



**Determination by a Private Rented Housing Committee**  
**Statement of decision of the Private Rented Housing Committee**  
(hereinafter referred to as "the Committee")

**under Section 24(1) of the Housing (Scotland) Act 2006**

Re: - Property at 44B Urquhart Road, Aberdeen AB24 5LT (also known as Flat 2, 44 Urquhart Road, Aberdeen AB24 5LT) **("the property")**

Land Register Title number: - **ABN45175**

**The Parties:-**

Mr John Monaghan and Ms Louise Byrne residing at 44B Urquhart Road, Aberdeen AB24 5LT **("the tenants")**

and

Mr Stephen George Donnelly, designed in the lease as care of AM-PM, 441 Union Street, Aberdeen, AB11 6DA and in the property Title Deed as residing at Steading 1, Maiden Craig, Lang Stracht, Aberdeen **("the landlord")**

**The Committee comprised:-**

- Ms I. R. Montgomery - Chairperson.
- Mr C. Hepburn - Surveyor member.
- Ms L. Robertson - Housing member.

**Decision:-**

**The Committee unanimously determined that the Landlords had failed to comply with the duty imposed by Section 14(1) (b) of the Housing (Scotland) Act 2006 ("the 2006 Act"). The Committee accordingly proceeded to make a Repairing Standard Enforcement Order (RSEO) as required by Section 24(2) of the 2006 Act.**

## Background

1. By application dated 17<sup>th</sup> September 2008 the tenant applied to the Private Rented Housing Panel (**prhp**) for a determination of whether the landlords had failed to comply with the duty imposed by Section 14(1)(b) of the 2006 Act.
2. The application made by the first tenant stated 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 there is adequate lighting in the common areas of the house and that there is adequate security or lockable doors in the common areas to prevent people from gaining access from the road. The tenants also stated that the doorbell and security intercom system was not functioning.
3. The tenants produced evidence of notification of these defects to the landlord's agent in the form of a copy letter and various copy emails. The correspondence produced included emails from the landlord's agent acknowledging receipt of the correspondence sent by the tenant.
4. The President of the **prhp** decided to refer the application under Section 22(1) of the 2006 Act to a Private Rented Housing Committee ("a Committee").
5. On 10<sup>th</sup> October 2008 the Committee served Notice of Referral under and in terms of Schedule 2, paragraph 1 of the 2006 Act upon the Parties. In terms of paragraph 13 of the PRHP (Applications and Determinations) (Scotland) Regulations 2007, service of any formal communication upon the known agent of a party is deemed to be service upon that party.
6. The Committee inspected the property on the morning of 17<sup>th</sup> December 2008. Both tenants were present during the inspection. The landlord was neither present nor represented at the inspection.

## The evidence

7. The evidence before the Committee consisted of:-
  - Application form;
  - Copy lease;
  - Notification to landlords of issues of claimed disrepair;
  - Written representations from the tenants dated 3<sup>rd</sup> November 2008;
  - Written representations from the landlord's agent dated 20<sup>th</sup> October 2008;
  - Copies of correspondence relative to these proceedings;
  - Extract of Title from the Land Register.

### **Summary of the issues**

8. The issues complained of by the tenants in the application and correspondence before the Committee can be summarised as follows:-
- The lighting in the common areas of the property was initially non-existent and remains inadequate;
  - The lack of lighting means that negotiating entry and exit from the property is difficult and potentially dangerous as a number of stairs have to be negotiated in the dark;
  - There is no security and no lockable doors in the common areas to prevent people gaining access from the road;
  - The security intercom system located at the door on the landing leading to the flat does not work;
  - The door on the landing leading to the flat has a lock but the tenants have not been supplied with keys;
  - The lack of security means that strangers use the common areas, and a homeless person has been regularly sleeping in an outbuilding.

### **The inspection**

9. The Committee observed that the main entrance door giving access to the common close from the street did not have a lock or any other means of secure entrance. There is no intercom system at that location. Inside the door on the left is a box containing electrical wiring but no electricity meter. This box was open at the time of inspection. The original lighting system was clearly not functioning as there were no bulbs in any of the sockets. Entrance to the tenants' flat is gained by ascending stairs. On the first floor landing there is a door which has a lock. There is an intercom system at the outside of this door which was not functioning as at the time of the inspection. The light which would have indicated that it was operational was not illuminated.

