

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 47 Broadstone Avenue, Port Glasgow PA14 5AT, being the subjects registered in the Land Register of Scotland under Title Number REN78772 ("the Property")

The Parties:-

MS HELEN MORRISON, residing at 47 Broadstone Avenue, Port Glasgow PA14 5AT ("the Tenant")

and

MR HARJIT KAUR BOPARI, trading as Priya Properties Ltd, 1 Mansion Avenue, Port Glasgow PA14 5QP ("the Landlord")

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, and taking account of the evidence led by the Tenant and the Landlord in writing and at the hearing, determined that the Landlord has failed to comply with the duty imposed by Section 14 (1) (b) of the Act.

Background

- 1 By application received by the Private Rented Housing Panel on 22nd February 2010 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 4th March 2010 the Private Rented Housing Panel intimated the decision of the President of the Panel to both the Landlord 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 Tenant from Inverclyde Council Environment and Community Protection Department dated 27th November 2009.
 - (b) Copy letter from the Tenant to the landlord dated 17th February 2010.

The Landlord lodged no written representations with the Committee in advance of the inspection and the hearing.

- 4 The Private Rented Housing Committee inspected the Property on the morning of 18th May 2010. Both the Tenant and the Landlord were present at the inspection.
- 5 Following the inspection of the Property the Private Rented Housing Committee heard evidence from both the Tenant and the Landlord at the property. Both the Tenant and the

Landlord consented to evidence being heard at the property without the necessity of convening a separate hearing for that purpose.

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

- (a) The ceiling in the sitting room was affected by dampness.
- (b) The kitchen ceiling had been damaged by flood damage.
- (c) The front door was poorly fitted and allowed rain and draughts into the property.
- (d) The electrical sockets within the property were unsafe.
- (e) The lighting in the hallway at the front door did not operate.
- (f) The toilet cistern lid was broken in half.

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

	Complaint	Observation
(a)	Dampness affecting ceiling in sitting room	The Committee observed a patch on the ceiling of the sitting room where the Tenant indicated there had been a previous leak into the property. The Landlord explained that there had been water penetration in the past. It was understood that this had been caused by damage to the chimney head immediately above the property. In particular the rendering around the chimney head was broken. The Landlord further explained that the chimney head was owned in common with other proprietors in the building. The Landlord submitted that he lacked the necessary rights to carry out a repair to the chimney head without the consent of the other owners in the property. The Landlord had contacted the factors of the property who had inspected the property and in particular had inspected the chimney head. The factors had carried out some repairs to the chimney head. The Tenant confirmed that the water penetration in the sitting room was last noted in November 2009.
(b)	Damage to kitchen ceiling décor as a result of flood damage	The Committee noted that part of the kitchen ceiling's decoration had been damaged and the plaster work exposed. The Tenant explained that there had been water penetration at this part of the ceiling and she last noticed the water penetration in December 2009. The Landlord explained that the water penetration had been caused by the same problems with the chimney head directly above the property. He again highlighted that he had alerted the factors of the property to the requirement to carry out the necessary repairs and that he lacked the sole necessary rights to carry out the repair as the chimney head was owned in common with other proprietors within the property.
(c)	Poorly fitted front door	The Committee observed that the front door fascia around the front door was missing and that the Tenant complained that as a consequence rain and wind penetrated the door

		at this point.
(d)	Electrical sockets	The Committee noted that the Tenant accepted that the Landlord had carried out repairs to the electrical sockets within the property and that she was satisfied that this matter was no longer an issue of concern.
(e)	Lights in the hallway and the front door	The Committee noted that the Tenant accepted the Landlord had repaired the lighting in the hallway at the front door and that this matter was no longer an issue of concern.
(f)	Toilet cistern lid	The Committee noted that the toilet cistern lid was broken in half. The Tenant accepted that the lid had been broken by her actions (albeit she maintained this was as a result of the toilet flush system not operating properly).
(g)	Smoke detector	Although not specifically highlighted in her list of complaints the Tenant had indicated in her application that she did not consider that the property met the Repairing Standard as there was not satisfactory provision for detecting fires and for giving warning in the event of fire or suspected fire. The Committee noted that there was a battery operated smoke detector in the property. The Tenant confirmed that there was no battery within the smoke detector. The Tenant accepted that it was her duty to replace the battery within the smoke detector.

Summary of the issues

- 8 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 and the Landlord and took account of their 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 Landlord 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
(a)	Dampness affecting ceiling in sitting room	The Committee were not satisfied that there was any evidence of dampness in the ceiling of the sitting room. The Committee noted both parties' comments that there had been previous water penetration. The Committee accepted the Landlord's comments that this water penetration had been caused by problems with the chimney head situated directly above the property. The Committee further accepted that the chimney head was common property. The Committee further accepted that the Landlord has taken steps to have the factor of the property carry out the necessary repairs to the chimney head. In terms of Section 16 (4) of The Housing (Scotland) Act 2006 a Landlord is not to be treated as having failed to comply with the duty imposed by Section 14 (1) of the Act where

