



Repairing Standard Enforcement Order

Ordered by the Private Rented Housing Committee

Case Reference Number: PRHP/RP/16/0158

Re: All and whole 0.02 hectare, with house Neilstra, 18 Carmuir Drive, Camelon, Falkirk thereon, referred to in Feu Disposition to Ralph John Neilson and another, recorded in the Division of the General Register of Sasines for the County of Stirling on 5 April, 1984 (Search sheet no: 45738) (**"the property"**)

The Parties:-

Ms Susanne Muenz, formerly residing at the property ("the tenant")

Mr Ralph John Neilson, c/o Property Unlimited, 18 Cockburn Street, Falkirk FK1 5BE ("the landlord")

Committee Members – Sarah O'Neill (Chairperson); David Godfrey (Surveyor Member)

NOTICE TO: Mr Ralph John Neilson (the landlord)

Whereas in terms of its decision dated twelfth July 2016, the Private Rented Housing Committee determined that the landlord had failed to comply with the duty imposed on him by Section 14 (1) (b) of the Act, and in particular that the landlord has failed to ensure that the house meets the repairing standard in that: 1) 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 2) 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 landlord 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 landlord to:

1. Provide an up to date gas safety certificate in respect of the property by a Gas Safe registered engineer, showing that all gas installations and appliances, and in particular the gas fire in the living room, have been checked, repaired as necessary, and are in a reasonable state of repair and in proper working order.
2. Provide an up to date Electrical Installation Condition Report in respect of the property by a suitably qualified and registered SELECT or NICEIC electrical contractor, showing that all electrical installations, fixtures and fittings and all appliances, and in particular the storage heater in the smaller bedroom, have been checked and are in a reasonable state of repair and in proper working order, with no Category C1 or C2 items present.
3. Repair or replace the toilet seat as necessary in order to ensure that it is in a reasonable state of repair and in proper working order.
4. Replace/reinstate the fitted kitchen as necessary in order to ensure that it is in a reasonable state of repair and in proper working order, including in particular the cooker hood, oven, kitchen units and cupboards and the kitchen floor covering.
5. Instruct a competent plumber to inspect the cold water system within the property and repair same, to ensure a constant and adequate flow of cold water.
6. 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 **28 days** 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 twelfth day of July, Two Thousand and Sixteen before this witness -

J. KANE

S. O'NEILL

_____ witness

_____ chairperson

JANET KANE name in full

EUROPA BUILDING Address

450 ARGYLE STREET

GLASGOW

PANEL CLERK 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/16/0158

Re: 18 Carmuirs Drive, Camelon, Falkirk FK1 4JG ("the property")

The Parties:-

Ms Susanne Muenz, formerly residing at the property ("the tenant")

**Mr Ralph John Neilson, c/o Property Unlimited, 18 Cockburn Street, Falkirk
FK1 5BE ("the landlord")**

**Committee Members – Sarah O'Neill (Chairperson); David Godfrey (Surveyor
Member)**

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 all the available evidence, determines that the landlord has failed to comply with the duty imposed on him 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 April 2016, the tenant applied to the Private Rented Housing Panel ("the panel") for a determination that the landlord had failed to comply with his duties under Section 14(1) of the Act.
2. In her application, the tenant stated that she believed the landlord had failed to comply with his 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 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
3. The tenant made the following complaints in her application form and her notification letter of 22 February 2016 to the landlord:
 1. The bathroom water supply is defective - cold water does not come out at all or with such high pressure that the whole bathroom is wet. There is constantly air in the pipes.
 2. The bathtub is moving up and down in the right back corner.
 3. The handrail in the bathroom is loose, which is a safety issue.
 4. The toilet seat is loose and moves around.
 5. There are open wires in the fitted wardrobe in the master bedroom.
 6. The light in the fitted wardrobe does not work.
 7. The night storage heater in the small bedroom is not adjustable, and only produces heating on full power during the night.
 8. The lock on the front door is too long and hurts your hand when you try to open the door.
 9. There is brown sticky stuff coming out of the oven when it is used.
 10. Nearly all of the kitchen floor tiles are loose.
 11. The light on the cooker hood is not working.
 12. The kitchen drawers/cupboards are not working.
 13. The light in the kitchen is loose and it is impossible to replace the broken bulb, as it falls out again.
 14. There is rubbish outside the house and in the small bedroom.
 15. The gas fire in the living room is not working.
4. The tenant also included a number of other complaints in her application form: namely, that there was water between the window panes in the master bedroom; that there was only one light in the entrance hall (bulb not

adjustable); that the carpets in the entrance hall were worn out; and that the laminate flooring in the living room was broken. There was, however, no evidence before the committee that the tenant had notified the landlord of these complaints prior to submitting her application. The committee was therefore unable to consider these complaints.

