



Repairing Standard Enforcement Order

Ordered by the Private Rented Housing Committee

Reference Number:- PRHP/RP/16/0011

Re: Property at Flat 4, 14 Main Street, Milngavie, G62 6BL all as more particularly described in and registered in Land Certificate DMB52210 (hereinafter referred to as “the property”).

The Parties:-

Mr Daevid Rosemun (“the Tenant”)

Mr Robert Scott Harvey, known as Scott Harvey, 16 Dumbrock Road, Milngavie G62 7RB (“the Landlord”)

NOTICE TO

Mr Robert Scott Harvey, known as Scott Harvey, 16 Dumbrock Road, Milngavie G62 7RB (“the Landlord”)

Whereas in terms of their decision dated 30 March 2016, 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 (“the Act”) and in particular the Landlord has failed to ensure that: the house is wind and watertight and in all other respects fit for human habitation, the structure and exterior of the house are in a reasonable state of repair and in proper working order, 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 that that the 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:-

- (a) To repair or replace all of the windows in the property to ensure that they are wind and watertight and in proper working order.
- (b) To repair or replace the front door and the surrounding frame of the front door to ensure that it is wind and watertight and in proper working order.
- (c) To repair the cracked masonry surrounding the bathroom window and reseal the window to ensure that the structure and exterior of the house are in a reasonable state of repair and in proper working order.
- (d) To repair the crack on the rendering located on the external wall outside the kitchen to ensure that the structure and exterior of the house are in a reasonable state of repair and in proper working order.
- (e) To carry out all works identified as potentially dangerous within the Electrical Installation Condition Report signed and dated 18 March 2016 and, once all of the said necessary works have been carried out, to produce a further report by a suitably qualified and registered electrician confirming that said works have been carried out.
- (f) To repair or replace as required all of the electric storage heaters located within the property.
- (g) To produce a Portable Appliance Test (PAT) on all portable electrical appliances and equipment supplied by the Landlord and located within the property.
- (h) To repair or replace the tumble dryer and any other appliance supplied by the landlord and identified in the PAT as defective.

The Private Rented Housing Committee order that the works specified in this Order must be carried out and completed within the period of 28 days 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.

Please note that in terms of Section 28(1) of the Act, a landlord who, without reasonable excuse, fails to comply with an 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 an RSEO has effect in relations to the house. This is in terms of Section 28(5) of the Act.

In witness whereof these presents type written on this page and the preceding page are executed by Patricia Anne Pryce, Chairperson of the Private Rented Housing Committee at Glasgow 7 April 2016 before this witness:-

Patricia Pryce

Signed

Patricia Anne Pryce, Chairperson

Date 7 April 2016
Nicholas Pryce

NICHOLAS PRYCE WITNESS
ACCOUNTANT
55 BLYTHWOOD ST, GLASGOW



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

Reference Number: PRHP/RP/16/0011

Re: Property at Flat 4, 14 Main Street, Milngavie, G62 6BL ("the Property ")

The Parties:-

Mr Daavid Rosemun ("the Tenant")

**Mr Robert Scott Harvey, known as Scott Harvey, 16 Dumbrock Road,
Milngavie G62 7RB ("the Landlord")**

Decision

The Committee, having made such enquiries as it saw fit for the purpose 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 concerned and, taking account of the evidence submitted by the Landlord and the application by the Tenant, determined that the Landlord has failed to comply with the duty imposed by Section 14 (1) (b) of the Act.

The Committee consisted of:-

Patricia Anne Pryce	-	Chairperson
Carol Jones	-	Surveyor Member

Background

- 1. By application comprising of all documents received between 18 January 2016 and 26 January 2016, from the Tenant, the Tenant applied to the Private Rented Housing Panel for a determination as to whether the Landlord had failed to comply with the duties imposed by Section 14 (1) (b) of 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**

property meets the repairing standard and the Tenant brought forward the following breaches:-

That there was dampness in the property.

That the property was not wind and watertight.

That there was a problem with the double glazing in the property.

That there was a problem with the electrics in the property as they were shorting and not working.

That there was a problem with the smoke alarms.

The tenant attached an email dated 28 December 2015 to his application notifying the landlord of these concerns and also raising the following issues:

That the shower unit is cracked.

That the storage heaters are erratic/possibly not working.

That the toaster shorted and heating element on tumble dryer not working.

That the light at top of stairs outside the front door is not working.

