



Repairing Standard Enforcement Order
Ordered by the Private Rented Housing Committee

PRHP Ref: PRHP/RP/16/0101

Re: Property at 24 Rose Street, Lesmahagow, ML11 0HT ("the Property")

Title No: LAN 194656

The Parties:-

Ms Victoria Forrest, Hoodshill Farm, Lesmahagow, ML19PG; Ms Victoria Forrest, c/o Countrylet Ltd, 33 Abbeygreen, Lesmahagow, ML11 0EQ ("the Landlord")

Mrs Margaret McConnell, 24 Rose Street, Lesmahagow, ML11 0H ("the Tenant")

NOTICE TO Ms Victoria Forrest ("the Landlord")

Whereas in terms of their decision dated 17 June 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 house is wind and watertight and in all other respects reasonably fit for human habitation; and
- (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.

the Private Rented Housing Committee now requires the landlord 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 Private Rented Housing Committee requires the landlord:-

1. To instruct a suitably qualified window contractor to inspect the windows to establish the cause of the condensation and draughts and carry out such repairs as are recommended to rectify same,
2. To replace the damaged floor tiles or fit linoleum in the shower room.
3. To re-plaster and paint the ceiling in the bathroom.

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 17 June 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/16/0101

Re: Property at 24 Rose Street, Lesmahagow, ML11 0HT ("the Property")

Title No: LAN 194656

The Parties:-

Mrs Margaret McConnell ("the Tenant")

**Ms Victoria Forrest, Hoodshill Farm, Lesmahagow, ML11 9PG; Per
Countrylet Ltd, 33 Abbeygreen, Lesmahagow, ML11 0EQ ("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 Landlord and the Tenant 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 David Godfrey, Surveyor Member

Background

1. By application received on 16 March 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 house is wind and watertight and in all other respects reasonably fit for human habitation; and any fixtures, fittings and appliances provided by the landlord under the tenancy are in a reasonable state of repair and in proper working

order. Specifically the Tenant complained that the shower controls were hanging off the wall, the shower cubicle seals were falling apart, the floor tiles in front of the shower were broken, the window seals were missing leading to water inside the glazing units of the windows, and water damage in the bathroom and kitchen.

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 Tenant on 22 April 2016.
4. Following service of the Notice of Referral neither the Landlord nor the Tenant made written representations to the Committee. Both confirmed that they would attend the hearing.
5. The Private Rented Housing Committee inspected the Property on the morning of 2 June 2016. The Tenant and her daughter Brenda Adam were present during the inspection. Neither the Landlord nor the Letting Agent were present.
6. Following the inspection of the property the Private Rented Housing Committee held a hearing at Lesmahagow and District Resource Centre. The Tenant, her daughter Brenda Adam, the Landlord and the Letting Agent Jeanette Harrison were present. The Tenant and the Letting Agent gave evidence.

The Inspection

7. At the time of the inspection the weather was sunny and warm. The Committee were able to inspect the whole property. The property is a modern ground floor flat which comprises a hall, living room, kitchen, bathroom and 2 bedrooms one of which has an ensuite shower room. The Tenant is disabled and the Committee were accompanied during the inspection by her daughter. The Committee inspected all of the windows and were advised that until the warm weather had started these had been badly affected by condensation forming between the double glazed panes and that there were draughts from all of the windows. The Committee noted water marks along the bottom of the windows inside the glazed units but otherwise did not observe any significant condensation or draughts. The window vents were all shut at the time of the inspection. The Tenant advised that a piece of furniture had been moved in front of the living room window to block out the draughts. In the ensuite shower room the Tenants daughter advised that the shower had recently been repaired. The controls had been reattached to the wall and the shower had been re-sealed and was watertight. The Committee noted that the floor tiles were damaged and some were repaired with duct tape. In the kitchen the Tenants daughter pointed to a thin crack on the ceiling. The Tenant advised that she understood that this was damage caused by a leak from the property above which had occurred before she became the tenant. In the

bathroom the Committee noted more extensive damage to the ceiling which again the Tenant attributed to the historical leak from the property above. During the inspection the Committee noted that there are battery operated smoke detectors in the living room and one of the bedrooms. Two other smoke detectors in the hall and second bedroom have been removed. There is no heat detector in the kitchen. There is a CO detector.

The Hearing

8. At the Hearing the Tenant gave evidence. She advised that she has been the Tenant of the property for 3 years since 26 July 2013. She resided there with her husband until his death and now lives there alone. She indicated that the problems with the windows started the previous year during the winter months. She stated that condensation forms between the glass panes and the windows are draughty. She keeps the windows open as much as possible to ventilate the property. Although she has complained to the Letting Agent and the Landlord about the other repairs issues she indicated that she only complained about the windows immediately before making her application to the Private Rented Housing Panel, having been advised by a member of the PRHP staff that she had to do so if she wanted her complaint about the windows to form part of her application. The Tenant advised the Committee that the other matters were raised with the Letting agent during a house inspection in February 2016. However, the shower room repairs had first been complained of in May 2014 and the bathroom and kitchen ceiling issues had been reported when she moved into the property and on numerous occasions since that date. She confirmed that the shower has been repaired to her satisfaction on 18 March 2016. She was told in February 2016 that the flooring would be replaced but so far only a temporary repair with duct tape has been carried out. On 3 May she was told that someone would be out to measure up for flooring but did not attend. She advised the Committee that the Letting Agent had contacted her on 17 May 2016 to arrange a house inspection. This inspection had not taken place partly because she did not believe she was due an inspection at that point and partly because she had been unwell.
9. The Letting Agent, Jeanette Harrison gave evidence on behalf of the Landlord. She stated that she has always had a good relationship with the Tenant and has been to the property on many occasions. She advised that the first complaint about the windows was in March 2016 prior to intimation of the Application. She confirmed that no action has yet been taken in relation to the complaint but that her recent request to inspect the house was made so that she could take a look at the windows. She also confirmed that she is making arrangements to have a contractor inspect the windows and deal with any repairs issues. Ms Harrison then stated that it was accepted