5. On 5 May 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 on 19 April 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 18 May 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 29 June 2016. Written representations were requested by 8 June 2016. Written representations were received from the landlord's agent on 2 June 2016.
7. On 23 May, an email was received from the landlord's agent advising that the tenant had moved out of the property. The tenant confirmed this during a telephone conversation with a member of panel staff on 26 May. On 1 June 2016, the committee issued a minute of continuation to a determination under Schedule 2 Paragraph 7(3) of the Act. This stated that, having received confirmation from the landlord's agent that the tenancy had been lawfully terminated, the tenant was to be treated as having withdrawn her application in terms of Schedule 2 paragraph 7 (1) of the Act. It then stated that the committee considered that the application should be determined on public interest grounds, due to the nature of the alleged repairs and the potential effects on any future tenants/occupiers if those allegations were substantiated.
8. The committee issued a direction to the landlord on 1 June, requiring him to provide to the committee by 23 June 2016: 1) a gas safety certificate in respect of the property dated after 19 April 2016 by a Gas Safe registered engineer, showing that all gas installations and appliances have been checked and are working safely and 2) an Electrical Installation Condition Report (EICR) in respect of the property dated after 19 April 2016 by a suitably qualified and registered SELECT or NICEIC contractor, showing that all electrical installations, fixtures and fittings and all appliances have been checked and are working safely. The landlord's agent attached a copy of a gas safety certificate in respect of the property dated 20 January 2015 to its

written representations of 2 June. It was stated in these representations that the tenant did not allow access to the property for a gas safety certificate or EICR to be carried out, and therefore no certificates were available. No further response to the direction was received by that date.

9. The committee notes that refusal or failure to provide the committee with any document or information required by the committee, without reasonable excuse, is an offence and liable on summary conviction to a fine not exceeding level 3 of the standard scale in terms of Schedule 2 Paragraph 3(3) (c) of the Act. The committee also notes that as the tenant's tenancy commenced after 1 December 2015, the landlord was required by law to provide the tenant with an EICR prior to the start of the tenancy. The landlord was also required to provide the tenant with a new gas safety certificate when the existing certificate expired in January 2016.

The inspection

10. The committee inspected the property on the morning of 29 June 2016. The weather conditions at the time of the committee's inspection were dry and overcast. Ms Kristene Spalding, the proprietor of the landlord's letting agent, Property Unlimited, and her colleague, Ms Jay McCourtney, provided access to the committee and were present at the inspection. Photographs were taken during the inspection and are attached as a schedule to this decision.

The property

11. The property is a semi-detached house estimated to be in the region of 65 years old. The property comprises: a hallway, living room, two bedrooms, kitchen and bathroom. The property was unoccupied at the time of the committee's inspection, and was undergoing renovation and redecoration works.

The hearing

12. Following the inspection, the committee held a hearing at Wallace House, Maxwell Place, Stirling FK8 1JU. The landlord was not present or represented at the hearing. The committee was satisfied that, in terms of regulation 15 of the Private Rented Housing Panel (Tenant and Third Party Applications) (Scotland) Regulations 2015, the requirements regarding the giving of notice of a hearing had been complied with. Ms Spalding advised the committee at its inspection that neither she nor any of her colleagues were able to attend the hearing. The committee therefore decided to proceed to make a decision on the basis of its inspection and all of the other evidence before it.

The evidence

13. The evidence before the committee consisted of:

- The application form completed by the tenant.
- Notification email dated 22 February 2016 from the tenant to the landlord's agent, setting out the repairs alleged to be required, and forwarded to the panel by the tenant on 19 April 2016.
- Sasine search sheet number 45738 showing the owner of the property to be Ralph John Neilson.
- Copy front page of tenancy agreement between the landlord and the tenant and Ms Carmen Rochel in respect of the property, together with a copy of a tenant information pack acknowledgement form signed by the tenant on 27 March 2016.
- Email correspondence between the panel and the housing department at Falkirk Council dated 6, 13 and 18 May 2016
- Emails from the landlord's agent to the panel dated 23 and 24 May and 1 June 2016.
- Email correspondence between the panel and the tenant dated 26 May 2016.
- Written representations from the landlord's agent in email dated 2 June 2016
- Copy gas safety certificate in respect of the property dated 20 January 2015.
- The committee's inspection of the property.

Summary of the issues

14. 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 landlord had complied with the duty imposed on him by section 14 (1) (b).

Findings of fact

15. The committee made the following findings in fact:

- The tenant and Ms Carmen Rochel entered into a tenancy agreement with the landlord to rent the property from 8 December 2015 until 7 June 2016.
- The owner of the property is Mr Ralph John Neilson, who is the registered landlord for the property.

