



**Repairing Standard Enforcement Order
Ordered by the Private Rented Housing Committee**

**Determination by Private Rented Housing Committee
Statement of Decision of the Private Rented Housing Committee issued under
Section 24(1) of the Housing (Scotland) Act 2006**

Ref prhp/rp/15/0012

In respect of an application lodged in terms of Section 22(1) of the Housing (Scotland) Act 2006 by James Smith residing at 1B, Hozier Street, Coatbridge ML5 4LB ("the Tenant") against PCM Property Developments Ltd, having a place of business at 36, Wood Street, Coatbridge ML5 1LY ("the Landlords")

Re: Property: 1B, Hozier Street, Coatbridge ML5 4LB ("the Property") more particularly described in and registered in the Land Register for Scotland under Title Number LAN19855

Committee Members

Karen Moore (Chairperson)

Charles Reid Thomas (Surveyor Member)

Colin Campbell (Housing Member)

NOTICE TO THE LANDLORDS

PCM Property Developments Ltd,

having a place of business at 36, Wood Street, Coatbridge ML5 1LY

Whereas in terms of their decision dated 29 April 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 Housing (Scotland) Act 2006 and in particular that the Landlords had failed to ensure that the Property is wind and watertight and in all other respects reasonably fit for human habitation and 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 now requires the Landlords to carry out the following works (or other such works as are necessary for the purposes of ensuring that the Property meets the Repairing Standard and that any damage caused by carrying out of the works in terms of the Order is made good.):-

The Landlords must :-

1. (a) within fourteen calendar days of the date of this Order, instruct a competent, reputable roofing contractor, being a roofing contractor capable of providing a 30 year guarantee, to carry out, within twenty eight days of the Landlords' instruction, a fully documented inspection and report ("the Roof Report") on the roof of the Property including the chimneys and chimney heads, the ridges, skewes, flashings, gutters and the supporting beams and sub-structure, the purpose of which report is to recommend works to the whole roof, including replacement if necessary, to ensure that the roof is made wind and watertight and free of rot;
- (b) within seven calendar days of the date the Roof Report, submit a copy of the report to the Committee;
- (c) within two calendar months of the date the Roof Report, commence the works as recommended by the Roof Report and confirm in writing to the Committee that the works have commenced;
- (d) within three calendar months of the date of commencement of the works as specified in paragraph 1(c) above, complete the works as recommended by the Roof Report and confirm in writing to the Committee that the works have been completed;
2. (a) within fourteen calendar days of the date of this Order, instruct a competent, reputable building surveyor, to carry out, within twenty eight days of the Landlords' instruction, a fully documented inspection and report ("the Building Report") on the structure of the Property including the external walls, including the window surrounds, and internal walls, the purpose of which report is to recommend works to the external structure to ensure that the Property is made wind and watertight and is structurally stable and to recommend works to the internal walls to ensure that these are free of dampness;
- (b) within seven calendar days of the date the Building Report, submit a copy of the report to the Committee;
- (c) within two calendar months of the date the Building Report, commence the works as recommended by the Building Report using a competent, reputable building contractor capable of providing a 30 year guarantee and confirm in writing to the Committee that the works have commenced;

(d) within three calendar months of the date of commencement of the works as specified in paragraph 2(c) above, complete the works as recommended by the Building Report and confirm in writing to the Committee that the works have been completed and

3. Within two calendar months of the date of completion of the works recommended by the Roof Report and the Building Report, make good all internal decoration in the Property affected as a result of these works.

A Landlord or a Tenant aggrieved by the decision of the Private Rented Housing Committee may appeal to the Sheriff by summary application within twenty one 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 two preceding pages are signed by me, Karen Moore, Chairperson of the Private Rented Housing Committee on 29 April 2015 at Glasgow before this witness, Norman William Moore, Solicitor, Cumbernauld.

N. MOORE

K. MOORE



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Re: Property: 1B, Hozier Street, Coatbridge ML5 4LB ("the Property")

Committee Members

Karen Moore (Chairperson)

Charles Reid Thomas (Surveyor Member)

Colin Campbell (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, determined that the Landlord has not complied with the duty imposed by Section 14 (1) (b) of the Act in respect that the Property meets the Repairing Standard in respect of Sections 13 (1) (a) and 13 (1) (b) of the Act and that for the reasons set out below.

