



Repairing Standard Enforcement Order

Ordered by the Private Rented Housing Committee

PRHP Ref: PRHP/RP/0058

Re: Property at 44 Millhall Court, Plains, Airdrie, ML6 7GE ("the Property")

Title No: LAN 201276

The Parties:-

Brendan Kearns 55 Laurel Heights, Banbridge, County Down; Brendan Kearns c/o Ritehome Ltd 350 Glasgow Harbour Terrace, Glasgow, G11 6EG ("the Landlord")

Vicky Tulika, 44 Millhall Court, Plains, Airdrie, ML6 7GE ("the Tenant")

NOTICE TO Mr Brendan Kearns ("the Landlord")

Whereas in terms of their decision dated 21 May 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 that the landlord has failed to ensure that:-

- (a) 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;
- (b) any fixtures, fittings and appliances provided by the landlord under the tenancy are in a reasonable state of repair and in proper working order; and
- (c) any furnishings provided by the landlord under the tenancy are capable of being used safely for the for the purpose for which they are designed.

the Private Rented Housing Committee now requires the landlord to carry out such work as is necessary for the purposes of ensuring that the property concerned meets the repairing standard and that any damage caused by the carrying out of any work in terms of this Order is made good.

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

1. To attach the living room blind to the living room window or arrange for a new blind to be installed.
2. To instruct a suitably qualified electrician to investigate the cause of the defective lighting in the communal hallway and stairs and to carry out such repairs as are required to rectify the defects and ensure that the lighting is in proper working order.
3. To investigate the cause of the defect in the communal satellite dish on the roof of the property and carry out such repairs as are required to rectify the defect. Alternatively to provide the Tenant with a replacement satellite dish or similar appliance which will enable the Tenant to access satellite television.

4. To provide the Tenant with a current gas safety certificate from a Gas Safe registered engineer.

The Private Rented Housing Committee orders that the works specified in this Order must be carried out and completed within the period of four weeks 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 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 type written on this and the preceding page are executed by Josephine Bonnar, Solicitor, Chairperson of the Private Rented Housing Committee at Motherwell on 21 May 2016 before this witness:-

J. BONNAR

Chairperson

G. BONNAR

Witness

Gerard Bonnar _____ Name in full

Buchanan House _____ Address

58 Port Dundas Road _____

Glasgow _____

Solicitor _____ Occupation



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

PRHP Ref: RP/16/0058

Re: Property at 44 Millhall Court, Plains, Airdrie ML6 7GE ("the Property")

Title No: LAN 201276

The Parties:-

Vicky Tulika ("the Tenant")

Brendan Kearns 55 Laurel Heights, Banbridge, County Down; Brendan Kearns c/o Rite Home Ltd, 350 Glasgow Harbour Terrace, Glasgow, G11 6EG ("the Landlord")

Decision

The Committee, having made such enquiries as it saw fit for the purposes of determining whether the Landlord has complied with the duty imposed by Section 14 (1)(b) of the Housing (Scotland) Act 2006 ("the Act") in relation to the property, and taking account of the evidence led by both the Tenant and the Letting Agent on behalf of the Landlord at the hearing, determined that the Landlord had failed to comply with the duty imposed by Section 14 (1)(b) of the Act.

The Committee comprised:-

Mrs Josephine Bonnar, Chairperson

Mr Mike Links, Surveyor Member

Background

- 1. By application received on 12 February 2016 the Tenant applied to the Private Rented Housing Panel for a determination of whether the Landlord had failed to comply with the duties imposed by Section 14 (1)(b) of the Housing (Scotland) Act 2006 ("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 house meets the repairing standard and in particular that the Landlord had failed to ensure that:- 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; and, any furnishings provided by the landlord under the tenancy are capable of being used safely for the purpose for which they are designed. Specifically the Tenant complained that she had not been provided with a current gas safety certificate, that there was no flooring in the kitchen, that the blind in the lounge was not hanging at the window, that there was no lighting in the common hallway and stairs, that the satellite dish at the property was not working and that there were cracks on the walls. She also stated that she had not been provided with an inventory of contents at the time she signed the lease, or subsequently.

3. The Private Rented Housing Committee served Notice of Referral under and in terms of Schedule 2, Paragraph 1 of the Act upon both the Landlord and the Tenants on 22 March 2016.
4. Following service of the Notice of Referral neither the Landlord nor the Tenant made written representations. Both confirmed that they would attend the Hearing.
5. The Private Rented Housing Committee inspected the property on the morning of 5 May 2016. The Tenant and the Landlord's Agent Colvil Johnstone were present during the inspection.
6. Following the inspection of the property the Private Rented Housing Committee held a hearing at Airdrie Business Centre, Chapel Street, Airdrie. The Tenant and the Landlord's Agent were both present and gave evidence.

