



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**

In connection with

Property at Flat 2/1, 53 E Budhill Avenue, Glasgow G32 0PG ("the house")

The Parties:-

Ms. Deborah Silvestro, Flat 2/1, 53E Budhill Avenue, Glasgow G32 0PG ("the Tenant")

Maconochies of Kilmarnock Limited, incorporated under the Companies Acts and having their registered office at 22 Campbell Street, Kilmarnock KA1 4HW ("the Landlord")

Reference PRHP/G32/33/10

DECISION

The Committee, having made such enquiries as is fit for the purpose of determining whether the Landlord has complied with the duty imposed by Section 14 (1) (b) in relation to the house concerned, and taking account of the evidence presented and the written representations, determined that the Landlord had failed to comply with the duty imposed by Section 14(1) (b) of the Housing (Scotland) Act 2006 (hereinafter referred to as "the Act")

Background

1. By application dated 9 February 2010 and received on 10 February 2010 the Tenant applied to the Private Rented Housing Panel (hereinafter referred to as "PRHP") for a determination of whether the Landlord 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 Landlord had failed to comply with the duty to ensure that the house meets the repairing standard and in particular that the Landlord had failed to ensure compliance with Sections 13(1) (a), (b),(c) and (d) of the Act which state that " (a) the house is wind and watertight and in all other respects reasonably fit for human habitation; (b) 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; (c) 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; and (d) 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 Tenant's application related to complaints of a defective heating and hot water system, gaps in the windows, electrical faults, exposed foam around pipes and the need for a new radiator. The Tenant submitted to PRHP a copy of the Lease with a copy of the Form AT5, copy letter dated 9 February 2010 which she had sent to the Landlord with notification of the required repairs, and a copy of the gas safety record relating to the house dated 2 February 2010 indicating that "boiler condemned due to carbon monoxide alarm activated and expanding foam not fire retardant". Said letter of 9 February was sent to the Landlord by recorded delivery post.

3. By letter dated 10 March 2010, PRHP gave intimation that the President of the PRHP had made a decision to refer the application under Section 23(1) of the Act to a Private Rented Housing Committee.

The Committee comprised the following members:

Mrs. Aileen Devanny, Legal Member
Mr. Mike Links, Surveyor Member
Mr. Tom Keenan, Housing Member

4. The Private Rented Housing Committee served Notice of Referral under and in terms of Schedule 2 Paragraph 1 of the Act upon the Landlord and the Tenant. Following service of the Notice of Referral the Landlord's agent indicated that she wished to attend a hearing before the Committee. The Landlord's agent submitted written representations along with correspondence she wished to refer to. The Tenant did not submit any further representations after the Notice of Referral.

5. The tenancy was lawfully terminated following upon service of a Notice to Quit on the Tenant by the Landlord and the Private Rented Housing Committee decided in terms of Schedule 2 paragraph 7 (3) of the Act to proceed to determine the application. In making this decision the Committee was mindful that the alleged repairs involved gas safety issues as well as allegations of electrical faults and other repairs.

6. The Private Rented Housing Committee inspected the house on the morning of 21 May 2010. The Landlord's agent, Ms. Marilyn Conway, and a representative of the

Landlord, Mr. McConnachie, were present. The Tenant was not present.

7. Following the said inspection the Private Rented Housing Committee held a hearing at the offices of PRHP, 140 West Campbell Street, Glasgow.

Submissions at the Hearing

8. The Committee considered the application with the accompanying correspondence from the Tenant and the written evidence submitted by the Landlord's agent. The Committee heard evidence and representations from the Landlord's agent, Ms. Marilyn Conway and from the Landlord's representative, Mr. McConnachie.

8.1 Ms. Conway indicated that the boiler in the house was defective and tradesmen had visited the house during the tenancy with a view to carrying out repairs to the boiler. However, the Tenant had been argumentative and on her instructions the tradesmen had left without carrying out the repairs. She indicated that the Tenant had subjected her to verbal abuse. She stated that the radiator in the lounge had been knocked of the brackets by Tenant misuse and that the radiator had been removed and pipe work sealed by tradesmen acting on her behalf. She disputed that there were gaps in the windows. Generally she stated that the repairs had not been carried out due to the obstructive attitude of the Tenant.

Letter from the Tenant's agent, Shelter, dated 11 May 2010 confirmed that the Tenant left the house on 20 April 2010 and the Landlord's agent indicated that the first occasion she had visited the house since it was vacated by the Tenant was at the inspection by the Private Rented Housing Committee on 21 May 2010. She stated that she had offered the Tenant electric heaters after the boiler was declared unsafe and the Tenant had reluctantly taken one heater and complained about the high costs of heating a house using this type of heater. Mr. McConnachie and Ms. Conway accepted that the boiler was not in proper working order.

