



Repairing Standard Enforcement Order

Ordered by the Private Rented Housing Committee

Case Reference Number: PRHP/RP/16/0016

Land Register Title No: DMB18974

Re: 4 West Abercromby Street, Helensburgh G84 9LJ ("the property")

The Parties:-

Miss Laura Docherty, residing at the property ("the tenant")

**Mr Gary Dinsdale and Mrs Elizabeth Dinsdale, 1 Glebe Park, Mansewood,
Dumbarton G82 3HE ("the landlords")**

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

NOTICE TO: Mr Gary Dinsdale and Mrs Elizabeth Dinsdale (the landlords)

Whereas in terms of its decision dated 26 May 2016, the Private Rented Housing Committee determined that the landlords had failed to comply with the duty imposed on them by Section 14 (1) (b) of the Act, and in particular that the landlords have failed to ensure that the house meets the repairing standard in that 1) the house is not wind and watertight and in all other respects reasonably fit for human habitation; 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; 3) 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; and 4) 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

The Private Rented Housing Committee now requires the landlords 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 landlords to:

1. Instruct a suitably qualified drainage engineer or other suitably qualified contractor to investigate and rectify any drainage issues within the grounds of the property and reinstate the drain to the rear of the property to ensure that it is in a reasonable state of repair and in proper working order.
2. Provide an up to date gas safety record in respect of the property by a Gas Safe registered plumbing and heating engineer, showing that the boiler, all associated pipework/radiators including in particular the kitchen radiator and any other gas appliances, have been checked, repaired as necessary and are in a safe and proper working order.
3. Instruct a suitably qualified contractor to investigate the cause of the leak above the living room window and to carry out such works as are necessary to ensure that the leak is eliminated and therefore the structure and exterior of the property and in particular, the living room window, are in a reasonable state of repair and in proper working order.
4. Instruct a suitably qualified and registered SELECT or NICEIC electrical contractor to repair or replace the faulty electrical socket in the tenant's daughter's bedroom and the light and extractor fan in the en-suite off that bedroom as necessary to ensure that they are in a reasonable state of repair and in proper working order.
5. Obtain a dampness report in respect of the property from a suitably qualified damp specialist and carry out any works identified in that report which are necessary to treat the dampness within the rear hall and rear bedroom, in order to ensure that the structure and exterior of the property is in a reasonable state of repair and in proper working order.
6. Repair or replace the washing machine as necessary in order to ensure that it is in a reasonable state of repair and in proper working order.
7. Fit draught excluders to the front door and reinstate/repair the cat flap on the back door to ensure that these doors are wind and water tight.
8. 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 **eight weeks** 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 two preceding pages are signed by Sarah Frances O'Neill, solicitor, Chairperson of the Private Rented Housing Committee, at Glasgow on the twenty-sixth day of May, Two Thousand and Sixteen before this witness -

M Morton

S O'Neill

_____ witness _____

_____ chairperson

MURRAY MORTON name in full

450 ARGYLE ST Address

GLASGOW G2 8LH

CIVIL SERVANT. 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/16/0016

Land Register Title No: DMB18974

Re: 4 West Abercromby Street, Helensburgh G84 9LJ ("the property")

The Parties:-

Miss Laura Docherty, residing at the property ("the tenant")

**Mr Gary Dinsdale and Mrs Elizabeth Dinsdale, 1 Glebe Park, Mansewood,
Dumbarton G82 3HE ("the landlords")**

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 landlords have 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 landlords have failed to comply with the duty imposed on them 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 received on 19 January 2016, the tenant applied to the Private Rented Housing Panel ("the panel") for a determination that the landlords had failed to comply with their duties under Section 14(1) of the Act.

2. In her application, the tenant stated that she believed the landlords had failed to comply with their duty to ensure that the property met the repairing standard as set out in section 13(1) (d) of the Act. Her application stated that the landlords 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.
- 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.
- any fixtures, fittings and appliances provided by the landlord under the tenancy are in a reasonable state of repair and in proper working order.
- the house has satisfactory provision for detecting fires and for giving warning in the event of fire or suspected fire.

