

## 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:** The flatted dwellinghouse at 70 Walker Drive, South Queensferry, West Lothian EH30 9RR, being the subjects registered in the Land Register of Scotland under Title Number WLN1741 ("the Property")

#### The Parties:-

**MS KIRSTY SIVES**, residing at 70 Walker Drive, South Queensferry, East Lothian EH30 9RR ("the Tenant")

**MR GEORGE SCOTT CRAIG and MR DAVID JASON SCOTT**, per their agents Messrs Amarello Ltd, having a place of business at Lochside House, 3 Lochside Way, Edinburgh EH12 9DT ("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 concerned, and taking account of the evidence led by the Tenant in writing and at the hearing, 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 14<sup>th</sup> April 2009 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.
- 2 By letter dated 12<sup>th</sup> May 2009 the President of the Private Rented Housing Panel intimated a decision to both the Landlords and the Tenant to refer the application under Section 22 (1) of the Act to a Private Rented Housing Committee.
- 3 In addition to her application to the Private Rented Housing Panel, the Tenant also lodged the following papers with the Panel in support of her application:
  - (a) Copy letter addressed to the Landlords' agents dated 24<sup>th</sup> February 2009.
  - (b) Copy letter addressed to the Landlords' agents dated 31<sup>st</sup> March 2009.
  - (c) Copy Short Assured Tenancy Agreement between the Tenants and the Landlords dated 23<sup>rd</sup> February 2007.

The Landlords lodged no written representations with the Committee.

- 4 The Private Rented Housing Committee inspected the Property on the morning of 13<sup>th</sup> July 2009. The Tenant was present during the inspection. The Landlords did not attend the inspection.
- 5 Following the inspection of the Property the Private Rented Housing Committee held a hearing at Rosebury Hall, High Street, South Queensferry. The Tenant attended the hearing. The Landlords did not attend the hearing.

6 In terms of her application the Tenant submitted that she considered the Landlords had failed to meet the Repairing Standard as the Property had the following defects:-

- (a) The Tenant had not been provided with a key to lock the windows in the property. The Tenant was not therefore able to lock the windows and the Tenant was concerned about safety issues, particularly as she had young children in the Property.
- (b) The Landlords had failed to replace the carpets in the two back bedrooms of the Property.
- (c) There was no radiator in either of the two back bedrooms to the Property.
- (d) The bathroom radiator leaked onto the floor of the bathroom.
- (e) The washhand basin in the bathroom was cracked in two places.
- (f) The base of the bath had been melted by a previous occupant and the bath was uncomfortable to use.
- (g) The bathroom had mould around the washhand basin and the bath where each of these items was attached to the wall.
- (h) The toilet cistern was loose and there was a leak from the toilet onto the bathroom floor.
- (i) The windows in the living room and front bedroom of the Property allowed excessive draughts into these rooms, particularly during cold and windy weather.
- (j) The two back bedrooms of the Property suffered from dampness, particularly under the windows.
- (k) The lock up in the basement of the Property (which was for the sole use of the Tenant and which was part of the subjects of the tenancy) was not capable of use as a storage area as recent water ingress had severely damaged the roof which had collapsed into the storage area.
- (l) There was no available hot water in the bathroom.
- (m) The heating system and radiators regularly made loud banging noises when the heating system was operational.

The Committee's observations from their inspection of the Property along with the comments of the Tenant noted at the hearing are as follows:-

|    | <b>Complaint</b>         | <b>Observation</b>   |
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| a) | Lockable windows         | The Committee noted that all of the windows in the Property were capable of being locked. The Tenant's evidence was that she had taken the tenancy on a clear undertaking from the Landlords that the windows were capable of being locked. The Tenant had never been given a key for the windows. |
| b) | Carpets for two bedrooms | The Committee noted that new carpets had now been fitted to the two bedrooms concerned by the Landlords, and that the Tenant had herself supplied a further carpet for a third bedroom.  |

