



Repairing Standard Enforcement Order

Ordered by the Private Rented Housing Committee

prhp Ref: PRHP/RP/15/0093

Re : Property at 76 Biggar Road, Cleland ML1 5PL ("the Property")

Land Certificate No: LAN3907

The Parties:-

Mrs Kelly Rafferty, residing sometime at 76 Biggar Road, Cleland, ML1 5PL ("the Tenant")

James Francis Doherty, care of Excel Property, 6 Bairds Crescent, Allanshaw Industrial Estate, Hamilton ML3 9FD ("the Landlord")

NOTICE TO (James Francis Doherty "the Landlord")

Whereas in terms of their decision dated 12 August 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:-

- (a) the structure and exterior of the Property (including drains, gutters and external pipes) are in a reasonable state of repair and in proper working order,
- (b) 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, and
- (c) 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:-

1. To obtain from a suitably qualified registered electrician and exhibit to the Committee an Electrical Installation Condition Report in respect of the Property. In the event that this report identifies that repair or replacement works are required, the Landlord must carry out those repair or replacement works to ensure that the electrical installation meets the current standards.
2. To instruct a Gas Safe qualified engineer to inspect the central heating boiler to establish that it is in proper working order, to prepare and exhibit to the Committee the engineer's report on its condition and to have any work recommended in that report carried out by a Gas Safe qualified engineer;
3. To replace the missing slab at the front of the Property and to carry out such works to the slabs at the front and rear of the Property as are required to ensure that they do not present a significant tripping or slipping hazard, this work to include removal of vegetation growth on the slabs to front and rear and
4. To replace the two stoppers/plugs in the kitchen sink, in order to ensure that it holds water when filled.

The Private Rented Housing Committee order that the works specified in this Order must be carried out and completed within the period of four weeks 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 executed by George Barrie Clark, solicitor, Lasswade, chairperson of the Private Rented Housing Committee at Lasswade, on 12 August 2015, before this witness, Valerie Elizabeth Jane Clark, Droman House, 5 School Brae, Lasswade, Midlothian.

V CLARK

G CLARK

_ witness

_____ chairman



Statement of decision of the Private Rented Housing Committee under Section 24 (1) of the Housing (Scotland) Act 2006

prhp Ref: PRHP/RP/15/0093

Re : Property at 76 Biggar Road, Cleland ML1 5PL ("the Property")

The Parties:-

Mrs Kelly Rafferty, residing sometime at 76 Biggar Road, Cleland, ML1 5PL ("the Tenant")

James Francis Doherty, care of Excel Property, 6 Bairds Crescent, Allanshaw Industrial Estate, Hamilton ML3 9FD ("the Landlord")

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) in relation to the house concerned, and taking account of the evidence led by the Landlord at the hearing, determined that the Landlord had failed to comply with the duty imposed by Section 14 (1)(b) of the Act.

Background

1. By application dated 6 March 2015, received on 12 March 2015, the Tenant applied to the Private Rented Housing Panel for a determination of whether the Landlord had failed to comply with the duties imposed by Section 14 (1)(b) of the Housing (Scotland) Act 2006 ("the Act").
2. The application by the Tenant stated that the Tenant considered that the Landlord had failed to comply with his duty to ensure that the house meets the repairing standard and in particular that the Landlord had failed to ensure that:-
 - (a) the house is wind and water tight and otherwise 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, and
 - (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.
3. By letter dated 17 June 2015 the President of the Private Rented Housing Panel intimated a decision to refer the application under Section 22 (1) of the Act to a Private Rented Housing Committee.
4. The Private Rented Housing Committee served Notice of Referral under and in terms of Schedule 2, Paragraph 1 of the Act upon both the Landlord and the Tenant.

