



Repairing Standard Enforcement Order

Ordered by the Private Rented Housing Committee

Case Reference Number: PRHP/RP/15/0328

Re: 43 Lilac Avenue, Clydebank G81 4NX ("the property")

Land Register Title No: DMB37034

The Parties:-

Miss Amber Bailey and Mr Kenneth Hopkirk, residing at the property ("the tenants")

Miss Sandra Findlay, 5 Ladeside Terrace, Shiskine, Isle of Arran KA27 8EE ("the landlord")

The committee: – Sarah O'Neill (Chairperson); Carol Jones (Surveyor Member)

NOTICE TO: Miss Sandra Findlay (the landlord)

Whereas in terms of its decision dated 3 March 2016, the Private Rented Housing Committee determined that the landlord had failed to comply with the duty imposed on him by Section 14 (1) (b) of the Act, and in particular that the landlord has failed to ensure that the house meets the repairing standard in that:

- the property is not wind and watertight and in all other respects reasonably fit for human habitation.
- 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.

The Private Rented Housing Committee now requires the landlord to carry out such work as is necessary for the purpose 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 before the date specified in this order.

In particular the Private Rented Housing Committee requires the landlord to:

1. Carry out the works recommended in the dampness survey report by Peter Cox Limited dated 30 December 2015, namely installing extractor fans in the kitchen and bathroom of the property.
2. Commission a suitably qualified building contractor to identify any external drainage issues and any conditions which may be causing damp in the property in relation to the front garden and in particular the paved path under the front bedroom window.
3. Carry out any remedial works recommended by that contractor, in order to ensure 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.
4. On completion of all the above works, ensure that all affected finishes and decoration are restored to an acceptable standard.

The Private Rented Housing Committee orders that the works specified in this order must be carried out and completed within the period of **two months** from the date of service of this notice.

Rights of Appeal

A landlord or tenant aggrieved by the decision of the 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 any order made in consequence of it is suspended until the appeal is abandoned or finally determined. 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.

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 Sarah Frances O'Neill, solicitor, Chairperson of the Private Rented

Housing Committee, at Glasgow on the third day of March, Two Thousand and Sixteen before this witness -

P Stewart

witness

S O'Neil

chairperson

PAUL STEWART name in full

450 ARGYLE ST Address

GLASGOW

TEAM LEADER Occupation



Determination by Private Rented Housing Committee

Statement of Decision of the Private Rented Housing Committee

(Hereinafter referred to as "the committee")

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

Case Reference Number: PRHP/RP/15/0328

Re: 43 Lilac Avenue, Clydebank G81 4NX ("the property")

Land Register Title No: DMB37034

The Parties:-

Miss Amber Bailey and Mr Kenneth Hopkirk, residing at the property ("the tenants")

Miss Sandra Findlay, 5 Ladeside Terrace, Shiskine, Isle of Arran KA27 8EE ("the landlord")

The committee: – Sarah O'Neill (Chairperson); Carol Jones (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) of the Housing (Scotland) Act 2006 ("the Act") in relation to the property, and taking account of all the available evidence, determines that the landlord has failed to comply with the duty imposed on her by Section 14 (1) (b) of the Act. The committee therefore issues a Repairing Standard Enforcement Order. The committee's decision is unanimous.

Background

1. By application dated 27 November 2015, the tenants applied to the Private Rented Housing Panel ("the panel") for a determination that the landlord had failed to comply with her duties under Section 14(1) of the Act.
2. In their application, the tenants stated that they believed the landlord had failed to comply with her duty to ensure that the property met the repairing standard as set out in sections 13(1) (a) and (b) of the Act. Their application stated that the landlord had failed to ensure that:
 - the house is wind and watertight and in all other 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.
3. The tenants complained in their application form that there was dampness and mould in both bedrooms, and that they could not use the bedrooms as a result. They stated that there was mould in both rooms; that their furniture was being damaged; and that they were concerned for the health of their infant daughter. They stated that the landlord was unwilling to do the repairs, and was saying that the damp was due to condensation as a result of the tenants' use of the property. They stated that the local authority environmental health department had visited the property and had confirmed that the problem was due to extensive dampness in the first bedroom, and not condensation. They also said that there was a drainage problem outside the window of the first bedroom.
4. The tenants stated in their application that the following work required to be carried out at the property:
 - Dampness in first bedroom needs to be addressed and corrected
 - The second bedroom needs to be renovated as the smell from the dampness (wet, rotting wood) is very strong
5. On 22 December 2015, the President of the panel issued a minute of decision stating that she considered that in terms of section 23 (3) of the Act there was no longer a reasonable prospect of the dispute being resolved between the parties at a later date; that she had considered the application paperwork submitted by the tenant, comprising documents received between 30 November 2015 and 21 December 2015; that neither party had agreed to mediation; and intimating her decision to refer the application to a panel committee for determination.