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| c) | Missing radiators                             | The Committee noted that no radiators had been in existence within the two back bedrooms at the time that the Tenant took the tenancy of the Property. The Tenant accepted that this was the case.  |
| d) | Bathroom radiator                             | The Committee noted that the bathroom radiator no longer leaked and this was accepted by the Tenant.  |
| e) | Bathroom washhand basin                       | The Committee noted two very minor cracks to the washhand basin within the bathroom.  |
| f) | Bath  | The Committee noted a melted part on the bottom of the bath. The Tenant confirmed that the bath had been in this condition when she took occupancy of the Property.   |
| g) | Mould round the washhand basin and bath       | The Committee noted a very small amount of mould, particularly where the bathroom fittings were attached to the wall. The Committee noted in evidence from the Tenant that she had regularly cleaned the mould and had applied a plastic strip around the bath to assist in the prevention of future mould growth.  |
| h) | Loose cistern/leaking toilet                  | The Committee did not observe any particular problem with the fitting of the cistern. The Committee did however observe that the toilet was leaking onto the floor of the bathroom at the back of the toilet.   |
| i) | Draughts to the living room and small bedroom | The Committee visited the Property on a warm, still summer's day, and there were no apparent draughts through the windows at that time. The Tenant gave evidence that when the weather was cold and windy there was excessive draughts coming through the windows in the living room and the small bedroom. The Committee further noted that the Landlords had attached foam draught excluders to part of the living room window and that (according to the evidence of the Tenant) this work had been successful in excluding the draughts from that part of the window. |
| j) | Dampness back bedrooms                        | The Committee noted a small amount of dampness around the windows of each of the back bedrooms. The Tenant gave evidence that she had (within the last few months) cleaned the dampness with detergent and had painted over the affected areas.   |
| k) | Lock up                                       | The Committee viewed the exclusive part of the basement which was part of the subjects of tenancy. The Committee observed that the ceiling of this part of the tenancy had fallen in and that the area for exclusive use of the Tenant was not suitable for use as a storage area.  |
| l) | No hot water in bathroom                      | The Tenant advised that this issue had been resolved  |
| m) | Heating system                                | The committee were not able to observe the heating system in operation. The Tenant did however give evidence that when the heating system was running a number of the radiators would make loud banging noises. The Tenant advised that she had reported this previously to the Landlords and the Landlords had obtained a quotation to repair the heating system. The Tenant had   |

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|  | seen a copy of this quotation which made reference to moving a valve within the heating system. The Tenant gave evidence that despite having obtained that quote the Landlords had then failed to carry out further work and that the heating system continued to make excessive noise whilst it was operating. |
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### Summary of the issues

- 7 The issue to be determined by the Rented Housing Committee is whether or not the Property meets the repairing standard in terms of Section 13 (1) of the Act as at the date of the hearing. The committee considered the submissions of the Tenant, the Committee's own observations at the inspection and the documents submitted. They were satisfied that the Tenant had intimated the requirement for works to the Landlord as required by the Act. The Committee noted that the Landlords had carried out some repair work to the Property since the date of the Tenant's application.

