



Repairing Standard Enforcement Order

Ordered by the Private Rented Housing Committee

Ref: PRHP/RP/16/0070

Re property at: 10d Kelly Street, Greenock, PA16 8NF, being the subjects registered in the Land Register of Scotland under Title Number REN70745 ("the Property")

The Parties:-

Miss Charlene McMath, residing at 10d Kelly Street, Greenock, PA16 8NF ("the Tenant")

And

Mr Ross Cuffee and Mr James Cuffe, residing at 21 Ardgowan Street, Greenock, PA 16 8EG ("the Landlord") per their agent, Homefinders, Letting Agents, having a place of business at 111 West Blackhall Street, Greenock, PA15 1YD ("the Landlord's Agent")

NOTICE TO Mr Ross John Cuffee and Mr James Cuffe, residing at 21 Ardgowan Street, Greenock, PA 16 8EG ("**the Landlords**") and their agent Homefinders, Letting Agents, having a place of business at 111 West Blackhall Street, Greenock, PA15 1YD ("**the Landlords' Agent**")

Whereas in terms of their decision dated 19 May 2016, the Private Rented Housing Committee ("the Committee") determined that the Landlords have 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) Any fixtures, fittings and appliances provided by the Landlords under the tenancy are in a reasonable state of repair and in proper working order.

The Committee now requires the Landlords to carry out such work as are 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 Committee requires the Landlords to:-

- (a) Instruct any necessary repairs and/or renewal to the gas fire in the lounge of the property so that it is in a reasonable state of repair and in proper working order;
- (b) Exhibit to the Committee certification from a Gas Safe registered engineer to confirm that the gas fire is operational and safe to use; and
- (c) Produce a full and updated gas safety certificate certified for the property from a Gas Safe registered engineer confirming that all gas installations within the property are in working order and safe to use.

The Committee order that the works specified in this Order must be carried out and completed within the period of 4 weeks from the date of service of this Notice. The Committee further orders that the certificates required in terms of this order must be produced to the Committee within 4 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 page and the preceding page only are executed by Andrew Cowan, chairperson of the Private Rented Housing Committee at Glasgow on 19 May 2016 before this witness:-
A Cowan

Signed
Andrew Cowan, Chairperson

L McManus

.....Witness
Laura McManus, Secretary, 7 West George Street, Glasgow, G2 1BA



Determination by Private Rented Housing Committee

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

Ref: PRHP/RP/16/0070

Re Property at: 10D Kelly Street, Greenock, PA16 8NF, being the subjects registered in the Land Register of Scotland under Title Number REN70745 ("the Property")

The Parties:-

Miss Charlene McMath, residing at 10D Kelly Street, Greenock, PA16 8NF ("the Tenant")

And

Mr Ross John Cuffe and Mr James Cuffe, ("the Landlords") per their agents, Homefinders, Letting Agents, having a place of business at 111 West Blackhall Street, Greenock, PA15 1YD ("the Landlords' Agent")

Decision

The Private Rented Housing Committee ("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 concerned and, taking account of the evidence led by both the Landlords and the Tenant in writing, and by the Tenant at the hearing, determined that the Landlords have failed to comply with the duty imposed by Section 14 (1)(b) of the Act.

The Committee

The Committee consisted of:-

Mr Andrew Cowan – Chairperson
Mr Mike Links – Surveyor Member

Background

1. By application received by the Private Rented Housing Panel ("the Panel") on 18 February 2016, the Tenant applied to the Panel for a determination as to whether the Landlords 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 Landlords had failed to comply with their duty to ensure that the Property meets the repairing standard.
3. The Tenant explained in her application that she believed that the Landlords had failed to carry out work which was necessary to ensure that a gas fire (which was located in the lounge), was in a reasonable state of repair and in proper working order.
4. In support of her application, the Tenant submitted copies of letters which had been sent by the Tenant's solicitors (Messrs Brown & Co, 9 St Michael Street, Greenock,) to the Landlords' Agents. The letters produced were dated 8, 22 and 29 January and 2 and 16 February 2016. In each of the said letters the Tenant's solicitors had highlighted a number of complaints which the Tenant had identified with the Property.
5. On 16 March 2016, the Committee issues a Notice of Direction in which they required the Landlords to provide a gas safety certificate for the Property. The Landlords were specifically directed that the certificate produced must relate to an inspection of the Property after 18 December 2015 and should also address whether there is a carbon monoxide alarm which complies with the statutory guidance in the Property. No such certificate was produced by the Landlords in accordance with the Direction issued by the Committee.
6. By letter dated 8 April 2016, the Committee served a Notice of Referral, inspection and hearing upon both the Landlords and the Tenant. In terms of the said letter both the Landlords and the Tenant were advised that the Committee intended to inspect the Property on 17 May 2016 and to thereafter hold a hearing in relation to the Tenant's application on the same date.
7. By email dated 10 May 2016, the Landlords wrote to the Committee and gave written representations in relation to the application.

8. By email dated 12 May 2016, the Landlords' Agent wrote to the Committee and made further written representations on the Landlords behalf.