3. The tenant made the following complaints in her application form and in her notification letter to the landlords:

1. Collapsed drains lying open for months, leading to water blockages and drainage issues.
2. No heating for weeks - the boiler is not flued properly.
3. Windows leaking in living room - wood is rotting.
4. Leak in kitchen radiator- mushrooms growing.
5. No extractor fan in toilet or in en-suite off rear bedroom.
6. Wallpaper in hallway is wet with dampness.
7. Lights and socket in daughter's bedroom are not working.
8. Dampness and mould in son's bedroom.
9. The washing machine is shredding clothes.
10. Wind is coming in the door and the windows are not airtight.
11. There are no gas or electrical safety certificates.

4. The tenant had also complained in email correspondence with the landlords dated 1 October 2014 and 20 January 2015 that there was dampness and mould in the bathroom and in her daughter's walk in wardrobe and en-suite

shower room. As these complaints had been notified to the landlords prior to the tenant submitting her application, the committee also considered these issues.

5. On 10 February 2016, 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 19 January and 4 February 2016; 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 26 February 2016, notifying them under and in terms of the 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 11 April 2016. Written representations were requested by 18 March 2016.
7. On 12 March 2016, an email was received from Mr Gary Dinsdale, advising that he was abroad until 7 April, and had not been able to read the documentation sent to him as a result. He said that he was therefore unable to respond to the panel by the deadline of 18 March. He asked for an extension to the deadline for written representations, and for the inspection and hearing to be postponed until a date in May.
8. The committee issued a direction to the parties on 17 March 2016. In its direction, the committee extended the deadline for written representations from the parties to 29 March 2016, and refused Mr Dinsdale's request for a postponement of the inspection and hearing. Written representations were received from the landlords on 25 March 2016.
9. On 5 April, in the light of the landlords' representations, the committee issued a second direction, again extending the deadline for written representations until 22 April 2016, and postponing the inspection and hearing. A date of 5 May 2016 was subsequently fixed for the inspection and hearing.

The inspection

10. The committee inspected the property on the morning of 5 May 2016. The weather conditions at the time of the committee's inspection were dry and bright. The tenant was present at the property during the inspection, but declined to accompany the committee around the property in carrying out its inspection. Her son and co-tenant, Mr Bradley Stuart, showed the committee around the property and pointed out the matters complained about. The

landlords were both present at the inspection. Photographs were taken during the inspection and are attached as a schedule to this decision.

The property

11. The property forms part of the ground floor of a large two storey detached house with single storey rear projection estimated to be in the region of 130 years old. It is constructed of sandstone with a pitched slated roof and located in a good residential area just north of Helensburgh town centre. The landlords told the committee that the house had been converted in the 1950s. The property is a substantial one. It comprises: a front hallway, living room, rear hallway, kitchen, small laundry room, bathroom, four bedrooms, two of which have en-suite shower rooms, and a room which the landlord stated was a family/dining room, which the tenant was currently using as her bedroom.
12. One of the rooms which the landlord described as a bedroom was immediately off the room being used by the tenant as her bedroom. The tenant was currently using this room as a dressing room/study. Two of the other bedrooms have en-suites: one of these bedrooms is very small and was formerly occupied by one of the tenant's two sons and the other is currently occupied by her daughter. The fourth bedroom was immediately off the son's bedroom with the en-suite and is being used by both of the tenant's sons. The small bedroom with the en-suite is currently not being used as a bedroom; the tenant said this was due to the dampness within that room. The landlords told the committee that the property was let on an unfurnished basis.

The hearing

13. Following the inspection, the committee held a hearing at Victoria Halls, Sinclair Street, Helensburgh G84 8TU. The tenant was present and gave evidence on her own behalf at the hearing. Her son and joint tenant, Bradley Stuart, was also present at the hearing. Both landlords were present and gave evidence on their own behalf at the hearing.

The evidence

14. The evidence before the committee consisted of:
 - The application form completed by the tenant.
 - Registers Direct copy of Land Register title DMB18974.
 - Undated copy short assured tenancy agreement between the landlord and the tenant and her son, Bradley Stuart, in respect of the property.

- Email correspondence between the tenant and the landlords' agent, McArthur Stanton solicitors, dated between 24 February and 31 March 2014, submitted by the tenant with her application.
- Email correspondence between the tenant and the landlords dated between 25 August 2014 and 22 June 2015, submitted by the tenant with her application.
- Notification letter from the tenant to the landlords, setting out the repairs alleged to be required, together with certificate of posting dated 25 January 2016 and proof of delivery notice dated 30 January 2016.
- Emails from Mr Dinsdale to the panel dated 12, 18 and 25 March 2016.
- Written representations from the landlord dated 25 March 2016.
- Various emails between the parties forwarded to the panel by Mr Dinsdale on 27 March 2016.
- Email from Jackie Baillie MSP to the panel dated 4 April 2016.
- Email from Mr Dinsdale to the panel dated 8 April 2016.
- Email correspondence between the parties and copied to the panel dated 8 April 2016.
- Written representations from Mr Dinsdale dated 18 April 2016.
- The committee's inspection of the property.
- The oral representations of the parties at the hearing.

