



Repairing Standard Enforcement Order

Ordered by the Private Rented Housing Committee

prhp ref: RP/15/0202

Re 1 Kirkstone, Kirkvale Court, Glasgow, G77 5HG being the subjects registered in the Land Register of Scotland under title number REN44139 ('the Property')

The Parties:-

Ms Katy McColl residing at the Property ('The Tenant')

Mr Philip Firestone residing at 7 The Toll, Busby Road, Clarkston, Glasgow G76 7BG ('The Landlord')

NOTICE TO Mr Philip Firestone

Whereas in terms of their decision dated 8TH October 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, in terms of Section 13 of the said Act to ensure that the house is wind and watertight and in all other respects reasonably fit for human habitation, 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 and that 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.

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 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 following:

(One) The Landlord is to eradicate water ingress in the principal bedroom (Section 13(1) (a) of the Act).

(Two) The Landlord is to install sufficient mechanical extraction in the bathroom to eradicate the formation of mould on the walls.
(Section 13 (1) (b) of the Act).

(Three) The Landlord is to replace or repair the W.C. so that it operates effectively in removal of solid matter.
(Section 13(1) (c) of the Act).

(Four) The Landlord is to provide a space heating system that works efficiently and does not have excessive noise when being operated. The Landlord requires to provide to the Private Rented Housing Panel Committee a report from a suitably qualified engineer confirming that the space heating system works efficiently and without excessive noise.

(Section 13(1) (c) of the Act).

The Private Rented Housing Committee requires that these works must be completed by 7th December 2015.

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.

Signed. **M. McAllister** Date 19th October 2015
Martin J.
Chairperson,

K. McDonald

..... witness: Kirsty McDonald, Solicitor, 51 Hamilton
Street, Saltcoats



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

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Re 1 Kirkstone, Kirkvale Court, Glasgow, G77 5HG being the subjects registered in the Land Register of Scotland under title number REN44139 ('the Property')

The Parties:-

Ms Katy McColl residing at the Property ("The Tenant")

Mr Philip Firestone residing at 7 The Toll, Busby Road, Clarkston, Glasgow G76 7BG ('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) of The Housing (Scotland) Act 2006 ("the 2006 Act") in relation to the Property, determined that the Landlord has failed to comply with the duty imposed by Section 14 (1)(b) of the 2006 Act and made a repairing standard enforcement order in terms of Section 24(2) of the said Act.

Background

- 1. By application dated 12TH July 2015 the Tenant applied to the Private Rented Housing Panel for a determination of whether the Landlord has failed to comply with the duties imposed by Section 14 (1) (b) of the 2006 Act.**
- 2. The application by the Tenant stated that she considered that the Landlord has failed to comply with his duty to ensure that the Property meets the repairing standard. She contended that the Property is not wind and watertight and in all respects reasonably fit for human habitation; that the structure and exterior of the house (including drains, gutters and external**

pipes) are not in a reasonable state of repair and in proper working order and that the installations in the Property for the supply of water, gas and electricity and for sanitation, space heating and heating water are not in a reasonable state of repair and in proper working order.
In particular the application stated that:-

- 2.1 There is a loud banging noise coming from the boiler and radiators.
- 2.2 The window in the main bedroom is not watertight.
- 2.3 The toilet does not adequately flush away the contents.
- 2.4 In a subsequent letter to the landlord the Tenant stated that there is mould on the bathroom walls. This letter was incorporated into the application.

3. The President of the Private Rented Housing Panel, having considered the application, referred the application under Section 22 (1) of the Act to a Private Rented Housing Committee. The Committee comprises of Martin McAllister (Chairperson) and Susan Napier (Surveyor Member)

4. The Private Rented Housing Panel served a Notice of Referral under and in terms of Schedule 2, Paragraph 1 of the Act upon both the Landlord and the Tenant, dated 25th August 2015.

5. The Committee attended at the Property on 2nd October 2015 for an inspection. The tenant was present and Mr Adam Arr, the Landlord's representative was present. The committee noted that the Property is a ground floor flat in block of six flats. The Property's accommodation comprises a living room, kitchen, bathroom and three bedrooms. There are common gardens to the front and rear of the Property. A schedule of external and internal photographs is attached to this Determination. The committee found the following:-

6. Findings on Inspection

6.1 Bedroom Window

The Committee could find no fault with the window and the Tenant explained that, when it rains heavily, there is water ingress at the top of the window. The Committee noted evidence of past water ingress at the top and side of the window frame. The wallpaper is damaged and the Tenant showed the committee members the bowl that she uses to collect the water. The surveyor member of the Committee used a damp meter on the window surround above and to the side of the window and found there to be high readings of 15 and 20. The Committee inspected the exterior of the Property and found that the render above the bedroom window showed signs of a previous repair.

