



1
Repairing Standard Enforcement Order

Ordered by the Private Rented Housing Committee

Case Reference Number: PRHP/RP/15/0190

Re : 15 Maryfield Place, Tamfourhill, Falkirk FK1 4RN ("the Property")

Title : STG3613

The Parties:-

Danielle Verhees, 15 Maryfield Place, Tamfourhill, Falkirk FK1 4RN ("the Tenant")

Colin Campbell, c/o Let Direct, 178 Grahams Road, Falkirk, FK2 7BY ("the Landlord") care of his agents Let Direct, 178 Grahams Road, Falkirk, FK2 7BY

NOTICE TO

Colin Campbell ("the Landlord")

Whereas in terms of their decision dated 5 November 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 Property meets the repairing standard in that :-

- (a) the living room has a window which cannot be opened;
- (b) the front door has a Yale lock which is not in proper working order;
- (c) the back door cannot be opened due to a locked mortice lock with missing keys;
- (d) the bathroom window cannot be opened;
- (e) the kitchen has suffered from a leak from the ceiling

the Private Rented Housing Committee now requires the Landlord to carry out such work as is necessary for the purposes of ensuring that the Property 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 refit, repair or replace the right-hand or westmost double glazed window in the front living room of the Property so that it is in proper working order and a reasonable state of repair and wind and water tight;
- (2) to repair or replace the Yale lock on the front door of the Property so that it is in a reasonable state of repair and in proper working order;
- (3) to replace the mortice lock on the back door of the Property so that it is in a reasonable state of repair and in proper working order;
- (4) to refit, repair or replace the opaque single glazed window in the bathroom of the Property so that it is in proper working order and a reasonable state of repair and wind and water tight;
- (5) to instruct a person with demonstrable relevant specialist experience to investigate the water ingress at ceiling of the kitchen of the Property;
- (6) to obtain from such person written recommendations for all (if any) works necessary to eliminate any dampness, water ingress or other causes of water ingress into the kitchen and to lodge said recommendations with the Committee;
- (7) to take all reasonable steps to carry out or have carried out all works, including those contained in said written recommendations necessary to eliminate any cause of water ingress into the kitchen and to make good;
- (8) to assist such a person mentioned in parts (5) and (6) above and to enable any works required by virtue of part (7) by taking all reasonable steps to obtain access to the flat above the Property for him or any person carrying out said works;
- (9) to lodge with the Committee written documentation evidencing the carrying out of this Order.

The Private Rented Housing Committee order that the works specified in this Order must be carried out and completed within the period of 2 months 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 pages are executed by David Bartos, Advocate, Parliament House, Parliament Square, Edinburgh EH1 1RF, Chairperson of the Private Rented Housing Committee at Edinburgh on 5 November 2015 before this witness:-

D. Bartos _____ witness
chairperson

L. Galloway

LUCY GALLOWAY name in full

7 WAITEDALES Address

EDINBURGH

EH10 7JQ

SOLICITOR Occupation



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

Statement of Reasons for Decision of the Private Rented Housing Committee

(Hereinafter referred to as "the Committee")

Under Section 24(1) of the Housing (Scotland) Act 2006

Case Reference Number: PRHP/RP/15/0190

Re : 15 Maryfield Place, Tamfourhill, Falkirk FK1 4RN ("the Property")

Title : STG3613

The Parties:-

Danielle Verhees, 15 Maryfield Place, Tamfourhill, Falkirk FK1 4RN ("the Tenant")

Colin Campbell, c/o Let Direct, 178 Grahams Road, Falkirk, FK2 7BY ("the Landlord") care of his agents Let Direct, 178 Grahams Road, Falkirk, FK2 7BY

The Committee comprised:-

Mr David Bartos	- Chairperson
Mr Mark Andrew	- Surveyor 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) in relation to the Property, determined that the Landlord had failed to comply with the duty imposed by Section 14 (1)(b) of the Housing (Scotland) Act 2006.

Background:-

1. By application received on or about 26 June 2015 the Tenant applied to the Private Rented Housing Panel ("PRHP") for a determination that the Landlord had failed to comply with the duty to ensure that the Property met the repairing standard in section 13 of the Housing (Scotland) Act 2006.
2. In her application the Tenant complained that the Landlord had failed to meet the repairing standard in the following respects:
 - (1) The window in the living room was screwed shut
 - (2) The front door had a faulty lock and was not secure;
 - (3) there was no key for the back door;

- (4) the bathroom window had been painted shut and could not be opened;
- (5) the bathroom suffered from dampness around the window as evidenced by black mould
- (6) in the kitchen the ceiling had a crack following a leak from the flat upstairs.