Summary of the issues

15. 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 landlords had complied with the duty imposed on them by section 14 (1) (b).

Findings of fact

16. The committee made the following findings in fact:

- The tenant and her son, Bradley Stuart, entered into a short assured tenancy agreement with the landlords to rent the property for six months from 9 May 2014 until 19 November 2014.

- The tenant, Mr Stuart, and the tenant's two other children, were all still living in the property at the time of the inspection.
- The property is owned jointly by the landlords, who are the registered landlords for the property.
- The committee in its inspection carefully checked the items which were the subject of the complaint. The committee observed the following:
 - i. There was a flexible drain auger, commonly known as a 'drain snake' used for unblocking drains, protruding from the outside drain at the rear of the property. This appeared to be stuck in the drain, which was uncovered and appeared to be blocked.
 - ii. The boiler, which is situated within a cupboard in the room which the tenant is currently using as a bedroom, had a safety warning notice dated 4 December 2015 affixed to the front stating that it was 'at risk - open flued appliance - bedroom'.
 - iii. There were signs of rusting on the top of the radiator in the kitchen, and the committee noted that there were drops of water present at the top of the radiator. There was staining on the carpet underneath the radiator, which appeared to have resulted from past water leakage, although the carpet was dry to the touch at the time of inspection.
 - iv. There was no extractor fan in the en-suite shower off the small bedroom which was formerly used by one of the tenant's two sons. The surveyor member of the committee was unable to open the window in the en-suite easily, but Mr Dinsdale was able to open the window by pushing it with some force.
 - v. There was no extractor fan in the main bathroom. There was, however, a window in the bathroom, which the tenant confirmed could be opened properly.
 - vi. The wallpaper in the rear small bedroom formerly used by one of the tenant's sons was coming away from the wall at the external rear corner. Damp meter readings were taken, and moderate to high readings were found in this area.
 - vii. High damp readings were found in the hall leading to the small rear bedroom, which abuts the external stairs leading to the upper storey of the building.
 - viii. There was a leaking down pipe to the rear of the property, outside the small rear bedroom at the corner where the damp meter readings were taken.
 - ix. The light in the en-suite off the tenant's daughter's bedroom was not working. The extractor fan within the en-suite, which is connected to the light, was also not operating.

- x. There was a cracked double electrical socket in the tenant's daughter's bedroom, which the tenant advised was not working.
- xi. The ceiling light in the rear hall was not operating correctly.
- xii. There was a part missing from inside the washing machine drum.
- xiii. All of the windows within the property were modern PVC double glazed units, aside from the window in the en-suite off the tenant's sons' bedroom, which is timber framed and single glazed.
- xiv. There was some cracking in the timber surround below the living room window and behind the radiator situated under the window.
- xv. There was a narrow stone decorative moulding above the exterior of the living room window, and some deterioration in the stone work in this vicinity was noted. The gutter above appeared to be choked with vegetation.
- xvi. There was a hole for a cat flap in the back door, and the flap was missing. The tenant had covered the hole with bubble wrap.
- xvii. There was a draught coming in underneath the inner front door, which is situated behind external storm doors.
- xviii. Damp readings were taken in the walk in wardrobe in the tenant's daughter's bedroom. While the wall was cold to the touch, no signs of dampness were found.
- xix. Damp readings were taken in the bathroom, but no signs of dampness were found.
- xx. There were signs of slight black spot mould on the wood panelling in the bathroom.

