



**DETERMINATION BY PRIVATE RENTED HOUSING COMMITTEE**

**STATEMENT OF DECISION OF THE PRIVATE RENTED HOUSING COMMITTEE  
UNDER SECTION  
24(1) OF THE HOUSING (SCOTLAND) ACT 2006**

**In connection with**

**Property at Flat 7, 16 Shepherds Court, Buchanan Street, Balfour G63  
(hereinafter referred to as "the house")**

**Ms. Agnieszka Czajkowska and Krzysztof Koszanski, Flat 7, 16 Shepherds Court,  
Buchanan Street, Balfour ("the Tenant")**

**Mr. Robert Stevenson and Mrs. Janice Barclay Stevenson, Spouses, 2 Earls Hill  
Drive, Bannockburn (represented by Mr. Daniel Gibson, Letting Manager, Martin &  
Co. (Stirling) Limited, 13/15 Upper Craigs, Stirling FK8 2DG) ("the Landlord")**

**DECISION**

The Committee, having made such enquiries as is fit for the purposes of determining whether the Landlord has complied with the duty imposed by Section 14(1)(b) in relation to the house concerned, and taking account of the evidence led by the Tenant at the hearing and the written representations of the Landlord and the Tenant, determined that the Landlord had failed to comply with the duty imposed by Section 14(1)(b) of the Housing (Scotland) Act 2006 (hereinafter referred to as "the Act")

**Background**

1. By application dated 3 December 2009 and received on 8 December 2009 the Tenant applied to the Private Rented Housing Panel (hereinafter referred to as "PRHP") for a determination of whether the Landlord had failed to comply with the duties imposed by Section 14(1) (b) of the Act.
2. The application by the Tenant stated that the Tenant considered that the Landlord had failed to comply with the duty to ensure that the house meets the repairing standard and in particular that the Landlord had failed to ensure compliance with Section 13(1)(a),(b),(c),(d),and (e) of the Act which states that " the house is wind and watertight and in all other respects reasonably fit for human habitation; the structure and

exterior of the house (including drains, gutters and external pipes) are in a reasonable state of repair and in proper working order; 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; any fixtures, fittings and appliances provided by the landlord under the tenancy are in a reasonable state of repair and in proper working order; and any furnishings provided by the landlord under the tenancy are capable of being used safely for the purpose for which they are designed". The Tenant's complaint of disrepair within the application related to dampness and condensation in the flat and she submitted photographs in the application to illustrate the problems she alleged, copies of electricity accounts indicating her consumption of fuel along with a copy letter from Alexander Anderson, Plumbing and Building Contractors, dated 10 August 2009. She also submitted to PRHP a copy of a letter sent to the Letting Agents on 3 November 2009 with a recorded delivery receipt intimating that she did not believe the house met the repairing standard due to the presence of dampness and condensation and asking the agents to take action. She also submitted a copy of a letter from Martin and Co. dated 2 December 2009 with the copy tenancy agreement and AT5 form.

3. By letter dated 26 January 2010 the President of the Private Rented Housing Panel intimated a decision to refer the application under Section 23(1) of the Act to a Private Rented Housing Committee.

The Committee comprised the following members:

Mrs. Aileen Devanny, Legal Member  
Mr. Ian Mowatt, Surveyor Member  
Mr. Scott Campbell, Housing Member

4. The Private Rented Housing Committee served Notice of Referral under and in terms of Schedule 2 Paragraph 1 of the Act upon the Landlord and the Tenant. Following service of the Notice of Referral the Tenant made no further written representations to the Committee beyond confirming on 5 February 2010 her wish to proceed with the application and indicating that a planned meeting with the Letting Agent had not taken place. She indicated that she wished to attend a hearing before the Committee. The Landlord's agent submitted written representations along with a copy e-mail sent on 6 January 2010 to the Tenant which referred to a report commissioned at his request by Richardson and Starling, damp specialists. The e-mail is referred to for its terms and quotes sections of the report from Richardson and Starling as follows

" Our inspection to the external fabrics of the building was carried out from ground level only and the following external defects were noted

1. Defective roof coverings
2. Defective rainwater goods
3. Defective external render "

"In view of the mould growth to the ceiling areas this would appear to be the result of cold spots caused by the lack of insulation within the roof void. We therefore recommend your own labour inspects and ensures the correct level of insulation is applied within the roof void area. No allowance is made within our quotation for this work."

"These rooms were observed to have wall areas showing evidence of condensation. Proper heating and ventilation must be maintained to reduce moisture available for evaporation into the air within the property condensing on wall surfaces".

