

Repairing Standard Enforcement Order

Ordered by the Private Rented Housing Committee

Case Reference Number: PRHP/RP/14/0193

Re: 7 Muirfield Road, Cumbernauld G68 0EX (“the property”)

Land Register Title No: DMB35676

The Parties:-

Mr Craig Adams, formerly residing at the property (“the tenant”)

Mr Iain Ritchie and Mrs Elizabeth Ritchie, c/o Pennylane Homes, 67 High Street, Johnstone PA5 8QG (“the landlords”)

The committee: – Sarah O’Neill (Chairperson); Kingsley Bruce (Surveyor Member) and Susan Brown (Housing member)

NOTICE TO: Mr Iain Ritchie and Mrs Elizabeth Ritchie (“the landlords”)

Whereas in terms of its decision dated 1 July 2015, the Private Rented Housing Committee determined that the landlords had failed to comply with the duty imposed by Section 14 (1) (b) of the Act, and in particular that the landlords have failed to ensure that the house meets the repairing standard in that:

- the house is not wind and watertight and in all other respects reasonably fit for human habitation
- the installations in the property for the supply of water, gas and electricity and for sanitation, space heating and heating water are not in a reasonable state of repair and in proper working order
- any fixtures, fittings and appliances provided by the landlord under the tenancy are not in a reasonable state of repair and in proper working order

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

In particular the Private Rented Housing Committee requires the landlords to:

1. Ensure that all windows in the property are thoroughly checked by a suitably qualified contractor, and carry out all necessary repairs in order to ensure that the windows are wind and water tight and in proper working order.
2. Repair or replace the kitchen tap in order to ensure that it is functioning correctly and is in a reasonable state of repair and in proper working order.
3. Repair or replace the flush mechanism on the downstairs toilet in order to ensure that it is in a reasonable state of repair and in proper working order.
4. Ensure that the radiator at the back of the living/dining room is properly secured to the wall.
5. Engage a suitably qualified, and Gas Safe registered, heating engineer to:
 - i. carry out a thorough check of the heating installation within the house to ascertain whether this is working effectively
 - ii. carry out any work which is necessary to ensure that the heating installation is in a reasonable state of repair and in proper working order.

The Private Rented Housing Committee orders that the works specified in this order must be carried out and completed within the period of **six weeks** from the date of service of this notice.

Rights of Appeal

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.

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. 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.

Please note that in terms of section 28(1) of the Act, a landlord who, without reasonable excuse, fails to comply with a RSEO commits an offence liable on summary conviction to a fine not exceeding level 3 on the standard scale. A landlord (and that includes any landlord's successor in title) also commits an offence if he or she enters 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. This is in terms of Section 28(5) of the Act.

IN WITNESS WHEREOF these presents typewritten on this and the two preceding pages are signed by Sarah Frances O'Neill, solicitor, Chairperson of the Private Rented Housing Committee, at Glasgow on the first day of July Two Thousand and Fifteen before this witness -

L. McGuire _ witness **S. O'Neill** _ chairperson

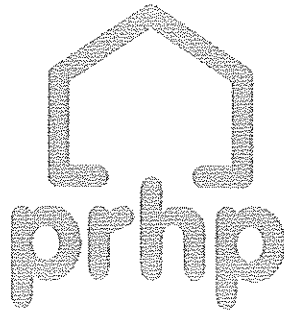
Luke McGuire name in full

450 Argyll Street Address

Glasgow

G2 8LH

Panel Clerk Occupation



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 ("the Act")

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The Parties:-

Mr Craig Adams, formerly residing at the property ("the tenant")

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The committee: – Sarah O'Neill (Chairperson); Kingsley Bruce (Surveyor Member) and Susan Brown (Housing member)