The Inspection

7. At the time of the inspection the weather was dry and bright. The Committee were able to inspect the whole property. The Committee noted that the property is a first floor flat in a modern 3 storey building. It is located within a development of similar properties. A visual inspection of the front of the block showed the exterior to be in a reasonable state of repair. It was noted that there is a large communal satellite dish on the roof of the building. The other blocks in the development also have satellite dishes on the roof. Some also have smaller individual dishes attached to walls. No such individual dishes are evident at the property which is the subject of the Application. The property is accessed by a door at the front of the building leading to a common hallway and stair. The Committee noted that the stairs and hallway appear to be poorly maintained. Lights located on the walls of the hallway and stairs provide almost no light. Within the property the Tenant pointed to the kitchen floor which is covered by linoleum type floor covering, She advised that this had only recently been installed and previously there was no floor covering. She pointed to a large window blind lying on the living

room floor. She said that this had never been attached to the window. The Committee noted the absence of a frame or other fixings to attach the blind to the window. The Committee also noted cracks on the walls in the living room. The property has a battery operated smoke detector in the living room but no heat detector in the kitchen. There is a CO detector in the kitchen.

The Hearing

8. At the Hearing the Tenant gave evidence. She stated that she was given the keys to the flat on 3 September 2015. She had no gas for the first week. A gas engineer then attended. He serviced the boiler and turned on the gas. She had previously been shown a gas safety certificate that was out of date but has not been provided with a current one. The living room blind has never been attached to the window. Flooring in the kitchen was only laid on 24 March 2016. The kick board at the bottom of the kitchen unit was not re-instated afterwards. The absence of proper lighting in the hall and stairs has been an issue since the beginning of her tenancy. Initially there was no lighting at all. She arranged for a fire service inspection and they were able to switch on the emergency lighting which is all that is currently available. They recommended instructing an electrician. The Tenant further advised that she arranged for Sky Television to attend to connect her television to the satellite dish. Although this had not been mentioned at the time of viewing the property and was not referred to in the tenancy agreement she assumed that it was in working order. The representative from Sky said the dish was not working and also that she could not be provided with a small individual satellite dish because the trees at the back of the building would affect reception.
9. The Tenant indicated that she had first viewed the property with an agent from Rite Home. She cannot recall his name. He told her that the blind and kitchen flooring would be attended to before she moved in. This did not happen. Shortly after moving in she was in contact with Robert Jones of Rite Home about various repairs issues. The gas engineer attended and a plumber fixed a defect in the toilet but there was no action in relation to the other matters. She sent numerous emails about the lighting, the blind, the kitchen floor, the gas safety certificate and the satellite dish. As she had viewed the property in the daytime she only became aware of the problem with the lighting in the hallway once she moved in. After the fire service inspection she contacted the Letting agents again about the lighting issues and was told that this was a matter to be raised with the factors. She advised the Committee that she would have contacted the factor but had not been provided with the details. She stated that Robert Jones inspected the property on 14 January 2016. She asked him about the various outstanding issues and he told her that he would have them attended to. She heard nothing further. She

advised the Committee that no inventory had ever been provided, however confirmed that the property was let to her unfurnished.

10. Mr Johnstone gave evidence on behalf of the Landlord. He provided some background to the problems at the property. He stated that the owner resides in Ireland and he does not have his current address, all contact taking place by email and telephone. All of the properties in the block are owned by individuals who live in England and Ireland. Some are in the process of being re-possessed by lenders. The company that built the development went out of business before a completion certificate had been obtained although this was eventually resolved in April 2015. No factor was ever appointed. He did not dispute that the Tenant had been told that there was a factor and offered no explanation for this. He advised the Committee that Robert Jones was no longer employed by the Agency and he accepted that there had been failings on the part of Robert Jones in relation to the management of the tenancy. He did not dispute any of the Tenants evidence in relation to the repairs or her attempts to have these addressed.

11. Mr Johnstone went on to give evidence about the specific repairs issues. He said that he accepted that the Tenant should have a current gas safety certificate. He stated that there is a current certificate dated 15 September 2016 which will be sent to her. He further stated that he accepted that the blind should be attached to the window or a new blind ordered and installed. He indicated that he would arrange for an electrician to attend and look at the lighting in the hall. He thought that the lights might just need new bulbs. He expressed the view that the satellite dish would not normally be considered as part of the facilities provided by the Landlord but could make some enquiries as to the options available. Although not part of the application he confirmed that he would arrange for the kickboard in the kitchen to be re-instated, the blind in the kitchen to be fixed and to have the smoke detector replaced with interlinked hard wired detectors so as to comply with current regulations. He hoped to resolve all matters by the end of May 2016.