The Tenant considers that the Landlord is in breach of his duties under the Housing (Scotland) Act 2006 in relation to the repairing standard and in particular the Landlord has failed to ensure:-

- (i) The house is wind and watertight and in all other respects reasonably fit for human habitation.
- (ii) 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.
- (iii) 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.
- (iv) Any fixtures, fittings and appliances provided by the Landlord under the tenancy are in a reasonable state of repair and in proper working order.
- (v) The house has satisfactory provision for detecting fires and for giving warning in the event of fire or of suspected fire.
- (vi) The house has satisfactory provision for giving warning if carbon monoxide is present in a concentration that is hazardous to health.

3. By Minute dated 1 February 2016 the President of the Private Rented Housing Panel intimated a decision to refer the application under Section 23(1) of the Act to a Private Rented Housing Committee.

4. On 17 February 2016, the Private Rented Housing Committee ("the Committee") wrote to the Landlord to advise that the Committee intended to inspect the property on 29 March 2016 at 10.00 hours. The letter further confirmed that a Hearing had been arranged in relation to the application, which Hearing would be held in Wellington House, 134-136 Wellington Street, Glasgow, G2 2XL commencing at 13.00 hours.

Finally, the letter confirmed that any written submissions had to be received by the Committee by 9 March 2016.

5. On 26 February 2016, the Committee issued a Notice of Direction in terms of Schedule 2 Paragraphs 2(1) and 3(1)(b) of the Housing (Scotland) Act 2006 and Regulation 14 of the Private rented Housing Panel (Applications and Determinations)(Scotland) Regulations 2007, which Notice required the Landlord to provide to the Committee an Electrical Installation Condition Report (EICR) by a suitably qualified and registered electrician and a Portable Appliance Test on all portable electrical appliances and equipment supplied by the Landlord and located within the property. The said documents were to be lodged with PRHP no later than midday on 14 March 2016.

The Inspection

6. On 29 March 2016, the Committee attended at the property for the purposes of inspection of the property. The Tenant and the Landlord were present at the inspection.

At the inspection on 29 March 2016, the Committee noted the following points: -

- (a) The property comprises a three apartment first floor flat situated above shop units. It is constructed of red sandstone with rendered brick rear elevations and a pitched tiled roof. The flat is situated within the pedestrian precinct in Milngavie town centre which is located around 7 miles north-west of Glasgow city centre. This property is estimated to be more than one hundred years old or thereby and access is afforded via an external staircase to the rear.
- (b) The accommodation comprises all on one level an entrance vestibule, a hallway, two bedrooms, a living room with the kitchen located off the living room.
- (c) The larger bedroom has a large bay window consisting of three window units and the top right of the window unit located at the left most side when viewed internally within the property was not flush with the frame. There was a gap between this upper part of the window and the frame where an additional strip of foam seal had been added but the gap remained. The Tenant advised that this had been his first bedroom when he moved into the property in October 2015 but that he could not continue to use this room due to the draughts caused by the faulty window units and the fireplace/chimney, especially during periods of high winds. According to the Tenant the electric storage heater located in this room was not functioning properly. Damp meter

readings were taken by the Surveyor Member of the committee around the bay window but these were low and did not show any damp.

- (d) In the smaller bedroom, the window also appeared to be draughty. The Tenant advised that he had moved into this room and attempted to use this as his bedroom when he moved out of the larger bedroom but that he could not remain in this bedroom either due to the draughts emanating from the window causing the bedroom to be too cold whether or not the heating in the bedroom was switched on. The electric storage heater in this room was functioning.
- (e) There was some black spot mould located on the internal bathroom wall above the skirting board and above the window to the rear elevation and the external masonry surrounding the bathroom window was badly cracked. The Tenant complained that the bathroom was too cold to use in cold weather due to the draughts in the bathroom.
- (f) There was a high reading for dampness located in the bottom left hand corner of the bathroom, on the same wall where the window was located and adjoining the vestibule.
- (g) The front door of the property was badly swollen, cracked and rotten at the base. There was a large clear gap between the front door and the door frame where daylight freely filtered through. The door frame was also rotten. A new lock had been fitted to the front door but the Tenant complained that water ingress still occurred via the front door into the vestibule of the property during periods of heavy rain and wind. The Tenant also complained that the front door would swell up in heavy rain making it difficult for him to exit the property which concerned him if there were to be an emergency and he required to leave the property quickly.
- (h) There was a high reading for dampness on the bottom of the wall of the vestibule behind the front door which was directly through the wall from the bathroom from where the other high reading for dampness had been taken as described above.
- (i) The living room was now being used by the Tenant as his bedroom and living room area combined. The kitchen is located off this room but the Tenant kept the door to the kitchen closed and placed blankets around this door to prevent draughts and the cold which emanated from the kitchen into the living room. The Tenant advised that this was the only way he could keep the room warm enough for him to sleep there. The Tenant had also blocked off the fireplace in this room to prevent draughts emanating from it. The control button for the boost heat function of the electric storage heater in the living room was broken. In order to make this heater work, the Tenant required to use a screwdriver to change the control of the heater. The Tenant complained that the window in this room was also draughty.

