



DETERMINATION & STATEMENT OF REASONS

Issued by the Private Rented Housing Committee in terms of Section 26 and Paragraph 6(2)(b) of Schedule 2 of the Housing (Scotland) Act 2006

THE PROPERTY

125, Blarmore Avenue, Inverness IV3 8QT, being ground, 60 on plan, part of (I) 11.09 acres, outlined in red on plan annexed to Feu Disposition by Hugh MacRae and Company (Builders) Ltd in favour of Barratt Developments (Aberdeen) Ltd, dated 10 February and recorded in the General Register of Sasines applicable to the County of Inverness on 29 March both in the year 1978 and (II) 9.273 acres, outlined in red on the plan annexed to the Feu Disposition by Hugh MacRae and Company (Builders) Ltd in favour of Barratt Developments (Aberdeen) Ltd, dated 27 March and recorded in the said division of the General Register of Sasines on 28 June both in the year 1978 (hereinafter referred to as "the property")

THE PARTIES

Mrs Ada Katrina MacKenzie, residing at the property, per Alan Rooney, Citizens Advice Bureau, 103, Academy Street, Inverness IV1 1LX (hereinafter referred to as "the tenant")

and

The Accountant in Bankruptcy, c/o Wylie & Bisset LLP, 168 Bath Street, Glasgow G2 4TP, as trustee on the sequestrated estate of Jean Forbes McDonald residing at 11 Kings View Terrace, Inverness IV3 TS, per Harper Macleod LLP, The Ca'd'oro, 45 Gordon Street, Glasgow G1 3PE (hereinafter referred to as "the landlord")

PRHP Reference: PRHP/RP/15/0326

Committee Members – David Preston (Chairperson) and Sara Hesp (Surveyor Member)

Decision

The Committee, having made such enquiries as are fit for the purposes of determining whether the landlord had complied with the terms of the Repairing Standard Enforcement Order (hereinafter referred to as the "RSEO") dated 11 March 2016 in terms of section 26(1) of the Housing (Scotland) Act 2006 (hereinafter referred to as "the Act") and taking account of the written and oral representations on behalf of the landlord, determined: that the landlord had failed to carry out repairs specified in the RSEO; that a Notice of Failure should be sent to the Local Authority in terms of section 26(2)(a) of the Act; and to make our rent relief order in terms of section 26(2)(b) of the Act reducing the rent payable under the tenancy by 90%.

Background

1. Reference is made to: the Determination of the Committee dated 11 March 2016 which decided that the landlord had failed to comply with the duty imposed by section 4(1)(b) of the Act; and the RSEO issued by the Committee on that date which required the landlord to carry out the works specified therein. The said works were to be carried out and completed within three weeks from the date of service of the RSEO on the parties, which was effected on 14 March 2016.
2. By email dated 5 April 2016, the landlord's solicitor indicated that, notwithstanding the terms of the Determination, their client did not accept that the Accountant in Bankruptcy was required to fulfil the obligations of landlord in terms of the lease on the basis that the lease had not been adopted.
3. By letter dated 7 April 2016, the tenant's representative advised that: none of the works specified in the RSEO had been carried out; and that the tenant had not been contacted by the landlord or the agents at any time during the period specified for the carrying out of the work, which had expired on 6 April 2016, regarding the work that needed to be done.
4. Notwithstanding that it was apparent to the Committee that the landlord had not complied with the terms of the RSEO, the Committee determined that it should carry out a re-inspection of the property and hold a further hearing in order that the parties could make representations regarding further procedure.
5. A re-inspection of the property was carried out by the Committee on 8 June 2016 followed by a hearing.

Inspection

6. The Committee re-inspected the property on the morning of 8 June 2016. The tenant and Mr James Duff, Solicitor on behalf of the landlord were present throughout the inspection.
7. The inspection revealed that none of the works specified in the RSEO, namely:
 - i. To lodge with PRHP a satisfactory Electrical Installation Condition Report (EICR) completed by a suitably competent person accredited by NICEIC or SELECT.
 - ii. To repair the warm air heating unit.
 - iii. To lodge with PRHP a satisfactory Gas Safe Certificate.
 - iv. In accordance with the recommendations contained in BS5839 Part 6, install smoke alarm and fire detectors and heat detectors that meet the standard as set by building regulations and the revised Domestic Technical Handbook guidance on the requirements for smoke alarms, details of which are available on the PRHP website at www.prhpscotland.gov.uk.
8. Photographs of the property and of the issues raised were taken by the surveyor member and are attached hereto.