6. The President of the panel wrote to the parties on 5 January 2016, notifying them under and in terms of the 2006 Act of her decision to refer the application under Section 22(1) of the Act to a private rented housing committee and that an inspection and a hearing would take place on 15 February 2016. Written representations were requested by 26 January 2016. No written representations were received from either party by the deadline.
7. On 13 January, an email was received from the landlord's agent, advising that the tenant had given notice to the landlord, who had accepted this. The landlord's agent later confirmed that the last day of the tenancy would be 3 March 2016. On 3 February, a letter was received from the tenants confirming that they were still living in the property; that no works had been completed; and that they had received no contact from the landlord or the letting agent regarding the repairs. They stated that they had been asked by the landlord to leave the property on 3 March, but that they still wished for the committee's inspection and hearing to go ahead.
8. On 2 February 2016, the committee issued a direction by recorded delivery to the landlord, requiring her to provide copies of:
 - 1) the report from the local authority environmental health department relating to the property which was referred to in the tenants' application paperwork, which indicated that this report was to be sent to the landlord's agent, and
 - 2) The report from Phil Cox (sic) relating to the property which the tenant had indicated was to be sent to the landlord/ her agent.
9. The direction also required the landlord to confirm that Miss Sandra Findlay, the landlord named on the tenancy agreement paperwork, is the owner of the property (who is named as Sandra McCarty in the land certificate). The committee required the landlord to comply with the direction by 11 February 2016. No response was received from the landlord by that date.

The inspection

10. The committee inspected the property on the morning of 15 January 2016. The weather conditions at the time of the committee's inspection were dry and bright. The tenants were present at the property during the inspection. The landlord was not present at the inspection. Photographs were taken during the inspection and are attached as a schedule to this decision.

The property

11. The property is a lower flat situated in a four-in a block former Local Authority block of flats estimated to be in the region of 80 years old and located around 2.5 miles north-west of Clydebank town centre. The property comprises: a hallway, living room, two bedrooms, kitchen, bathroom and conservatory/extension. The property was let to the tenants on an unfurnished basis, aside from two wardrobes in the rear bedroom which were in the property when they moved in, but had later been removed.

The hearing

12. Following the inspection, the committee held a hearing at Wellington House, 134-136 Wellington Street, Glasgow G2 2XL. The tenants were present at the hearing. The landlord was neither present nor represented at the hearing. The committee was satisfied that, in terms of regulation 24 of the Private Rented Housing Panel (Applications and Determinations) (Scotland) Regulations 2007, the requirements of regulation 19 (1) regarding the giving of notice of a hearing had been complied with. The committee therefore decided to proceed to make a decision on the basis of the inspection, the oral representations made by the tenants at the hearing and the other evidence before the committee.
13. An email was received by the panel from the landlord's agent the day following the hearing, advising that there had been a misunderstanding as to the hearing venue. This stated that the agent had attended the property at 11am for a hearing, to discover that the hearing was in fact taking place elsewhere. The agent stated that they had reports from damp specialists and had also been dealing with West Dunbartonshire Council regarding the matter, and offered to discuss the matter further.
14. The panel administration sent the landlord's agent a further copy of the committee's direction on 18 February, requesting copies of the documents required. The landlord's agent replied by email the same day, stating that the direction had not been received, and enclosing copies of 1) dampness survey report from Peter Cox Ltd in respect of the property dated 30 December 2015; 2) various email correspondence between the landlord's agent and the Environmental Health Department at West Dunbartonshire Council dated between 8 December 2015 and 14 January 2016; and 3) letter from the landlord's agent to West Dunbartonshire Citizens' Advice Bureau dated 23 November 2015.

