



Repairing Standard Enforcement Order

Ordered by the Private Rented Housing Committee

Reference PRHP/ML9/69/11

RE: Property at 25 Scott Street, Larkhall ML9 2QH, being the subjects more particularly described in Land Certificate Title Number LAN 181339 ("the house")

The Parties:-

Miss. Catherine Karen Telfer, residing at 25 Scott Street, Larkhall ML9 2QH (represented by her agent Mr. James Anderson, 98 Kier Hardie Road, Larkhall) ("the Tenant")

Mr. Peter Ross Munro, 7 Earls Hill, Cumbernauld G68 9ET, whose agents are the firm of Munro, Neil and Osborne, Estate Agents and Mortgage Consultants, 82 Union Street, Larkhall ML9 1DR ("the Landlord")

NOTICE TO Peter Ross Munro ("the Landlord")

Whereas in terms of their decision dated 17 November 2011, 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:-

- (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;

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 renew the pathway from the gate to the back door to provide a satisfactory access route which is in a reasonable state of repair.
- (b) To provide a report on the structure and condition of the garage from a competent contractor who is licensed under the Waste Management Regulations and to carry out any works identified as necessary in that report (including the removal/ replacement of said garage if that is identified as the appropriate option and the suitable disposal of materials following any dismantling of the garage).
- (c) To carry out works to the water duct to provide a suitable and safe covering for the duct.
- (d) To repair the roughcast at the exposed brickwork on the rear elevation of the house to a reasonable state of repair.
- (e) To complete repairs to the ceiling and walls in the kitchen and front bedroom and the walls at the stairway and back bedroom to ensure that they are reinstated to a reasonable state of repair, and
- (f) To instruct a periodic electrical inspection report from a qualified electrician and to carry out any works identified as necessary in that report to a satisfactory standard.

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 Thirtieth day of November, Two Thousand and eleven in the presence of the undernoted witness:-

WITNESS: **S James**

..... **SARA JAMES, PAUEL** Secretary
of Private Rented Housing Panel,
140 WEST CAMPBELL STREET
GLASGOW .

A Devanny



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 25 Scott Street, Larkhall ML9 2QH ("the house")

The Parties:-

Miss. Catherine Karen Telfer, residing at 25 Scott Street, Larkhall ML9 2QH (represented by her agent Mr. James Anderson, 98 Kier Hardie Road, Larkhall) ("the Tenant")

Mr. Peter Ross Munro, 7 Earls Hill, Cumbernauld G68 9ET, whose agents are the firm of Munro, Neil and Osborne, Estate Agents and Mortgage Consultants, 82 Union Street, Larkhall ML9 1DR ("the Landlord")

Reference PRHP/ML9/69/11

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 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 form received on 24 March 2011 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. The form was returned to the Tenant on 1 April as it was unsigned and hence an invalid application and the Tenant signed and re-submitted the application to PRHP, whereupon it was deemed a valid application.

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 as the house was a mess with repairs left undone and only partially completed despite the repairs being notified to the Landlord some year and a half to two years previous. The Tenant's application related to complaints of a leaking toilet causing water ingress into the kitchen below and affecting the decoration and walls there and causing dampness in a kitchen cupboard; the front bedroom ceiling being unfinished and reinstatement of the bedroom to a reasonable condition was still outstanding ; the top stair hallway having unfinished plasterwork repairs and its reinstatement following works was still outstanding; bare electrical wires and a loose electrical socket at the top upstairs hallway; staining to the bathroom ceiling; a defective bath panel and defective bathroom floorboards under the bath; a kitchen window not closing properly and not being wind and watertight; repairs required to the shower, a radiator valve, toilet and overspill water pipe; repairs required to plaster work and decoration caused by the repositioning of the back bedroom radiator; roughcast repairs and exposed brickwork to the rear elevation of the house; an awkward locking system to the rear door; a loose and unsafe cover to an 8 foot drop water duct in the rear garden; broken slabs and an uneven path from the gate to the back door and a defective asbestos garage. The application also referred to the Tenant replacing a washing machine supplied by the Landlord at her own expense due to the Landlord's delay in replacing this machine. The Tenant submitted to PRHP a copy of the Lease with a copy of a letter dated 23 March 2011 sent to the Landlord referring to outstanding works notified over a year before. A recorded delivery slip dated 28 March 2011 was attached as evidence of posting of this letter.