With the exception of the complaint concerning the opening of the bathroom window the application related to the matters which had been raised by the Tenant in her letter dated 5 June 2015 to the Landlord's agents.

- 3. The President of the Private Rented Housing Panel decided under section 23 of the 2006 Act to refer the application to a Private Rented Housing Committee. An inspection of the Property and hearing at Falkirk Town Hall, Westbridge Street, Falkirk FK1 5RS was fixed for 29 October 2015 at 10.00 a.m. and 11.00 a.m. respectively. The parties were invited to make written submissions to the Panel's office by 29 October 2015.
- 4. This was all intimated to the Tenant and the Landlord's agents by letter of the Panel's Clerk dated 11 September 2015 and entitled "Notice of Referral, Inspection and Hearing". The Committee comprised the persons stated above. The intimation of the Notice of Referral and Inspection/Hearing to the Landlord's agents included a copy of the Tenant's application to the Panel.
- 5. Following intimation of the Notice of Referral, Inspection and Hearing the Committee issued a direction dated 24 September 2015 seeking clarification of the ownership of the Property. By e-mail to the PRHP dated 14 October 2015 the Landlord confirmed that his wife Mrs Pauline Campbell had passed away in January 2013. By virtue of the survivorship destination in the title to the Property the Landlord is now the sole owner of the Property.

The Inspection

- 6. The Committee inspected the Property on 29 October 2015. The Committee was present at the Property at 10.00 a.m. but there was no-one present in the Property and despite prior assurance from the Landlord's agents that their representative would be present, there was no appearance on their behalf either. In the event following the making of efforts by the Panel's clerk to contact the agents, their representative Diana Halcrow arrived at about 10.30 a.m. It would have been helpful for the agents to indicate to the Panel's clerk of any such delay.
- 7. The weather was overcast with a drizzle of rain. The inspection revealed that the Property is a ground floor flat in a two storey tenement block from the late 1890s in the Tamfourhill area of Falkirk. The Committee carefully inspected the matters which were the subject of complaint.

The Evidence

8. The evidence before the Committee consisted of:-
- The application form
 - Copy letter from the Tenant to Let Direct dated 5 June 2015
 - Copy letter from Falkirk Council's Debt Adviser to Let Direct dated 8 May 2015 with enclosed statement from the Tenant
 - Copy e-mails between the Council's Robert Griffith of the Debt Advice Unit and the Council's Private Sector Benefit team dated 18 June and 25 June 2015
 - Copy e-mail from the Landlord to PRHP dated 14 October 2015
 - Copy e-mail from Let Direct's Lisa Bryce to PRHP dated 29 September 2015
 - Copy tenancy agreement between the Landlord and the Tenant dated 8 August 2014
 - Registers Direct copy of Land Register title sheet for STG3613 printed on 1 September 2015
 - The oral evidence of Diana Halcrow of Let Direct

The Hearing

9. At the conclusion of the inspection the Committee held the hearing at the venue fixed. Due to the delayed inspection the hearing began at 11.20 a.m. There was no appearance by or on behalf of the Tenant. Miss Diana Halcrow from the Landlord's agents attended and gave evidence and made submissions.
10. Miss Halcrow explained that she had been in charge of inspections on behalf of the agents for about 8 months. The first that the agents had been informed of the complaints was in the Tenant's letter of 5 June 2015. Following this she had carried out an inspection of the Property on 11 July 2015. During this she had explained to the Tenant that the agents would get their contractors to carry out the repairs.
11. The agents had tried to contact the Tenant by telephone on several occasions without success. A notice to quit had been sent to the Tenant on or about 12 August. On 19 October 2015 Miss Halcrow went to the Property. There was no answer at the door and she saw through the window that there were boxes and the Tenant appeared to have moved out. She discovered from the neighbour that the Tenant had moved out about two weeks earlier. The tenancy was due to end in November.
12. With regard to the living room complaint she accepted that there was a window which had been screwed shut and that it was not in a reasonable state of repair and not in proper working order.
13. She accepted that the Yale lock on the front door was faulty in that the staple unit which receives the lock bolt was missing from the door frame.

When she arrived to visit on 19 October the Property was secure and the door was locked. She had with her a locksmith who changed the mortice lock and installed a new one.