5. Following service of the Notice of Referral the Tenant (by e-mail dated 8 July 2015), made written representations to the Committee. The Landlord (by two e-mails dated 6 July 2015), made written representations to the Committee.
6. The Private Rented Housing Committee inspected the Property on the morning of 12 August 2015. The Tenant was not present or represented at the inspection. The Landlord was present during the inspection. The Committee comprised George Clark (chairman), Carol Jones (surveyor member) and Scott Campbell (housing member).
7. The file of photographs of the Property, taken by the surveyor member of the Committee at the inspection, are attached to and form part of this Statement of decision.
8. Following the inspection of the Property the Private Rented Housing Committee held a hearing at Wishawhill Community Centre, Learning and Leisure Services, Low Mains Road, Wishaw and heard from the Landlord. The Tenant was neither present nor represented at the hearing.
9. The Tenant submitted as follows:- the drains of the Property blocked regularly. The Landlord would not investigate why this was happening and diverted the blame falsely on neighbours, when he had been advised that the drains and pipes were faulty underground; there was damp in the Property and the Landlord had attempted to cover this up by painting over it; the window in the main bedroom was not fit for purpose; the floors were not level and were causing damage to flooring and tiles; in particular, the flooring in the main hallway was breaking because underneath it was not even; the front door was letting in water from somewhere and a puddle was frequently developing at the front hall area; the plugs/stoppers for the kitchen sink were not working and the sink would not fill up and stay full; the slabs in front and at the back of the Property were hazardous and the front of the Property had a patch of ground that had soil with a kerbstone surround that filled with water when wet; the stairs in the Property were steep and only had a railing for the bottom one-third of their length; the socket at the top of the stairs only worked when the shower power switch was turned on and the socket fitting was loose; the shower fitting was loose; there were cracks in the upstairs walls and a large gap in the wall in the kitchen, near the washing machine; and the central heating boiler pressure dropped frequently and had to be turned up every two days. The Tenant also commented that the windows, including the bottom front room and the upstairs bedroom, were opened frequently during the day and had given written consent to the Landlord to fit vents in any rooms where the Landlord felt that such vents would help with the mould problem.
10. The Landlord submitted as follows:- a specialist jet unit from Underground Inspection Services Limited had cleared a choked manhole on 11 February 2015 and had reported that it was full of heavy rags and baby wipes. The Landlord had, at his own expense, cleared the main drain to the rear of the Property on several occasions and, on each occasion, the cause had been baby wipes having been put down the toilet by the occupiers of one of the four properties served by the drain. The drains had never blocked prior to the Tenant moving in to the Property. The only other blockage had arisen when the septic tank serving the Property had been full and the Landlord had arranged for it to be emptied and had paid the cost involved. The damp in the Property had appeared since the Tenant had moved in and had been caused by the Tenant placing four or five large fish tanks in the front bedroom and keeping the temperature in the room extremely high, causing condensation. The only other area of dampness had been behind the washing machine and under the kitchen floor and this had resulted from a leak from a hose that the Tenant had fitted. The Landlord had replaced the whole kitchen floor in order to repair the damage caused by the leak from the Tenant's washing machine hose. The Landlord had also repaired the floor joists adjacent to the front door and replaced the hall flooring. The Landlord could not understand the complaint about the window in the main bedroom, as the double glazed window units in the room had recently been replaced, so there were no leaks or draughts from them. The slabs at the front of the Property had been level when the Tenant moved in, but she had removed the fence between the front garden and the street and had used the front garden as a car parking area, without the Landlord's

permission. Any damage had been the result of the Tenant's use of the front garden as a car park, but the Landlord would be making good any slabs that had been disturbed by the Tenant's car and would also make good any hazardous slabs at the rear of the Property. The Landlord had provided a Gas Safety Record report dated 13 March 2015.

Summary of the issues

11. The issues to be determined were whether the Property met the repairing standard as laid down in Section 13 of the Act and whether the Landlord had complied with the duties imposed on landlords by Section 14(1)(b) of the Act.