Preliminary issue

17. Mr Dinsdale pointed to guidance produced by the panel which states that an application made to the panel by a tenant is deemed to be withdrawn when the tenancy is lawfully terminated. He produced a copy letter from his solicitors, TC Young, dated 16 April 2015, which stated that notices had been served on the tenants terminating their tenancy as at 9 July 2015. He therefore appeared to be arguing that the tenant's tenancy had been lawfully terminated, and that her application should be treated as withdrawn.
18. The committee notes that, while Mr Dinsdale had previously advised the panel that eviction proceedings were underway, it was clear that the tenant was still living in the property. Mr Dinsdale stated in his email of 25 March to the panel that in July 2015, he had agreed that the tenant could remain in the property until the end of November 2015, due to her difficult personal circumstances.
19. The committee notes that, as the tenant did not leave the property at the end of the notice period, a statutory assured tenancy automatically came into force, in terms of section 16 (1) of the Housing (Scotland) Act 1988. In terms

of sections 16(2) and 33 (4) of the 1988 Act, such a statutory assured tenancy comes to an end on the day on which an order for possession made by a sheriff takes effect. The landlord did not provide evidence of any such order having been granted by the sheriff as at the date of the committee's inspection and hearing. The committee was therefore satisfied that, as at the date of its inspection and hearing, there was still a tenancy in place.

Reasons for decision

20. It was clear from the correspondence, the inspection and the hearing that there was a difficult relationship between the parties. The tenant believed that the landlords had agreed to allow her to remain in the property on a long term basis, and was clearly still very upset that they had given her notice in January 2015 that they intended to sell the property. An eviction process had been ongoing in the sheriff court for some time.
21. The chairperson explained to the parties at the start of the hearing that the committee was unable to consider issues relating to non-payment of rent or the eviction process, but could only make a decision on the repairing standard issues which arose from the tenant's application.
22. Mr Dinsdale told the committee that it was in his interests to maintain the property, which was his family home, in good repair. He said that he had, however, been unable to carry out repairs as the tenant had refused to allow him or his tradespeople access to the property. The committee observes that, if they are having difficulty in exercising their right of entry to the property to carry out works, it would be open to the landlords to apply to the private rented housing panel for assistance in gaining access to the property. It appears to the committee that the landlords were aware of the existence of the right of entry application process. Mr Dinsdale stated in his email to the panel of 25 March 2016: 'I had considered involving your office to gain access with this tenant but expected her to be away by now as she gave her word to leave by the end of November.'
23. The complaints before the committee as set out in the tenant's application, and the committee's determinations in relation to each of these, are set out below.
 1. *Collapsed drains*
24. The committee observed at its inspection that there was a drain auger protruding from the outside drain at the rear of the property. This appeared to be stuck in the drain, which was uncovered. The tenant told the committee that dirty water from the drains had been coming up into the house through the pipe

into the laundry room and into the washing machine. She said that she was still experiencing problems with a bad smell which came into her bedroom, particularly when it rained, and which forced her to leave the room. She told the committee that that there were also 'rumbling' noises coming from the ensuite off her daughter's bedroom.

25. She told the committee that, with the landlords' permission, she had arranged for a contractor to come and clear out the drains using the drain auger in April 2015, but that he had been unable to remove this from the drain. She said that the contractor had told her that this was because the drain had collapsed and had said that the whole garden would need to be dug up. She said that her upstairs neighbour had told her that there had been problems with the drains for a long time. She told the committee that the contractor had tried to contact Mr Dinsdale about the problem.
26. Mr Dinsdale told the committee that he agreed there was a problem with the drains, but that he was unsure as to what was causing this. He said that he had not been contacted by the contractor. He thought the contractor had cleared the drain, and until the committee's inspection, he had thought the problem was with the rainwater drain. He said that he had notified the tenant that he intended to visit the property to inspect the drains, but that she had refused to allow him access. He thought that the drain may be mutual with the upstairs property, and was arranging for water testing to be carried out.
27. The committee determines that the drain, which forms part of the structure and exterior of the property, was not in a reasonable state of repair and in proper working order at the time of its inspection.

2. Boiler and heating

28. At its inspection, the committee noted that the boiler, which is situated within a cupboard in the room which the tenant is currently using as a bedroom, had a safety warning notice dated 4 December 2015 affixed to the front stating that it is 'at risk'. The tenant told the committee that she had been advised that the boiler was not flued properly, and that it had been shut off for two weeks, during which time there had been no heating or hot water. She said that the work which was required had never been done. She said that the boiler was now working in terms of hot water, but that the hearing went on and off periodically.
29. Mr Dinsdale told the committee that the problem was not with the boiler itself, but that he had first been made aware in August 2014, when the most recent gas safety inspection was carried out, that the boiler was at risk because it was open flued and was situated in a room where the tenant was sleeping. The

engineer had switched the gas off and refused to grant the certificate, until the tenant had moved out from the room. He had been advised that the room should not be used as a bedroom for safety reasons, and that doing so could be a breach of gas safety regulations. He said that after this, the landlords had repeatedly encouraged the tenant not to use the reception room as a bedroom. The tenant had moved out of the room temporarily, but had then moved back in and refused to stop using the room as a bedroom.

