

Repairing Standard Enforcement Order

Ordered by the Private Rented Housing Committee

Case Reference Number: PRHP/RP/14/0245

Re: 49 Bridge Street, Lockerbie DG11 2HR (“the property”)

Land Register Title No: DMF336

The Parties:-

Miss Emma McTurk, residing at the property (“the tenant”)

**Dr Jaswant Singh Mom, 22 Gleneagles Drive, Lancaster LA1 3RP
 (“the landlord”)**

The committee: – Sarah O’Neill (Chairperson); Andrew Taylor (Surveyor Member) and Ahsan Khan (Housing member)

NOTICE TO: Dr Jaswant Singh Mom (‘the landlord)

Whereas in terms of its decision dated 11 June 2015, the Private Rented Housing Committee determined that the landlord had failed to comply with the duty imposed by Section 14 (1) (b) of the Act, and in particular that the landlord has failed to ensure that the house meets the repairing standard in that:

- the property 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
- the property does not have satisfactory provision for detecting fires and for giving warning in the event of fire or suspected fire

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 preceding page are signed by Sarah Frances O'Neill, solicitor, Chairperson of the Private Rented Housing Committee, at Glasgow on the eleventh day of June Two Thousand and Fifteen before this witness -

E.A. JOHNSON

S. O'NEILL

witness

chairperson

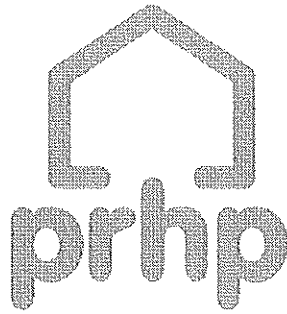
BRUCE ALEXANDER JOHNSON name in full

50 LAURELDALE GARDENS Address

GLASGOW

GL2 4QT

TRAINER 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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Re: 49 Bridge Street, Lockerbie DG11 2HR (“the property”)

Land Register Title No: DMF336

The Parties:-

Miss Emma McTurk, residing at the property (“the tenant”)

**Dr Jaswant Singh Mom, 22 Gleneagles Drive, Lancaster LA1 3RP
 (“the landlord”)**

The committee: – Sarah O’Neill (Chairperson); Andrew Taylor (Surveyor Member) and Ahsan Khan (Housing member)

Decision

The committee, having made such enquiries as it saw fit for the purposes of determining whether the landlord has 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 landlord has 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 10 October 2014, the tenant applied to the Private Rented Housing Panel (“the panel”) for a determination that the landlord had failed to comply with his duties under Section 14(1) of the Act.
2. In her application, the tenant stated that she believed the landlord had failed to comply with his duty to ensure that the property met the repairing standard as set out in sections 13(1) (a) (c) (d) and (f) of the Act. Her application stated that the landlord had failed to ensure that:
 - the property 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
 - the house has satisfactory provision for detecting fires and for giving warning in the event of fire or suspected fire
3. The tenant made a number of complaints in her application, by reference to a letter to her landlord dated 21 September from her representative, Mr Haig McCulloch of DDM Consultancies, which set out these complaints as follows:
 1. Windows are not secure at the front and back of the property
 2. Back door lock does not work and is ‘gaping’, which is a security issue
 3. Smashed glass at the back door of the property
 4. In the toilet, there are exposed wires which can be touched and could cause injury.
 5. There is no gas safety inspection certificate
 6. There have been no electrical inspections carried out at the property, and no certificates have been produced
 7. There are no smoke alarms or carbon monoxide detectors fitted
 8. The general decoration of the property is poor
4. The tenant stated in her application that the following work required to be carried out at the property:
 1. Windows and doors need to be secured
 2. Exposed electrical wires in toilet need to be addressed
 3. Gas safety certificate or inspection required

