



Repairing Standard Enforcement Order

Ordered by the Private Rented Housing Committee

Re: Property at 16 WATLING DRIVE, Camelon, Falkirk, FK1 4QD, being the south most house on the first floor tinted blue of the block 10,12,14 and 16 WATLING DRIVE, with the garden ground tinted pink on the said Plan.

Land Register Title number STG56003

PRHP Reference: PRHP/RP/14/0263

The Parties:

MISS SHERYL MORRISON, 16 Watling Drive, Camelon, Falkirk, FK1 4QD ("the tenant")

MS JANIS IRIS LEARY AND MR ALEX WALKER c/o AJ Properties, Office 2033, Livingston, West Lothian, EH54 0DE. ("the landlord")

Reference number: PRHP/RP/14/0263

Notice to MS JANIS IRIS LEARY AND MR ALEX WALKER ("the landlord")

Whereas in terms of its decision of 2nd September 2015, 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:

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

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.

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:

- (i) To investigate the source of dampness within both bedrooms and carry out such works as are necessary to eradicate the dampness from these rooms;
- (ii) To replace the double glazed unit at the window of the main bedroom;
- (iii) To instruct an independent suitably qualified electrical engineer to carry out an inspection of all electrical wiring at the property and to carry out such works as are necessary to address the defect in bonding identified in the gas safety certificate of 20th April 2015;
- (iv) And to produce a new electrical safety report, thereafter;
- (v) To fit child locks to the windows within the kitchen and main bedroom.

The Private Rented Housing Committee order that the works specified in this Order must be carried out and completed by 16th October 2015.

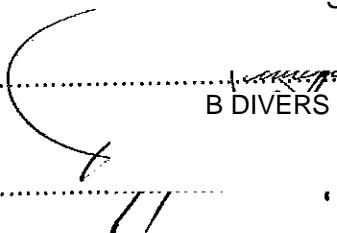
Right of Appeal

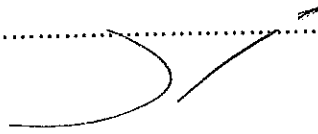
A landlord or tenant aggrieved by the decision of the Private Rented Housing Committee may appeal to the Sheriff by summary application within 21 days of being notified of that decision.

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 determined.

IN WITNESS WHEREOF these presents typewritten on this are signed by Simone Sweeney, Chairperson of the Private Rented Housing Committee, at Glasgow, on 2nd day of September, Two Thousand and Fifteen in the presence of the undernoted witness:

S SWEENEY

..... Chairperson
 B DIVERS

 Witness

Barry Divers, Advocate, Faculty of Advocates, Parliament Hall, Edinburgh, EH1 1RF
 2/9/15 Date



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 16 Watling Drive, Camelon, Falkirk, FK1 4QD ("the property")

MISS SHERYL MORRISON, 16 Watling Drive, Camelon, Falkirk, FK1 4QD ("the tenant")

MS JANIS IRIS LEARY AND MR ALEX WALKER, c/o A.J. Properties, Office 2033, Livingston, West Lothian, EH54 0DE ("the landlord")

Reference number: PRHP/RP/14/0263

Decision

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) of the Housing (Scotland) Act 2006 ("the Act") in relation to the property concerned and taking into account the evidence led from the tenant and the landlord at the hearing and the documentation and photographs submitted to the Private Rented Housing Panel ("PRHP") by the parties, the Private Rented Housing Committee ("the committee") determine that the landlord has failed to comply with the duty imposed by Section 14 (1) (b) of the Act.

Relevant Statutory Provisions

Section 13: The repairing standard

(1) A house meets the repairing standard if—

- (a) the house is wind and water tight and in all other respects reasonably fit for human habitation,
- (b) 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,
- (c) 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,
- (d) any fixtures, fittings and appliances provided by the landlord under the tenancy are in a reasonable state of repair and in proper working order,
- (e) any furnishings provided by the landlord under the tenancy are capable of being used safely for the purpose for which they are designed, and
- (f) the house has satisfactory provision for detecting fires and for giving warning in the event of fire or suspected fire.

Section 14: Landlord's duty to repair and maintain

(1) The landlord in a tenancy must ensure that the house meets the repairing standard—

- (a) at the start of the tenancy, and
(b) at all times during the tenancy.

Background

1. By application dated, 6th November 2014, the tenant applied to the PRHP seeking a determination of whether or not the landlord had failed to comply with the duties imposed by Section 14 (1) (b) of the Act.
2. In her application the tenant indicated that the landlord had failed to comply with sections 13 (1) (a) (b) and (d) of the Act ("the repairing standard").
3. In her application, at sections 4 and 5 the tenant offered specification of how she considered her landlord to have failed to have met the repairing standard of section 13:

"Hall ceiling flaking and falling off

Main bedroom ceiling cracked

Second bedroom damp on ceiling

Living room ceiling flaking and falling off

Hall wall artex bubbled and bubbled off

Main bedroom full of damp.