30. He said that the boiler itself was working fine, but acknowledged that there may be a problem with the central heating system. He had asked a gas engineer to look at this in December 2015, but he had refused to do so because the boiler was at risk due to the tenant using the reception room as a bedroom. He pointed to a warning notice from the gas engineer dated 4 December 2015, which the tenant had signed, confirming that the use of the boiler could present a hazard.
31. The tenant told the committee that when she had first viewed the property, there were two single beds in the room she was currently using as a bedroom, and that she had been told it was a bedroom. Mr Dinsdale denied this, saying that the property was advertised as having four bedrooms and three reception rooms, including the family room which the tenant was now using as a bedroom. The tenant said that there was no other suitable room which she could sleep in.
32. The committee noted that, whatever the reasons behind the tenant sleeping in the room where the boiler was situated, this appeared to be preventing the landlords from finding a gas engineer to carry out a gas safety inspection or check the central heating system. The committee determined that the central heating did not appear to be in a reasonable state of repair and in proper working order. It noted, however, that in order to ensure that a gas safety inspection could be undertaken and the central heating could be checked and if necessary repaired, it may be necessary for the tenant to use another room in the house as a bedroom.

3. Windows leaking in living room

33. The committee did not observe any signs of leaks from the living room windows at its inspection, although the weather was dry. There was some cracking in the timber surround below the window and behind the radiator situated underneath it. There was a narrow stone decorative moulding above the exterior of the window, and some deterioration in the stone work in this vicinity was noted. The gutter above appeared to be choked with vegetation.

34. The parties agreed that there had been water ingress through the window, but there was a difference of opinion about the extent of this. The tenant said that when it rained, water poured through the middle and right hand windows. She said that she had first become aware of the leak when putting up her Christmas tree in December 2014. She had asked Mr Dinsdale to look at it at that time, but said that he had not been back to fix it.
35. Mr Dinsdale agreed that he had been made aware of the water ingress at that time, but said he believed it to be an insignificant and minor leak. He said that he had not been back at the property since December 2014, as the tenant had refused to allow him access to the property after being given notice in January 2015. He believed that the leak was coming from above the window, and showed the committee copies of text messages to a contractor whom he had asked to carry out a water test, in order to establish what was causing the leak. He said that the contractor intended to carry out the test when there was a dry day.
36. The committee determines on the basis of all the evidence before it, that on the balance of probabilities, the living room windows were not wind and watertight at the time of its inspection.

4. Leak in kitchen radiator

37. The committee noted at its inspection that there were signs of rusting on the top of the radiator in the kitchen, and that there were drops of water present at the top of the radiator. There was staining on the carpet underneath the radiator, which appeared to have resulted from previous water leakage, although the carpet was dry to the touch at the time of inspection.
38. The tenant told the committee that when the heating goes on, the radiator leaks, but that it had not leaked when the heating was off. She showed the committee photographs taken in May 2015, showing mushrooms growing on the carpet underneath the radiator.
39. Mr Dinsdale told the committee that he did not know whether the radiator was leaking, and said he was unaware that there was an issue until he received the tenant's notification letter in January 2016. He had taken no action to get someone to look at it, as he was unable to get a gas engineer to go into the property for the reasons already outlined.
40. The committee determines that the radiator did not appear to be in a reasonable state of repair and proper working order at the time of its inspection.

5. No extractor fan in toilet or in en-suite off rear bedroom.

41. At its inspection, the committee noted that there was no extractor fan in either the bathroom or the en-suite off the small rear bedroom. There were, however, windows in both rooms. The tenant said that the window in the en-suite did not open, but the committee noted at its inspection that, while the window may not be easy to open, it was capable of being opened. The bathroom window could also be opened. Mr Dinsdale said that he had told the tenant to ventilate the rooms after showering/bathing by opening the windows. The tenant said that she felt, however, that this was not practical in the winter, given how cold the property could become.
42. The committee considered that the windows in these two rooms appeared to be capable of being opened and provided adequate ventilation. While there were no extractor fans fitted in either room, these did not appear to be necessary and were not a requirement in terms of the repairing standard.