The Inspection

9. The Committee proceeded with the inspection of the Property on 17 May 2016. The inspection was attended by the Tenant, together with Mr Darren Corney, a colleague of the Tenant. Neither the Landlords nor the Landlords' Agent were represented at the inspection. At the inspection the Committee noted that the gas appliances situated within the kitchen of the Property (namely the boiler and gas cooker) were in working order.
10. The Committee noted that the gas fire situated within the lounge of the Property had a warning notice which advised that the gas fire was not safe to use.

The Hearing

11. The Committee thereafter held a hearing in relation to the Tenant's application at Gamble Halls, 44 Shore Street, Gourrock, PA19 1RG. The hearing was attended by the Tenant and by Mr Darren Corney. Neither the Landlords nor the Landlords' Agent made an appearance at the hearing.
12. The Committee heard evidence from the Tenant and Mr Darren Corney. The Tenant explained that a new boiler had been installed in the Property around November 2015. Following the installation of that boiler a succession of inspections had been carried out by gas engineers relative to the gas appliances within the Property. As a consequence of the findings of each of these gas inspections the Tenant (using the services of the Local Authority Environmental Health Officer) had alerted the Health and Safety Executive, as there were conflicting opinions as to the safety or otherwise of the various gas appliances within the Property. Given the nature and extent of the risks associated with the gas appliances, the Environmental Health Officer at the Local Authority had made arrangements to ensure that appropriate work was carried out to ensure that

the boiler and the gas cooker were operational and safe to use. The Tenant accordingly accepted that, as at the date of the hearing, there was no failure of the repairing standard in relation to these particular gas appliances.

The Tenant further gave evidence that in the course of the various inspections of gas appliances within the Property one of the gas engineers expressed concern that the gas fire, located within the lounge of the Property, was not safe to use. A warning notice was accordingly attached to the gas fire and the Tenant was advised not to use the gas fire.

Since January 2016, the gas appliances within the Property have been inspected on at least four occasions. Despite these inspections no engineer has positively confirmed that the gas fire is now safe to use. The Tenant's evidence was that a gas engineer had indicated that the gas fire should not be used and it was not safe to do so. She had accordingly not used the gas fire since January 2016. As a consequence she was not able to fully heat the lounge in the Property.

13. Although the Landlords did not attend the inspection or the hearing, they did lodge a letter by email dated 10 May 2016. Although that letter was received out with the time limit required by the Committee, the Committee nonetheless noted the terms of the letter submitted by the Landlords, primarily related to issues in connection with a Court action which they have raised at Greenock Sheriff Court for recovery repossession of the Property from the Tenant. The Landlords further specified the amount of money they have spent on the flat in terms of repairs and other matters. The Landlords also indicated that the Tenant was withholding rent. The Landlord's Agent lodged an email with the Committee dated 12 May 2016. In that email the Landlords' Agent stated that (sic) "All issues rectified, excluding gas fire problem, Landlords declare that he no longer can afford to reinvest in the Property sufficiently, because of the Tenant withholding various rents." The Landlords' Agent then gave further information in relation to the action by the Landlords at Greenock Sheriff Court.

Decision

14. The Committee are required to determine whether the Property meets the repairing standard. On the evidence available to the Committee from both the Landlords and Tenant, it is accepted that the gas fire is not in operational condition. The gas fire is a fixture, fitting and appliance provided by the Landlords under the tenancy and, accordingly, the Landlords have a duty in terms of Section 13 (1)(d) of the Act to ensure that the gas fire is in a reasonable state of repair and in proper working order. The Landlords and the Tenant both agree in their submissions to the Committee that the gas fire is not in proper working order. In the circumstances, the Committee accordingly determine that the Landlords have failed to comply with the duty to ensure that the Property meets the repairing standard at all times during the tenancy all as required by Section 14(1)(b) of the Act.
15. The Committee noted that the representations made by both the Landlords and the Landlords' Agent. The written representations lodged by the Landlords and the Landlords' Agent sought to suggest that the Landlords should not be required to carry out necessary works to meet the repairing standard as the Tenant had failed to pay her full rent and because the Landlords had already expended considerable sums on the Property. The Committee determined that the question as to whether the Tenant has complied with her obligations in terms of the tenancy (by way of payment of rent) is not relevant to the question of whether the Property meets the repairing standard.
16. As the Committee are satisfied that the Property does not meet the repairing standard, the Committee proceeded to make a Repairing Standard Enforcement Order as required by Section 24(!) of the Act.
17. The decision of the Committee was unanimous.

Right of Appeal

18. 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

19. 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.

A Cowan

Signed
Andrew Cowan, Chairperson

Date 19 May 2016

L McManus

.....Witness

Laura McManus, Secretary, 7 West George Street, Glasgow, G2 1BA

SCHEDULE OF PHOTOGRAPHS

10 D KELLY STREET, GREENOCK, PA16 8NF

CASE REF: PRHP/RP/16/0070 17 MAY 2016



Front elevation



Gas boiler/CO detector



Cooker



Living Room gas fire



Smoke detector