No child locks on any windows

Floor boards in hall broken or missing

Condensation inside main bedroom window (between double glazed unit)."

4. In support of her application, the tenant had submitted photographs and a, "landlord notification of repair letter," dated 30th August 2014. The letter included the list of repairs required as that at paragraph 3, above.
5. By letter of 30th December 2014, the President of the PRHP referred the application to the committee in terms of Section 23 (1) of the Act.
6. An inspection and hearing were assigned for 5th June 2015. By letter of 20th March 2015, parties were given notice of the date and time of the inspection and hearing. The committee attended the property at 10am. Only a representative from the letting agents was present. She identified herself as, Kim McBeth. Access to the property was not provided. The inspection

could not proceed. Only Ms McBeth attended the hearing which took place at the Ettrick Dochart Community hall, Dochart Place, Hallglen, Falkirk at 11.30am. The committee comprised the following members:

- (i) Miss Simone Sweeney, Legal member;
- (ii) Ms Susan Napier, Surveyor member and;
- (iii) Ms Sue Shone, Housing member.

7. At the hearing on 20th March 2015, the committee heard submissions from Ms McBeth on behalf of the landlord.
8. By letter of 6th May 2015, letting agents, AJ Properties, on behalf of the landlord wrote to the PRHP to advise that the tenant was no longer residing at the property.
9. In light of no access having been gained to the property on 20th March 2015, a second inspection and hearing were arranged for 21st August 2015. Present at the inspection was the current tenant and a representative from the letting agents, Mr Jay Spowart. Only Mr Spowart attended the hearing which took place at the Best Western Park Hotel, Camelon Road, Falkirk at 11am. At the hearing the committee heard representations from Mr Spowart and considered the documentation submitted to the committee. At the conclusion of the tenant's submissions, the committee adjourned to consider all the evidence provided and to make its findings.

Submissions at the hearing on 20th March 2015

10. Kim McBeth gave evidence for the letting agents. Ms McBeth explained that Alex Walker and Janice Leary are the owners of AJ Properties with whom she has worked for 2 years. The letting agents had managed the property since purchasing it in 2006.
11. With regards to the complaint of the former tenant at section 4 of the application form, Ms McBeth advised that on receipt of the complaint, around August 2014, the letting agents had contacted Ms McBeth by telephone to arrange a suitable time for tradesmen to attend the property to enable repairs to be done. Unfortunately the tenant had refused to allow the tradesmen onto the property. The tenant stated that in the past the tradesmen had indicated that she had contributed to issues of dampness by drying clothes indoors and failing to ventilate adequately.
12. Ms McBeth confirmed to the surveyor member that there were no vents around any of the windows.
13. She advised that the local authority had carried out works to the roof of the property. A & J Lettings had contributed 50% of the costs. Ms McBeth could not be sure when the works were

carried out to the roof but was satisfied that the work was complete. She recalled having received a letter from the council in advance of the works in September 2014. If required, she could ascertain the exact date on which the bill was paid by A & J Lettings which might provide some indication of when the works were done.

14. Ms McBeth believed the last time the letting agents had gained access to the property was 22nd January 2015. She had a job sheet which provided her with the date. Any condensation at the main bedroom window had been made good. The double glazing unit had been re-sealed and re-installed.
15. Plastering had been carried out at the ceiling of the living room, bedrooms and hallway, the artex having on the walls of the hallway having been sanded in advance.
16. It was Ms McBeth's submission that the tradesmen employed by the letting agents had reported that any dampness within the bedrooms was due to a lack of ventilation by the occupants. Anti-fungal paint had been applied to the wall of the main bedroom below the window.
17. Both bedrooms have central heating.
18. Ms McBeth advised that locks had been attached to the windows of the property but the tenant had not liked them. The locks are not child lock due to the age of the windows.
19. Ms McBeth submitted that the floorboards in the hall had been cut and replaced.
20. A hard wired smoke detector had been fitted to the ceiling of the hallway.
21. Ms McBeth produced a gas safety certificate which was due to expire on 25th April 2015.
22. Mr Spowart attended the hearing before the committee at the Best Western Park Hotel, Camelon Road, Falkirk at 11am on 21st August.
23. Mr Spowart explained to the committee that he had only been employed by the letting agents for 2 months and had not been inside the property until the inspection that morning. Mr Spowart had had no prior sight of the tenant's application. A copy was provided by the committee.
24. In his opinion, it looked like some rooms had undergone redecoration. He conceded that there was evidence of dampness within the bedrooms during the inspection and that condensation existed at the double glazed window unit of the main bedroom.
25. Mr Spowart produced an electrical certificate dated 23rd March 2015 and a gas safety certificate dated 20th April 2015. The gas safety certificate identified a failure with the PE bonding. The earlier electrical certificate all installation is recorded as satisfactory.