The Landlord's agent submitted, firstly, that the roofing problems are matters which he had referred to the Factor as these are common repairs, secondly, that an Energy Assistance Package would be available to the Tenant (but not the owner) which would potentially provide insulation free of charge so the remedy for this matter lies with the Tenant, and, lastly, that advice has been given to the Tenant on ways to avoid condensation by keeping the house well heated and well ventilated by opening windows where possible to allow circulation of fresh air. Far from refusing to carry out works to the house, he submitted that he had actively tried to resolve the issues but had had limited success in getting the Factor to take appropriate action regarding the roof. The insulation works could be initiated by the Tenant under the Energy Saving Scheme, and thereafter the Landlord would arrange for the affected areas to be treated and repainted. He concluded by saying that he felt the Tenant's application had been premature in the circumstances. The Landlord's agent gave no indication in his submissions as to whether he proposed to attend the inspection and hearing.

5. The Private Rented Housing Committee inspected the house on the morning of 22 March 2010. The Tenant, Ms. Czajkowska and Mr. Koszanski were present as was an interpreter from Alpha Interpreting Services, Ms. Violeta Browarczyk. Neither the Landlord nor his agent attended the inspection.

6. Following the said inspection the Private Rented Housing Committee held a hearing at the Black Bull Hotel, Killearn. Prior to the hearing the Committee was advised that it had been the intention of Mr. Gibson, the Landlord's agent, to attend the hearing but he was unwell and arrangements were made for his further written submissions (received by PRHP that morning) to be passed to the Committee and to the Tenant for consideration prior to the hearing. His further written submissions stated that last August the Factor's roofer (Alexander Anderson, Plumbing and Building Contractors) had indicated that the roof was fine and ventilation was the problem. However, following upon complaints from the Tenant last November a report was commissioned by him from Richardson and Starling in December 2009 and the roofing problems they identified reported to the Factor on 8 January 2010. He submitted e-mail correspondence between himself and the Factor dated 8, 11 and 13 January and 18 March 2010. The present situation being that a further roofing contractor has been instructed by the Factor to carry out an inspection and give their findings and recommendations. The Landlord's agent concluded his written submissions by

requesting that the Committee put their deliberations on hold to allow the matter to be resolved by the Factor and to allow the Tenant to arrange for loft insulation and thereafter for him to arrange redecoration.

The Committee considered written evidence submitted and heard evidence from the Tenant, Ms Czajkowska. Once the Tenant had given her evidence, the Committee adjourned to consider all the evidence and the written representations and submissions, and to make their determination.

### **Submissions at the Hearing**

7. It was pointed out by the Committee Chairperson at the start of the hearing that the Committee was there to determine whether the house met the repairing standard in terms of the Act.

Ms. Czajkowska indicated that she had been the tenant of the house since May 2008 and the problems of dampness first became evident in November/ December 2008. She had been in ongoing discussions with the Landlord's letting agents since then about the problem of dampness and condensation in the house. She referred to the photographs taken in December 2008 which she had submitted with her representations which showed mould on the walls. The letting agents had advised that the problem was caused by condensation and advised her to properly heat and ventilate the house. Thereafter, she made a point of heating the house to a constant temperature throughout the day and reducing it to a slightly lower medium setting during the night. This had been a costly exercise as the house had electric heaters but she had persevered with this as the electricity bills she said confirmed. She also opened the windows daily before going to work and again after she returned home and at weekends. She estimated that during the winter months, the windows were open 3 to 4 hours per day. When she cooked in the kitchen she opened the window and closed the kitchen door to reduce moisture in the rest of the house. She had no tumble dryer and draped wet clothes on a clothes dryer near a heater and at an open window. She washed down the internal walls affected by mould weekly with anti- mould remover and in the summer months she washed them monthly as the problem was not as bad at that time. She and her partner painted the internal walls of the house three times a year in an attempt to eradicate the mould that gathered, the last occasion they painted the walls was November 2009. Some of her clothes in a wardrobe and shoes lying on the floor had been damaged by mould. She had consulted her doctor complaining of dizziness and headaches and these health problems had been attributed to the dampness and the presence of mould in her home. She felt that she had taken all reasonable steps to reduce the condensation and dampness in the house which remained a continuing problem. Both she and her partner worked and she felt she would be ineligible for any grant assistance as they did not claim state benefit. In any event she felt that the responsibility of installing suitable loft insulation was the responsibility of the Landlord. She stated that the house did not meet the repairing standard.