6.2 Bathroom Walls

The bathroom has ceramic tiles on the floor and walls. The Committee noted that there was mould on the tiled walls and grout. The tenant said that she does clean the walls with bleach but that the mould returns. There is a large opening window. The Tenant said that it was not practical to leave the window

open for any length of time because with the window open there is a large opening and there are consequent issues with security and privacy. The Tenant said that the shower is very effective and when used creates a lot of steam.

6.3 The Toilet

The W.C. is a modern close coupled system with a water saving cistern. The Tenant said that the flushing mechanism is not effective in flushing away solid matter and that a jug of water has to be used to assist in the flushing. The tenant demonstrated the flushing mechanism with toilet paper placed in the W.C. and the paper flushed away but the committee noted that it was not a powerful flush.

6.4 The Boiler and heating system.

The heating system was not switched on at the time of the inspection. The Tenant explained that the boiler had been replaced after the commencement of the tenancy. A new combination boiler had replaced the old boiler which had been of a traditional type which heated water in a cylinder. She said that the boiler provided hot water without issue. She said that, after an hour or so of the boiler being operated, excessive banging noises could be heard from the central heating system. She said that the noise was so great that the system could not be operated. The Tenant said that she had to use alternative electric radiators. The Committee noted the existence of an oil filled electric radiator in a bedroom.

6.5 Smoke and heat detection sensors

The Tenant had made no comment about these in her application but the Committee noted that the provision of these did not comply with current regulations

7. At the conclusion of the inspection Mr Arr explained that, because of absence in his office, it would not be possible for a representative of the Landlord to be present at the Hearing. The Committee thought it appropriate that Mr Arr be invited to make comment on the issues arising from the application and the Tenant had no objection to him doing so.

Mr Arr said that has arranged for a window technician to look at the bedroom window and that this is scheduled for Monday 5th October. He said that, having examined the exterior of the Property, it may be that the problem of the water ingress lay not in the window itself.

Mr Arr said that various plumbers had looked at the issue of the W.C. and that one had recommended the installation of a new system. Mr Arr did not contend that there is not an issue with the flushing of the W.C. and said that, since the matter had been raised by the Tenant, the internal workings of the cistern had been replaced but that this had not resolved the problem.

Mr Arr said that a number of engineers had commented on the issue with the heating system and that one solution might be replacement of the thermostatic valves. He said that the Landlord has authorised this work to proceed. Mr Arr said that if this did not resolve the issue it may be that

pipework will require to be replaced. He said that problems frequently arise when a combination boiler is fitted to an old heating system.

Mr Arr said that the Property is one of a number of properties that his company manage which will be part of a programme to upgrade the heat and smoke detection systems. He said that this work is scheduled to be carried out by a contractor in November 2015.

The Hearing

Following the Inspection, a Hearing took place at Wellington House, Wellington Street, Glasgow. The Tenant was present and gave evidence.

The Issues

8. Sections 13(1)(a),(c) and (d) of The Housing (Scotland) Act 2006 provide that the Property must be wind and watertight and in all respects reasonably fit for human habitation, 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 and 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.

The Committee had before it the application and copies of letters sent by the Tenant to the Landlord dated 10th December 2014 and 7th July 2015. The Committee also had written representations of the Landlord dated 18th September which coincided with what Mr Arr had said at the Inspection.

The Tenant said that water drips on to the window sill when there is heavy rain and that she has to catch it in a bowl which she keeps on the window sill.

Ms McColl said that a lot of steam builds up in the bathroom when the shower is used and that she cannot really open the window when the shower is being used because someone in the back garden could see in to the bathroom. She also said that because of the tiled walls it is worse and she expressed the view that ventilation alone would not be sufficient and that the air in the bathroom needed to be moved. She said that she does clean the mould off the tiles and grout but that it returns.

The Tenant said that the toilet does not flush away solid matter and that a jug of water has to be used to assist the process. She said that she finds this to be embarrassing especially when she has to explain this to guests using the facility. She said that she thought the design of the bowl contributed to the problem.