The evidence

15. The evidence before the committee consisted of:

- The application form completed by the tenants.
- Registers Direct copy of Land Register title DMB37034.
- Form AT5 relating to the property and signed by the landlord's agent and the tenants dated 3 March 2015, together with standard letter from the landlord to the tenants regarding the landlord's repairing standard obligations; notice to terminate the tenancy as at 2 March 2016; and copy of tenancy deposit scheme prescribed information relating to the property. The tenants also produced a copy of the tenancy agreement between the parties at the hearing.
- Various email correspondence between Miss Bailey and the landlord's agent regarding the complaints made in the tenants' application and other issues dated between 18 May and 27 November 2015.
- Letter from the landlord's agent to the tenants dated 11 November 2015.
- Email correspondence between the tenants and West Dunbartonshire Citizens Advice Bureau dated 17 November 2015.
- Letter to the landlord's agent from West Dunbartonshire Citizens' Advice Bureau dated 16 November 2015
- Letter from the landlord's agent to the panel dated 17 December 2015, advising that the matter was in hand and that the agent was awaiting a formal report to confirm any findings of dampness.
- Email from Miss Bailey to the panel dated 8 December 2015, stating that the tenants had just been visited by a company called Phil Cox (sic) whose visit had been arranged by the council.
- Email to the panel from the landlord's agent dated 13 January 2016.
- Letter from the tenants to the panel dated 3 February 2015.
- Dampness survey report from Peter Cox Ltd in respect of the property dated 30 December 2015.
- Various email correspondence between the landlord's agent and the Environmental Health Department at West Dunbartonshire Council dated between 8 December 2015 and 14 January 2016
- Letter from the landlord's agent to West Dunbartonshire Citizens' Advice Bureau dated 23 November 2015.

- The oral representations of the tenants at the hearing.
- The committee's inspection of the property.

Summary of the issues

16. The issue to be determined was whether the property meets the repairing standard as set out in Section 13 of the Act, and whether the landlord had complied with the duty imposed on her by section 14 (1) (b).

Findings of fact

17. The committee made the following findings in fact:

- The tenants entered into a tenancy agreement with the landlord on or around 3 March 2015 to rent the property for one year from that date.
- The owner of the property is Miss Sandra Findlay. Miss Findlay is the registered landlord and is the landlord named in the tenancy agreement and associated paperwork. The owner is shown on the land certificate as Sandra McCarty. In the absence of any confirmation from the landlord or her agent that this is the same person, as required by the committee's direction, the committee determines that on the balance of probabilities Miss Findlay is the owner of the property.
- The property was let through the landlord's agent, Clydebank Estate and Letting Agents, 48 Kilbowie Road, Clydebank G81 1TH.
- The committee in its inspection carefully checked the items which were the subject of the complaint. The committee observed the following:
 - i. The front bedroom was cold, despite the radiator being turned on.
 - ii. The radiator in the front bedroom was not as warm as might have been expected.
 - iii. The radiator appears to be an older style single panel type situated on an internal wall and may not be sufficient to heat the room adequately especially given the size of the room and the fact that three of the walls in that room are external.
 - iv. Damp readings were taken in the front bedroom, and high readings were found along the front elevation underneath the window, the base of the hip end wall and inside the fitted cupboard off the bedroom.
 - v. Damp readings were taken in the rear bedroom. High damp readings were found around the window and along the hip end wall on the stairwell side.

- vi. There was evidence of some condensation on the window sills in both bedrooms.
- vii. No significant mould was visible in either bedroom, but the tenant said that this had been present and had been cleaned off.
- viii. The windows in the property were fitted with trickle vents, which were open.
- ix. There was no evidence of pooling outside the property under the front bedroom window, but there had been no recent rain at the time of inspection.
- x. The underfloor vent on the outside front elevation of the building, underneath the front bedroom window, was at ground level and partly covered by the stone paving, which appeared to have been laid on top of the already high ground level.