6. Wallpaper in hallway is wet with dampness.

43. The committee inspected the rear hallway and high damp meter readings were found in the area along the wall abutting the external stairs leading to the upper flat.
44. The tenant told the committee that she had reported the dampness problem to the landlords in November 2014, and that Mr Dinsdale had seen it in December 2014, but that the landlords had taken no action since that time. She said Mrs Dinsdale had told her there had been a dampness problem previously, and that it was coming from a cupboard in the property upstairs. The tenant had spoken to the upstairs neighbour, who had denied that the dampness was related to his property.
45. Mr Dinsdale told the committee that there had previously been a slight dampness problem in the same area. It had been treated and re-plastered around 2011. In his view, however, the tenant's failure to heat and ventilate the property were at least partly responsible for the dampness. He said that he and his wife and 3 adult children had lived in the property for some years without experiencing any dampness, as had the two previous tenants. He said that he had, however, arranged for the same contractor who would be carrying out the water testing to look at the dampness issue.
46. The committee determines that the high levels of dampness in the hallway are not likely to be the result of a failure to heat and ventilate the property, and that the rear hallway is part of the structure and exterior of the property which

was not in a reasonable state of repair and in proper working order at the time of the committee's inspection.

7. Lights and socket in daughter's bedroom are not working.

47. The committee observed at its inspection that the light in the en-suite off the tenant's daughter's bedroom was not working. The extractor fan within the en-suite, which is connected to the light, was also not operating. There was also a cracked double electrical socket in the bedroom. The tenant told the committee that none of the electrical sockets in that room were working, although these were not tested by the committee.
48. Mr Dinsdale told the committee that he had arranged for an electrician to go to the property. He said he had understood that the sockets had all been fixed, and pointed to a (undated) letter from the electrician which he had submitted to the committee. This letter stated that the sockets had been repaired, but that a second visit was needed to carry out remedial work to the en-suite lighting, and that despite calling the tenant more than once to arrange a date for this, she had not responded. The tenant told the committee that she had responded to the electrician, and that he had wanted to come between Christmas and New Year, which was not convenient. She had asked him to arrange another date, but he had not come back to her. The committee accepted the tenant's evidence on this point.
49. The committee determines that the electrical socket, which is part of the installations in the house for the supply of electricity, and the light within the en-suite, which is a fixture or fitting provided by the landlords under the tenancy, are not in a reasonable state of repair and in proper working order.
50. The committee also noted at its inspection that the ceiling light in the rear hall was not operating correctly. There was no evidence before the committee that the tenant had notified the landlord of this complaint in writing, but the committee notes that this matter may be related to the electrical issues elsewhere in the property.

8. Dampness and mould in son's bedroom.

50. At the committee's inspection, moderate to high damp readings were found in the rear corner of the small rear bedroom. The committee also observed a leaking down pipe to the rear of the property, outside the bedroom, which may be related to the dampness. The tenant also told the committee that when it rained, water poured from the rear gutters outside the bedroom.

51. The tenant told the committee that she had made Mr Dinsdale aware of the dampness in December 2014, and that her son had been unable to sleep in the room since then. Mr Dinsdale accepted that there may be some dampness present, but as with the dampness in the rear hallway, he suggested that this was exacerbated by the tenant's failure to heat and ventilate the property.
52. The committee determines that the small rear bedroom is part of the structure and exterior of the property which was not in a reasonable state of repair and in proper working order at the time of the committee's inspection.

9. The washing machine is shredding clothes.

53. The committee observed at its inspection that there was a part missing from inside the washing machine drum, creating a rough surface. The tenant brought the missing part to the hearing. She told the committee that it had fallen off some time ago, and that some of her clothes had been pulled and ruined. She brought some of the damaged garments to the hearing, and the committee accepted her evidence that the damage to these had been caused by the fault with the washing machine.
54. Mr Dinsdale told the committee that when the tenant had first complained about the washing machine, he had not taken the matter seriously. He said that the machine has been brand new when the tenant had moved in, and had been left in the property as a favour to her. He accepted, however, that there appeared to be an issue with the washing machine.
55. The committee determines that the washing machine is an appliance provided by the landlords under the tenancy, as it was in the property at the time the tenant moved in. The landlords therefore have a duty under the repairing standard to ensure that it is in a reasonable state of repair and proper working order. The washing machine was not in a reasonable state of repair and proper working order at the time of the committee's inspection.

