



Repairing Standard Enforcement Order

Ordered by the Private Rented Housing Committee

Re 44 Calderpark Street, Lochwinnoch, PA12 4AX being the subjects registered in the Land Register under Title Number REN110143 ('the Property')

The Parties:-

Maura Richmond residing at 44 Calderpark Street, Lochwinnoch, PA12 4AX ('The Tenant')

Bowhouse Properties Limited, Innescote, Roxburgh, Kelso, TD5 8LZ ('The Landlords')

NOTICE TO The Landlords, the said Bowhouse Properties Limited

Whereas in terms of their decision dated 1st February 2013, the Private Rented Housing Committee determined that the Landlords have failed to comply with the duty imposed by Section 14 (1)(b) of the Housing (Scotland) Act 2006 and in particular the Landlords have failed to ensure that 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 and 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.

The Private Rented Housing Committee now requires the Landlords to carry out such work as is necessary for the purposes 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.

In particular the Private Rented Housing Committee requires the Landlords to:-

1. Install a hatch to enable the flue run to be viewed and exhibit a fully compliant updated Gas Safety Certificate.
2. Remove or repair the decking and associated hut in the rear garden to render the garden safe.

The Private Rented Housing Committee order that these works must be carried out and completed By 31st March 2013.

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.

Signed..... **J Taylor** Date 1st February 2013
Chairperson

..... E Shedden witness: ELIZABETH GIFFEN SHEDDEN, 65, High Street, Irvine



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

Re 44 Calderpark Street, Lochwinnoch, PA12 4AX being the subjects registered in the Land Register under Title Number REN110143 ('the Property')

The Parties:-

Maura Richmond residing at 44 Calderpark Street, Lochwinnoch, PA12 4AX ('The Tenant')

Bowhouse Properties Limited, Innescote, Roxburgh, Kelso, TD5 8LZ ('The Landlords')

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, determined that the Landlords have failed to comply with the duty imposed by Section 14 (1)(b) of the Act.

Background

1. By application dated 25th September 2012 the Tenant applied to the Private Rented Housing Panel for a determination of whether the Landlords have failed to comply with the duties imposed by Section 14 (1)(b) of the Act.
2. The application by the Tenant stated that she considered that the Landlords have failed to comply with their duty to ensure that the Property meets the repairing standard. She advised that the Property was not wind and watertight and in all other respects reasonably fit for human habitation and that the installations in the Property 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 proper working order.

The application gave further details of the work that the Tenant considered required to be done, namely:-

- 2.1 Repair required to the roof and chimney breast.
- 2.2 Serious water damage to living room wall and ceiling.
- 2.3 The boiler has a safety risk notice.
- 2.4 There is dangerous rubbish left from previous tenant in the back garden and clear garden.

3. The President of the Private Rented Housing Panel, having considered the application, referred the application under Section 22 (1) of the Act to a Private Rented Housing Committee.
4. The Private Rented Housing Committee served Notice of Referral under and in terms of Schedule 2, Paragraph 1 of the Act upon both the Landlords and the Tenant, dated 29th November 2012.

5. Following service of the Notice of referral the Landlords sent written representations dated 3rd January 2013. The main points contained in the written representations are as follows:

5.1.1 Boiler has Safety Risk

The notice was left by Gas Man Energy who had subsequently advised the Landlords that they had left the notice because they had been unable to inspect the full length of the venting flue through the kitchen as it had been boxed in. They had left the notice to cover themselves but advised that the boiler was safe to use and the inspection hatch was not a legal requirement. The Landlords explained that they have instructed Robert Scarf, joiners, to create a hatch for future inspections.

5.1.2 Dangerous rubbish left from previous Tenant

The Landlords advised that there is a collapsed shed in the garden that belongs to the Tenant and it is her responsibility to dispose of it.

5.1.3 Outstanding repair to water ingress from chimney breast and serious water damage to living room wall and ceiling

There was storm damage to the Property on 3rd December 2011. The resulting damage to the roof and chimney head has been repaired. The damp plaster in the living room has been replaced and the room has been re-decorated.

6. The Committee attended at the Property on 29th January 2013. Peter Bowyer (a Director of Bowhouse Properties Limited), Annette Gulliver of AMG Letting and the Tenant were present. The Committee inspected the alleged defects and found as follows:-

6.1 Repair required to the roof and chimney breast.

The roof and chimney breast had been satisfactorily repaired.

6.2 Serious water damage to living room wall and ceiling.

There was no evidence of dampness in the living room. The wall had been satisfactorily re-plastered and re-decorated.

6.3 The boiler has a safety risk notice.

There was a safety risk notice attached to the boiler.

6.4 There is dangerous rubbish left from previous tenant in the back garden.

In the rear garden there was a collapsed garden shed that belonged to the Tenant. There was also an area of raised wooden decking. The steps leading to the decking were broken. The decking itself appeared to be in a poor condition. The Committee did not climb onto the decking as it did not appear to be structurally sound. There was also a dilapidated hut made of plywood and felt adjacent to the decking. Wooden slats had been nailed across the door of the hut to prevent access being gained to the hut.