Once evidence had been given, and representations made on the application, the Committee adjourned to consider the evidence and representations, and to make their determination.

Summary of the issues

9. The issue to be determined is whether the house meets the repairing standard as laid down in Section 13 of the Act and whether the Landlord had complied with the duty imposed by Section 14(1) (b).

Findings in Fact

10. The Committee made the following findings in fact:-

10.1. The Tenant entered into a lease with the Landlord for the rent of the house on 20 July 2009.

10.2. The Tenant notified the Landlord of the required works to the house and the required works were specified in a letter to the Landlord dated 9 February 2010. The Landlord's agent was aware of the works and issued instructions to tradesmen to carry out checks.

10.3. The house is a second floor flat in a sandstone tenement built around 1900 comprising lounge, 2 bedrooms, kitchen, and bathroom. The Committee confined their inspection to the items specified in the application and the alleged breaches of repairing standard.

The inspection revealed: - that there were gaps between the window frame and the surround of at least one window in the lounge and daylight could be seen through the gaps. The Tenant had used tape to seal the spaces between the frame and the surround in an attempt to make the lounge windows wind and watertight. The radiator in the lounge had been disconnected. The gas boiler in the kitchen had a sticker indicating that it had been condemned and the gas central heating system which also heats the water was not in working order. The electricity had been disconnected and so the Committee could only make a visual examination of the fuse box and the electrical fittings. However, from that visual inspection no evidence was seen of electrical faults. However, the Landlord may wish to have a qualified electrician carry out checks for reassurance.

Reasons for the Decision

11. In considering the repairing standard issue the Committee carried out an internal inspection of the house and in particular closely examined the specific defects highlighted by the Tenant in the application. In addition the Committee carefully considered the written documentation submitted and oral evidence. The Committee considered the representations of the Landlord's agent and Landlord's representative in relation to the repairing standard.

Inspection of the house indicated that the boiler had been condemned (this was also confirmed in the gas safety record); and the installation for the supply of space heating and hot water was not in proper working order; and some of the windows in the lounge were not wind and watertight due to gaps between the window surround and the frame. The Committee considers that to comply with Section 13(1) (a), (b), (c) and (d) of the Act that these items require remedial works. The Committee considered that a period of

28 days from service of the Notice on the Landlord would be a reasonable period of time for the works to be carried out.

Decision

12. The Committee, considering the terms of Section 13(3) of the Act, determined that the Landlord had failed to comply with the duty imposed by Section 14(1) (b) of the Act.

13. The Committee proceeded to make a Repairing Standard Enforcement Order as required by Section 24(2), which Order is referred to for its terms.

14. The decision of the Committee was unanimous.

Right of Appeal

15. 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

16. 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 Devanny

Chairperson,
21 May 2010





Repairing Standard Enforcement Order

Ordered by the Private Rented Housing Committee

PRHP REFERENCE- G32/33/10

Re: Property at Flat 2/1, 53E Budhill Avenue, Glasgow G32 0PG, being the subjects registered in the Land Register for Scotland under Title Number GLA 13790; ("the house")

The Parties

**Ms. Deborah Silvestro, Flat 2/1, 53E Budhill Avenue, Glasgow G32 0PG
("the Tenant")**

**Maconochies of Kilmarnock Limited, incorporated under the Companies Acts,
and having their registered office at 22 Campbell Street, Kilmarnock KA1 4HW
("the Landlord")**

NOTICE TO Maconochies of Kilmarnock Limited, ("the Landlord")

Whereas in terms of their decision dated 21 May 2010, 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 and in particular that the Landlord has failed to ensure that the house meets the repairing standard in that:-

- (1) the house is wind and watertight and in all other respects reasonably fit for human habitation;
- (2) 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;
- (3) 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; and
- (4) 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 is necessary for the purposes of ensuring that the house 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:-

- (a) to repair or replace the gas boiler and to ensure that the gas central heating system and hot water system are in a reasonable state of repair and proper working order; and to produce a Gas Safety Report for the house to Private Rented Housing Panel confirming the boiler and the forgoing systems for space heating and hot water meet the gas safety regulations and are in proper working order,
- (b) to repair or replace the lounge windows to ensure that they are wind and watertight.

The Private Rented Housing Committee order 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.

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.

IN WITNESS WHEREOF these presents typewritten on this and the preceding page are signed by Aileen Margaret Devanny, Chairperson of the Private Rented Housing Committee, at Glasgow on Third day of June, Two Thousand and Ten in the presence of the undernoted witness:-

WITNESS..... R Shea **A Devanny**
ROBERT SHEA
PRIVATE RENTED HOUSING PANEL
140 WEST CAMPBELL STREET
GLASGOW