Hearing:

9. Thereafter a hearing took place at The Spectrum Centre, 1 Margaret Street, Inverness IV1 1LS. The tenant and Mr Rooney attended the hearing along with Mr Duff on behalf of the landlord. The tenant provided oral evidence and Mr Duff made representations on behalf of his client.
10. At the beginning of the hearing the chairman explained the purpose of the hearing and the procedure to be followed. He invited Mr Duff to make representations on behalf of the landlord.
11. Mr Duff indicated to the committee that his clients sought a variation of the RSEO terms of section 25 of the Act to the effect of extending the period specified for the carrying out of the works.
12. Mr Duff advised that his clients were aware that there had been no progress with regard to the works but he explained that this had been due to ongoing discussions

between his client and the tenant. He advised that, notwithstanding that his client was of the view that he had not acquired the landlord's interest in the property, it was accepted, in view of the Committee's Determination of 11 March 2016, that the Account in Bankruptcy was responsible for fulfilling the requirements of the RSEO.

13. The landlord had become aware that the tenant had been paying the rent due by her in terms of the lease into a holding account and that the balance in that account was therefore available. He said that discussions had taken place with a view to either: using the funds in that account to effect the works required; or giving the tenant an opportunity to purchase his client's interest in the property and setting those funds against the price.
14. Mr Duff advised the Committee that the delay in making progress with the works had arisen from the fact that his firm had received a copy of the RSEO from the PRHP office on 26 May 2016 and that since then there had been constant discussions with the tenant regarding the work being carried out on the possibility of purchasing the property.
15. Mr Duff sought a variation of the RSEO by extending the period for completion of the works for a period of a further four weeks, which he considered would provide his client an opportunity to obtain quotations and have the necessary work carried out.
16. The tenant indicated her agreement with the situation as outlined by Mr Duff. She explained that she continued to make payment of the rent into the holding account and was prepared to consider the possibility of purchasing the landlord's interest in the property if suitable arrangements could be made.
17. Mr Duff suggested that in the event that the tenant purchased the landlord's interest, the RSEO could be revoked as the property would thereby become owner-occupied.

Decision and Reasons

18. The Committee considered its observations at the re-inspection as well as the documents submitted to it and the submissions by the landlord and the tenant.
19. For the reasons stated in its Determination dated 11 March 2016 the Committee continued to be of the view that the tenant was entitled to the protection afforded by the Housing (Scotland) Act 2006, notwithstanding the sequestration of the landlord. The Committee was satisfied, on the evidence before it, that there was a lease in existence in respect of the property under which the tenant was in lawful occupation of the property. If it were the case that the Accountant in Bankruptcy was not the de facto landlord then the effect would be that there would be a lease in existence under which there was no landlord, even although tenant continued to make payment of rent. The Committee was unable to see any circumstances in which such a situation could arise.

20. The Committee recognised that the landlord had in fact not received any rent due to the fact that tenant was exercising her right to withhold rent until such time as the necessary repairs to the property had been carried out by the landlord.
21. Mr Duff's submissions appeared to the Committee to rest on section 25((3)(b), namely that satisfactory progress has been made in carrying out the work required. However the Determination and RSEO had been issued to Accountant in Bankruptcy on 14 March 2016 and it was not until 26 May 2016, almost 2 months after the time limit specified in the RSEO, that any action was taken with regard to the landlord's obligations by way of discussions rather than action. Indeed quotations had not been obtained for the repair of the heating unit.
22. The Committee determined that the Accountant in Bankruptcy had been under an obligation to fulfil the responsibilities of landlord since the appointment on 27 April 2015.
23. The Committee noted a letter from Wylie & Bisset dated 19 May 2015 addressed "TO THE OCCUPIER, 125 Blarmore Avenue, Inverness which advised the tenant of their appointment as agents for the Accountant in Bankruptcy, and an undated response addressed to Sharon Toal with reference DMK/ST/MC2787/CSQ4.8 from the tenant which referred to a previous telephone conversation between the tenant and Wylie & Bisset as well as to correspondence with Mrs Jean MacDonald regarding the condemnation of boiler. By letter dated 3 January 2016 the tenant advised PRHP that she had been advised by Sharon Toal to withhold the rent in a holding account.
24. The Minute of Continuation issued by the President of PRHP on 12 January 2016 had been served on the In Bankruptcy The Committee considered that the Accountant in Bankruptcy had been made aware of the problems with the property.
25. The Committee paid particular regard to the nature of the faults in the property involving serious issues regarding: the potentially dangerous condition of the electric system; the condemnation of the gas supply and warm air heating unit; and the inadequate provision of smoke alarms and fire detectors and considered that these matters should have been prioritised as a matter of urgency.
26. The Committee could see no reason why and EICR and Gas Safe Certificate could not have been instructed and submitted to PRHP prior to the re-inspection and hearing.
27. None of the required work had been carried out within a period of almost 3 months since the issue of the Order.
28. Accordingly the Committee determined that as no progress had been made with the