4. Smoke and carbon monoxide alarms to be fitted.
5. By letter dated 4 March 2015, 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 and that an inspection and a hearing would take place on 7 May 2015. Written representations were requested by 19 March 2015.
6. Written representations were received from the tenant's representative, Ms Dana McTurk, on 27 March. These stated that the tenant felt that the landlord was failing in his responsibilities. They stated that since the tenant's application was submitted, there had been no progress, despite the landlord promising to get things done. No written representations were received from the landlord
7. On 7 April 2015, the committee issued a direction requiring the landlord to produce an up to date gas safety certificate for the property by 28 April 2015. Despite assurances to panel staff that the gas safety inspection had been carried out and the certificate was on its way, the landlord failed to comply with the direction by the specified date.
8. On 27 April 2015, the landlord telephoned the panel offices to advise that, while he had received the committee's direction, he had not received the notice of referral, inspection and hearing with the application paperwork. He confirmed to a member of panel staff that he was resident at one of the two addresses to which the notice had been sent. It was apparent from this conversation that a Royal Mail slip had been delivered to his home advising him that the letter required to be signed for, but that he had not gone to collect this. He indicated during that telephone call that he wished to request a postponement, and that he would put this in writing to the committee.
9. A letter from the landlord dated 1 May was received on 11 May. In this letter, he advised that he had arranged an engineer to carry out a gas inspection and would forward the certificate to the committee, and requested a postponement of at least 6 weeks. In the circumstances, and in the interests of fairness to the tenant, the committee agreed to postpone the inspection and hearing until 1 June. The revised notice of referral, inspection and hearing was posted to both parties on 11 May, giving details of the new inspection and hearing date. The gas safety certificate was never received by the panel.

The inspection

10. The committee inspected the property on the morning of 1 June 2015. The tenant was present at the property during the inspection. The landlord was neither present nor represented at the inspection

The property

11. The property is a ground floor flat situated within a two storey flatted block, which is estimated to be in the region of 60 years old. The property comprises all on one level: hallway, living room/ kitchen, two bedrooms; a toilet and separate shower cubicle off the second bedroom.

The hearing

12. Following the inspection, the committee held a hearing at Lockerbie Town Hall, High Street, Lockerbie DG11 2ES. Neither the tenant nor the landlord were present or represented at the hearing.

The evidence

13. The evidence before the committee consisted of:
 - The application form completed by the tenant.
 - Registers Direct copy of Land Register title DMF336
 - Copy of assured shorthold tenancy agreement between the landlord and the tenant, and signed by the landlord but not by the tenant. The agreement is not dated, but gives the tenancy start date as 1 May 2014.
 - Letter of notification dated 21 September 2014 from the tenant's representative, Mr Haig McCulloch of DDM Consultancies, to the landlord setting out the repairs alleged to be required, together with certificate of posting.
 - The written representations of the tenant.
 - Letter from the landlord to the panel dated 1 May 2015.
 - The committee's inspection of the property.

Summary of the issues

14. 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 landlord has complied with the duty imposed on him by section 14 (1) (b).

Findings of fact

15. The committee made the following findings in fact:

- The tenancy agreement between the parties is an English tenancy agreement. Although the agreement is not dated and has not been signed by the tenant, the tenant confirmed to the committee at the inspection that she pays monthly rent to the landlord. The committee is satisfied that there is a tenancy in place, and no representations have been received from the landlord to the contrary. The tenancy is 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 committee in its inspection carefully checked the items which were the subject of the complaint. The committee observed the following:
 - i. The windows at the front and back of the property were secure and appeared to be operating correctly.
 - ii. The back door did not fit well within the door frame and there were visible gaps. The door was not capable of being securely locked. The only locking mechanism was a bolt which the tenant advised she had fitted herself. The glass door panel which had been smashed has been replaced with a plywood panel.
 - iii. There was some visible wiring in the toilet. At a low level behind the toilet, there was correctly fitted earth bonding wires to the sink pipework. At a higher level, there was a spur connection from the spur unit to the boiler. The committee did not observe any wiring which was exposed or appeared to be dangerous in the toilet.
 - iv. There was an electrical socket on the rear wall of the kitchen with visible signs of scorch marks. The tenant advised the committee that this scorching had occurred when the tumble dryer had been plugged into that socket. She stated that the tumble dryer was now plugged in elsewhere, and that she no longer used the socket.
 - v. The electric oven was plugged into a wall socket, rather than a separate cooker control unit.
 - vi. There were no smoke alarms or heat sensors within the property. There was a wire hanging from the ceiling in the hallway, where a smoke alarm appeared to have been wired in previously. The

tenant told the committee there had been no smoke alarm when she moved into the property. There was a carbon monoxide detector installed in the kitchen, which the tenant advised she had installed herself.