		<p>the purported failure only occurred only because the Landlord lacked the necessary rights (or access of otherwise) despite having taken reasonable steps for the purposes of acquiring those rights. The Committee were satisfied in this particular case that the Landlord lacked the necessary rights to carry out the work without the consent of other co-owners of this joint property. The Committee were satisfied that the Landlord had taken reasonable to date to acquire those rights and to have the necessary works carried out.</p> <p>The Committee accordingly found there was no breach of the Repairing Standard in this respect.</p>
(b)	Damage to kitchen ceiling décor as a result of flood damage	<p>The Committee were not satisfied the decorative damage in the ceiling of the kitchen constituted a failure of the repairing standard. The Committee noted both parties' comments that there had been previous water penetration. The Committee accepted the Landlord's comments that this water penetration had been caused by problems with the chimney head situated directly above the property. The Committee further accepted that the chimney head was common property.</p> <p>The Committee further noted that the Landlord has taken some steps to have the factor of the property carry out the necessary repairs to the chimney head. In terms of Section 16 (4) of The Housing (Scotland) Act 2006 a Landlord is not to be treated as having failed to comply with the duty imposed by Section 14 (1) of the Act where the purported failure only occurred only because the Landlord lacked the necessary rights (or access of otherwise) despite having taken reasonable steps for the purposes of acquiring those rights. The Committee were satisfied in this particular case that the Landlord lacked the necessary rights to carry out the work without the consent of other co-owners of this joint property. The Committee were satisfied that the Landlord had taken reasonable to date to acquire those rights and to have the necessary works carried out.</p> <p>The Committee accordingly found there was no breach of the Repairing Standard in this respect.</p>
(c)	Poorly fitted front door	<p>The Committee noted that the front door was not wind and watertight. In the circumstance the Committee were of the view that the condition of the front door accordingly breached the terms of the Repairing Standard (Section 13 (1) (a)).</p>
(d)	Electrical sockets	<p>The Committee noted that the Landlord had carried out a repair and that, as at the date of the inspection, there was accordingly no breach of the Repairing Standard.</p>
(e)	Lights in the hallway and the front door	<p>The Committee noted that the Landlord had carried out a repair and the lighting was now in working order. In the circumstances the Committee determined that there was accordingly no breach of the Repairing Standard in this respect.</p>

(f)	Toilet cistern lid	<p>The Committee noted that the toilet cistern lid was broken. The Committee further noted that the Tenant accepted that the cistern had broken as a result of her own actions.</p> <p>In terms of Section 16 of The Housing (Scotland) Act 2006 the duty imposed by the Repairing Standard did not require the Landlord to carry out work where the Tenant was liable by virtue of the Tenant's duty to use the house in a proper manner.</p> <p>Given that the Tenant accepted that she was responsible for the damage caused to the toilet cistern lid the Committee determined that there was not a breach of the Repairing Standard in this respect.</p>
(g)	Smoke detector	<p>There was a smoke alarm in the property. The Tenant was required to replace the battery in the smoke alarm. The fact that the alarm did not have a battery present at the time of the inspection of the property was accordingly not, in itself, a breach of the Repairing Standard.</p>

Decision

- 9 The Committee accordingly determined the Landlord had failed to comply with the duty imposed by Section 14 (1) (b) of the Act in relation only to the defective front door.
- 10 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 Landlord to carry out repairs to the front door of the property such as are necessary to make it wind and watertight.
- 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 six weeks from the date of intimation of the Repairing Standard Enforcement Order upon the Landlords.
- 11 The decision of the Committee was unanimous.

Observation

- 12 The Landlord wished the Committee to take note of the condition of the property and in particular his averments that the Tenant had failed to maintain the property in a reasonable condition. The Committee explained to the Landlord that these issues were not within the Committee's jurisdiction unless these issues directly related to the Tenant's complaints which had been made to the Committee.

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.

A Cowan

Signed
Chairperson

Date.....

18/5/10

A McDonald

.....Witness

ARLEEN McDONALD

.....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 47 Broadstone Avenue, Port Glasgow PA14 5AT, being the subjects registered in the Land Register of Scotland under Title Number REN78772 ("the Property")

The Parties:-

MS HELEN MORRISON, residing at 47 Broadstone Avenue, Port Glasgow PA14 5AT ("the Tenant")

and

MR HARJIT KAUR BOPARI, trading as Priya Properties Ltd, 1 Mansion Avenue, Port Glasgow PA14 5QP ("the Landlord")

NOTICE TO MR HARJIT KAUR BOPARI, trading as Priya Properties Ltd, 1 Mansion Avenue, Port Glasgow PA14 5QP ("the Landlord")

Whereas in terms of their decision dated 18th May 2010, 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 house is wind and watertight and in all other respects reasonably fit for human habitation.

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 Committee requires the Landlord to carry out repairs to the front door of the property such as are necessary to make it wind and watertight.

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

A Cowan

Signed.....
Chairperson

Date..... 18th May 2010.

A McDonald

Witness.....

Name in full..... ARLEEN McDONALD

Address..... 7 WEST GEORGE STREET
GLASGOW, G2 1BA.