works required it had no alternative but to issue a Notice of Failure.

29. Having determined to issue a Notice of Failure, the Committee is required in terms of section 26 (2) of the Act, to decide whether to make a rent relief order. The Committee was mindful of the serious nature of the faults with the property and the length of time during which the tenant had continued to make payment of the rent, albeit into a holding account, since the heating unit had been condemned on 13 October 2015.
30. Accordingly the Committee determined that the rent payable under the tenancy should be reduced by 90% until such time as the work specified in the RSEO has been carried out.

Right of Appeal

A landlord or tenant has the right to appeal this decision to the Sheriff by summary application within 21 days of being notified of that decision.

Effect of Appeal

In terms of section 63 of the Act, where such an appeal is made, the effect of the decision and of any order is suspended until the appeal is abandoned or finally determined by confirming the decision, the decision and any order will be treated as having effect from the day on which the appeal is abandoned or so determined.

David Preston

21 June 2016



PRHP/RP/15/0326

Schedule of photographs taken during the re-inspection of 125 Blarmore Avenue,
Inverness IV3 8QT on 8 June 2016

Interior

Warm air heating unit

DO NOT REMOVE THIS LABEL

COMPETENT GAS OPERATIVE:
If this gas appliance/installation has led to a fatal/major injury (RIDDOR 6(1) reportable) it may be subject to an HSE/Suppliers investigation. Contact the local HSE Office and/or Gas Supplier before assessing and/or repairing this gas appliance/installation.

Description of findings: *Signs of spillage, uncontrolled flame escaping at meter heater control*

Gas Operative's Name: *NIALL MALCOLM*

Tel. No: *256156* Date: *15/10/15*

ID Card Licence No: *221830*





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Schedule of photographs taken during the re-inspection of 125 Blamore Avenue,
Inverness IV3 8QT on 8 June2016



Immersion heater and hot water cylinder tank



Inner hallway - battery operated smoke detector



PRHP/RP/15/0326

**Schedule of photographs taken during the re-inspection of 125 Blarmore Avenue,
Inverness IV3 8QT on 8 June 2016**



Meter cupboard – electric pre-payment meter



RENT RELIEF ORDER

ORDERED BY THE PRIVATE RENTED HOUSING COMMITTEE

THE PROPERTY

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THE PARTIES

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NOTICE TO the Landlord

Whereas in terms of its decision dated * 2016, the Private Rented Housing Committee ("the Committee") determined in terms of Section 26(1) of the Housing (Scotland) Act**

2006 (the "said Act") that the landlord had failed to comply with the Repairing Standard Enforcement Order (RSEO) dated 11 March 2016 in relation to the property.

The Committee determined to make a Rent Relief Order in terms of Section 27 of the said Act reducing the rent payable under the tenancy for the house by an amount of 90% of the rent which would, but for the order, be payable. The rent reduction will take effect 28 days after the last date on which the decision to make the Rent Relief Order may be appealed under section 64 of the said Act.

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. Where the appeal is abandoned or finally determined by confirming the decision, the Rent Relief Order will take effect 28 days after the date on which the appeal is abandoned or the decision is confirmed.

David Preston

✓ 21 June 2016