14. When the complaint had been made about the back door key she had approached the Landlord and he had assured her that a key had been issued to the Tenant. On her inspection in July the Tenant had told that it had not. Miss Halcrow had been unable check the back door access on that occasion due to rubbish being piled up against the back door.
15. She had first become aware of the bathroom window issue during her July inspection. There was no dampness in the bathroom. There had merely been a lack of ventilation in the bathroom.
16. In the kitchen she had been unaware of the crack but she knew of the leak. Ms Halcrow submitted that the Landlord accepted that there had been a leak from the upstairs flat via the kitchen ceiling. That leak had to be repaired. She was unaware of any contact with the upper owner. No work had been done on this given the lack of rental payments.
17. Other than in respect of the rent arrears and the notice to quit the Committee had no reason to doubt the evidence of Miss Halcrow which was given with a willingness to assist the Committee. The reason for the Committee's reservation in relation to the arrears and notice issues is that she was slightly more uncertain about these matters and lacked documentation to confirm her evidence.

Findings of Fact

18. Having considered all the evidence, including their inspection, the Committee found the following facts to be established:-
 - (a) The Property is a ground floor flat in a two storey tenement. It comprises a living room, kitchen, two double bedrooms and a bathroom.
 - (b) On or about 8 August 2014 the Tenant and the Landlord entered into a lease of the Property for 6 months expiring on 7 January 2015. In clause 1.1 of the lease the parties agreed that if the lease was not terminated by either party to end of that date it would continue on a rolling month to month basis until terminated by the Tenant or Landlord through giving no less than two months written notice.
 - (c) Notice to quit has been given by the Landlord to take effect on or about 7 November 2015.
 - (d) The living room is at the front of the Property. It has two UPVC double-glazed windows. The rightmost of these has the window unit screwed

to the frame in the top left, and top right corners and in the centre (below the handle). It cannot be opened.

- (e) The front door has two locks. One is a mortice lock installed recently. It is in proper working order. The other is a Yale lock which lacks a staple unit on the door frame which would hold the bolt.
- (f) There is a back door leading from the kitchen to the yard area behind the building. It is locked. Neither agents nor the Tenant has a key. The Tenant had been issued with a key.
- (g) The kitchen ceiling has staining from a leak. The staining is at the join of two ceiling panels. It appears to be historic.
- (h) The bathroom has a single glazed opaque sash and case window. It has been painted and is not capable of being opened. There are a few light mould stains on the lower frame and in the corners of the window. These areas are dry and there is no dampness.
- (i) There is a mains connected smoke alarm in the hallway from which there is entry into all of the rooms. There is no smoke alarm in the kitchen or other rooms.
- (j) The schedule of photographs attached to this Determination.

Reasons for Decision

- 19. The Committee required to decide whether in respect of the complaints the Property failed to meet any aspect of the repairing standard in section 13 of the Act.
- 20. The duty of the landlord to ensure that during a tenancy a house meets the repairing standard in section 13 of the Housing (Scotland) Act 2006 applies only where the landlord becomes aware that work requires to be carried out for the purposes of complying with the repairing standard (2006 Act, s.14(3)). In addition no application can be made to the Panel unless the tenant has notified the landlord that work requires to be carried out for the purpose of making the house meet the repairing standard (s.22(3) of the 2006 Act). This is reflected in instructions to tenants at part 4b of the application form and in Note 1 on that form.
- 21. On complaint (1) it was accepted on behalf of the Landlord that the window in the living room could be seen as a fixture which was not in a reasonable state of repair nor in proper working order. The Committee found that there was therefore a breach of section 13(1)(d) of the 2006 Act as well as a breach of section 13(1)(b) given that the window forms part of the structure and exterior of the Property.