- (j) There was a high reading of dampness within the kitchen on the wall located behind the tumble dryer. On the outside of this wall, there was a large crack in the rendering. The Tenant advised that he did not use the kitchen as the cooker was dangerous to use due to its location, there was a draft which emanated from a wooden panel covering a vent and located on the back wall of the kitchen, the tumble dryer did not work and the toaster shorted. The Tenant complained that the electrics were not safe and the sockets in the kitchen kept tripping so he cooked using his own microwave oven which was located in the living room. The Tenant confirmed that some of the appliances, in particular the tumble dryer, had failed a recent Portable Appliance Test (PAT). The Tenant confirmed that he kept the door to the kitchen closed to try and keep the living room warm. The Landlord advised that this was the wrong thing to do as it would be better to keep this door open to allow the air to circulate in the property and for the kitchen to receive heat from the living room.
- (k) There were two battery operated smoke detection devices in the property, one located within the hallway of the property and the other located within the smaller bedroom.
- (l) There was an external light outside the front door of the property and located above the kitchen window. The Tenant confirmed that this light worked but that he was concerned about it as its function was intermittent and that this was another example of problematic electrics within the property.

The surveyor member of the Committee took several photographs which form the Schedule attached to this decision.

The Hearing

7. Both the Tenant and the Landlord attended the hearing. Mr Raymond Heath, Housing Advice Worker from the Citizens Advice Bureau, 11 Alexandra Street, Kirkintilloch also attended the hearing to represent the Tenant's interests.

Preliminary Issue

The Committee advised the parties that, although the Tenant had sought to include consideration of the smoke alarms within the property as part of his present application, the Committee could not properly consider this as an issue at the hearing as the Tenant had failed to properly notify the Landlord of this specific issue in advance of making the application to the Committee. All parties accepted this preliminary decision of the Committee.

The Committee heard evidence from the Tenant who confirmed the details within his application. The Tenant confirmed that he was employed as a

photographic technician by the City of Glasgow College and that he had been so employed for the past eleven years.

In particular, the Tenant confirmed that the Electrical Danger Notification Form dated 15 January 2016 completed by Messrs Robert Hill and Company, Electricians, was provided directly to him by the firm of electricians.

The Landlord interjected at that point to complain that the Electricians had erroneously given this form to the Tenant and that the form should have been given to the Landlord and now the Tenant was using this form against the Landlord and that this was unfair.

The Committee advised that the form was part of the Tenant's application to the Committee and would be considered as part of the Tenant's application. The form highlighted that there was a risk of electric shock and fire as there was no RCD in the shower and that the sockets in the kitchen kept tripping.

The Tenant confirmed that the shower had since been fully replaced and it was functioning well. The Tenant confirmed that no work had been carried out on the sockets in the kitchen.

The Tenant advised that the tumble dryer was still not working.

The Tenant confirmed that there was still water ingress from the front door of the property when it was wet and windy due to the large gap between the front door and the door frame.

The Tenant advised that due to the cracks in the masonry surrounding the bathroom window the bathroom was often too cold to use. The Tenant advised that the Landlord had attempted to use bathroom sealant along the bottom edge of the bathroom window where there was a gap but that this had not improved matters much.

The Tenant confirmed that he could not use either bedroom in the property due to the draughts emanating from the windows in those rooms. The Tenant complained that the windows did not sit flush hence the wind could freely whistle into the property and, as both bedrooms were situated at the front of the building overlooking Main Street, he complained that Main Street was a windy location and effectively acted as a wind tunnel.

The Tenant complained that the electric storage heater located in the larger bedroom had only worked intermittently since he moved into the property. He advised that the Landlord had instructed contractors to effect repairs on this heater but that it still did not work properly.