by the Landlord that the bathroom flooring needed to be replaced and said that there were a number of reasons for the delay. The Landlord wanted two quotes obtained before instructing the work. There had been discussions about turning the room into a wet room but that the landlord was not agreeable to this. The Tenant had been annoyed when her request was refused. Lastly, the Tenant had recently been unwell so access to the property had been an issue. She confirmed that a contractor had now been instructed to remove the floor tiles and replace same with non-slip linoleum. Ms Harrison confirmed the ceilings in the kitchen and bathroom needed to be painted and the bathroom one re-plastered. She confirmed that she had been aware of this issue at least since June 2015. Her explanation for the delay was that the Landlord wanted confirmation from the occupier of the flat above that the leak had been repaired and that no further damage was likely. Letters had been sent but no reply received. Information confirming the position has only recently been obtained and the Landlord has agreed to instruct the work. A painter provided a quote in June 2015 and is now instructed by the Landlord to carry out the work. The Tenant will have to allow access for this. Ms Harrison advised the Committee that access has been a problem in recent weeks. Lastly Ms Harrison advised the Committee that an electrician is currently going round all of her agency properties carrying out electrical inspections and fitting new smoke detectors to ensure that the properties comply with current regulations and the property is included in this programme of work.

10. Following the Letting Agent's evidence the Committee sought clarification from the Tenant on the issue of access to the property. The Tenant was adamant that she has always cooperated with the Landlord when access was needed but claimed that sometimes contractors have failed to turn up. She accepted that access had not been provided in the last couple of weeks because she had been ill and in hospital but conceded that she could go to her daughters house nearby when repairs were being carried out and would arrange to do so. However, she was adamant that access had only been a recent issue and that poor communication by the Letting Agent and delays meant that she had no faith in them getting the work done. She confirmed also that although she had wanted a wet room she was prepared to allow access for the non-slip linoleum to be fitted.

Findings in Fact

11. The property is a modern two bedroomed ground floor flat in the centre of Lesmahagow. The accommodation comprises a hall, living room, kitchen, bathroom and two double bedrooms one of which has an ensuite shower room.

12. The Tenant has resided at the property since 26 July 2013 and currently resides at the property alone.
13. The Tenant notified the Landlord that the bathroom and kitchen ceilings were damaged shortly after moving in to the property. Repairs issues in relation to the shower and floor in the ensuite shower room were first notified to the Landlord in May 2014. A complaint about the windows was made in March 2016.
14. The Letting Agent obtained a quote for the kitchen and bathroom ceilings to be repaired in June 2015. The shower was repaired on 18 March 2016. A temporary repair to the floor was carried out on that date.
15. The kitchen ceiling has a superficial thin crack across it.
16. A section of the bathroom ceiling is damaged with peeling paint and plaster.
17. The tiling to the floor of the ensuite shower room is badly damaged.
18. The windows at the property are affected by slight condensation inside the glazing units.
19. A CO detector has been installed in the kitchen. There are 2 functioning battery operated smoke detectors in the property.

Reason for decision

20. The Committee considered the issues of disrepair set out in the Application and noted at the inspection and hearing.
21. The Committee noted during the inspection of the property that the shower room floor tiles and the bathroom ceiling are in a state of disrepair. The Tenants evidence that these matters had been reported some considerable time ago was not disputed by the Landlord. Furthermore the Letting Agent indicated that both were scheduled to be repaired in the near future. The Letting Agent stated in evidence that there had been recent problems getting access to the property for inspection and repair. This was not disputed by the Tenant but there seemed to be no suggestion that this had been a regular problem throughout the tenancy nor that the floor and ceiling had not been repaired timeously because of access issues. The parties therefore appeared largely to be in agreement about these repair issues.

22. During the inspection the Committee noted a slight crack on the surface of the kitchen ceiling. This appeared to be superficial and was not considered to be a breach of the repairing standard. The Committee noted however that the letting agent intends to have the kitchen ceiling painted when the bathroom ceiling is being repaired and painted.
23. The property was inspected during warm, dry weather and the Committee did not note any condensation or draughts affecting the windows. Water marks were visible inside the double glazed units which supported the Tenants complaint that condensation affects the inside of the windows during colder weather. The Letting Agent indicated that she was not in a position to accept or deny the problems with the windows. She had not yet inspected same or arranged for a contractor to do so. She had only been made aware of the issue in March 2016. She had attempted to arrange an inspection of the property in May but access had not been provided. On balance the Committee was persuaded that the windows should be inspected by a window contractor to establish the cause of the condensation and any draughts and carry out necessary repairs.
24. It was the view of the Committee that there had been some issues with access particularly in recent weeks but that this did not justify the delays on the part of the Landlord in attending to matters which had been brought to her attention.
25. The Committee accordingly took the view that they will require to make a Repairing Standard Enforcement Order in respect of the windows, the shower room floor tiles and the bathroom ceiling.

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.... Date... 17 June 2016

Josephine Bonnar, Chairperson



PRHP REF: PRHP/RP/16/0101

24 ROSE STREET, LESMAHAGOW, LANARK, ML11 0HT

Front elevation



En-suite shower enclosure



En-suite Shower Room floor tiles



Bedroom 1 - Window



Bedroom 2 - Window



Kitchen ceiling



Bathroom ceiling



Bathroom ceiling



Bedroom 1 – smoke detector fitting



David Godfrey MRICS

2nd June 2016