The Committee accordingly determined as follows:-

|    | Complaint                               | Determination   |
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| a) | Lockable windows                        | The Committee accepted that as the windows form part of the structure and interior of the Property they were required to be in a reasonable state of repair and in proper working order. Although the windows were fitted with locks no key had ever been given to the Tenant and accordingly the windows were not in proper working order. The fact that the windows would not lock was accordingly a breach of the Repairing Standard. (Section 13 (1)(b)). |
| b) | Carpets for two bedrooms                | The Committee noted that the new carpeting had now been supplied and that there was no breach of the Repairing Standard in this respect.  |
| c) | Missing radiators                       | The Committee noted that no radiators had been provided by the Landlord in either of the two abck bedrooms. This had been the position since the start of the tenancy. There was accordingly no breach of the Repairing Standard in this respect  |
| d) | Bathroom radiator                       | The Committee noted that the radiator in the bathroom no longer leaked and there was no breach of the Repairing Standard in this connection.  |
| e) | Bathroom washhand basin                 | Whilst the Committee noted that there was minor cracking to the washhand basin the Committee were of the view that this fixture was in a reasonable state of repair and in proper working order and accordingly there was no breach of the Repairing Standard in this respect.  |
| f) | Bath                                    | The Committee noted the melted part on the base of the bath. The Committee were of the view that this fixture supplied by the Landlords under the tenancy was not in a reasonable state of repair or in proper working order and that accordingly it breached the terms of the Repairing Standard (Section 13 (1) (d)).   |
| g) | Mould round the washhand basin and bath | Whilst the Committee noted that there was evidence of a small amount of mould in the bathroom the Committee were of the view that the mould was minimal. The Committee noted that the Tenant had been able to   |

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|    |   | manage the mould growth through regular cleaning and painting. Accordingly the Committee were of the view there was no breach of the Repairing Standard in this connection.   |
| h) | Loose cistern/leaking toilet                  | The Committee did not observe any particular problem with the fixing of the cistern to the wall. The Committee did however note that there was a leak from the toilet which (as an installation supplied by the Landlords for sanitation) was not in a reasonable state of repair or in proper working order and that accordingly it breached the terms of the Repairing Standard (Section 13 (1) (c)).   |
| i) | Draughts to the living room and small bedroom | The Committee accepted the evidence of the Tenant that there were on occasions excessive draughts from the living room and small bedroom windows at the front of the Property. The Committee in particular noted that previous work by the Landlords to address this issue at part of the living room window (where the Landlords had fixed foam draught excluder) had been successful. The Committee were of the view therefore that, as the windows form part of the structure and exterior of the house, they were not in proper working order as they allowed excessive draughts and the windows accordingly breached the terms of the Repairing Standard (Section 13 (1) (b)). |
| j) | Dampness back bedrooms                        | The Committee noted the evidence of the Tenant which was to the effect that there was excessive dampness around the windows in the back bedrooms of the Property. The Tenant had painted over the affected areas with special paint which she had purchased and the Committee noted that this had to a degree been successful and there was no substantial evidence of dampness within these bedrooms at the time of the inspection. In the circumstances the Committee were satisfied there was no breach of the Repairing Standard in that respect.   |
| k) | Lock up                                       | The Committee noted the extent of disrepair within the lock up of which the Tenant had exclusive use. The Committee were satisfied that the lock up formed part of the structure and exterior of the house and that it was not in a state of repair or in proper working order and that accordingly it breached the terms of the Repairing Standard (Section 13 (1) (b)).   |
| l) | No hot water in bathroom                      | The Tenant accepted that this issue had been resolved and accordingly there was no breach of the Repairing Standard in this respect.  |
| m) | Heating system                                | The Committee accepted the evidence of the Tenant to the effect that (when operational) the heating system made loud banging noises. Accordingly the Committee accepted that the installations in the house for space heating were not in a reasonable state of repair or in proper working order and that accordingly it breached the terms of the Repairing Standard (Section 13 (1) (c)).  |

### Decision

- 8 The Committee accordingly determined the Landlords had failed to comply with the duty imposed by Section 14 (1)(b) of the Act.
- 9 The Committee proceeded to make a Repairing Standard Enforcement Order as required by Section 24(2) of the Act. In particular the Committee requires the Landlords to:-
- (a) provide keys for all windows in the Property or replace the locks on the windows, such that all windows in the Property are capable of being locked.
  - (b) Repair or replace the bath on the Property.
  - (c) Repair the leak to the toilet within the Property.
  - (d) Carry out such repairs as may be necessary to exclude excessive draughts from the windows in the living room of the Property and the small bedroom to the front of the Property.
  - (e) Carry out such works as are necessary to the lock up in the basement of the Property (in relation to the part of which the Tenant has exclusive use) to allow the Tenant to use that area as a dry storage area.
  - (f) Carry out such repairs as are necessary to the central heating system within the Property (including the radiators) so that the said central heating system operates correctly and that it does not make loud banging noises when operational.

