



## **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 dwelling house at 52/6, Bath Street, Edinburgh, EH15 1HF ('the Property')**

**The Parties:-**

**Toby and Leanne Rockingham, 52/6, Bath Street, Edinburgh ('The Applicant')**

**Dr Nicoletta Policek, 52 (2F3) St Stephens Street, Edinburgh, EH3 5AL ('the Landlord')**

#### **Decision**

The Committee, having made such enquiries as it saw fit for the purposes of determining whether the Landlord has complied with the duty imposed by Section 14 (1)(b) in relation to the property concerned, and taking account of the evidence led by the Landlord at the hearing, determined that the Landlord had failed to comply with the duty imposed by Section 14 (1)(b) of the Act.

#### **Background**

1. By application dated 12<sup>th</sup> August 2009 the Applicant 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 ("the Act").
2. The application stated that the Applicant considered that the Landlord had failed to comply with his duty to ensure that the house meets the repairing standard and in particular that the Landlord had failed to ensure that:-
  - (a) The property is wind and watertight and in all other respects reasonably fit for human habitation.
  - (b) Any fixtures, fittings and appliances provided by the Landlord under the tenancy are in a reasonable state of repair and in proper working order.
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 Applicant was tenant of the Property at the date of the said application. They vacated the property prior to the date of the inspection by the committee.
5. The Private Rented Housing Committee served Notice of Referral under and in terms of Schedule 2, Paragraph 1 of the Act upon both the Landlord and the Applicant.
6. Following service of the Notice of Referral the Applicant made written representations to the Committee by forwarding to them the following:-
  - (a) A copy of the lease of the House.
  - (b) A statement advising of the following matters:-
    - a. The landlord had failed to provide a full copy of the lease.
    - b. The windows in the property are old and corroded.
    - c. The gas oven does not work properly.
    - d. The landlord failed to provide a gas safety certificate.
    - e. There is no energy certificate for the property.
    - f. There is no mains operated fire alarm at the property.
    - g. The washing machine provided by the Landlord has ripped several items of clothing and does not work properly.
    - h. The flooring between the hall and the second bedroom was too high and does not allow the door to close.
    - i. The central heating system is constantly losing pressure.
  - (c) A copy of the letter the Applicants sent to the Landlord dated 31<sup>st</sup> March 2009 advising of the matters detailed in their said statement.
7. The Private Rented Housing Committee attended at the House on 15th December 2009. The landlord's agent, Christine Riach, and the new tenant of the property were present. The committee inspected the alleged defects and found as follows:-
  - (a) The windows in the Property were generally in an acceptable condition, except those in the left hand back bedroom. The windows in that room do not open properly and were draughty.
  - (b) The gas oven and cooker hood are working. This was confirmed by the new tenant.
  - (c) The new tenant showed the committee the gas safety certificate, which was dated 6<sup>th</sup> November 2009 (job reference 1351932662). The certificate stated that the appliances and central heating boiler are safe, albeit the certificate was not signed.
  - (d) Neither the Landlord's agent or the new tenant had an energy performance certificate for the Property.
  - (e) The hard wired smoke alarm in the hall was fully operational. There is no fire alarm in the Property.
  - (f) The new tenant advised that the washing machine was working satisfactorily.
  - (g) The laminate flooring between the hall and the left hand back bedroom was uneven seemed to be a tripping hazard in its present condition.
  - (h) The new tenant advised that the central heating was working satisfactorily. She confirmed that sometimes it did lose pressure but it was a simple job to top up the system.
8. Following the inspection of the House the Private Rented Housing Committee held a hearing in the PRHP community centre in Leith. The Landlord attended. The applicant did not attend. The Landlord advised the committee as follows:-

- (a) Viewforth Glazing had inspected the windows and would be repairing the window and window frame in the left hand back bedroom after Christmas. She explained she owns the property and wishes to ensure that it is in good condition.
- (b) The gas oven and cooker hood are working.
- (c) She has obtained an energy efficiency report and this is with her Solicitor as part of the Home Report for the Property.
- (d) There is a mains operated smoke alarm in the Property and it is fully operational.
- (e) The washing machine is fully operational.

Further she showed the committee her copy of the gas safety certificate and acknowledged that it was not signed.

### **Summary of the issues**

9. The issues to be determined are:-

- (a) Whether the condition of the windows are in a reasonable state of repair and proper working order and whether their condition rendered the Property not wind and water tight or in other respects not reasonably fit for human habitation (Sections 13(1)(a) and (b) of The Housing (Scotland) Act 2006.)
- (b) Whether the gas oven, cooker hood, washing machine and laminate flooring between the hall and the left hand back bedroom are in a reasonable state of repair as required by section 13(1)(d) of The Housing (Scotland) Act 2006.
- (c) Whether the central heating system is in a reasonable state of repair and proper working order as required by section 13(1)(c) of The Housing (Scotland) Act 2006.
- (d) Whether the Property has a satisfactory provision for detecting fires and for giving warning in the event of fire or suspected fire.

