



REPAIRING STANDARD ENFORCEMENT ORDER
Ordered by the Private Rented Housing Committee

Re: Property at 25 Adrian Road, Glenrothes, Fife, KY7 4LP as more particularly described in Land Certificate Title Number FFE2841 ("the House")

The Parties:

Agata Sliwa ("the Tenant")

and

Mr Muhammad Arshad, c/o Remax Lettings, Flemington Road, Glenrothes, Fife, KY7 5QF ("the Landlord")

PRHP REFERENCE PRHP/RP/15/0150

NOTICE TO

Mr Muhammad Arshad, the Landlord

WHEREAS in terms of their decision dated 16 August 2015 the 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:

*"(c) the installations in the house for the supply of water, gas and electricity and for sanitation, space heating and water heating 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..."*

The Committee now requires the landlord to carry out such work as is necessary for the purposes of ensuring that the House 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 Committee requires the Landlord:

1. To contact Scottish Gas and to require them to attend the House in order to carry out a full inspection of the gas heating system generally in order to eradicate the noise in the boiler and to repair or replace the non-

functioning radiators in the front two bedrooms, failing which to ensure the proper functioning of the boiler and said radiators himself;

2. To replace the tiling and floor covering within the bathroom with suitable alternatives in order to restore the bathroom to the condition it was in prior to the repair which was carried out; and
3. To replace the oven in the kitchen with a suitable alternative.

The Committee order that the works specified in this Order must be carried out and completed within one calendar month from the date of service of this Notice and for written proof of having done so to be supplied to the Private Rented Housing Panel.

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 the decision.

Where such an appeal is made, the effect of the decision and 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.

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 Maurice O'Carroll, Chairperson of the Private Rented Housing Committee at Edinburgh on the 17th day of August, Two Thousand and Fifteen in the presence of the undernoted witness:

Chairperson M O'CARROLL

Witness: A VEITCH

Name in full: ANDREW VEITCH

Occupation: ADVOCATES' CLERK

Witness Address: PARLIAMENT HOUSE, HIGH ST, EDINBURGH
E41 1RF



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 25 Adrian Road, Glenrothes, Fife, KY7 4LP (“the House”)

Agata Sliwa (“the Tenant”)

**Mr Muhammad Arshad, c/o Remax Lettings, Flemington Road, Glenrothes, Fife,
KY7 5QF (“the Landlord”)**

PRHP REFERENCE PRHP/RP/15/0150

DECISION

The Committee having made such enquiries as are 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 House, and having taken account of the evidence led at the hearing and of the written documentation attached to the application and submitted by the parties, has made the following decision:

It has determined that the Landlord has failed to comply with the duty imposed by section 14(1)(b) of the Act in terms of section 13(1)(c) and (d) of that Act.

The decision was unanimous.

Background

By application dated 2 May 2015 (the “Application”) the Tenant applied to the Private Rented Housing Panel (“PRHP”) for a determination of whether the Landlord had failed to comply with the duties imposed by section 14(1)(b) of the Act.

By letter dated 28 May 2015, the President of the PRHP intimated a decision to refer the Application under section 23(1) of the Act to a Private Rented Housing

Committee (hereinafter referred to as “the Committee”). Notice of Referral to a Committee was accordingly sent to the parties on 22 June 2015.

The Application stated that the Tenant considered that the Landlord had failed to comply with the duty to ensure that the House meets the repairing standard and in particular that the Landlord had failed to ensure compliance with the following paragraphs of section 13(1) of the Act:

- “(a) the house is wind and water tight and in all other respects reasonably fit for human habitation;*
- (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 capable of being used safely for the purpose for which they are designed; and*

The Tenant had intimated to Remax, agents of the Landlord, a number of complaints which he stated required rectification by means of a letter dated 2 May 2015, failing which, he would apply to PRHP. As is evident by the President’s decision of 28 May 2015, the stated repairs were not effected at that time.

The Committee comprised the following members:

Maurice O’Carroll, Chairperson
Carolyn Hirst, Housing Member
Geraldine Wooley, Surveyor Member

The Committee inspected the House at 10.00am on 30 July 2015. The Tenant was present at the inspection, along with her partner, Mr Bathgate, who afforded entry. The Landlord, Mr Arshad was also present, together with Mr Ian Drysdale from Remax Lettings.