26. By email of 1st September 2015, the surveyor member of the committee contacted the Gas Safe register for their advice. An email reply from Technical Services officer, Gary Carter, dated 1st September 2015 read,

"As you are aware, the Landlord's duties include an examination of the physical condition of the gas pipework and action needs to be taken if an engineer notices an apparent defect in bonding during maintenance checks (this applies to both main or supplementary equipotential bonding). The Gas Safe registered should record the defect on the safety record and advise that a competent electrician be consulted. The electrician should then provide a condition report that is in line with the appropriate standard. My advice would be aimed toward the relevant landlord to ensure that all of the service providers are competent and registered. The information may be accepted, but if doubt remains, a third party external audit may be employed to offer a complete overview of the situations."

Summary of the issues

27. The issues to be determined are;

- (i) whether the landlord has complied with the duty imposed by sections 13 (1) (a) (b) and (d) of the Act ("the repairing standard") and;
- (ii) whether the landlord has complied with the duty imposed by Section 14 (1) (b).

Findings in fact

28. The committee make the following findings in fact:

29. That there was now written tenancy agreement between the parties for the property. A letter from the tenant accompanying the application to the PRHP reads, *"I don't have a tenancy agreement. I have lived in this rented flat since October 2011. My least was for 6 month. Which would of ended in March 2012. But I didn't sign another tenancy least."* The letter was date stamped by the PRHP, 18th November 2014.

30. October 2011 is the month on which the tenancy commenced. The tenant was residing at the property in January 2015.

31. That the landlords are Alex Walker and Janis Iris Leary. The lease is a short assured tenancy in terms of the Housing (Scotland) Act 1988. The provisions of Chapter 4 of the Act apply.

32. That the property is owned by Janis Iris Leary and bears the title number STG56003, having been purchased by her on 5th October 2006.

33. That, by letter of 30th August 2014 (Landlord notification of repair letter) the landlord was made aware of the tenants' complaints as that narrated at paragraph 3, above and that these complaints were received by the letting agents.

34. That the tenant requested that the local authority carry out emergency repairs to the property and that this request was intimated to the landlords via the letting agents.
35. That works were undertaken to the roof of the property by Falkirk Council in late 2014. A letter from Falkirk Council's Corporate and Neighbourhood services to the letting agents, dated 9th September 2014, is contained within the papers before the committee.
36. That the letter lists the "emergency" repairs which Falkirk Council will carry out at the property as "Repair roof causing water penetration at 14-16 Watling Drive."
37. That the landlords met half the costs of this work.
38. That the tenant submitted an application to the PRHP on 6th November 2014.
39. That the tenant left the property in or around March 2015.
40. That the letting agents produced a copy of a tenancy agreement between them and new tenants dated 27th March 2015.
41. That an inspection and hearing was arranged to take place on Friday 20th March 2015 and this was intimated to both parties by letter of on 26th February 2015.
42. That the tenant was not present at the inspection of 26th February 2015 that a representative of the letting agent was present and that no access was gained to enable the committee to inspect the property.
43. That a second inspection and hearing were assigned for Friday 21st August 2015.
44. That on the date of the inspection, the weather was dry.
45. That the new tenant was present and a representative of the letting agents, Mr Spowart was present at the inspection.
46. That the property is an ex local authority four in a block style upper cottage flat with 3 apartments, kitchen and bathroom.
47. That there was evidence of recent plastering having been applied to the ceiling of the living room;
48. That there was no evidence of any part of the ceiling in the living room flaking or falling off and that there was evidence of recent plastering having been applied to the ceiling; that there is no evidence of the property failing to meet the repairing standard of section 13 (1) (b) of the Act in this regard.