### **Findings of fact**

10. The Committee finds the following facts to be established:-

- The tenancy is a short assured tenancy.
- The applicant had vacated the House and a new tenant was occupying the property.
- The windows in the left hand back bedroom were defective and in need of repair. The other windows in the property were in a reasonable state of repair and proper working order and they were wind and water tight.
- The gas oven and central heating boiler appeared to the committee to be in a reasonable state of repair and appeared to be in proper working order. The committee acknowledged that the gas safety certificate exhibited to them stated that the gas oven and central heating boiler were safe. However they noted that the gas safety certificate had not been signed and until the valid gas safety certificate had been produced they would be unable to confirm that the gas oven and central heating boiler were in proper working order.
- The cooker hood and washing machine were in a reasonable state of repair and proper working order.
- The laminate flooring between the left hand back bedroom and the hall was uneven and presented a tripping hazard.
- The Property has a satisfactory smoke alarm and there is no requirement (under the repairing standard) to have a fire alarm installed.
- The alleged absence of the Energy performance Certificate for the Property is not a breach of the repairing standard.
- The alleged failure by the Landlord to provide a full copy of the lease is not a breach of the repairing standard.

## Decision

11. The Committee accordingly determined that the Landlord had failed to comply with the duties imposed by Sections 14 (1)(a) and 14(1)(b) of the Act. The Landlord has failed to ensure (1) the windows in the left hand back bedroom were in a reasonable state of repair and proper working order and they were wind and water tight as required by sections 13(1)(a) and (b) of the Act (2) the laminate flooring between the left hand back bedroom and the hall was in a reasonable state of repair and proper working order as required by section 13(1)(d) of the Act and (3) the gas appliances and central heating boiler are in a reasonable state of repair and proper working order as required by sections 13(1)(c) and (d) of the Act
12. The Committee acknowledged that in terms of section 7 of Schedule 2 of the Housing (Scotland) Act 2006 as the lease of the Property had been lawfully terminated the application is deemed to have been withdrawn. However in terms of Section 7(3)(b)(1) of the said Act the Committee are entitled to continue to determine the application.
13. Accordingly the Committee proceeded to make a Repairing Standard Enforcement Order as required by section 24(1).
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.

Signed .....  
Chairperson

**J Taylor**

..... Date 7<sup>th</sup> January 2010

# Repairing Standard Enforcement Order

## Ordered by the Private Rented Housing Committee

Re : The dwelling house at 52/6, Bath Street, Edinburgh, EH15 1HF, being the subjects registered in the Land Register of Scotland under Title number MID103117 ('the Property')

The Parties:-

Toby and Leanne Rockingham, 52/6, Bath Street, Edinburgh ('The Applicant')

Dr Nicoletta Policek, 52 (2F3) St Stephens Street, Edinburgh, EH3 5AL ('the Landlord')

### NOTICE TO Nicoletta Policek

Whereas in terms of their decision dated 7<sup>th</sup> January 2010 the Private Rented Housing Committee determined that the Landlord has failed to comply with the duty imposed by Sections 14 (1)(a) and 14(1)(b) of the Housing (Scotland) Act 2006 and in particular:- The Landlord has failed to ensure (1) the windows in the left hand back bedroom were in a reasonable state of repair and proper working order and they were wind and water tight as required by sections 13(1)(a) and (b) of The Housing (Scotland) Act 2006 (2) the laminate flooring between the left hand back bedroom and the hall was in a reasonable state of repair and proper working order as required by section 13(1)(d) of The Housing (Scotland) Act 2006 and (3) the gas appliances and central heating boiler are in a reasonable state of repair and proper working order as required by sections 13(1)(c) and (d) of The Housing (Scotland) Act 2006.

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 to:-

- (1) Repair or replace the window in the left hand rear bedroom to render the window wind and water tight and in proper working order.
- (2) Have the gas safety certificate pertaining to the condition of the gas appliances and central heating boiler in the Property signed by a suitably qualified engineer and exhibit the same to the committee, failing which exhibit to the committee an updated gas safety certificate confirming that the gas appliances and central heating boiler are safe.
- (3) Secure the threshold plate between the hall and the rear left hand bedroom to render it safe and proper working order.

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

Signed..... **J Taylor** ..... Date 7<sup>th</sup> January 2010  
Chairperson  
..... **H McCall** ..... Witness  
65 High Street, Irvine, KA12 0AL