7. Following the inspection of the Property the Private Rented Housing Committee held a hearing at Howwood Village hall, Station Road, Howwood. Peter Bowyer, Annette Gulliver and the Tenant were also present at the hearing.

In relation to the matters detailed in the application the parties advised as follows:

7.1 Repair required to the roof and chimney breast.

The parties confirmed that the repair had been satisfactorily completed.

7.2 Serious water damage to living room wall and ceiling.

The parties confirmed that the repair and re-decoration had been satisfactorily completed.

7.3 The boiler has a safety risk notice.

The Tenant explained that there is a safety notice on the boiler. The Notice states: 'Safety Warning. At Risk'

Mr Bowyer referred the Committee to an email he had received from Gasman Energy dated 13th December 2012.

The email states:

'The boiler was marked 'At Risk' as the flue had been boxed in and full flue run was unable to be viewed. Gas Man Energy advised that due to this a CO2 alarm was required. The boiler was 'stickered' as per Gas Safety Regulations. However if the boiler was dangerous then it would have been marked as 'Immediately dangerous' and the boiler would have been shut down. Hatches are required to view the full flue, However these regulations do not come into place until 31st December 2012, therefore fitting a CO alarm is a short term solution as advised by Gas Safe (http://www.gassaferegister.co.uk/advice/flues_in_ceiling_spaces/frequently_asked_questions.aspx). A hard wired CO2 Alarm was fitted on 10.04.12. The boiler being marked 'At Risk means it could become dangerous in the future and that the Landlord should have hatches fitted before 1st January 2013. However it should be noted that this is not a legal requirement.'

Mr Bowyer explained that he has instructed Robert Scarf to fit a hatch and it will be completed by the end of the month.

7.4 There is dangerous rubbish left from previous tenant in the back garden and clear garden.

The Tenant explained that the decking and the adjacent hut need to be made safe.

Mr Bowyer advised that when he bought the Property the decking was in good order. He put the slats across the door of the hut in October 2011.

Summary of the issues

8. As stated above, the parties confirmed at the inspection and the hearing that the repair required to the roof and the chimney breast and the water damage to the living room wall and ceiling had been satisfactorily attended to.

Therefore the issues to be determined are:-

- 8.1 The structure and exterior of the Property was not in a reasonable state of repair and proper working order (Section 13(1)(b) of The Housing (Scotland) Act 2006).

Whether the condition of back garden results in the Property not being in a reasonable state of repair and in proper working order.

- 8.3 That the installations in the Property 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 proper working order (Section 13(1)(c) of The Housing (Scotland) Act 2006).

Whether the boiler is in a reasonable state of repair and proper working order.

Findings of fact

9. As a preliminary matter the Committee found, as confirmed by the parties, that:-
 - 9.1 The leaking roof and defective chimney heads had been satisfactorily repaired as there was no evidence of dampness and
 - 9.2 The ceiling and wall of the living room had been satisfactorily repaired.

Thereafter the committee found:-

9.1 The structure and exterior of the Property was not in a reasonable state of repair and proper working order (Section 13(1)(b) of The Housing (Scotland) Act 2006).

The decking and the hut fall within the definition of 'House' as defined in section 194(1)(b)(ii) of the Housing (Scotland) Act 2006. That section states that 'House' includes any yard, garden, garage, out-house or other area or structure which is, or is capable of being, occupied or enjoyed together with the living accommodation (solely or in common with others).

The Committee found that the decking and the adjacent hut were in a poor condition and appeared to be structurally unsound. Consequently the Committee considered that the back garden was NOT in a reasonable state of repair and proper working order.

9.2 That the installations in the Property 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 proper working order (Section 13(1)(c) of The Housing (Scotland) Act 2006).

The Committee accepted that there is an At Risk Notice on the boiler. They also accepted the explanation provided in the email from Gas Man Energy. The email explained that regulations required an access hatch to be fitted to allow access to the flue. The Committee also acknowledged that the Gas Safety Certificate exhibited to the Committee dated 19th March 2012 confirmed that the boiler was safe to use but remedial action was required. The faults detailed in the Gas Safety Certificate were that inspection hatches need to be fitted and there was no CO 2 alarm.

The Committee acknowledged that a CO 2 alarm had been fitted and the Landlord intended to fit the flue inspection hatch.

On balance the Committee considered that the presence of the At Risk notice resulted in the boiler NOT being in a reasonable state of repair and proper working order.

Decision

10. The Committee accordingly determined that the Landlords had failed to comply with the duties imposed by Sections 13 (1)(a) and 14 of the Act, as stated.
11. The Committee proceeded to make a Repairing Standard Enforcement Order as required by section 24(1). The Repairing Standard enforcement Order has a time limit of the 31st March 2013 for the Landlords to carry out works necessary to bring the Property up to the repairing standard.
12. The decision of the Committee was unanimous.

Right of Appeal

13. 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

14. 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 Taylor

Signed Date 1st February 2013
Chairperson