Following the inspection, the Committee held a hearing at Stenton Jubilee Centre, Dunrobin Road, Glenrothes, Fife at 11.00am. The Tenant was not present at the hearing. Both Mr Arshad and Mr Drysdale attended the hearing and provided further evidence. They also gave various undertakings which are discussed below. The Committee considered the written evidence submitted by the parties and heard representations from the Landlord and his letting agent.

Summary of the Issues

The issues to be determined are: whether (1) the House meets the repairing standard as laid down in section 13(1)(a)(c) and (d) of the Act; and therefore (2) whether the Landlord has complied with the duty imposed by section 14 (1)(b).

Findings in Fact

The Committee made the following findings in fact:

The Landlord and the Tenant entered into a Tenancy agreement in respect of the House on or about 28 February 2013, upon which date she took entry. The lease was signed by the Tenant and by an employee of Remax Lettings on the landlord's behalf. The lease was a short assured tenancy which was rolled over until the date of the inspection. The rent payable is £430 per calendar month.

The registered owner of the House is Mr Muhammad Arshad and Nasreen Akhtar by virtue of a disposition in their favour registered in the Land Register on 17 August 1995 under Title Number FFE2841.

The provisions of Chapter 4 of Part I of the Act apply to the tenancy.

The Tenant formally notified the Landlord of the defects in the house which are now the subject of the Application on 2 May 2015, although the Committee understands that she and her partner had informally complained about what they considered to be defects on many occasions prior to that date, in particular during a face to face meeting on 28 April 2015. The Tenant and her partner Mr Bathgate live in the House with their five year old son.

The inspection on 30 July 2015 revealed:

The property is a main door entry former council house on two floors with three bedrooms and is in generally good decorative order throughout.

On entry through the front door, there is a short hallway giving access to the stairs in front to the upper floor. To the left on entry, there is a living room with French windows giving access onto the patio and garden to the rear of the property. To the right, there is an open plan kitchen and dining area. Mr Bathgate had re-hung the cupboards in the kitchen so that they were fully functioning. Only one small cupboard next to the oven remained nailed shut following works instructed by the Landlord in the past.

The seals on the French windows in the living room had perished and they were no longer wind or watertight. During the inspection, Mr Bathgate indicated that he intended to fix the French windows himself. The garden was well maintained.

The ceiling in the kitchen had recently been repainted but showed signs of bowing and there was also some bulging evident beneath strip lighting above the cooker. Mr Bathgate indicated that the oven would sometimes become red hot during operation to the potential danger of their son, and that sometimes smoke would escape from it, setting off the smoke alarm.

The bedrooms and family bathroom are located upstairs and accessed off a central hallway. At the rear of the property to the left is a single bedroom where the gas boiler is housed. Mr Bathgate stated that the boiler made a knocking sound when in operation and queried whether the pipework was correctly fitted. There was no radiator in the rear single bedroom.

To the right is the bathroom, with WC bath and shower above. The bath had been re-sealed the day prior to the inspection. The Tenant confirmed that it had been filled with water prior to the sealant being applied and that it appeared that the leak from the bath area to the kitchen downstairs had been stopped. The Committee observed that tiling behind the WC had been removed in order to put the new unit in place and that the space in the tiling which had been created as a result were covered over by an unattractive piece of plywood of about 30cm square. As a result of the same repair, the lino surrounding the WC unit no longer fitted correctly with the result that there was a gap at the foot of the unit.

At the front of the property upstairs, there is a spare double bedroom on the right hand side when viewed from the front and opposite that is the main bedroom used by the Tenant. The radiators in the spare bedroom and main bedroom were not functional, despite previous attempts at repairs having been made in the past. The Tenant and the Landlord agreed that the reason for this was a fault in the thermostatic control in each radiator.

The House has battery operated smoke detectors in the upper hallway and kitchen which the Committee confirmed understood to be functional.

A Gas Safety Certificate dated 4 February 2015 was provided during the inspection which confirmed that the gas boiler was functional and safe to use.

Photographs showing the relevant parts of the House were taken and are appended to this decision.

Evidence at the Hearing

At the hearing, the Committee discussed the background to the Application. The Landlord had previously lived in the House having purchased it in 1995. He had installed a new oven about two years before first letting out the House in 2011. Following the Tenant's letter of complaint, a substantial amount of work had been carried out to the House including the following:

- the front and rear doors to the House had been replaced and were now wind and watertight;
- the window frames throughout the House had been replaced;
- the toilet had been replaced;
- the bath had been re-sealed and
- a boiler service repair contract had been entered into between Scottish Gas and the Landlord (known as Homecare 200) at the Landlord's expense with effect from 22 May 2015.