The Committee further determined that any damage caused by the carrying out of any work in pursuance of the necessary repairs to the Property is to be made good by the Landlords.

The Committee determined that the repairs required to the property must be completed within a period of two months from the date of intimation of the Repairing Standard Enforcement Order upon the Landlords.

- 10 The decision of the Committee was unanimous.

### Observation

The smoke alarm in the property was installed by the Tenant sometime after 3<sup>rd</sup> September 2007 and accordingly does not comply with the guidance issued by the Scottish Ministers as there is no hard wired smoke detector installed in the property in accordance with the recommendations contained in the British Standard on the design of fire detection installations for dwellings (BS5839). No application was made by the Tenant to the PRHP in this respect and accordingly the Committee make no finding in respect of this matter. The issue is drawn to the Landlords' attention as a matter of good practice.

### Right of Appeal

- 11 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**

12 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 .  
Chairperson

..... Date..... 13/7/09.....

# S Lindie

.....Witness

..... SARARA LINDIE ..... Full Name

..... 7 WEST GEORGE STREET ..... Address

..... GLASGOW G2 1BA .....

## **Repairing Standard Enforcement Order**

### **Ordered by the Private Rented Housing Committee**

**Re: The flatted dwellinghouse at 70 Walker Drive, South Queensferry, West Lothian EH30 9RR, being the subjects registered in the Land Register of Scotland under Title Number WLN1741 ("the Property")**

#### **The Parties:-**

**MS KIRSTY SIVES, residing at 70 Walker Drive, South Queensferry, East Lothian EH30 9RR ("the Tenant")**

**MR GEORGE SCOTT CRAIG and MR DAVID JASON SCOTT, per their agents Messrs Amarello Ltd, having a place of business at Lochside House, 3 Lochside Way, Edinburgh EH12 9DT ("the Landlords")**

**NOTICE TO MR GEORGE SCOTT CRAIG and MR DAVID JASON SCOTT, per their agents Messrs Amarello Ltd, having a place of business at Lochside House, 3 Lochside Way, Edinburgh EH12 9DT ("the Landlords")**

Whereas in terms of their decision dated 13 July 2009, 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 that the Landlords have failed to ensure that the:-

- (a) 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;
- (b) 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 improper working order;
- (c) Any fixtures, fittings and appliances provided by the Landlords under the tenancy are in a reasonable state of repair and 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 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 landlords to carry out such works as are necessary to:

- (a) provide keys for all windows in the Property or replace the locks on the windows, such that all windows in the Property are capable of being locked.
- (b) Repair or replace the bath on the Property.
- (c) Repair the leak to the toilet within the Property.



- (d) Carry out such repairs as may be necessary to exclude excessive draughts from the windows in the living room of the Property and the small bedroom to the front of the Property.
- (e) Carry out such works as are necessary to the lock up in the basement of the Property (in relation to the part of which the Tenant has exclusive use) to allow the Tenant to use that area as a dry storage area.
- (f) Carry out such repairs as are necessary to the central heating system within the Property (including the radiators) so that the said central heating system operates correctly and that it does not make loud banging noises when operational.

The Committee further determined that any damage caused by the carrying out of any work in pursuance of the necessary repairs to the Property is to be made good by the Landlords.

The Private Rented Housing Committee order that the works specified in this Order must be carried out and completed within two calendar months 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.

# A Cowan

Signed...  
Chairperson

... Date... 13/7/09

## S Lindie

Witness.....

Name in full... SANDRA LINDIE

Address... 7 WEST GEORGE STREET, GLASGOW