22. Given that the window was only one of two windows in the living room and there was no difficulty with the other window, the Committee took the view that it could not be said that the fixed nature of the window rendered the living room and therefore the Property not reasonably fit for human habitation. There was no breach of section 13(1)(a) of the 2006 Act in that respect.
23. Complaint (2) related to the front door lock. On the basis of the finding in fact (e) above, the Committee concluded that the Yale lock was not in a reasonable state of repair nor in proper working order. In these circumstances the Property failed to meet the repairing standard in section 13(1)(d) in this respect. The existence of a functioning mortice lock meant that the Property was sufficiently secured and there was no breach of section 13(1)(a).
24. Complaint (3) related to the back door key being missing. The back door forms part of the structure of the Property and in any event is a fixture provided by the Tenant. The Committee took the view that a door which cannot be opened cannot be seen as being in proper working order. There was therefore a failure to meet the repairing standard in section 13(1)(b) and 13(1)(d) of the 2006 Act.
25. The duty of the Landlord to ensure that the repairing standard is complied with does not require any work to be carried out for which the Tenant would be liable by virtue of his duty to use the Property in a proper manner (2006 Act, section 16(1)(b)(i)). The work necessary to allow the back door to be opened is the replacement of the lock. The apparent loss by the Tenant of her key should not however necessitate replacement of the lock. This is because in terms of clause 15.5 of the lease the Landlord bound himself to retain a set of keys to allow the Tenant to obtain a duplicate set in the event of loss. Therefore the exclusion of the Landlord's duty set out above does not apply.
26. Complaints (4) and (5) related to the bathroom. It was accepted on behalf of the Landlord that there was a breach of the repairing standard in relation to the window which could not be opened. With regard to the allegation of dampness the Committee concluded that there was no ongoing dampness and that any dampness which had given rise to staining had been caused by condensation during the use of the bathroom with a closed window. For these reasons the window only fell below the repairing standard in section 13(1)(b) and (d) of the 2006 Act. Complaint (5) was rejected.
27. Complaint (6) related to the kitchen ceiling. The Committee made the findings in fact at (g) above. The Landlord's representative accepted that there was a leak to be attended to. The issue for the Committee is whether the ceiling of the Property in the kitchen is watertight. While the staining on the ceiling appears to be historic, Ms Halcrow accepted that there had been no contact with the upper flat owner or residents. In these circumstances given her concession and the lack of evidence as to how

the leak had come about, the Committee conclude that in relation to the kitchen ceiling the Property is not watertight and that there is a failure to meet the repairing standard in terms of section 13(1)(a) of the 2006 Act.

28. The need to carry out work to deal with the complaints and breaches of repairing standard that have been upheld was something of which the Landlord's agents were aware on or about 11 July 2015. The Landlord has had a reasonable time to carry out the work necessary to deal with the breaches of repairing standard. Accordingly the Committee make the decision set out above.
29. The Committee considered the terms of the Repairing Standard Enforcement Order which requires to be made. It is not in a position, having regard to the inspection, to identify the precise cause of the leak into the kitchen. The Committee therefore proceeds to make an Order requiring the specialist investigation of the leak to allow identification of the causes and the carrying out of remedial works by the upper flat owner or resident, if necessary pursuant to an order of the court under the Tenements (Scotland) Act 2004. If evidence can be obtained from the upper flat owner or residents that the cause of the leak has been dealt with it may be that this will allow revocation of the Order as unnecessary in respect of the kitchen matter. The Order also requires the carrying out of repairs to deal with the other complaints that have been upheld.
30. The Landlord is reminded that it is a criminal offence for him to enter into a tenancy or other occupancy arrangement in relation to the Property while a Repairing Standard Enforcement Order has effect in relation to the Property.

Decision

31. The Committee determined that the Landlord had failed to comply with the duty imposed by section 14 (1) (b), of the Act in relation to the failure of the Property to meet the repairing standard in relation to (1) the window in the living room; (2) the Yale lock on the front door; (3) back door opening; (4) the bathroom window; and (5) the kitchen ceiling leak.
32. The Committee proceeded to make a Repairing Standard Enforcement Order as required by section 24 (2). The decision of the Committee is unanimous.

Rights of Appeal

33. A landlord aggrieved by this decision of the Committee may appeal to the Sheriff by summary application within 21 days of being notified of that decision.
34. Unless the lease or tenancy between the parties has been brought to an end, the appropriate respondent in such appeal proceedings is the other party to the proceedings and not the Committee which made the decision.

Effects of Section 63 of the 2006 Act

- 35. Where such an appeal is made, the effect of this decision and of any Order made in consequence of it is suspended until the appeal is abandoned or finally determined.
- 36. 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.

Signed **D. Bartos**Date: 5 November 2015
 David Bartos, Chairperson

Signature of Witness: **L. Galloway**Date: 5 November 2015

Name of witness: LUCY GALLOWAY

Address: 7 WHITEBALES
 EDINBURGH
 EH10 7JQ

Occupation of witness: SOLICITOR



Living Room window. Note screws at top and to left of handle



Front Door – Note missing snib staple / keeper

This is the first of three pages comprising the
schedule of photographs referred to in the
decision under section 24(1) in case reference
PRHP/RP/15/0190

Dave Barber
Lacy Cradock



Bathroom window – painted shut

This is the record of three pages comprising the
schedule of photographs referred to in the
decision under section 24(1) in case reference
PR14P/RA/15/0190

David Burt
Lucy Galloran



External view – bathroom window in gable wall



Kitchen ceiling showing leak from flat above

This is the third of three pages comprising the
schedule of photographs referred to in the
deed in under section 24(1) in case reference
PRHP/RP/15/0190

David Butler
Lucy Graham