Decision

The committee, having made such enquiries as it saw fit for the purposes of determining whether the landlords have complied with the duty imposed by Section 14 (1) (b) of the Housing (Scotland) Act 2006 ("the Act") in relation to the property, and taking account of all the available evidence, determines that the landlords have failed to comply with the duty imposed by Section 14 (1) (b) of the Act. The committee therefore issues a Repairing Standard Enforcement Order. The committee's decision is unanimous

Background

1. By application dated 13 August, the tenant applied to the Private Rented Housing Panel ("the panel") for a determination that the landlords had failed to comply with their duties under Section 14(1) of the Act.
2. In his application, the tenant stated that he believed the landlords had failed to comply with their duty to ensure that the property met the repairing standard as set out in sections 13(1) (a) (c) and (d) of the Act. His application stated that the landlords had failed to ensure that:
 - the house is wind and watertight and in all other respects reasonably fit for human habitation
 - the installations in the property 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, fitting and appliances provided by the landlord under the tenancy are in a reasonable state of repair and in proper working order
3. The tenant made the following complaints in his application:
 1. the windows in the property are substandard, and water and wind come in when it rains or the weather is cold
 2. no carbon monoxide detectors are fitted in the property
 3. the tap in the kitchen is leaking
 4. the downstairs toilet does not flush
 5. a radiator in the living room is not properly secured
 6. the radiators require to be flushed out as the house takes a long time to warm up.
4. The tenant stated in his application that the following work required to be carried out at the property:
 1. Replace affected windows with new or specific parts to eliminate draughts and water seepage
 2. Install carbon monoxide detectors
 3. Repair kitchen tap
 4. Repair downstairs toilet
 5. Secure living room radiator to wall
 6. Flush all radiators.
5. By letter dated 27 August 2014, the President of the panel wrote to the parties, notifying them under and in terms of the 2006 Act of her decision to

refer the application under Section 22(1) of the Act to a private rented housing committee. Written representations were requested by 17 September 2014.

6. Written representations were received from the landlords' agent on 1 September 2014. These stated that they and the landlords had met with the tenant at the property; that the landlords had agreed to carry out essential repairs, which had commenced the following week; that the tenant had refused access to the tradesmen roughly halfway through the agreed works; and that they were awaiting a suitable date from the tenant to re-commence the works. The landlords' agent stated that they had explained to the tenant that the landlords were willing to do the repairs, but that the tenant's commercial childcare operation from the property was limiting his ability to allow access to the tradesmen employed by the landlords. A letter to the tenant dated 15 August 2014, outlining these issues, was attached to the written representations.
7. No response to the notice of referral and no written representations were received from the tenant. Panel staff attempted to contact the tenant by letter/email on 3 occasions between 23 September and 30 December 2014, but no response was received. On 16 January, a member of panel staff wrote to the landlords' agent, enquiring as to whether the tenant had left the property, and whether any works had been carried out at the property. A response was received from the landlords' agent on 21 January, confirming that the tenant had vacated the property in October 2014, and stating that he had owed a large amount of rent arrears and caused damage to the property. The letter stated that no work had been carried out at the property, and that the landlords were marketing the property both for sale and for let, with a view ideally to selling it.
8. On 9 February 2015, the committee issued a minute of continuation to a determination under Schedule 2 Para 7(3) of the Act. This stated that having received confirmation from the landlord that the tenancy had been terminated, the tenant was to be treated as having withdrawn his application in terms of Schedule 2 paragraph 7 (1) of the Act. It then stated that the committee considered that the application should be determined on health and safety grounds, due to the nature of the alleged repairs and the potential effects on any future tenant/occupiers if those allegations were substantiated.
9. On 23 February, a letter was received from the landlords' agent, advising that new handles were required for the defective windows, and that the window repairs had been arranged to ensure that they were wind and watertight.

10. On 3 June 2015, the panel served a notification under and in terms of the 2006 Act upon the parties, indicating that an inspection and a hearing would take place on 22 June 2015.

The inspection

11. The committee inspected the property on the morning of 22 June 2015. The landlords were not present or represented at the inspection. Two of the new tenants who are currently living at the property were at home and gave access to the committee, and were present at the property during the inspection.