49. That there was no evidence of any part of the ceiling in the main bedroom being cracked; that there was evidence of recent plastering having been applied to the ceiling; that there is no evidence of the property failing to meet the repairing standard of section 13 (1) (b) of the Act in this regard.
50. That there was evidence of dampness and damp staining on the wall of the main bedroom; that tests were taken by the surveyor member and the readings on the damp meter were very high.
51. That there was evidence of dampness and damp staining on the wall and ceiling of the second bedroom which divides this room from the main bedroom; that tests were taken by the surveyor member and the readings on the damp meter were very high. That the property does not meet the repairing standard of section 13 (1) (a) of the Act therefore.
52. That the repair works undertaken by Falkirk Council were applied to the area of the roof immediately above the wall which divides the two bedrooms; the wall on which there was evidence of severe dampness.
53. That there was no evidence of any "bubbling" to the artex on the walls of the hallway or of any of the artex falling off the wall; that there is no evidence of the property failing to meet the repairing standard of section 13 (1) (b) of the Act in this regard.
54. That the windows of the property had aluminium frames.
55. That there were no air vents around any of the windows.
56. That there were child locks applied to the bottom section of the windows of the second bedroom, living room and bathroom. These locks were not tested by the committee. Therefore the committee shall make no comment as to whether these locks were in proper working order and met the repairing standard of section 13 (1) (d).
57. That there was no evidence of child locks on the windows of the main bedroom or at the kitchen; that the property fails to meet the repairing standard of section 13 (1) (d) of the Act in this regard.
58. That there was evidence of condensation in the double glazed unit of the window of the main bedroom. The property does not meet the repairing standard of section 13 (1) (a) of the Act therefore.
59. That the stairs of the main hallway appeared to be stone; that the flooring of the main hallway appeared to be wood, covered by a carpet.

60. That although the flooring of the main hallway was uneven in parts, there was no evidence of any broken or missing floor boards in the hall and the property satisfies the repairing standard of section 13 (1) (c) therefore.
61. That an electrical certificate dated 23rd March 2015 and a gas safety certificate dated 20th April 2015 were produced to the committee on behalf of the landlord on 21st August 2015.
62. That the gas safety certificate of 20th April 2015 identified a failure with equipotential electrical bonding at the property. The property does not meet the repairing standard of section 13 (1) (c) of the Act therefore.
63. That this failure with equipotential electrical bonding at the property was not identified in the electrical safety inspection report of 23rd March 2015.

Reasons for decision

64. The committee inspected both bedrooms in which damp staining was evident on the walls and the ceiling. Tests carried out with a dampness meter recorded high readings of dampness in each of the bedrooms. The landlord's representative, Mr Spowart conceded that the dampness was evident.
65. The committee identified condensation on a window pane within the main bedroom which was accepted by Mr Spowart, the landlord's representative.
66. The committee received electrical and gas safety certificates directly from Mr Spowart on behalf of the landlord at the hearing on 21st August 2015. Mr Spowart accepted that there was a failure with PE bonding identified on the gas safety certificate which was produced after the most recent of the two inspections of the property. Having carried out further enquiries to satisfy themselves of the meaning of this failure, the committee is satisfied that further electrical investigations are required at the property by the landlord.
67. On inspection, the committee observed hard wired smoke detectors fitted to the ceilings of the hallway, kitchen and the living room of the property. No tests were undertaken to identify if the smoke detectors were in proper working order as these was not part of the tenant's application and there had been no prior notification of any complaint with the smoke detector to the landlord. Therefore the committee shall make no comment as to whether the smoke detector met the repairing standard of section 13 (1) (f).
68. On inspection, the committee observed a carbon monoxide detector fitted to the ceiling of the hallway. No tests were undertaken to identify if the carbon monoxide detector was in proper

working order as it did not form part of the tenant's application and there had been no prior notification of any complaint with the carbon monoxide detector to the landlord. Therefore the committee shall make no comment as to whether the carbon monoxide detector met the repairing standard of section 13 (1) (d).

Decision

69. The committee determined that the landlord has failed to comply with the duties imposed by sections 13 (1) (a) (c) and (d) and 14 of the Act.

70. The committee proceeded to make a Repairing Standard Enforcement Order as required by Section 24 (1). The Repairing Standard Enforcement Order has a time limit of 4 weeks from the date of service of the Order for the landlord to carry out works necessary to ensure that the property meets the repairing standard.

71. The decision of the committee was unanimous.

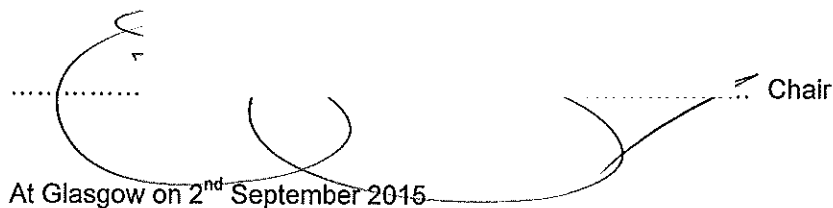
Right of Appeal

72. 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

73. 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 determined.

S SWEENEY

 Chair
At Glasgow on 2nd September 2015