The Tenant confirmed that, although there was no PAT report provided to the Committee at the hearing, a PAT of all the appliances supplied by the Landlord to the Tenant within the property had been carried out by the aforesaid Robert Hill and Company a couple of weeks before the hearing. The Tenant confirmed that the toaster had passed the PAT but that the

tumble dryer had failed the PAT. The Tenant also helpfully confirmed that the electric sockets located in the kitchen had also passed the PAT.

The Tenant confirmed that he used the living room as his bedroom, living room and kitchen as this was the only room in the house where he could keep warm enough.

The Landlord then gave evidence to the Committee. The Landlord advised that he was a self-employed property manager and had been so for more than twenty years. He confirmed that he managed four properties, all of which he owned. The Landlord advised that although the Tenant complained in his application to the Committee that there had been problems with the property since he moved in to it in October 2015, the first the Landlord was made aware of any problems by the Tenant was in terms of the Tenant's email to the Landlord dated and sent 28 December 2015. The Landlord advised that he immediately responded to this email and inspected the property on 29 December 2015. The Tenant confirmed to the Committee that this was an accurate record of events by the Landlord.

The Landlord advised that when he inspected the property on 29 December 2015 he discovered that the Tenant did not have the electric storage heaters switched on and that the Tenant was only using one small portable heater which was the Tenant's own heater. The Landlord advised that all of the storage heaters had been switched off.

The Tenant confirmed that two of the storage heaters in the property were not working, namely, the ones located within the larger bedroom and the one within the living room. The Tenant confirmed that these were switched off when the Landlord inspected as they were not working. The Tenant disputed that the heaters located in the smaller bedroom and hallway were switched off. The Tenant advised that he always kept these on.

In response, the Landlord confirmed that he had also supplied the Tenant with two separate two bar electric fires which the Tenant could also have used if the Tenant had been cold.

The Landlord confirmed that two of the storage heaters were not working at that time.

The Landlord advised that the Tenant was causing dampness within the property by keeping the door to the kitchen closed and blocked with blankets.

The Landlord confirmed that the property was cold but not damp when the Tenant first moved in as the property had been lying empty for six months before the Tenant moved in to the property in October 2015.

The Landlord advised that he himself had arranged for Scottish Power to install the electric storage heaters in the property and that these were heaters which were, in the opinion of Scottish Power, adequate and

appropriate for the size of property and which were designed to automatically boost heat when the weather turned cold. When questioned by the Committee, the Landlord confirmed that he had arranged for the installation of these heaters some twenty years previously and that they were up to standard at the time they were installed.

The Landlord was clear that when he inspected the property on 29 December 2015 the heaters had been switched off underneath, that is, at the sockets of the heaters, and that, in his opinion, the Tenant had not been using the heating properly.

The Landlord accepted that the masonry surrounding the bathroom window was badly cracked but he confirmed to the Committee that he did not intend effecting any repairs to this until the better weather came in as there was no point in fixing these cracks while the risk of frost remained.

The Landlord advised that in relation to the front door of the property, as this was in his opinion a storm door and therefore was not really part of the property as such, it was only to be expected that rain might come in through this door. When asked by the Committee, the Landlord confirmed that he had never considered replacing this door. The Landlord confirmed to the Committee that he would get the door looked at after the hearing but as this was an old property, issues such as these were only to be expected.

The Landlord advised that any dampness in the property has been caused by the extremely wet weather which has been experienced recently. The Landlord advised that the building was old and the rear kitchen projection was of single brick construction and therefore some water penetration should be expected at times of extremely wet weather. The Landlord advised that given the age and nature of the property, it made it all the more important that the air be allowed to circulate within the property and that the kitchen door should be left open.

The Landlord advised that he had produced the copy text messages as part of his response to the application to demonstrate that he had not delayed in responding to the Tenant's concerns as soon as he was made aware of these.

The Landlord then sought to lodge the Electrical Installation Condition Report which was produced by the said Messrs Robert Hill and Company after their inspection of the property on 3 March 2016 and which report was signed and dated 18 March 2016. The Landlord advised that he had instructed this report on receiving the Notice of Direction by the Committee dated 26 February 2016. However, he confirmed that he had not received the report from the electricians until just before the hearing started today.

The Committee sought the views of the Tenant and Mr Heath regarding the late lodging of this report. Neither the Tenant nor Mr Heath had any objection to this report being lodged so late in proceedings. The Committee took the decision to allow the report to be lodged in all the circumstances of the case.

However, the Landlord had not been able to print off the report in a fashion which allowed it to be completely read as he had encountered technical difficulties when attempting to print off the report. The Committee agreed to allow the Landlord to email a copy of the report to the PRHP Administration who then printed off sufficient copies of the report so that all parties had a copy of same. At that point, the Committee took a short recess to allow the Committee and all parties to read the report.