- The property is managed on behalf of the landlord, who lives in the USA, by Property Unlimited, 18 Cockburn Street, Falkirk FK1 5BE.
- The committee in its inspection carefully checked the outstanding items which were the subject of the complaint. The committee observed the following:
 - i. When the cold water tap on the bathroom sink was turned on, water came out with considerable force, splashing over the top of the sink. The same thing occurred when the cold bath tap was turned on.
 - ii. The bath had been secured, and did not move when pressure was put on it.
 - iii. There was no handrail in the bathroom. There was no sign that there had previously been such a handrail in place.
 - iv. The toilet seat was loose.
 - v. The surface cabling and light fitting, together with the light switch, had been removed from the fitted wardrobe in the master bedroom.
 - vi. The storage heater in the smaller bedroom had been painted. It showed signs of scorch marks around the vents and the controls were worn.
 - vii. The front door lock had been replaced and was found to be operating correctly.
 - viii. The kitchen was in the process of being refitted. The floor tiles had been removed. The oven had been disconnected; the cooker hood had been removed; and the kitchen units and cupboards had been dismantled.
 - ix. The kitchen ceiling light was operating correctly.
 - x. No attempt was made by the committee to switch on the gas fire in the living room, but it appeared that it had been some time since the fire had last been used.

Reasons for decision

16. Following its inspection and the hearing, the committee determined that:

- the installations in the house for the supply of water, gas and electricity and for sanitation, space heating and heating water are not in a reasonable state of repair and in proper working order
- 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

17. 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. The bathroom water supply is defective

18. The committee observed at its inspection that when the cold water tap on the bathroom sink was turned on, water came out with considerable force, splashing over the top of the sink. This also happened when the cold bath tap was turned on. Ms Spalding indicated at the inspection that the landlord's agent accepted that there was a fault with the water supply, and intended to have this repaired. The committee determines that the cold water supply in the bathroom, which forms part of the installations in the house for the supply of water, is not in a reasonable state of repair and in proper working order.

2. The bathtub is moving up and down in the right back corner.

19. The committee observed at its inspection that the bath had been secured, and did not move when pressure was put on it. The committee therefore determines that the bath is in a reasonable state of repair and in proper working order.

3. The handrail in the bathroom is loose, which is a safety issue.

20. The committee observed at its inspection that there was no handrail in the bathroom, and that there was no sign that there had previously been such a handrail in place. Ms Spalding told the committee at the inspection that there had never been a handrail in the bathroom. The committee determined, on the balance of probabilities, that there had been no handrail in the bathroom during the tenant's tenancy, and that there was accordingly no repairing standard issue to consider.

4. The toilet seat is loose and moves around.

21. The committee observed at its inspection that the toilet seat was loose. The committee therefore determines that the toilet seat is not in a reasonable state of repair and in proper working order.

5. There are open wires in the fitted wardrobe in the master bedroom.

6. The light in the fitted wardrobe does not work.

22. The committee observed at its inspection that the surface cabling and light fitting, together with the light switch, had been removed from the fitted wardrobe in the master bedroom. Ms Spalding told the committee that these had been old style fittings, which had not been in use for some time. The committee determined that, as these fittings had now been removed from

the wardrobe, the wardrobe was now in a reasonable state of repair and in proper working order.

7. The night storage heater in the small bedroom is not adjustable, and only produces heating on full power during the night.

23. The committee observed at its inspection that the storage heater had been painted. It showed signs of scorch marks around the vents and the controls were worn. The committee noted that the heater appeared to be of some age. While the committee observes that it might be expected that a storage heater would be on during the night, in the absence of an up to date Electrical Installation Condition Report, which it had directed the landlord to produce, it was unable to determine whether the heater was in a reasonable state of repair and in proper working order.

8. The lock on the front door is too long and hurts your hand when you try to open the door.

24. The committee observed at its inspection that the front door lock had been replaced and was found to be operating correctly. It therefore determines that the lock is in a reasonable state of repair and in proper working order.

9. There is brown sticky stuff coming out of the oven when it is used.

10. Nearly all of the kitchen floor tiles are loose.

11. The light on the cooker hood is not working.

12. The kitchen drawers/cupboards are not working.

25. The committee observed at its inspection that the kitchen was in the process of being refitted. The floor tiles had been removed. The oven had been disconnected; the cooker hood had been removed; and the kitchen units and cupboards had been dismantled. It was not therefore possible for the committee to make a specific determination in relation to each of these specific complaints. The committee determines, however, that at the time of its inspection, the kitchen as a whole was not in a reasonable state of repair and in proper working order.

13. The light in the kitchen is loose.

26. The committee observed at its inspection that, when inspected, the kitchen ceiling light was operating correctly. It therefore determines that at the time of its inspection, the kitchen ceiling light was in a reasonable state of repair and in proper working order.

14. There is rubbish outside the house and in the small bedroom.

sanitation, space heating and heating water are not in a reasonable state of repair and in proper working order; and 2) 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.

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

Rights of Appeal

34. 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.
35. 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

36. 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..

Sarah O'Neill, Chairperson

.....Date.....12/7/16.....



PRHP REF: PRHP/RP/16/0158

18 CARMUIRS DRIVE, CAMELON, FALKIRK, FK1 4JG



Front elevation



Bathroom



Surface cabling and light fitting removed from master Bedroom wardrobe



Bedroom storage heater



Renewed front door lock



Kitchen presently being refitted



Kitchen floor tiles removed



Kitchen light fitting



Gas fire in Lounge

David Godfrey MRICS

29th June 2016

