

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 dwellinghouse situated at and known as 71 Cumbrae Drive, Motherwell, ML1 3LJ, being the subjects registered in the Land Register of Scotland under Title Number LAN173013 ("the Property")

The Parties:-

MR WILLIAM McPHERSON, residing at 71 Cumbrae Drive, Motherwell, ML1 3LJ ("the Tenant")

MR TAHIR AMIN, residing at 64 Aultmore Drive, Motherwell
("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 concerned, and taking account of the evidence led by the Tenant 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 dated 17th 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 23rd March 2010 the President of the Private Rented Housing Panel intimated a decision to both the Landlord and the Tenant to refer the application under Section 22 (1) of the Act to a Private Rented Housing Committee. The intimation to the Landlord was made per his agents Messrs Let's Express, 367 Paisley Road West, Glasgow, G51 1LX. The said agents subsequently acknowledged receipt of the Notice of Referral. Shortly prior to the date of the hearing in relation to this matter the agents for the Landlord wrote to the Tenant and advised that they no longer acted as agents for the Landlord. In the circumstances the Committee who considered the application were satisfied that as the Landlord's agents had been properly notified of the hearing it was appropriate to proceed with the hearing and make a determination in relation to the Tenant's application. All future correspondence including the decision of the Committee in relation to the application will be notified directly upon the Landlord.
- 3 In addition to his application to the Private Rented Housing Panel the Tenant also lodged a copy letter dated 12th March 2010 addressed to the Landlord's agents in which the Tenant listed the nature and extent of his complaints regarding the Property. The Tenant further lodged with the Private Rented Housing Panel a copy of the tenancy agreement between the Landlord and the Tenant dated 7th March 2009.

- 4 The Landlord has lodged no written representations with the Committee.
- 5 The Private Rented Housing Committee inspected the Property on the morning of 27th July 2010. The Tenant was present during the inspection. The Landlord did not attend the inspection.
- 6 Following the inspection of the Property the Private Rented Housing Committee held a hearing at Cullinan Community Centre, Logans Road, Motherwell. The Tenant attended the hearing. The Landlord did not attend the hearing. Prior to the inspection and the hearing the Clerk to the Committee had contacted the Landlord's agents on 23rd July 2010. She had confirmed to the Landlord's agents that the inspection and the hearing were proceeding on 27th July 2010.
- 7 In terms of his application to the Private Rented Housing Panel the Tenant submitted that the Landlord had failed to meet the Repairing Standard as the Property had the following defects:-
 - (a) The gas boiler heating system within the property is inoperable and as a consequence the Tenant has no hot water and no central heating.
 - (b) The electric shower in the bathroom does not provide hot water.
 - (c) There is a leak from a pipe below the sink in the kitchen.
 - (d) A socket below the sink has fused.
 - (e) Within the kitchen the Landlord has failed to refit a kitchen work top following the installation of a new fridge freezer.
 - (f) The toilet flush mechanism in the bathroom is broken and has been broken throughout the period of the tenancy. It does not operate correctly. The toilet can only flush by removal of the cistern lid. The cistern is not secured to the wall.
 - (g) The front door frame of the Property has gaps around its fitting which allow wind and water to ingress the Property.
 - (h) The external cellar door of the Property is not capable of being opened as it is in a bad state of repair and has been boarded shut.
 - (i) There is an external waste pipe at the rear of the Property which is leaking.

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

	Complaint	Observation
(a)	The gas boiler heating system within the property is inoperable and as a consequence the Tenant has no hot water and no central heating.	The Committee noted that the electric timer mechanism for the central heating system was not operating. There was a power supply to the control, but the control itself was not functioning. The Committee further noted from the evidence of the Tenant that a previous Gas Safety Record issued to the Tenant (dated 6 th April 2009) identified that the boiler required service. The Committee further noted from the evidence of the Tenant that when the Tenant had in the past attempted to operate the electronic heating control mechanism it had fused other electrical circuits within the property.
(b)	The electric shower in the bathroom does not provide hot	The Committee noted that whilst the electric shower pumps water through its system it is not providing hot