The effect of the above was that by the time of the inspection the only outstanding matters in relation to the Application were: the damaged oven seal/malfunctioning oven; the two non-functioning radiators and the noisy

operation of the boiler. The replaced toilet, however, necessitated further repairs to the tiling and flooring in the bathroom as a direct result of that repair.

Separately, a matter for recommendation arose during the inspection, although it was not raised in the Application and therefore cannot form part of a Repairing Standard Enforcement Order ("RSEO"). That matter was the provision for detecting fires. In terms of current standards, the House ought to have linked mains operated smoke alarms in the upstairs and downstairs hallways. There should also be a heat detector in the kitchen.

During the hearing, it was pointed out by the Committee that even although a repair contract had been entered into with Scottish Gas, it was ultimately his responsibility in terms of the Act to ensure that all of the installations within the House for the supply of gas and space heating were in proper working order. That was accepted by the Landlord, although in the first place he understandably wished Scottish Gas to view the gas system and radiators in the expectation that they would be able to effect any necessary repairs.

Following discussion of the above, the Landlord provided an undertaking to carry out the following outstanding items of work to meet the Repairing Standard in full:

1. To contact Scottish Gas immediately in order to arrange for them to attend the House by the end of the following week, i.e. by 7 August 2015. Scottish Gas would be requested to carry out a full inspection of the gas heating system generally in order to eradicate the noise in the boiler and to repair or replace the non-functioning radiators in the front bedrooms;
2. To install linked mains operated smoke detectors in the upstairs and downstairs hallway with a heat detector in the kitchen by 7 August 2015;
3. To replace the tiling and floor covering within the bathroom with suitable alternatives in order to restore the bathroom to the condition it was in prior to the repair which was carried out, and to do so by 31 August 2015;
4. To replace the oven in the kitchen with a suitable alternative by 31 August 2015; and
5. To provide receipts obtained from a suitably qualified electrician in respect of the smoke alarm and oven installations.

The Committee was impressed by the amount of work which had already been carried out to the House since the Application was lodged. The Committee accepted as credible the Landlord's stated intention to carry out the remaining works necessary to the House and was grateful to the Landlord for the undertakings which he provided. It was minded to accept those undertakings.

However, section 24(2) of the Housing (Scotland) Act 2006 provides that where a Committee decides that the Landlord has failed to comply with the repairing standard duty, then it **must** issue an order requiring him to carry out such work as is necessary for the purpose of ensuring that the House meets that standard.

The Committee found that the fault in relation to the radiators in the bedrooms to the House, the remaining repairs to the bathroom as were necessary and the fault with the oven meant that the Landlord had at the time of the inspection failed to

comply with paragraphs (c) and (d) of section 13 of the 2006 Act. In those circumstances, therefore, the legislation does not provide the Committee with any discretion as to whether or not it may issue a RSEO. It is required to do so.

The Committee would note, however, that should proof of the above listed works be provided in the timescales indicated, then it will, upon request, produce a Revocation of the RSEO without delay thereafter.

Decision of the Committee and reasons

The Committee determined that the complaints in relation to paragraphs (c), and (d) of section 13(1) of the Housing (Scotland) Act 2006 should be upheld.

Accordingly, the Committee, considering the terms of section 13(3) of the Act, determined that the Landlord had failed to comply with the duty imposed by section 14(1)(b) of the Act to that extent.

The Committee was therefore obliged to make a Repairing Standard Enforcement Order in terms of section 24(2) of the Act in relation to the matters listed above as items 1, 3 and 4.

It also determined to make a recommendation that the battery operated smoke alarms in the House be replaced with linked mains operated smoke alarms in the upstairs and downstairs hallways and that a heat detector be fitted in the kitchen of the House.

The decision of the Committee was unanimous.

Right of Appeal

Section 64 of the Act provides a right of appeal to a landlord or tenant aggrieved by a decision of a private rented housing committee. An appeal may be made to the Sheriff within 21 days of the Landlord or Tenant being informed of the decision.

Where such an appeal is made, the effect of the decision and 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.

M O'Carroll 

Maurice O'Carroll
Chairperson

Date: 17 August 2015