Findings of fact

12. The Committee finds the following facts to be established:-
 - The tenancy is a Short Assured Tenancy which commenced on 16 March 2012.
 - The Tenant vacated the Property on or shortly before 12 June 2015.
 - The Committee did not carry out any test of the drainage system, but noted the terms of an e-mail dated 12 February 2015 from Underground Inspection Services Limited, confirming that they had, on the previous day, cleared a choked manhole and had found that the line/manhole was full of heavy rags/baby wipes.
 - The downstairs bedroom has very recently been redecorated and there were no visible signs of dampness. The surveyor member of the Committee, using a damp meter, was unable to detect evidence of unusually high moisture in the walls of the room.
 - The windows in the upstairs bedroom appear to have been recently installed and open and close satisfactorily.
 - The flooring in the entrance hallway has recently been replaced and there is no evidence of movement in it that indicates a problem beneath.
 - There is no evidence of unevenness in the flooring in the Property.
 - The front door of the Property appears to operate satisfactorily and there is no evidence of a gap below it which would let in water.
 - The plugs in the kitchen sink do not fit properly and do not retain water when the sink is filled.
 - There is a paving slab missing at the front of the Property. There is no fence separating the front garden area from the pavement. The slabs at the front and rear of the Property are uneven in places and there is vegetation growth on some of the slabs..
 - There is no evidence of an area of soil at the front of the Property which is liable to flood. There may be soil below the window of the ground floor bedroom, but there is a gravel strip between the window and the slabs leading to the front door.
 - There is a recently- fitted wooden banister running the length of the staircase.
 - The power socket outside the bathroom works when the shower power switch is off and the stair light works from both switches at the top and bottom of the stair. It was noted that there was one loose power point in the kitchen, but the landlord's tradesman secured this to the wall during the inspection.
 - The shower fitting in the en-suite shower room in the main bedroom is slightly loose.
 - There is no evidence of cracks in the upstairs walls, which have been recently redecorated.
 - The pressure in the central heating boiler was low at the time of the inspection.
 - There is no washing machine currently in the Property.
 - A number of lights in the Property were not working at the time of the inspection.

Reasons for the decision

13. The Property was in course of being prepared for a new tenancy when the Committee inspected it. There was new flooring in the hallway and kitchen and the Landlord advised the Committee that, as well as redecoration, the joists adjacent to the front door had been repaired, two kitchen units had been replaced and that a new banister had been fitted. The Landlord also advised that his electrician would have remedied any issues he found and the Committee recognised that the current works may have included remedying a number of items which were included in the Tenant's application. The Committee could not comment on the Tenant's complaint of a large space in the kitchen wall near the washing machine, as there is no washing machine currently in the Property. The Committee noted that a number of lights were not working and accepted that it might just be a matter of changing light bulbs, but the Landlord told the Committee that he did not have an Electrical Installation Condition Report for the Property. The Committee noted the Gas Safety record report of 13 March 2015, but was still concerned that the boiler pressure was low. The unevenness of the slabs at the front and rear of the Property constituted a potential tripping hazard and the Committee felt that the missing slab at the front should be replaced and the slabs to front and rear should be made safe. The plugs in the kitchen sink should be replaced, as the present ones did not permit the retention of water.
14. Although not included in the application, so not part of any Repairing Standard Enforcement Order that the Committee could make, the Committee noted that, whilst there were smoke detectors in the lower hall and landing, they were not hard-wired and there was no heat detector in the kitchen or smoke detector in the living room. The Landlord advised the Committee that he would be upgrading the system to present-day standards before a new tenant moved in. There was a carbon monoxide detector in the kitchen.

Decision

15. The Committee accordingly determined that the Landlord had failed to comply with the duty imposed by Section 14 (1)(b) of the Act.
16. The Committee proceeded to make a Repairing Standard Enforcement Order as required by section 24(1).
17. The decision of the Committee was unanimous.

Right of Appeal

18. **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

19. 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.

G CLARK

Signed
Chairperson

..... Date 12 August 2015