	water.	water.
(c)	There is a leak from a pipe below the sink in the kitchen.	The Committee noted that there was a leak below the sink in the kitchen. The Tenant required to collect the water from the leak on a daily basis to prevent the leak spreading to the floor of the kitchen.
(d)	A socket below the sink has fused.	The Committee noted that the socket below the sink was blackened and appeared to be fused.
(e)	Within the kitchen the Landlord had failed to refit a kitchen work top following the installation of a new fridge freezer	The Committee noted that a new fridge freezer had been installed by the Landlord. The Committee noted from the evidence of the Tenant that the Landlord had required to remove a section of work top to allow for the height of the new fridge freezer and this work top had not been replaced.
(f)	The toilet flush mechanism in the bathroom is broken and has been broken throughout the period of the tenancy. It does not operate correctly. The toilet can only flush by removal of the cistern lid. The cistern is not secure to the wall.	The Committee noted that the toilet flush mechanism for the toilet in the bathroom was broken and it was impossible to flush the toilet without manually removing the cistern lid and operating the flush system from within the cistern itself. The Committee further noted that the cistern was not secured to the wall.
(g)	The front door frame of the Property has gaps around its fitting which allow wind and water to ingress the Property.	The Committee noted that there were gaps around the fitting of the front door frame. In particular the Tenant has applied temporary taping to cover gaps around the front door and the Tenant gave evidence that the door allowed unacceptable draughts of cold air to enter the property.
(h)	The external cellar door of the Property is not capable of being opened as it is in a bad state of repair and has been boarded shut.	The committee noted that the cellar door of the Property was boarded shut and could not be used by the Tenant.
(i)	There is an external waste pipe at the rear of the Property which is leaking.	The Committee noted that an external waste pipe at the rear of the Property continued to leak onto the stairs leading from the back door of the Property to the garden area. The Landlord would appear to have carried out a temporary repair by fitting a covering sleeve over the waste pipe but the Committee noted that pipe continued to leak nonetheless.

Summary of the issues

- 8 The issues to be determined by the Rented Housing Committee is whether or not the Property meets the repairing standard in terms of Section 13 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 accordingly determined as follows:-

	Complaint	Determination
(a)	The gas boiler heating system within the property is inoperable and as a consequence the Tenant has no hot water and no central heating.	The Committee accepted that the gas boiler heating system not in a reasonable state of repair and in proper working order, and accordingly breaches the terms of the Repairing Standard - Section 13 (1) (c) of the Act.

(b)	The electric shower in the bathroom does not provide hot water.	The Committee accepted that the electric shower within the bathroom was not heating water and therefore not in a reasonable state of repair and in proper working order, and accordingly breaches the terms of the Repairing Standards - Section 13 (1) (c) of the Act
(c)	There is a leak from a pipe below the sink in the kitchen.	The Committee accepted that the pipe below the sink was leaking and accordingly not in a reasonable state of repair and in proper working order accordingly breached the terms of the Repairing Standards Section 13 (1) (c).
(d)	A socket below the sink has fused.	The Committee accepted that the socket below the sink was fused and inoperable and accordingly breached the terms of the Repairing Standard Section 13 (1) (c).
(e)	Within the kitchen the Landlord had failed to refit a kitchen work top following the installation of a new fridge freezer	The kitchen work top has not been refitted. The committee did not however accept that this issue was a failure of any of the repairing standard.
(f)	The toilet flush mechanism in the bathroom is broken and has been broken throughout the period of the tenancy. It does not operate correctly. The toilet can only flush by removal of the cistern lid. The cistern is not secure to the wall.	The Committee accepted that the toilet flush mechanism was broken and that the toilet cistern was not secured correctly to the wall. In the circumstances the Committee was of the view that it was not in a reasonable state of repair and in proper working order and accordingly breaches the terms of the Repairing Standard - Section 13 (1) (c) of the Act
(g)	The front door of the Property has gaps around its fitting which allow wind and water to ingress the Property.	The Committee noted the gaps around the ill fitting door frame at the Property and accepted the evidence of the Tenant that there were excessive draughts through these gaps. Accordingly the Committee determined that the door was not wind and water tight and accordingly breached the terms of the Repairing Standard - Section 13 (1) (a) of the Act
(h)	The external cellar door of the Property is not capable of being opened as it is in a bad state of repair and has been boarded shut.	The Committee noted that the external cellar door had been boarded up and was not capable of being opened and the cellar was not capable of being used by the Tenant. The Committee therefore determined that the cellar door (being part of the structure and exterior of the house) was not in a reasonable state of repair and in proper working order and that accordingly it breached the terms of the Repairing Standard - Section 13 (1) (b) of the Act
(i)	There is an external waste pipe at the rear of the Property which is leaking.	The Committee noted that the external waste pipe at the rear of the Property was leaking and was accordingly not in a reasonable state of repair and in proper working order and was therefore a breach of the terms of the Repairing Standard - Section 13 (1) (b) of the Act