10. Wind is coming in the door and the windows are not airtight.

56. The committee observed at its inspection that there was a hole for a cat flap in the back door, and the flap was missing. The tenant had covered the hole with bubble wrap. It also observed that there was a draught coming in underneath the inner front door, which is situated behind external storm doors. The tenant told the committee that the doors were not airtight.
57. The committee also observed that all of the windows within the property were modern PVC double glazed units, aside from the window in the en-suite off the

tenant's sons' bedroom. It did not notice any draughts coming through the windows, although it was a sunny day with little wind. The tenant told the committee that she was happy with all of the windows in the property, aside from the kitchen window. She said that the wind comes through the shutter, and through the wood panelling around the left side of the window, making the room very cold at night.

58. Mr Dinsdale accepted that there were some draughts in the property, but took the view that these were simply a feature of a 130 year old property, and were to be expected. He pointed out that the tenant would have been given a copy of the energy performance certificate for the property before moving in. He later confirmed to the committee by email that the energy rating was an 'F'.
59. The committee notes that section 13 (3) of the Act makes reference to the need to have regard to the age, character and prospective life of the house in determining whether the house meets the repairing standard. This however refers only to section 13(1)(b), which relates to the structure and exterior of the house. The tenant's complaint is that the doors and windows are not wind tight in terms of section 13 (1) (a) of the Act. While the committee accepts that draughts might be expected to an extent in such an old property, it considers that the draughts under the front door and through the cat flap in the rear door could be reduced. It therefore determines that the doors are not wind tight. As regards the windows, however, the committee considers that on the basis of the evidence before it, these met the repairing standard as regards wind tightness.

11. There are no gas or electrical safety certificates.

60. The committee notes that, while a landlord is required in terms of the repairing standard to ensure that the installations in the house for the supply of gas and electricity are in a reasonable state of repair and in proper working order, there is no specific requirement under the repairing standard to provide gas or electrical safety certificates.
61. With regard to the gas safety certificate, there is a legal requirement on landlords to ensure that an annual gas safety check is carried out. There is a strong argument that such a certificate is necessary in order to demonstrate that the gas installations meet the repairing standard, and for that reason the committee includes obtaining such a certificate in the order accompanying this decision.
62. It was clear that a gas safety certificate had not been obtained by the landlords since August 2014. Mr Dinsdale sent a copy of the most recent certificate, dated 4 August 2014, to the committee following the hearing. Mr Dinsdale told

the committee that no local gas safe engineer was prepared to carry out an inspection at the property because the tenant was sleeping in the room where the boiler was situated. He had provided evidence that both the local council and the Health and Safety Executive were aware of the issue, and he said neither had pursued the matter because of the situation with the tenant.

63. With regard to the electrical certificate, Mr Dinsdale confirmed to the committee that no such certificate had been obtained for the property, as this was not a requirement until December 2016. The committee notes that he is correct to say that there is at present no requirement on a landlord to provide an electrical installation condition report to an existing tenant (i.e. a tenant who moved into the property prior to 1 December 2015) until 1 December 2016.
64. The committee determines that there is no specific breach of the repairing standard in respect of the lack of gas or electrical safety certificates.

12. Other issues

65. The tenant had notified the landlords that there was 1) dampness and mould in the bathroom and 2) dampness in her daughter's walk in wardrobe and en-suite shower room. At its inspection, the committee took damp readings in the bathroom, but no signs of dampness were found. There were signs of slight mould on the wood panelling in the bathroom, but the committee was of the view that this was likely to be a result of inadequate ventilation in that room. Damp readings were also taken in the walk in wardrobe in the tenant's daughter's bedroom. While the wall was cold to the touch, no signs of dampness were found. The committee therefore found no breach of the repairing standard in relation to these matters.
66. Following its inspection and the hearing, the committee determined that:
- the house 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 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.
 - 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.

