom were not wind and watertight. The Committee did accept that the carpets within the property were not of such a condition that they fell short of the repairing standard.
18. The Committee took the view that the property, and in particular the Patio doors in the living room and the window in the bedroom were not wind and watertight. Accordingly there was a clear breach of the repairing standard. The only question to be determined by the Committee was whether they should issue an RSEO or accede to the landlord's agent's request to continue the matter.
19. The Panel took into consideration the terms of the Private Rented Housing Panel (Tenant and Third Party Applications) (Scotland) Regulations 2015. The Panel noted that in terms of Regulation 3 of these Regulations, the overriding objective is to enable panels and committees to deal with proceedings justly. The Committee noted that in terms of Regulation 11 they had the power to issue a direction including a power to require a party to provide further details of that party's case. The Committee noted in terms of Regulation 18 they had the power to adjourn a hearing. The Committee balanced the terms of the Regulations with the terms of Section 24 (2) of the Act. The Act states that where a Committee decide that a landlord has failed to comply with their duty to ensure a property meets the repairing standard, the Committee "must by order (a "Repairing Standard Enforcement Order") require the landlord to carry out such work".
20. The Committee therefore considered whether they should proceed to make an RSEO or to agree to the request to continue. The Committee took into account the length of time between the first complaint being made by the former tenant and the date of the hearing. The Committee noted the landlord had already had a period of over five months to carry out the repairs. The Committee took the view that the repairs required could be completed within a day. The Committee took the view that the landlord had had ample opportunity to carry out the repairs and that the Committee should not accede to any request to continue the matter or to adjourn the matter. The Committee also considered the terms of the email sent by the landlord to his letting agent and provided to the committee after the hearing. The committee noted that email indicated that works had commenced within the flat. The committee did not accept this assertion to be true. Accordingly the Committee determined that they should make an RSEO in respect of the Patio doors and the window.
21. The Committee accordingly determined to make an RSEO as required in terms of Section 24(2) of the Act and the decision of the Committee was unanimous.

## Rights of Appeal

22. A landlord or tenant aggrieved by the decision of the Committee may appeal to the Sheriff by summary application within 21 days of being notified of that decision.
23. The appropriate respondent in such appeal proceedings is the other Party to the proceedings and not the PRHP of the Committee which made the decision.

**Effects of Section 63**

- 24. Where such an appeal is made, the effect of the decision and of any Order made in consequence of it is suspended until the appeal is abandoned or finally determined.
- 25. Where the appeal is abandoned or finally determined by confirming the decision, the decision and the Order made in consequence of it are to be treated as having effect from the day on which the appeal is abandoned or so determined.

J Bauld

Signed.....

Date 2 March 2016

James Bauld Chairperson

G Williams

Signature of Witness..

Date 2 March 2016

G Williams

Name:

Address: 7 West George Street, Glasgow, G2 1BA

Designation: SENIOR COURT ADMINISTRATOR.

Flat 3/2, 74 Ferry Road, Glasgow G3 8QX

Case No: prhp/rp/15/0335

Date of Inspection: 19<sup>th</sup> Feb 2016.

### Schedule of Photographs



Front elevation

Ill-fitting patio door in LR



Distorted window frame in Bed



Gap in frame