Reasons for decision

16. Following its inspection and the hearing, the committee determined that:
- the property 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
 - the property does not have satisfactory provision for detecting fires and for giving warning in the event of fire or suspected fire
17. The complaints before the committee as set out in the tenant's application and the committee's determinations in relation to these are set out below.

1. *Windows are not secure at the front and back of the property*

The tenant advised the committee at the inspection that in fact she had no complaints about the front window, which was secure and operating normally. She said that the back window had been repaired, and when tested by the committee, this was found to be secure and operating correctly. The committee therefore determined that both front and back windows were wind and watertight, and were in a reasonable state of repair and in proper working order.

2. *Back door lock does not work and is 'gaping', which is a security issue.*

The committee noted from its inspection that there was no adequate lock on the back door. The tenant advised that when she had moved into the property, the rim lock had failed to operate, so she had installed a bolt. The committee observed that this bolt was now the only means of locking the door, and did not perform this function adequately. The committee also observed that the door did not fit well within the frame and that there were gaps. The tenant stated at the inspection that this was the cause of draughts within the property. The committee determined that the door is not currently wind and watertight.

3. *Smashed glass at the back door of the property.*

The committee observed that the glass panel had been boarded up, and determined that in this respect, the door was wind and watertight.

4. *In the toilet, there are exposed wires which can be touched and could cause injury.*

While the committee noted that the visible wiring in the toilet, as described at paragraph 15 above, was untidy, it determined that these wires appeared to be in a reasonable state of repair and in proper working order.

5. *There is no gas safety inspection certificate*

The landlord has failed to comply with the direction issued by the committee requiring him to produce an up to date gas safety certificate for the property. Under the Gas Safety (Installation and Use) Regulations 1988, the landlord is required to arrange an annual gas safety check to be carried out on gas appliances, and to provide a copy of the gas safety inspection certificate to the tenant.

The tenant advised the committee that the boiler 'cut out' regularly, leaving her with no central heating. She advised that the only other gas appliance in the property was the hob in the kitchen, which she did not use. She also told the committee at the inspection that she had never received a gas safety certificate, and that no-one had been to the property to carry out a gas inspection. The committee accepted the tenant's evidence that the boiler was faulty, and in the absence of the gas safety certificate which it had directed the landlord to produce, the committee determined that on the balance of probabilities, the installations in the property for the supply of gas and heating water are not in a reasonable state of repair and in proper working order.

6. *There have been no electrical inspections carried out at the property, and no certificates have been produced*

While there is currently no legal requirement on the landlord to provide an electrical safety certificate to the tenant, the landlord has a clear legal responsibility under section 13 (1) (c) of the Act to ensure that electrical installations within the property are in a reasonable state of repair and proper working order. On the basis of its inspection, which found a scorched electrical socket in the kitchen and an incorrectly wired cooker, the committee determined that the installations in the property for the supply of electricity are not in a reasonable state of repair and in proper working order.

7. There are no smoke alarms or carbon monoxide detectors fitted

The committee found no smoke alarms within the property during its inspection. In determining whether a property has satisfactory provision for detecting fires and for giving warning in the event of fire or suspected fire, section 13 (5) of the Act states that regard is to be had to any building regulations and any guidance issued by the Scottish Ministers on these matters. The current Scottish Government statutory guidance states that there should be at least one functioning smoke alarm in the room which is frequently used by the occupants for general daytime living purposes and one functioning smoke alarm in every circulation space, such as hallways and landings. The committee therefore determined that the property does not have satisfactory provision for detecting fires and for giving warning in the event of fire or suspected fire.

With regard to the complaint about the lack of a carbon monoxide detector, 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.

8. The general decoration of the property is poor

The committee noted that the tenant had carried out some decoration work herself. The committee was of the view that this was a cosmetic issue, and determined that it was not a matter for the repairing standard.

Summary of decision

18. The committee determines that the landlord has failed to comply with the duty imposed by Section 14 (1) (b) of the Act in respect of the complaints numbered 2,5,6 and 7 respectively which were made by the tenant.

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

Rights of Appeal

20. 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.

21. 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

22. 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.

S. O'NEILL

Signed.....

.....Date 11/6/15.....

Sarah O'Neill, Chairperson