Reasons for decision

- 18. It was clear from the correspondence that the tenants had complained to the landlord / her agent about a number of matters during their tenancy. They made clear to the committee, however, that they only wished it to consider the complaints set out in their application form, namely the dampness problem within the bedrooms, and the drainage problem at the front of the property.
- 19. The tenants told the committee that they had first noticed dampness in the front bedroom in April 2015, shortly after moving in. They said that when they moved in, the room had been decorated with wallpaper. The wallpaper had been peeling at the corners when they moved in, but it was only when they stripped the paper off in order to redecorate the room that they became aware that the walls were damp and mouldy. The letting agent had sent a contractor to look at this bedroom shortly afterwards, who had told them that the mould was caused by condensation, which was due to the tenants' improper use in failing to heat and ventilate the property adequately.
- 20. Ms Bailey told the committee that as soon as the tenants had moved in, they had found that the gas boiler was constantly losing pressure, and that the radiator in the front bedroom was not heating up properly. In May 2015, a contractor sent by the letting agency to carry out legionella testing on the central heating system had identified a leak in the radiator in the front bedroom. The leak was repaired, but this radiator continued to provide minimal heat. Ms Bailey said the contractor had stated that the pipes for the radiator were too thin. She said she had told the letting agency about this, and that she believed that the problems with the radiator could be the cause of the mould.
- 21. Ms Bailey told the committee that the tenants had later found mould in the rear bedroom behind two large wardrobes which the landlord had left behind, and had notified the landlord's agent about this in June 2015. They had asked the

landlord's agent to arrange for the wardrobes to be removed so that the mould could be treated. The wardrobes were removed some months later.

22. It was clear from the correspondence before the committee that the tenants had complained to the letting agent about damp and mould in both bedrooms on numerous occasions. They said they had been forced to sleep in the living room with their young baby for some months, and also had to throw out some of their own furniture and other belongings, as these had been damaged by the mould.
23. Ms Bailey told the committee that in November 2015, the local authority environmental health department had come to assess the dampness in the property, and had told the tenant that the cause of this was coming from the front bedroom, and was not a result of condensation. They said it may be due to a problem with the drainage in front of the window in the front bedroom.
24. Ms Bailey told the committee that a company called Phil Cox (sic) had visited the property at the instigation of the local authority in December 2015 to look at the dampness. She said that the contractor had said that the problem was caused by condensation because there were no extractor fans in the property. He told the tenant that he would be recommending that at least two extractor fans, in the kitchen and in the bathroom or hallway, should be installed.
25. This was confirmed by the dampness survey report by Peter Cox Ltd dated 30 December 2015, which was finally received by the committee on 18 February 2016. This report had been prepared for West Dunbartonshire Council, following a survey of the property on 18 December 2015. The report considered internal areas of the property only. It found that moisture levels in the walls were below the threshold at which the company would recommend a remedial damp proof course. The report noted damp stains and black mould on the walls, skirting boards and windows in the front and rear bedrooms, and that no extract vents had been fitted to the property. The report found that there was an issue with condensation within the property, and recommended the installation of ventilation units (extractor fans) in the bathroom and kitchen of the property, in order to reduce condensation, prevent mould growth and improve air quality in the property.
26. It was clear from the correspondence that, prior to the dampness survey being carried out, the landlord and letting agent had consistently taken the position that the dampness and mould were due to condensation as a result of the tenants' actions. The committee found on the basis of the tenants' evidence that there was no reason to believe that the dampness was the result of their lifestyle. The committee found the tenants to be credible and reliable witnesses, and accepted their evidence that they kept the property well heated and

ventilated by opening windows. The committee also observed at its inspection that the windows were fitted with trickle vents which were open, although it notes that in the letter to West Dunbartonshire Citizens' Bureau of 23 November 2015, the letting agent states that on a recent visit to the property, it had been noted that the vents were closed. It was also clear that the tenants had first complained about the dampness before their baby was born in July 2015, when only the tenants were living in the property.