The property

12. The property is a detached house within a residential development, which is estimated to be in the region of 25 years old. The property comprises: living/dining room, kitchen, utility room and toilet downstairs; and three bedrooms, one with an en-suite shower room and a bathroom upstairs.

The hearing

13. Following the inspection, the committee held a hearing at the Westerwood Hotel, 1 St. Andrew's Drive, Cumbernauld G68 0EW. Neither the tenant nor the landlords were present or represented at the hearing. It was clear from the case file that both the landlords and their agent had been given adequate and timeous notification of the time, date and place of the hearing. The committee therefore made its decision on the basis of its inspection and all the written evidence before it.

The evidence

14. The evidence before the committee consisted of:
 - The application form completed by the tenant.
 - Registers Direct copy of Land Register title DMB35676.
 - Copy of an assured shorthold tenancy agreement between the landlords and the tenant and Mrs Deborah Adams dated 13 February 2010, together with form AT5.
 - Letter of notification dated 13 August 2014 from the tenant and his wife to the landlords' agent setting out the repairs alleged to be required.
 - Various copy email correspondence between the tenant and the landlords' former agent dated between 4 April and 26 June 2014.
 - The written representations from the landlord's agent, together with the attached letter to the tenant dated 15 August 2014.
 - Letter from the landlords' agent to the panel dated 19 January and received on 21 January 2015.

- Letter from the landlords' agent to the panel dated 20 February and received on 23 February 2015.
- The committee's inspection of the property.

Summary of the issues

15. The issue to be determined was whether the property meets the repairing standard as set out in Section 13 of the Act, and whether the landlords have complied with the duty imposed on them by section 14 (1) (b).

Findings of fact

16. The committee made the following findings in fact:

- The tenant and his wife entered into a tenancy agreement with the landlords which commenced on 14 February 2010. They remained in the property until October 2014. The tenancy agreement between the parties was an English tenancy agreement. The committee is satisfied that there was a tenancy in place, and no representations have been received from the landlord to the contrary. The tenancy was a tenancy of a house let for human habitation, which does not fall within the exceptions set out in section 12 (1) of the Act. The provisions set out in Chapter 4 of the Act therefore apply.
- The property is owned by Iain Joseph Platt Lyon Ritchie and Elizabeth Ritchie.
- The property is managed on behalf of the landlords by PennyLane Homes, letting agents.
- The committee in its inspection carefully checked the items which were the subject of the complaint. The committee observed the following:
 - i. The windows throughout the property were in a poor state of repair. A number of windows had missing or loose/insecure handles, and were not capable of being closed properly. Some windows also had gaps between the casement and the frame. The window casement in the ensuite shower room was twisted and was not capable of being closed properly. The outside timber sills were bare and unpainted, and showed signs of decay.
 - ii. The flush mechanism on the downstairs toilet was not operating properly.
 - iii. The kitchen tap was defective. It showed clear signs of leakage, and was scattering water around and under the sink.

- iv. The radiator at the rear of the living /dining room had been pulled away from the wall and was loose.
- v. The heating was not on at the time of the inspection so the committee was unable to test this. The boiler is of some age, and appears to be the original boiler installed when the house was built. The current tenants indicated to the committee at the inspection that the radiators did not heat fully across their entire surface.

Reasons for decision

- 17. The complaints before the committee as set out in the tenant's application and the committee's determinations in relation to each of these are set out below.

- 1. *the windows in the property are substandard*

Despite assurances from the landlords' agent in its letter of 20 February 2015 that window repairs had been arranged to ensure that they were wind and watertight, the committee saw no evidence at its inspection that any such repairs had been carried out. The committee found that the windows were in a poor state of repair and many were incapable of being closed properly. It therefore determines that the house is not wind and watertight and in all other respects reasonably fit for human habitation.