After the recess, the hearing recommenced. The Committee advised the Landlord that the report confirmed that there were six separate matters which deemed to be potentially dangerous and a number of other issues which were deemed recommended for improvement. The Landlord accepted the findings of the report. In relation to the outside light, the Landlord further confirmed that he accepted that this had been highlighted by the report as being potentially dangerous and that he, himself, had fitted this light.

The Landlord also accepted that this report did not fully satisfy the Notice of Direction of the Committee of 26 February 2016 as no PAT report had been produced. The Landlord could offer no explanation as to why Messrs Robert Hill and Company had not produced this. The Landlord advised that he would seek this from them after the hearing had concluded. Both the Landlord and the Tenant confirmed that the PAT had been carried out on 3 March 2016.

Given all of the circumstances, the Committee is satisfied that the property is not wind and watertight and in all other aspects reasonably fit for human habitation as a result of draughts emanating from the failing window units and water ingress emanating from the rotting front door and accompanying door frame. The Committee is satisfied that the structure and exterior of the house are not in a reasonable state of repair and in proper working order as a result of the large cracks in the masonry surrounding the bathroom window and the large crack on the rendering of the wall outside the kitchen. The Committee is satisfied that the installations in the house 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 as a result of the storage heaters located in the larger bedroom and the living room not working, the defective control button on the storage heater in the living room and all the other dangerous issues raised in the EICR. The Committee is satisfied that the fixtures, fittings and appliances provided by the Landlord under the tenancy are not in a reasonable state of repair and in proper working order as a result of the tumble dryer not working.

As narrated above, the Committee has decided that it cannot properly consider the issue of whether or not the house has satisfactory provision for detecting fires and for giving warning in the event of fire or of suspected fire as the Landlord was not properly notified of this issue in advance of the present application.

The Committee is satisfied that the house does not require a carbon monoxide detector as there is no gas located within the property and currently no operational combustion appliances (including open fires) located within the property.

Decision

8. The Committee accordingly determines that the Landlord has failed to comply with the duty imposed by Section 14 (1) (b) of the Act. The Committee proceeded to make a Repairing Standard Enforcement Order as required by Section 24 (1) of the Act.

9. The decision of the Committee was unanimous.

10. The Private Rented Housing Committee require the Landlord to carry out such works as are necessary to ensure that the property meets the Repairing Standard.

11. The Committee considered that it would be reasonable to allow a period of 28 days from the date of the RSEO to carry out these works.

Reasons for Decision

12. The Committee considers that the Landlord has had sufficient time to carry out the outstanding repairs.

The Committee considers that the Landlord has failed in his duty under Section 14(1)(b) of the Act and has not complied with the repairing standard in terms of Sections 13 (1) (a) of that Act.

Observations

The Committee notes that it cannot properly consider the issue of whether or not the house has satisfactory provision for detecting fires and for giving warning in the event of fire or of suspected fire as the Landlord was not properly notified of this issue in advance of the present application. The Landlord advised in his evidence that he would not consider replacing the existing devices with hard wired devices which would be compliant with current guidance as he feels

that this would be too expensive. However, the Committee would strongly urge the Landlord to re-consider his position regarding this and, in particular, to consider placing the safety of his Tenant above any financial considerations.

Right of Appeal

13. 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

14. 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.

Patricia Pryce

Signed 

Patricia Anne Pryce

Date 7 April 2016



Schedule of photographs taken during the inspection of Flat 4, 14 Main Street, Milngavie
G62 6BL
by the Private Rented Housing Committee on the 29 March 2016.

Reference Number : PRHP/RP/16/0011



External view - Front elevation of property



Front large bedroom window - left top light



Front large bedroom window - left - lower section



Front large bedroom window - left - lower section



Front large bedroom window - middle section



Front large bedroom



Front small bedroom



Living Room



Living Room - window



Crack to side of bathroom window to rear elevation



Crack to side of bathroom window to rear elevation



Sealant at Bathroom window - external



Rot to External door frame



Rot to base of External door



Gap at side of External door - view from entrance vestibule



Bathroom - base of external wall



Bathroom - above window



Kitchen



Kitchen - wall to rear of tumble dryer



External projection - Kitchen



External security light



Fuse box in Hall



Defective control knob to electric heater in Living Room



Smoke alarm in small front bedroom



Smoke alarm in Hall