Findings in Fact

12. The property is a first floor flatted property in a modern block of flats built approximately 8 years ago in the Plains area of Airdrie. The accommodation comprises a hall, living room, kitchen, bathroom and bedroom.

13. The Tenant signed a short assured tenancy agreement for the subjects on 3 September 2015 and took entry on the same date. She lives at the property alone.

14. The Tenant first notified the Landlord of repairs issues at the property on 9 September 2015. This notification was made to the Letting Agent. Thereafter the Tenant made further reports of repairing issues by email and by telephone to the Letting Agent. She also discussed these with the Agent when he inspected the property on 14 January 2016.
15. On 24 March 2016 flooring was laid in the kitchen. A kickboard at the bottom of the kitchen units was removed during when the flooring was being laid and not reinstated.
16. The communal satellite dish located on the roof of the block of flats is not in working order. The tenancy agreement does not exclude the satellite dish from the fixtures and fittings being provided by the Landlord and it was not mentioned by the Letting Agent when the Tenant viewed the property or signed the tenancy agreement. The tenancy agreement refers to an inventory of furniture and contents but no inventory was provided to the tenant at the time the agreement was signed, or subsequently.
17. The lighting in the common hallway and stairs is not in working order. Only very limited emergency lighting is available.
18. In terms of the Land Certificate the Landlord is jointly liable with the other owners of properties in the building for the maintenance of the common parts including the communal satellite dish on the roof and the lighting in the communal hallway and stair.
19. The blind in the living room is not attached to the window and there are no fixings at the window to which the blind could be attached.
20. The Tenant has not been provided with a current gas safety certificate.

Reason for decision

21. The Committee considered the issues of disrepair set out in the Application and noted at the inspection and hearing.
22. It was not disputed by the Landlord's agent that a current gas safety certificate had not been provided to the Tenant. It was evident at the inspection that the living room window blind is not attached to the window and that it cannot be attached without a frame or suitable fixings. The Letting Agent did not dispute this. The lack of proper lighting in the hallway and stairs was also evident at the inspection. The Letting Agent accepted that this was of concern and indicated that he intended to instruct an electrician to investigate. The Agent did not dispute the claim that the satellite dish is defective but

expressed the view that it was not a fixture and fitting provided as part of the tenancy. The Committee did not accept the Landlords position in relation to this matter. The satellite dish is attached to the roof of the building. There is nothing in the tenancy agreement which seeks to exclude the satellite dish from the facilities provided to the Tenant. The tenant was not advised at any time the dish was not in working order. The Committee is of the view that the Tenant was entitled to assume that the dish was in proper working order.

23. In the Application the Tenant complained of cracks on the walls and door frames at the property. No evidence of notification to the Landlord of this defect was provided. The Committee noted the cracks on the walls at the Inspection. These appeared to be superficial and not indicative of structural issues at the property. The Committee took the view that the cracks could be dealt with by way of re-decoration and that no order in relation to this matter would be required even if the Committee was able to consider same.

24. The Letting Agent offered by way of explanation to the repairing standard issues that the Landlord resides in Ireland, there have been problems with the property since the flats were built, there is no factor and the employee at the Agency who was responsible for the property had failed to attend to matters and had been dismissed. The Committee however is of the view that the Landlord was notified on numerous occasions of the repair issues which required attention and for the most part these have not been resolved.

25. The Committee accordingly took the view that it will require to make a Repairing Standard Enforcement Order in respect of the satellite dish, the lighting in the common hallway and stair, the living room blind and the gas safety certificate.

Decision

26. The Committee accordingly determined that the Landlord had failed to comply with the duty imposed by Section 14 (1)(b) of the Act.

27. The Committee proceeded to make a Repairing Standard Enforcement Order as required by section 24(1)

28. The decision of the Committee was unanimous

Right of Appeal

29. **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

30. 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.

J. BONNAR

Signed....

Josephine Bonnar, Chairperson

.....Date 21 May 2016

SCHEDULE OF PHOTOGRAPHS

44 MILLHALL COURT, PLAINS, AIRDRIE ML6 7GE

CASE REF: PRHP/RP/16/0058 – 5 May 2016



FRONT ELEVATION



KITCHEN FLOOR COVERING



LIVING ROOM BLIND



LIVING ROOM WINDOW



COMMON HALL LIGHTS



PLASTER CRACKING IN LR