Background

1. By application dated 11 January 2015 and signed by the Tenant ("the Application"), the Tenant applied to the Private Rented Housing Panel for a determination that the Landlords had failed to comply with the duty imposed on them by Section 14 (1) (b) of

the Housing (Scotland) Act 2006 in respect that the Property does not meet the Repairing Standard in respect of Section 13 (1) of the Act.

2. The president of the Private Rented Housing Panel ("the prhp"), having considered the application, intimated to the parties by Notice of Referral dated 24 February 2015, a decision under Section 23 (1) of the Act to refer the Application to a Private Rented Housing Committee, and, in terms of Schedule 2, Paragraph 1 of the Act fixed an Inspection and Hearing for 21 April 2015 at 10.00 a.m. and 11.30 a.m., respectively.

Preliminary Matters

i) The Tenancy

3. The Tenant submitted a copy of his tenancy agreement as part of the Application. The agreement is a single page typed on note paper headed "PCM Property Developments Ltd, 36, Wood Street, Coatbridge ML5 1LY". The text is as follows:-

"Lease Agreement. I, Mr Smith, agree to rent property at 1B, Hozier Street, Whifflet, Coatbridge as from Monday 28 August, 2006. I, Mr Smith, agree to rent the above property for the monthly sum of £300. Each payment is due every month thereafter. The first payment is due on 28 August 2006. I, Mr Smith, understand that I am liable for gas, electricity, telephone, property contents insurance and council tax payments." The agreement is signed by the Tenant and by Jillian Murtagh.

4. The wording does not mention who the Landlords are. However, the Committee are aware from the public Registers of Companies that Mrs Murtagh is a director of PCM Property Developments Ltd on whose headed note paper the agreement is typed.
5. In the Application, Mr. Smith indicates that he pays rent to PCM Property Developments Ltd. In written representations to the Committee, Mrs Murtagh refers to the Tenant as "our tenant". Therefore, the Committee are satisfied that a tenancy exists between Mr. Smith and PCM Property Developments Ltd.
6. The tenancy is not excluded by Section 12 of the Act and so the Act applies to the tenancy.

ii) The Application and the statutory grounds for complaint.

7. The application is made under Section 22 of the Act which states:-

- (1) *A tenant may apply to the private rented housing panel for determination of whether the landlord has failed to comply with the duty imposed by section 14(1)(b).*
- (2) *An application under subsection (1) must set out the tenant's reasons for considering that the landlord has failed to comply with that duty.*
- (3) *No such application may be made unless the tenant has notified the landlord that work requires to be carried out for the purpose of complying with that duty.*

8. Section 22 of the Act does not prescribe a statutory form for the way in which the tenant must apply. The application form used by the Tenant is that which is provided by the prhp to assist tenants. The Committee note that in the application form, at Part 4 (c), at which part an aggrieved tenant is invited to select the elements of the repairing standard which have not been met, the Tenant has marked Section 13 (1) (c) – (f) inclusive.

9. Section 13 (1) (c) – (f) of the Act specify the following grounds:-

(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.

10. However, in the Application, the Tenant makes no mention of any matters which could be construed as conforming to Section 13 (1) (c) – (f) of the Act.

11. The written statements which form part of the Application and the photographs submitted by the Tenant in support of the Application relate to complaints of water ingress and allegations of a defective roof, guttering and external walls.

12. Section 13 (1) (a) – (b) of the Act specify the following grounds:-

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.