Ms McColl said that the new boiler had been fitted after she had commenced her tenancy and that its installation had been facilitated by her accessing grant monies to pay for it. She said that she is afraid when the system makes the noise that it does and she also has concerns because it must be noisy for her neighbours. She said that she had to use three fan heaters which she purchased and that she had to borrow an electric oil fired radiator from her

work to heat her son's bedroom which she said is particularly cold. She said that the situation with the heating is very frustrating because she has been trying for so long to have the system repaired. The Tenant's letter dated 10th December 2014 makes reference to her having spoken to the Landlord's representative with regard to the issue on three separate occasions since the boiler had been installed in March 2014. Ms McColl said that an engineer had told her that there is no issue with the boiler and she confirmed that it produces hot water effectively. The Tenant said that there is sometimes a sulphur smell from the boiler and that she had been told by an engineer that fitting of a filter may deal with this. The Tenant said that there is a current Gas Safety Certificate and that she would scan a copy to the PRHP office.

The Committee found

9.1 There is evidence of water ingress in the area of the window in the principal bedroom and that this is in contravention of Section 13(1) (a) of the 2006 Act.

9.2 There is mould on the bathroom walls caused by inadequate ventilation/extraction and that this is in contravention of Section 13(1) (b) of the 2006 Act.

9.3 The W.C. is not effective in flushing away solid matter and that this is in contravention of Section 13(1) (c) of the 2006 Act.

9.4 The central heating system is not able to be used without excessive noise. There is therefore not an efficient working system in the Property for space heating. The committee considered this to be in contravention of Section 13 (1) (c) of the 2006 Act.

10.Reasons

10.1 Water ingress: The evidence of the Tenant regarding water ingress was credible. The committee relied on what it had observed at the Inspection.

10.2 Mould on the bathroom walls: The Committee saw mould when it conducted the Inspection. The Tenant's explanation of the reasons for not opening the window when the shower is being used was credible especially since the Committee had seen the window and had noted that when open it did not allow privacy.

10.3 The W.C.: At the Inspection, Mr Arr conceded that there had been an issue with the flushing of the W.C. because he said that an attempt had been made to repair it. He did not contend that there is not a continuing issue. The tenant's evidence was held to be credible. The committee also observed that the W.C. did not have a powerful flush.

10.4 The central heating system: At the Inspection, Mr Arr accepted that there is an issue with the central heating system and said that work is scheduled to attempt to resolve it. The Tenant's evidence on the matter was credible. The

Committee also accepted that the Tenant had been trying to have the system fixed for some time. Not only did the Tenant give evidence on this but the copy letters before the Committee which the tenant had sent to the Landlord evidenced this.

11. The Committee considered whether or not any defects it found established brought the Property below the repairing standard in terms of the 2006 Act. In respect of the Findings it had made, the Committee considered that a repairing standard enforcement order should be made. There was clearly water ingress around the bedroom window and the landlord required to find the cause and eradicate it. There is evidence of mould on the walls of the bathroom and the combination of the steam generated by the shower, the ceramic tiled walls and ceiling and the inability to properly use the window to allow steam to escape and ventilate the bathroom led the Committee to the conclusion that mechanical extraction requires to be installed in the bathroom. The Committee considered that the Landlord requires to resolve the issue of the W.C and the central heating system that cannot be used. The committee made no finding in respect of the Tenant's evidence with regard to the smell from the heating system since it concluded that notice of this had not been given to the Landlord. The Committee did, however, hope that any work being carried out to the central heating system would include this aspect. The Committee noted that there is scheduled work in respect of smoke/heat alarms.

Decision

The Committee accordingly determined that the Landlord has failed to comply with the duties imposed by Section 14(1)(b), of the Act, as stated.

12. The Committee proceeded to make a Repairing Standard Enforcement Order as required by section 24(1) and 24(2) of the 2006 Act in the following terms:

**(One) The Landlord is to eradicate water ingress in the principal bedroom
(Section 13(1) (a) of the Act).**

**(Two) The Landlord is to install sufficient mechanical extraction in the bathroom to eradicate the formation of mould on the walls.
(Section 13 (1) (b) of the Act).**

**(Three) The Landlord is to replace or repair the W.C. so that it operates effectively in removal of solid matter.
(Section 13(1) (c) of the Act).**

(Four) The Landlord is to provide a space heating system that works efficiently and does not have excessive noise when being operated. The Landlord requires to provide to the Private Rented Housing Panel Committee a report from a suitably qualified engineer confirming that the space heating system works efficiently and without excessive noise. (Section 13(1) (c) of the Act).

In view of the nature of the failure to meet the Repairing Standard as defined in the 2006 Act, the committee determined that the repairing standard enforcement order requires to be complied with by 7th December 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.

Effect of section 63

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.

M. McAllister

Signed
2015

Martin J. McAllister
Chairperson

Date 19th October