- 2. *no carbon monoxide detectors are fitted in the property*

The committee notes that, while it might be seen as good practice to provide such a detector, this is not currently a requirement in terms of the repairing standard under section 13 (1) of the Act. There could accordingly be no failure to comply with the repairing standard in respect of this complaint.

- 3. *the tap in the kitchen is leaking*

The committee observed at its inspection that this tap was leaking underneath the sink and spraying water around the sink area. The committee determines that the kitchen tap is a fixture or fitting provided by the landlord under the tenancy, and that this is not in a reasonable state of repair and in proper working order.

- 4. *the downstairs toilet does not flush*

The committee tested the flush mechanism on the toilet and ascertained that this was not functioning properly. The current tenants advised the committee

at the inspection that the toilet overflows occasionally, flooding the toilet and the front entrance. The committee determines that the toilet, including the flush mechanism, is part of the installation for sanitation within the house, which is not in a reasonable state of repair and in proper working order.

5. a radiator in the living room is not properly secured

The committee observed at its inspection that the radiator at the rear of the living/dining room was not properly secured to the wall. In its letter to the tenant of 15 August 2014, the landlords' agent had suggested that this was a result of the tenant's own actions. Even if that were the case, the tenant who moved out some time ago, and the landlords have a responsibility to the new tenants to ensure that the radiator is in a reasonable state of repair and in proper working order. The committee determines that the radiator is part of the installation for space heating within the house, which is not in a reasonable state of repair and in proper working order

6. the radiators require to be flushed out as the house takes a long time to warm up.

The committee was unable to test the central heating at its inspection. On the basis of the other evidence before it, including: the age of the boiler and central heating system; the written representations of the tenant (which were supported by what the current tenant told the committee); and the letter from the landlords' agent to the tenant dated 15 August 2014 (from which the committee draws the inference that the landlord did not dispute that these repairs were required); the committee considers that on the balance of probabilities, the central heating system is not in a reasonable state of repair and in proper working order.

Observations

18. The committee makes the following observations:

- While this does not necessarily impact directly on whether the windows are wind and watertight, the committee observes that painting the outside windows and sills would help to protect the timbers against further rot/deterioration. This would help to protect the structure and exterior of the house.
- The committee notes that in its letter of 15 August 2014, the landlords' agent stated that the landlords had agreed to progress all of the repairs raised by the tenant (aside from the loose radiator and the carbon monoxide detector) but that 'the only reason that all necessary repairs have not been finished is

simply that you could not provide access.' The landlords' agent also told the panel on 20 February that the window repairs had been arranged. Yet despite the tenant having left the property in October 2014, and the new tenants having moved in around 3 months ago, the repairs have not been carried out. The committee observes that it is disappointing that these relatively straightforward repairs have not yet been carried out, despite these assurances, and that it is now necessary to issue a Repairing Standard Enforcement Order in respect of these matters.

- The committee also noted a number of other issues during its inspection, which it was unable to consider as these were not part of the application. The committee observes that some of these issues, which include ill-fitting and potentially draughty doors and possible water damage to the kitchen floor due to the leaking tap, could potentially become the subject of a future application.

Summary of decision

19. The committee determines that the landlords have failed to comply with the duty imposed by Section 14 (1) (b) of the Act, and in particular that the landlords have failed to ensure that the house meets the repairing standard in that:

- the house is not wind and watertight and in all other respects reasonably fit for human habitation
- the installations in the property for the supply of water, gas and electricity and for sanitation, space heating and heating water are not in a reasonable state of repair and in proper working order
- any fixtures, fittings and appliances provided by the landlord under the tenancy are not in a reasonable state of repair and in proper working order

20. The committee therefore makes a Repairing Standard Enforcement Order as required by section 24 (2) of the Act.

Rights of Appeal

21. 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.

22. 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

23. 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. 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.

Signed..... **S. O'Neill** Date..... 1/7/15

Sarah O'Neill, Chairperson