13. Accordingly, the Committee are of the view that, although having marked part 4 of the application form Section 13 (1) (c) – (f) inclusive with a tick, the Tenant did so to indicate that these Sub-sections of the Act have been complied with as the substance of his complaint conforms wholly to the grounds set out in Section 13 (1) (a) – (b) of the Act.
14. At the Inspection, the Tenant confirmed that he intended to indicate that Section 13 (1) (a) – (b) of the Act are the grounds in respect of which he complains.
15. The Landlord has been notified of the substance of the complaint being water ingress and allegations of a defective roof, guttering and external walls and has responded to these points.
16. The Committee are satisfied that the Application conforms Section 22 of the Act and that the Tenant has stated that the Landlords have failed to ensure that the Property met the Repairing Standard as set out in Section 13 (1) (a) and 13 (1) (b) of the Act by failing to ensure that the house is wind and watertight and in all other respects reasonably fit for human habitation and 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.
17. In particular, the Tenant stated that the roof is defective causing water to ingress into the Property at various places and that the external stonework of the Property is damaged, again, causing water to ingress into the Property.
18. As part of the Application, the Tenant lodged photographs showing holes in the ceiling of the Property and damage to the internal and external walls.
19. The full Application was intimated to the Landlords on 17 February 2015.
20. The Tenant on 2 March 2015 submitted written representations to the Committee and stated that the water ingress continued and the property was damp. He stated that he was aware that the roof was common to the other properties in the block and that he understood that the Landlords had difficulty in reaching agreement with the co-owners to

carry out a proper repair. The Tenant indicated that the Landlords had instructed various repairs to no effect.

21. Mrs. Murtagh, on behalf of the Landlords, submitted written representations to the Committee dated 6 March 2015 and stated that the Landlords are aware that the roof required to be repaired and of the water ingress. Mrs. Murtagh, on behalf of the Landlords, explained that the roof is common property and the co-owner refuses to agree to repairs being carried out. Mrs. Murtagh, on behalf of the Landlords, explained further that the Landlords had attempted, without success, to encourage the co-owner to agree to the repair by securing local authority grant funding.
22. Mrs. Murtagh, on behalf of the Landlords, submitted further written representations to the Committee by email on 7 April 2015 and stated that an agreement had been reached with the other tenant to have the roof replaced, that North Lanarkshire Council were involved and that she was in the process of obtaining quotes to replaced the roof.
23. The Tenant's written submissions were copied to the Landlords and the Landlords written submissions were copied to the Tenant.

Inspection and Hearing

24. An Inspection took place on 21 April 2015 at 10.00 a.m. at the Property. The Tenant was present. The Landlords did not attend.
25. The Committee inspected the items of which the Tenant complained specifically in the Application, namely:-
 - i) The roof;
 - ii) The external walls;
 - iii) The ceilings and
 - iv) The internal walls
26. Following the Inspection, a Hearing was held at the Private Rented Housing Panel offices at Europa Building, 450 Argyle Street, Glasgow on 21 April 2015 at 11.30 a.m. Neither the Tenant nor the Landlords attended.

Findings of Fact

27. Top Class Conservatories (Scotland) Limited having a place of business at of 293, Dundyvan Road, Coatbridge ML5 4AU are the registered owners of the Property.

28. The Tenant is the Tenant of the Property in terms of a tenancy agreement between him and the Landlords dated 20 and 21 June 2014.

29. The Property is an upper floor flat comprising one bedroom, one public room, a kitchen and a bathroom. The building of which the Property forms part is a two storey building, comprising ground floor shop premises and two upper floor flats appears to be of traditional stone and slate construction, estimated to be in the region of around 100 years old or thereby, with outer roughcast finish in part. The upper floor flats of the building have been extended since into the rear courtyard. The roof is pitched and finished with slates.

30. The roof, the chimney heads, the guttering and the external walls of the Property are owned in common by the owners of the Property and the owners of the remainder of the building of which it forms part, being the adjacent flat known as 1A Hozier Street and the ground floor shop premises known as 60, 62 and 64 Whifflet Street, Coatbridge.

31. From the Inspection, the Committee found the following:-

- i) The living room ceiling shows evidence of considerable water ingress at various locations, the ceiling having been repaired at some parts and requiring repair at others;
- ii) The bedroom ceiling shows evidence of considerable water ingress at various locations, the ceiling and coving having been repaired at some parts and requiring repair at others ;
- iii) The bedroom wall at the front of the Property at ceiling height shows evidence of considerable water ingress along its length;
- iv) The bedroom wall at the front of the Property at the side window shows evidence of considerable water ingress, the wall being wet to the touch;
- v) There is evidence of water ingress at the side window, at which the Tenant has placed a towel to absorb the water;
- vi) The Tenant has placed a bucket in the attic space above the living room in which to catch rain water as the roof above that part of the Property has an open holes in it;
- vii) There are hardwired smoke alarms in the living room and hall;
- viii) There is a carbon monoxide detector in the living room but none in the kitchen and there is no heat detector in the kitchen;