Decision

- 9 The Committee accordingly determined the Landlord had failed to comply with the duty imposed by Section 14 (1)(b) of the Act.
- 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:-
 - (a) Carry out such works as are necessary to ensure that the gas boiler heating system within the property is capable of being fully operated in a safe manner such as to allow the Tenant to operate normal central heating and hot water functions. The Landlord is required to produce a current Gas Safety Certificate in respect of all gas appliances within the Property including

the heating system and is further required to produce an Electrical Safety Certificate for all electrics within the Property.

- (b) Repair or replace the electric shower in the bathroom so that it is in a reasonable state of repair and in proper working order.
- (c) Repair the leak below the kitchen sink so that it is in a reasonable state of repair and in proper working order.
- (d) Repair the socket below the kitchen sink so that it is in a reasonable state of repair and in proper working order.
- (e) Repair the toilet flush mechanism and to secure the toilet cistern to the wall so that the toilet is in a reasonable state of repair and in proper working order.
- (f) Carry out such repairs as are necessary to ensure that the front door of the Property is wind and water tight.
- (g) Carry out such repairs to the external cellar door so that it is in a reasonable state of repair and in proper working order.
- (h) Repair the external waste pipe at the rear of the Property so that it is in a reasonable state of repair and in proper working order.

The Committee proceeded to make a Repairing Standard Enforcement Order as required by section 24(1). In terms of that order the Committee specified that the works specified as required to be completed by the Landlord must be carried out and completed within the period of 4 weeks from the date of service of that Order.

The decision of the Committee was unanimous.

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 S Cowan

Signed Date 27th July 2010
Andrew S Cowan, Chairperson

R King

Witness

Full Name Robina King

Address 7 West George Street, Glasgow G2 1BA

Occupation Legal Secretary

Repairing Standard Enforcement Order

Ordered by the Private Rented Housing Committee

Re: The dwellinghouse situated at and known as 71 Cumbræ Drive, Motherwell, ML1 3LJ, being the subjects registered in the Land Register of Scotland under Title Number LAN173013 ("the Property")

The Parties:-

MR WILLIAM McPHERSON, residing at 71 Cumbræ Drive, Motherwell, ML1 3LJ ("the Tenant")

MR TAHIR AMIN, residing at 64 Aultmore Drive, Motherwell ("the Landlord")

Whereas in terms of their decision, dated 27th July 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;

The Private Rented Housing Committee now requires the Landlord to carry out such repairs as are 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 Committee requires the Landlord to :

- (a) Carry out such works as are necessary to ensure that the gas boiler heating system within the property is capable of being fully operated in a safe manner such as to allow the Tenant to operate normal central heating and hot water functions. The Landlord is required to produce a current Gas Safety Certificate in respect of all gas appliances within the Property including the heating system and is further required to produce an Electrical Safety Certificate for all electrics within the Property.
- (b) Repair or replace the electric shower in the bathroom so that it is in a reasonable state of repair and in proper working order.
- (c) Repair the leak below the kitchen sink so that it is in a reasonable state of repair and in proper working order.
- (d) Repair the socket below the kitchen sink so that it is in a reasonable state of repair and in proper working order.
- (e) Repair the toilet flush mechanism and to secure the toilet cistern to the wall so that the toilet is in a reasonable state of repair and in proper working order.
- (f) Carry out such repairs as are necessary to ensure that the front door of the Property is wind and water tight.
- (g) Carry out such repairs to the external cellar door so that it is in a reasonable state of repair and in proper working order.
- (h) Repair the external waste pipe at the rear of the Property so that it is in a reasonable state of repair and in proper working order.

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 Landlord.

The Private Rented Housing Committee order that the works specified in this Order must be carried out and completed within a period of four 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 S Cowan

Signed..... Date 27th July 2010
Andrew S Cowan, Chairperson

R King

Witness.....

Name in full Robina King

Address 7 West George Street, Glasgow G2 1BA

Occupation Legal Secretary