## **Summary of the issues**

8. The issue to be determined is whether the house meets the repairing standard as laid down in Section 13 of the Act and whether the Landlord had complied with the duty imposed by Section 14(1) (b).

## **Findings in Fact**

9. The Committee made the following findings in fact:-

9.1. In May 2008 the Tenant entered into a lease with the Landlord for the rent of the house. The Tenant has continued in occupation of the house from that date with a fresh lease being entered into between the Landlord and the Tenant with effect from 16 January 2010. This is a short assured tenancy in terms of the Housing (Scotland) Act 1988. The provisions outlined in Chapter 4 of the Act apply.

9.2. The Tenant notified the Landlord of the required works to the house on or around December 2008 and the Landlord has been carrying out investigations as to the cause of the dampness. An initial report prepared on 10 August 2009 by Alexander Anderson Ltd., Plumbing, Heating and General Builders, suggested the cause was condensation due to lack of ventilation. The Landlord commissioned a report from Richardson and Starling, Damp Specialists, in December 2009. Their report concluded that external defects were noted to the tenement being defective roof coverings; defective rainwater goods and defective external render. The report also concluded that the mould growth to the ceiling areas appeared to be the result of cold spots caused by the lack of insulation within the roof void and that loft insulation required to be replaced. They also observed that wall areas showed signs of condensation and emphasised the need for proper heating and ventilation. The Landlord notified the building factors of the need for external repairs on 8 January 2010 but to date no works have been carried out. The Landlord wishes the Tenants to apply for grant assistance to carry out the insulation works.

9.3. The inspection by the Committee on 22 March 2010 revealed:-

The house is a top floor flat in a three storey modern tenement block built around 1990 in a village location comprising lounge, two double bedrooms, kitchen, internal bathroom and washroom. The house is not a listed building.

The weather at the time of inspection was wet.

Findings externally: the roof appeared from ground level visual inspection to be in a reasonable state of repair although the Committee did notice some loose slates lying in a gutter; there were roughcast render defects at the gable wall; there was old rainwater staining of the roughcast from gutter overflow but the Committee observed no specific leaks from the gutters at the time of inspection;

Findings internally: water penetration was noticed at the lounge window and the external render at this window was cracked; very high dampness readings (which were off the scale) were recorded on an electronic moisture meter at the coomb ceilings just under the roof in the lounge, and in the 2 double bedrooms and at some walls adjacent to these coomb ceilings; mould staining was observed on these walls and on these coomb ceilings; there was some evidence of mould on some window sills suggestive of condensation; and the Committee observed that there was staining to a carpet in the bathroom caused by condensation dripping from the cistern; there was little evidence of condensation staining in the ceilings or walls of the kitchen and bathroom; the original timber windows are double glazed with no permanent ventilation provision. The electrical heating system was working at the time of inspection but it was observed that the radiators in the 2 bedrooms were small for the size of these rooms. There is a dimplex heater in the lounge.

9.4 The Tenant ventilates the house by opening the windows regularly and heating the house to a reasonable level; and to eradicate mould she washes the walls with anti-mould remover and re-paints the internal walls regularly.

### **Reasons for the Decision**

10. In considering the repairing standard issue the Committee carried out an internal and external inspection of the house and in particular closely examined the specific defects highlighted by the Tenant in the application and detailed in the correspondence. In addition the Committee carefully considered the written documentation and oral evidence submitted. The Committee considered the representations of the parties in relation to the repairing standard.

Visual inspection of the house, as well as extremely high electronic moisture meter readings (in some instances off the scale), confirmed the presence of dampness in the house and this was confirmed by the report of the damp specialists referred to in the Landlord's representations. The Committee considered whether the extent of the dampness was to a level which made the house not "reasonably fit for human habitation" and to what extent the dampness and condensation may have arisen as a result of the manner of the Tenant's use of the house.

In relation to these issues, the Committee considered the guidance laid down in the cases of **Gunn v City of Glasgow District Council 1992 SCLR 1018** and **Fyfe v Scottish Homes 1995 S.C.L.R. 209** at page 211, when Sheriff Gordon relies on the dictum of Lord Aitken in **Summers v Salford Corporation 1943 AC 283** in support of the position that the comfort with which the tenant can live in the house is relevant to its fitness for habitation. Sheriff Gordon approved the proposition that "a landlord had a duty to provide a house which in respect of ventilation and heating could be reasonably heated to such an extent that there would be no dampness". The case of **Gunn** considers the standard of proof required of a landlord who seeks to establish that a

tenant has failed properly to heat and ventilate the property which is occupied. The Committee considered these cases in the context of deciding if the house meets the repairing standard laid down in Section 13(1) (a) of the Act which states the repairing standard is met if "the house is wind and water tight and in all other respects reasonably fit for human habitation".