27. The committee did not observe significant mould at the property during its inspection. Ms Bailey said that the tenants had cleaned the mould away, but the tenants had submitted photographs of the mould with their application, which were before the committee. There was also clear evidence from the Peter Cox Limited report that there had been mould present in the property. Damp readings were taken in the front bedroom, and high readings were found along the front elevation underneath the window and inside the fitted cupboard off the bedroom. Damp readings were also taken in the rear bedroom, and high readings were found around the window and along the base of the hip end wall on the stairwell side. The committee also observed evidence of minor condensation on windowsills in the property.
28. The tenants told the committee that when it rained, water would pool on the ground under the front bedroom window, and they believed that this may have contributed to the damp problem, as suggested by the environmental health department. The committee did not observe any direct evidence of a drainage problem at its inspection, but noted that there had been no recent rain. The committee noted that the drainage issue did not appear to have been addressed in the dampness survey report. It noted at the inspection that the underfloor vent on the outside front elevation of the building, underneath the front bedroom window, was partly covered by the stone paving, which appeared to have been laid on top of an already high ground level. It determined that this may aggravate the drainage/ pooling problem, and considered, on the basis of the evidence before it, that on the balance of probabilities this may be contributing to the dampness problem in the front bedroom.
29. The committee considers on the basis of the evidence available to it that the problems observed within the property appear to be primarily due to condensation. The committee considers, however, that the drainage problem under the front bedroom window may also be a contributory factor. On the basis of its inspection and the tenant's oral evidence, the committee considers that the issues raised by the tenant at the hearing in relation to the heating system, and particularly the radiator in the front bedroom, may also be a contributory factor. The committee noted that the radiator was a single panel

type, located on an internal wall in a room where three of the walls are external, and it did not appear to be heating up properly.

30. Following its inspection and the hearing, the committee determined that:

- the property is not wind and watertight and in all other respects reasonably fit for human habitation.
- 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.

Observations by the committee

31. The committee wishes to make observations on two additional matters, which were not included in the tenant's application. Firstly, the committee considers that the issues raised by the tenant at the hearing in relation to the heating system, and particularly the radiator in the front bedroom, may have contributed to the dampness. The tenants had clearly notified the landlord's agent about the issues with pressure in the boiler, which had resulted in the leaking radiator being fixed. There was, however, no evidence before the committee that the tenants had notified the landlord in writing of their concerns that inadequate heating in the property was contributing to the dampness problem, prior to submitting their application. The committee was therefore unable to make a finding as to whether the heating installation in the property was in a reasonable state of repair and in proper working order.

32. The committee observes that the landlord may wish to consider engaging a suitably qualified, and Gas Safe registered, heating engineer to carry out a thorough check of the boiler and heating installation within the house to ascertain whether this is working effectively, including the adequacy of the type and provision of radiators.

33. Secondly, the committee notes that there was no carbon monoxide alarm within the property. At the time when the tenant's application was made, this was not a requirement under the repairing standard. The committee observes, however, that since 1 December 2015, the repairing standard includes a requirement under section 13 (1) (f) of the 2006 Act to ensure that there is satisfactory provision for giving warning if carbon monoxide is present in a concentration that is hazardous to health. Scottish Government guidance on the provision of carbon monoxide alarms in private rented housing is available at:

<https://www.scottishlandlords.com/LinkClick.aspx?fileticket=t4YWL-asYF0%3D&tabid=432>

34. This guidance states that private landlords must ensure that a detection system is installed in all dwellings they rent to tenants where there is:
- a fixed combustion appliance (excluding an appliance used solely for cooking) in the dwelling or
 - a fixed combustion appliance in an inter-connected space, for example, an integral garage
 - a combustion appliance necessarily located in a bathroom (advice would be to locate it elsewhere) - the CO detector should be sited outside the room as close to the appliance as possible but allowing for the effect humid air might have on the detector when the bathroom door is open.
35. The guidance also states that it is expected that landlords will have regard to it immediately and ensure CO detection is installed by 1 December 2015. However, if a landlord has a scheduled annual gas safety check it is reasonable to arrange work to install CO detectors at the same time. This will mean that no more than one year from the date of this guidance, all private rented properties should have adequate CO detectors installed.

Summary of decision

36. The committee determines that the landlord has failed to comply with the duty imposed by Section 14 (1) (b) of the Act, and in particular that the landlord has failed to ensure that the house meets the repairing standard in that 1) the property is not wind and watertight and in all other respects reasonably fit for human habitation and 2) 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.
37. The committee therefore makes a Repairing Standard Enforcement Order as required by section 24 (2) of the Act.

Rights of Appeal

38. A landlord or tenant aggrieved by the decision of the committee may appeal to the sheriff by summary application within 21 days of being notified of that decision.
39. The appropriate respondent in such appeal proceedings is the other party to the proceedings and not the panel or the committee which made the decision.

Effects of Section 63 of the 2006 Act

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

S O'Neil

Signed.......... Date..... 3/3/16.....

Sarah O'Neill, Chairperson