3. By letter dated 14 September 2011, 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
Ms. Carol Jones, Surveyor Member
Mrs. Chris Harvey, 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 Tenant's agent indicated that the Tenant would attend the hearing before the Committee but gave no written submissions. Neither the Landlord nor his agents responded to the Notice of Referral. However, the Landlord did telephone the offices of PRHP on the morning of the hearing indicating that he would be unable to attend the hearing for urgent personal reasons but he indicated that he did not seek an adjournment of the hearing and had no objection to the Committee continuing with the inspection and hearing in his absence.

5. The Private Rented Housing Committee inspected the house on the morning of 17 November 2011. The Tenant and her agent, Mr. Anderson, were present at the inspection and the hearing. Neither the Landlord nor his agent attended the inspection or hearing.

6. Following the said inspection the Private Rented Housing Committee held a hearing at the Cameronian Hall, 89 Victoria Street, Larkhall.

Submissions at the Hearing

7. At the hearing the Committee considered the application with the accompanying paperwork and photographs which formed part of the application. The Committee heard evidence and representations from the Tenant and her agent, Mr. Anderson.

7.1 Mr. Anderson confirmed that the repairs to the shower, radiator valve, toilet and water overspill pipe were no longer an issue as repairs had been carried out. The kitchen window had been repaired and bath panel and flooring under the bath replaced. The Tenant was no longer experiencing dampness in the kitchen from the leaking toilet which had been repaired although there was still water ingress into the kitchen from the back door although this was not an item of repair complained of in the application. Mr. Anderson stated that the broken paving slabs and loose cover over the water duct were a health and safety concern as the Tenant has young children. There were also safety concerns about the condition of the asbestos garage which could no longer be used apart from storage because of concerns about exposure to asbestos. He submitted that the presence of a pile of rubble left in the driveway of the house from a recently demolished front wall was a further indication of the Landlord's disregard for his Tenant's living conditions and the attitude of the Landlord to completion of works. He accepted that the issue of the rubble had occurred since the date of application and did not form part of the items in the application which the Committee could consider. He submitted that the electrical wiring was a potential hazard and generally the house continued to display works started and not finished by the Landlord. Mr. Anderson stated that he had spoken to the Landlord on the Tenant's behalf at the offices of Munro, Neil and Osborne on two occasions prior to submitting the application to prhp about the need for the completion of the works detailed in the application but to no avail. The condition of the house was causing the Tenant to experience health issues.

7.2 Neither the Landlord nor his agent attended the hearing and no written representations were submitted by them.

Once the Tenant's agent had made representations at the hearing, the Committee adjourned to consider the evidence and representations, and to make their determination.

Summary of the issues

8. 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

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

9.1. The Tenant entered into a lease with the Landlord for the rent of the house on 4 February 2009.

9.2. The Tenant via her agent verbally and by letter dated 21 March 2011 notified the Landlord of the required works to the house prior to making the application to prhp and this was not challenged by the Landlord.

9.3. The house is a semi detached ex-local authority rented property. The Committee confined their inspection to the items specified in the application and the alleged breaches of repairing standard. The weather was dry at the time of inspection with little wind.

The inspection revealed: -

- i. The pathway between the gate and the back door displayed evidence of broken slabs with gaps between the slabs, the concrete cracked and the tarmac uneven. The condition of the pathway presented a safety issue due to the trip hazard. The defects mentioned contravene Section 13 (1) (a) and (b) of the Act as the exterior of the "house" as defined in Section 194 of the Act is not in reasonable state of repair and the condition of the paths are not reasonably fit for human habitation given the requirements of Section 86(1) (i) of the Housing (Scotland) Act 1987 and the safety issues which are present. There is a requirement in Section 86 (1) (i) of the Housing (Scotland) Act 1987 that to meet the tolerable standard, which is indicative of the human habitation standard, that the house must have satisfactory access to all external doors and outbuildings. "House" as defined in Section 194 of the Act includes "any yard, garden, garage, outhouse or other area or structure which is, or which is capable of being, occupied or enjoyed together with the living accommodation (solely or in common with others)."
- ii. The garage situated within the curtilage is used by the Tenant for storage. The walls and roof of the garage are constructed from asbestos which is cracked and crumbling and there are holes in the structure with a section of roof missing. The garage is not wind and watertight with the double doors not shutting flush with the structure allowing a gap for water ingress. The defects contravene Section

13(1) (a) and (b) of the Act as the garage is not wind and watertight and in all respects reasonable fit for human habitation and the exterior of the house is not in reasonable repair.