The Committee considered that the degree of dampness and condensation in the house was to a level that the house could not be said in all respects to be reasonably fit for human habitation. The Tenant in her representations contended that there had been injury to her health caused by the dampness and presence of mould which reinforces the view of the Committee that the house is not fit for human habitation.

The Committee in the context of deciding whether the Landlord had breached his duty to ensure that the house meets the repairing standard at all times during the tenancy laid down in Section 14(1) (b) went on to consider whether the dampness and condensation were due to the Tenant's failure to use the house in a proper manner. This is a relevant consideration in view of Section 16(1) (b) of the Act which makes clear that the Landlord's duty imposed in Section 14(1) does not require "any work to be carried out for which the tenant is liable by virtue of the tenant's duty to use the house in a proper manner". The Committee considered the attempts made by the Tenant to eradicate the mould involving regularly re-painting of the internal walls in the house and washing down the walls with anti-mould remover on a regular basis. The Tenant submitted that she heated the house properly and produced evidence of high electrical heating costs to support this. She indicated that she opened the windows regularly, for at least three to four hours daily. The Committee acknowledges that a ventilation system such as in this house which involves fully opening windows during winter months is not ideal. Having considered the evidence, the Committee did not think that any blame could be attached to the Tenant concerning any improper use of the house, and their view was that the problems of dampness and condensation were materially caused by the design of the house, the lack of permanent ventilation provisions in the windows, the inadequate size of radiators in some of the rooms, and, as the damp specialist's report identified, lack of adequate insulation in the roof voids. Visual inspection showed that the dampness readings were particularly high at the coomb-ceilings in the house which were just under the roof and in the surrounding walls which reinforced the Committee's view that there were cold spots in these areas. The need for satisfactory thermal insulation is now part of the requirement for a house to meet the tolerable standard in term of Section 11 of the Housing (Scotland) Act 2006. The Landlord's agent suggested that the Tenant should apply for a grant for the provision of the required insulation since he felt that she would be eligible for a grant which the Landlord would not be entitled to. However, the responsibility for ensuring that a house meets the repairing standard does not lie with the Tenant but rests with the Landlord. If a Tenant is eligible for such a grant and willing to apply, then that is a matter for agreement between the parties, but the Landlord cannot decline to discharge his duty on the basis that the Tenant may be eligible for a grant for works. In this case the Tenant is not in receipt of state benefits and she doubts her eligibility for a grant and in any event she is unwilling to apply. Considering all the circumstances, the Committee

concluded that the Landlord had failed in his duty to ensure the house meets the repairing standard detailed in Section 13 (1) (a).

The Committee observed the need for external repairs to the roof, rendering and gutters and considered that these repairs may have an impact on the dampness issues within the house which the Tenant complained of in her application. These findings are in line with the report of Richardson and Starling, Damp Specialists, which was referred to by the Landlord's agent in his written submissions.

In order to ascertain if these external repairs to the tenement fall within the Landlord's duty of repair, it is necessary to examine the responsibility of the Landlord for these repairs as laid down in Section 15(1) of the Act which provides

"Where a house forms part only of any premises, the reference in section 13(1)(b) to the house includes reference to any part of those premises which the owner of the house is responsible for maintaining (solely or in common with others) by virtue of ownership, any real burden or otherwise."

From examination of Land Certificate STG6224 which is the document evidencing the Landlord's ownership of the house, it is clear that the roof, outside walls and rainwater pipes, gutters and rhones are part of the "Common Parts" detailed in Condition 1(d) of the Deed of Conditions recorded G.R.S. (Stirling) 6 Dec. 1991 by Cairn Homes Limited, which forms one of the Burdens Writs or documents giving the ownership conditions of the house.

Condition 3 (b) of the said Deed of Conditions states that

"Each Proprietor will be liable equally with the remaining Proprietors having regard thereto for the repair and maintenance and, where necessary, renewal or improvement of the Common Parts..." and then proceeds to specify the proportion payable by the Proprietors.

From the title conditions relating to the Landlord's ownership of the house, the Committee concluded that the external repairs identified by the Committee fell within the Landlord's duty to ensure the house meets the repairing standard in Section 13(1) (b) which requires that "the structure and exterior of the house (including drains, gutters, and external pipes) are in a reasonable state of repair and in proper working order". The Landlord's agent admitted in representations that he has known of the findings of the report from Richardson and Starling since prior to Christmas 2009 and he advised the Factor of the terms of the report on 8 January 2010.