- ix) Externally, the roof sags and is in serious disrepair and is showing signs of nail sickness (a number of slates are missing or have slipped);
- x) The chimney heads appear to be in a poor state of repair with vegetation growing from them;
- xi) There is a significant gap between the skews and the slates and the skews have defective pointing;
- xii) The guttering appears to be in a poor state of repair;
- xiii) The external walls at the front and side elevations are cracked, have damaged pointing and show evidence of movement;
- xiv) The front and side window surrounds show evidence of movement and
- xv) The external side wall is bulging.

32. The Committee found that the content of the Application and the Tenant's written representations in respect of the condition of the Property accorded with their findings at the Inspection and so the Committee accepted these in full.

33. The Committee noted that the Tenant's written representations accorded with the Landlords' written representations insofar as the Landlords had made some attempts to repair the roof and that it was the Tenant's understanding that the Landlords appeared to have difficulty in securing agreement with co-owners to repair the roof properly. The Committee accepted that the Landlords had attempted repairs to the roof.

34. The Committee noted that the Landlords stated that they had attempted to have the co-owners of the roof conjoin with them to replace it without success. The Landlords indicated that, in 2011, they had contacted North Lanarkshire Council, the housing and environmental health authority for the local authority area in which the Property is situated, to assist, again without success. The Landlords indicated further that they have contacted North Lanarkshire Council recently and are now obtaining quotes to replace the roof. The Landlords made no written representations in respect of the external walls and the guttering. The Landlords did not provide any specific detail or evidence of the attempts which they had made to secure the agreement of the co-owners nor did they provide any specific detail or evidence of their dealings with North Lanarkshire Council. The Landlords did not make a request to adjourn the proceedings to allow the roof repairs to be effected. From the Landlords' written representations, the Committee were not persuaded that the Landlords' recent attempt at replacing the roof will come to fruition in the near future and so the Committee were not of a mind to adjourn the

proceedings of their own accord to allow the roof repairs to be effected. In any event, the Landlords had not addressed the other matters of which the Tenant complained.

Decision of the Committee

35. The issues to be determined by the Committee in reaching a decision are whether or not the Property meets the Repairing Standard in respect of Section 13(1) (a) and 13 (1) (b) of the Act at the date of the Inspection and Hearing. In particular, whether the Property is wind and watertight and in all other respects reasonably fit for human habitation and 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.
36. The Committee's decision was based on the content of the Application, the written representations submitted by the Tenant and by the Landlords and the Inspection.
37. The Committee determined that, as narrated in full in paragraph 31, in respect of Section 13 (1) (a) and 13 (1) (b) of the Act, the Landlords have failed to comply with the duties imposed by Section 14(1) (b) of the Act.
38. The decision is unanimous.
39. The Committee having determined that the Landlords had failed to comply with the duties imposed by Section 14(1) (b) of the Act proceeded to make a Repairing Standard Enforcement Order as required by Section 24(2) of The Act.
40. The Committee have serious concerns in respect of the condition of the Property and are mindful that the parts of the Property which cause concern are in common ownership. Therefore, the Committee direct that a copy of this decision together with the Repairing Standard Enforcement Order be sent, at the same time as its issue to the Landlords and the Tenant, to the Environmental Health Service and the Housing Service of North Lanarkshire Council to allow them to carry out their own enquiries into the condition of the Property.
41. The Committee further direct that a copy of this decision together with the Repairing Standard Enforcement Order be sent, at the same time as its issue to the Landlords and the Tenant, to Top Class Conservatories (Scotland) Limited having a place of business at of 293, Dundyvan Road, Coatbridge ML5 4AU being the registered owners of the Property.

Right of Appeal

42. 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.
43. Where such an appeal is made, the effect of the decision and of any repairing standards enforcement 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 any repairing standards enforcement order will be treated as having effect from the day on which the appeal is abandoned or so determined.

Signed

K. MOORE

Karen Moore, Chairperson

Date 29 April 2015