- iii. There is a water duct within the garden at the path leading to the back door which is covered by a paving slab. The paving slab is a trip hazard as well as causing a significant safety issue if it is removed and the duct exposed. This defect contravenes Section 13(1) (a) and (b) of the Act as the exterior of the house as defined in Section 194 of the Act is not in reasonable repair and not reasonably fit for human habitation given the tolerable standard test in Section 86 (1)(i) of the 1987 Act and the safety issues.
- iv. There is evidence of the removal of a structure to the rear elevation which the Committee were advised had been a porch. Brickwork to the rear elevation at the side of the back door was exposed following upon defects in the roughcast. There was no complaint of dampness due to roughcast defects but the exposed brickwork is unsightly and indicates that the exterior of the house is not in a reasonable state of repair which is a contravention of section 13(1) (b) of the Act.
- v. The Committee experienced no problems opening the back door with the key provided.
- vi. The kitchen cupboard ceiling has been replaced and any dampness issue appears to have been resolved although the ceiling and walls in the kitchen still require to be reinstated and decorated to the condition prior to the leak from the upstairs bathroom. This is a requirement in terms of Section 13(1) (a) and (b) of the Act to ensure that the house is reasonably fit for human habitation and the structure of the house is in reasonable state of repair. The Committee observed that the back door was warped and there appears to be water ingress at the door but this is not a matter which was the subject of complaint in the application and no determination can be made on this issue.
- vii. The washing machine supplied by the Landlord was not available for inspection and the washing machine provided by the Tenant is in situ. Accordingly, the Committee can make no determination on the complaint that the washing machine provided by the Landlord is not in proper working order.
- viii. The top stair wall has been partly plastered but the wall and decoration not reinstated following completion of these works which is a contravention of Section 13(1) (a) and (b) of the Act as the house should be reasonably fit for human habitation and the structure of the house in reasonable state of repair. The electrical wiring at this location is defective with the electrical socket and trunking not fixed to the wall which presents a trip and electrical hazard as well as a potential safety issue from exposed screws. Some of occupants of the house are children which raise the levels of risk if they interfere with the socket, cable or screws. This is a contravention of Section 13 (1) (c) of the Act as the

installation for the supply of electricity requires to be in reasonable state of repair and proper working order.

- ix. There is evidence of condensation staining to the ceiling above the bath and round the cistern. There is no extractor fan but ventilation could be provided by opening the bathroom window. The Tenant's agent conceded that the bathroom window could be opened more frequently. The Committee considers that the condensation is due to the lack of ventilation which could be remedied by the opening of the bathroom window more frequently rather than arising from a breach of the repairing standard.
- x. There was evidence of rectification of repairs to the bath panel; shower; radiator control; floorboards below the bath; kitchen window; and leak to the toilet.
- xi. The front bedroom ceiling has been replaced but the decoration to the ceiling and walls requires to be reinstated. This is required to comply with Section 13(1) (a) and (b) of the Act to ensure that the house is reasonably fit for human habitation and the structure is in a reasonable state of repair.
- xii. The back bedroom wall below the window has holes due to the repositioning of a radiator and this wall requires to be repaired and the wall and decoration reinstated and made good. This is required to comply with Section 13(1) (a) and (b) of the Act to ensure that the house is reasonably fit for human habitation and the structure is in a reasonable state of repair.
- xiii. The Committee observed that there were battery smoke detection devices which would appear to require to be checked to ensure that they meet the Statutory Guidance. However, this was not an item of complaint in the application and no determination can be made on this issue. Should these alarms require to be replaced, then the Landlord should ensure that any replacement comply with current regulations.

Reasons for the Decision

10. 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.

Inspection of the house indicated that the pathway, garage, cover of the water duct, exposed brickwork at the back door, the ceiling and walls in the kitchen and front bedroom, walls at the top of the stairs and back bedroom and the electrics require repair. The Committee considers that to comply with Section 13(1) (a), (b) and (c) of the Act that these items require remedial works. Sections 13(1) (a), (b) and (c) provide that the house meets the repairing standard if (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; and (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.

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, particularly given the safety issues.

The Committee is unable to make a determination in respect of the warped back door and battery smoke detection devices as there was no evidence of prior notification of these works on the Landlord and they did not form part of the works complained of in the application. However, the Committee considered that these matters should be checked and if necessary rectified by the Landlord as priority matters.

Decision

11. 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.

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

13. The decision of the Committee was unanimous.

Right of Appeal

14. 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

15. 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

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Chairperson,
17 November 2011