The Committee having established that the external repairs fell within the responsibility of the Landlord, went on to consider whether the Landlord had the necessary rights of access or otherwise to carry out the repair of Common Parts as the absence of these rights may provide an exception to the Landlord's repairing duty. Section 16(4) details this exception



" A landlord is not to be treated as having failed to comply with the duty imposed by section 14(1) where the purported failure occurred only because the landlord lacked necessary rights (of access or otherwise) despite having taken reasonable steps for the purposes of acquiring those rights".

Examination of the Landlord's Land Certificate revealed that the Landlord does have such rights as in Condition 2(c) of the said Deed of Conditions it states that

" Each Proprietor shall be bound to allow access to the Dwellinghouse owned by him to the Factor or any other Proprietor or to the tradesman employed by the Factor or such other Proprietor for the purpose of carrying out any necessary repairs to or renewal of the Common Parts or any portion thereof;"

The Landlord's written representations seem to imply that by reporting the repairs to the Factor that this discharges his repairing standard obligation. However, the Tenant's contract of let is with the Landlord and not the Factor and the Landlord has a duty to ensure that external repairs for which he is responsible, solely or in common with others, are carried out within a reasonable time of him becoming aware that the work is required. Condition 2(c) of the Deed of Conditions gives the Landlord access rights to carry out the repairs and he is not prohibited from carrying out common repairs involving replacing slates, repairing rendering and gutter repairs (The prohibition to works without the prior written consent of the Factor in Condition 2(b) in the Deed of Conditions only extends to structural or external alterations). Approximately three months have elapsed since the Landlord was first made aware by Richardson and Starling of the need for the external repairs to the tenement and in these circumstances, the Committee considers that the Landlord has had a reasonable time to carry out repairs and has failed in his duty under Section 14(1) (b) of the Act and had not complied with the repairing standard detailed in Section 13(1) (b) of the Act.

## **Decision**

11. The Committee, considering the terms of Section 13(3) of the Act, determined that the Landlord had failed to comply with the duty imposed by Section 14(1) (b) of the Act.

12. The Committee proceeded to make a Repairing Standard Enforcement Order as required by Section 24(2).

13. The decision of the Committee was unanimous.

## **Right of Appeal**

**14. 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**

15. 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.

# A Devanny

.....  
Chairperson, 22 March 2010



## **Repairing Standard Enforcement Order**

### **Ordered by the Private Rented Housing Committee**

**RE: Property at Flat 7, 16 Shepherds Court, Buchanan Street, Balfron G63, being the north-most flat on the second floor above the ground floor of the block known as 16 Shepherds Court, all as more particularly described in Land Certificate Title number STG 6224 (hereinafter referred to as "the house")**

**PRHP REFERENCE: G63/117/09**

#### **The Parties**

**Ms. Agnieszka Czajkowska and Krzysztof Koszanski, Flat 7, 16 Shepherds Court, Buchanan Street, Balfron ("the Tenant")**

**Mr. Robert Stevenson and Mrs. Janice Barclay Stevenson, Spouses, 2 Earlshill Drive, Bannockburn ("the Landlord")**

#### **NOTICE TO Robert Stevenson and Mrs. Janice Barclay Stevenson ("the Landlord")**

Whereas in terms of their decision dated 22 March 2010, 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 the house meets the repairing standard in that:-

(1) the house is wind and water tight and in all other respects reasonably fit for human habitation,

(2) the structure and exterior of the house (including drains, gutters and external pipes) are in a reasonable state of repair and in proper working order;

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:-

- (a) to carry out works (including those works identified in the report of Richardson and Starling, Damp Specialists) to eliminate/ reduce dampness in the house and to ensure that the house is reasonably fit for human habitation,
- (b) to carry out works to the external fabric of the tenement or block as identified in the said report of the Damp Specialists to ensure that the structure and exterior of the house (including drains, gutters and external pipes) are in a reasonable state of repair and in proper working order;

The Private Rented Housing Committee order that the works specified in this Order must be carried out and completed within the period of 56 days from the date of service of this Notice.

**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 typewritten on this and the preceding page are signed by Aileen Margaret Devanny, Chairperson of the Private Rented Housing Committee, at Motherwell on Seventh day of April, Two Thousand and Ten in the presence of the undernoted witness:-

WITNESS... **A S Devanny**

ALEXANDER SUTHERLAND DEVANNY

SOLICITOR

70 High Street, Lanark.

**A Devanny**