Observations by the committee

67. The committee wishes to make observations in relation to two further matters. Firstly, the committee notes that the tenant had ticked the box on her application form to indicate that the landlords had failed to ensure that the property had satisfactory provision for detecting fires and for giving warning in the event of fire or suspected fire. There was, however, no evidence before the committee that the tenant had notified the landlords of this complaint prior to submitting her application. Neither had the tenant included any further details of this complaint in her application form. The committee was therefore unable to make any order with regard to this matter.
68. The committee did observe at its inspection, however, that there were two ceiling mounted battery operated smoke alarms within the property, one in the hallway and the other in the small rear bedroom. There was a third battery operated smoke alarm sitting on a table in the hallway, which the tenant's son advised the committee was no longer operating correctly. The committee did not see a heat alarm in the kitchen. The committee also noted that there were two carbon monoxide monitors within the property, one in the hallway and the other on the outside of the cupboard where the boiler is situated.
69. The smoke alarms currently within the property do not comply with the current statutory requirements for rented properties. The repairing standard includes a requirement under section 13 (1) (f) of the 2006 Act that the house has satisfactory provision for detecting fires and for giving warning in the event of fire or suspected fire. In determining whether a property has satisfactory provision for detecting fires and for giving warning in the event of fire or suspected fire, section 13 (5) of the Act states that regard is to be had to any building regulations and any guidance issued by the Scottish Ministers on these matters.
70. The current Scottish Government statutory guidance states that there should be at least:
- one functioning smoke alarm in the room which is frequently used by the occupants for general daytime living purposes
 - one functioning smoke alarm in every circulation space, such as hallways and landings.
 - one heat alarm in every kitchen
 - and all alarms should be interlinked.
71. Secondly, while the committee notes that a possible blockage in the gutters to the rear of the property may be related to the dampness in the rear bedroom, the tenant also told the committee that there was an issue with the front gutters. She said that a 'river' of water runs along in front of the property when it rains. There was no evidence before the committee that the tenant had notified the

landlords of any complaint with regard to the gutters. The tenant had, however, submitted with her application a copy of email sent to her by Mrs Dinsdale on 28 August 2014, enquiring as to whether a contractor had been to look at the water overflow from the guttering. This email stated that it appeared that it may be necessary to dig out at the base of the pipe to see what the problem was, if it was not coming from the top.

72. The committee is unable to make a specific order with regard to the gutters, as this complaint does not appear to have been specifically notified by the tenant, but observes that the landlords may wish to consider engaging a contractor to check both front and back gutters.

Summary of decision

73. The committee determines that the landlords have failed to comply with the duty imposed by Section 14 (1) (b) of the Act, and in particular that the landlords have failed to ensure that the house meets the repairing standard in that 1) the house is not wind and watertight and in all other respects reasonably fit for human habitation; 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; 3) 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; and 4) the fixtures, fittings and appliances provided by the landlords under the tenancy are not in a reasonable state of repair and in proper working order.

74. The committee therefore makes a Repairing Standard Enforcement Order as required by section 24 (2) of the Act.

Rights of Appeal

75. 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.
76. 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

77. 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'Neill

Signed.....Date 26/5/16
Sarah O'Neill, Chairperson



Schedule of photographs taken during the inspection of 4 West Abercromby Street,
Helensburgh G84 9LJ
by the Private Rented Housing Committee on the 5 May 2016.

Reference Number : PRHP/RP/16/0016



External view - Front elevation of property



External drain to rear



External drain to rear



Safety Warning label on Boiler "At Risk"



Boiler



Kitchen - radiator



Kitchen - radiator and carpet



Kitchen - radiator and carpet (lifted to expose floorboards)



En-suite Shower (son's bedroom)



En-suite shower (son's bedroom)



En-suite Shower (son's bedroom) showing open window



Rear Hallway leading to son's bedroom



Son's Bedroom corner of rear single storey projection



External down pipe to rear single storey projection



External rear single storey projection and access steps to upper flat



Rear Elevation



Light fitting in En-suite to daughter's bedroom



En-suite shower (daughter's bedroom)



Built in cupboard (daughters bedroom)



Cracked double socket (daughter's bedroom)



Light fitting to rear hall



Light fitting to rear hall



Washing Machine



Living Room Window



Living Room Window



Living Room Window



Living Room Window



Back door - External



Back door - Internal



Front door - internal



Kitchen Window



Living Room Window - External



Front Elevation



Main Bathroom



Main Bathroom behind toilet cistern



Smoke alarm ceiling mounted - Hall



Smoke alarm - ceiling mounted - Hall



Smoke alarm not fixed- Hall



CO Alarm on door to boiler cupboard



CO alarm on coat rack in Hall