



Rent Relief Order

Ordered by the Private Rented Housing Committee

prhp Ref prhp/ky11/89/11

Re : 5, Elizabeth Street, Dunfermline KY11 4AZ, ((hereinafter referred to as "the house"))

The Parties:

Mrs Elizabeth Sword, 5 Elizabeth Street, Dunfermline KY11 4AZ ("the Tenant")

and

Anna Kennedy-Stewart, sometime of 2c, Harbour View, Harbour Road, Musselburgh and now of 6f Watt's Close, Musselburgh EH21 6AW ("the Landlord")

NOTICE TO the Landlord

Whereas in terms of their decision dated 29 August 2011, 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 has failed to comply with the Repairing Standard Enforcement Order in relation to the house made by the Committee.

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 20% 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.

IN WITNESS WHEREOF, these presents consisting of this page are executed by David Michael Preston, Solicitor, 140 West Campbell Street, Glasgow G13 1JH, chairman of the Private Rented Housing Committee at Oban on 9 December 2011 before this witness:-

F Campbell

witness

FIONA CAMPBELL name

22 ARCAHL SEC. address

OBAN

ARCAHL

D Preston

chairman



**PRIVATE RENTED HOUSING COMMITTEE
STATEMENT OF DECISION OF THE PRIVATE RENTED HOUSING COMMITTEE
UNDER SECTION 26(1) OF THE PRIVATE RENTED HOUSING (APPLICATIONS
AND DETERMINATIONS) (SCOTLAND) REGULATIONS 2007**

**In connection with
property at 5, Elizabeth Street, Dunfermline KY11 4AZ
(hereinafter referred to as "the property")**

Mrs Elizabeth Sword, 5, Elizabeth Street, Dunfermline KY11 4AZ (hereinafter referred to as "the Tenant")

Anna Kennedy-Stewart, sometime of 2c, Harbour View, Harbour Road, Musselburgh and now of 6f Watt's Close, Musselburgh EH21 6AW (hereinafter referred to as "the Landlord")

PRHP Reference: prhp/KY11/89/11

DECISION

The Committee, having made such enquiries as is fit for the purposes of determining whether: (1) the Landlord has complied with the terms of the Repairing Standard Enforcement Order (hereinafter referred to as "RSEO") dated 29 August 2011 in terms of section 26 (1) of the Housing (Scotland) Act 2006 (hereinafter referred to as "the Act") and (2) to make a Rent Relief Order in terms of section 26 (2) of the Act; and taking account of the written representations by the Landlord and the Tenant, determined that the Landlord had failed to carry out the repairs specified in the RSEO and that a Rent Relief Order should be made reducing the rent payable under the tenancy by the sum of 20%.

BACKGROUND

1. Reference is made to the Determination of the Committee dated 29 August 2011 which decided that the Landlord had failed to comply with the duty imposed by Section 14(1)(b) of the Housing (Scotland) Act 2006 ("the Act") and the RSEO made by the Committee which required the Landlord to carry out works as specified therein. The said works were to be carried out and completed within 2 months from the date of service of the Notice of the RSEO, which was effected on
2. Following service of the Order, the Landlord submitted representations on 2 September 2011 in which she did not dispute the fact that the works must be

done. She explained that she was unable to afford to carry out the repairs due to her financial situation.

3. Further representations were submitted by the Landlord on 8 November on the PRHP response form, which stated that "the concrete canopy had been removed at the rear of the property and plasterwork, the shower screen, bath panel replaced and bathroom sealed, gas safety certificate done and front door replaced and one bathroom window replaced". She requested further time to raise funds for the remaining 8 windows and further explained her financial situation.
4. A re-inspection of the property took place on 14 November 2011 and a report of the same date was copied to both parties. The report confirms that:
 - 4.1. the canopy has been removed but the exterior finish is incomplete and the decoration requires attention.
 - 4.2. the shower screen, side panel of the bath and the mastic around the bath have been replaced. The tiling and grouting remain as before. The damp staining to the side of the bath is still visible but was dry to the touch.
 - 4.3. a gas safety certificate is available.
 - 4.4. with the exception of the bathroom window, the windows have not been replaced. The bathroom window has cracked and requires to be re-glazed. Condensation was still apparent to the remaining windows.
 - 4.5. although not specified as part of the RSEO it was noted that the front door had been replaced with a PVC fitting.
5. Representations were received from the Tenant on the PRHP response form confirming her agreement with the re-inspection report and requesting that the Committee considers a Rent Relief Order.
6. Further representations were received from the Landlord by letter dated 24 November indicating that she disagreed with the re-inspection report in certain respects. She suggested that the RSEO made no reference to the exterior finish or decoration. She indicated that:
 - 6.1. in relation to the removal of the canopy, the finish work and painting work of the walls of the rear and front of the property was scheduled for June. She observed that the RSEO made no reference to exterior finish or decoration.
 - 6.2. she was unable to replace the windows apart from the one in the bathroom due to her financial situation
 - 6.3. a new shower screen and bath panel have been installed and the pipes under the bath have been checked and tightened.
 - 6.4. the gas safety certificate has been provided
 - 6.5. a new PVC door was installed to the property at the tenant's request.
7. The Committee carefully considered all the representations made as well as the re-inspection report. In relation to exterior finish, the Committee agreed that s24(2)(b) of the Act requires that any damage caused by the carrying out of any work specified in the RSEO is made good. the Committee must consider the condition of the property at the date of re-inspection and not at any future date.
8. The Committee agreed that it is unable in terms of the Act to take the personal or financial circumstances of the Landlord or the Tenant in considering whether the property fails to meet the Repairing Standard or in considering whether the Landlord has completed the work specified in the RSEO. The committee can only

make a determination in respect of the condition of the property as it is found at an inspection or a re-inspection. The Committee was satisfied that the work specified in the RSEO has been partially completed as detailed in the re-inspection report.

9. The Committee considered the Landlord's request for a variation or revocation of the RSEO contained in her response of 8 November. No basis for a variation had been provided apart from the financial circumstances of the Landlord which are not relevant to the Committee as outlined above. In any event the Committee agreed that the Tenant was required to live in the property which suffered from significant condensation as a direct result of the condition of the windows which presents a potential hazard to the health of the Tenant.
10. Accordingly the Committee decided that the Landlord has failed to comply with the RSEO made by it on 29 August 2011 in terms of s26(1) of the Act.
11. Having so decided the Committee agreed that a Rent Relief Order be made in terms of s 26(2) of the Act and considered that a reduction in the rent payable of 20% per month would be appropriate. The Committee noted that it was entitled to reduce the rent payable by the tenant by up to 90%. In reaching its decision the Committee was mindful of the fact that the windows had clearly been in a very poor condition for some time, the potential hazard to the health of the Tenant and the increased outlay to the tenant of the higher heating costs due to increased heat loss as a result of the nature of the windows.
12. The Committee also took into account that the Tenant is a protected tenant and as such is paying a fair rent as opposed to the market rent. However the Committee considered that a reduction of 20% per month would be a reasonable reduction to apply.
13. The Rent Relief Order shall 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 Act.

RIGHT OF APPEAL

14. 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

15. 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.

Signed **D Preston**
Chairperson

Date *9 December 2011*