### **The hearing**

10. The tenants attended the hearing and gave oral evidence. The landlord was neither present nor represented at the hearing.
11. Mr Monaghan stated that he and his partner Ms Byrne had assumed when they entered into the lease that the lighting and the security system were in good working order. They had also expected to be provided with a key to the door on the landing. He stated that no key has been provided. He stated that during the hours of darkness the common areas are in total darkness unless one of the two battery operated motion sensor lights is triggered. Even then, the lighting is inadequate. He stated that the battery has failed on one of these lights and it is not currently working. He stated that negotiating the many stairs in the dark is unpleasant and potentially dangerous. He stated that his partner Ms Byrne had

fallen when trying to do so. He explained that Ms Byrne carries a torch with her to use when entering and leaving the building but had still fallen despite this. He pointed out that the situation would become even more dangerous during cold weather when the steps could be slippery due to ice. He stated that a further difficulty is that, due to the darkness, people using the common areas bump into each other causing alarm to each other. This situation is exacerbated because homeless people are using the back court as sleeping accommodation. He stated that he and Ms Byrne would like a lock to be installed on the entrance door giving access from the street so as to improve the security of the building. At the very least they wish the lighting and the security intercom system to be restored to proper working order and a key for the door on the landing to be provided.

12. As a co-tenant and party to the proceedings, Ms Byrne was present throughout the testimony of Mr Monaghan and concurred with it. She confirmed that she had fallen on the stairs despite having taken the precaution of carrying a torch.
13. The landlord was not represented at the hearing but regard was had to the written representations made on his behalf. It was argued that the house is wind and watertight and fit for human habitation, and that the installations in the house for the supply of water, gas and electricity and for sanitation, space heating and water heating have always been in a reasonable state of repair and in proper working order. It was argued that the external doorway has never had a lock on it as access is required to the rear of the building. It was acknowledged that the lighting system is "defunct" but argued that replacement lights had been supplied for the tenants to install themselves. It was argued that there is no case to answer.

#### **Findings of fact**

14. Having considered all the evidence, the Committee finds the following facts to be established:-
  - a) The subjects of let include the common areas and stairway;
  - b) The electricity supply to the common lighting system has been disconnected;
  - c) The common lighting system which forms part of the fixtures and fittings of the common areas is not currently operational;
  - d) The two battery operated lights which have been added to the common areas do not provide an adequate replacement for the original integral common lighting system;
  - e) The security intercom system located outside the door on the landing does not currently function;
  - f) The door on the first floor landing has a lock but no keys were in evidence.

### **Other issues of concern.**

15. In the course of the inspection, the Committee observed with concern that the main electricity cables were hanging loosely against the rear wall adjacent to the external stairway. The Committee considered this to be undesirable from a health and safety perspective. At this point in time, however, the Committee's jurisdiction in terms of the 2006 Act is limited to dealing with the issues which have been raised in the application and brought to the notice of the landlords. If additional matters are to be raised then the tenant either requires to make a fresh application to deal with those issues, or the amendment procedures set out in paragraph 23 of the 2007 Regulations require to be followed. The Committee proceeded to deal only with the issues in respect of which proper notice has been given to the landlords.

### **Reasons for the decision**

16. By virtue of section 15(1) of the Housing (Scotland) Act 2006 the duty to ensure that the house meets the repairing standard extends also to common areas where the owner of the house is responsible for maintaining those parts either solely or in common with others. It is clear from the property description given in the extract Title Deed to the report that the landlord has a joint right in property in common with the proprietors of the remainder of the Tenement in and to *inter alia* "the entrance, vestibule lobby and common passageway, the front and back doors, the stairways, landings and stairways". That being so, all of these areas must also meet the repairing standard.

17. The tenants gave their evidence in a straightforward manner without any apparent embellishment. Their evidence was consistent with the observations of the members of the Committee during the inspection. They answered questions put to them without evasion or prevarication. The Committee considered the tenants to be credible witnesses and accepted their evidence as more likely than not to be reliable.

18. On the basis of the facts found and set out in paragraph 12 above the Committee reached the following conclusions:-

- The removal of the electricity supply to the common areas prevents the operation of both the common lighting system and the electrical intercom system.
- The common areas form part of the subjects of let and therefore the installations for the supply of electricity and any fixtures, fittings and appliances provided by the landlord under the tenancy must be in a reasonable state of repair and in proper working order.
- As at the date of the inspection, the common lighting system was not in a reasonable state of repair and in proper working order. It was not connected to an electricity supply and there were no light bulbs in the fittings and no covers to the fittings. It is acknowledged in the written representations that the system is "defunct".

- The two replacement lights supplied are grossly inadequate to light the area previously covered by the integral common lighting system.
- As at the date of the inspection, the intercom system located outside the door on the landing was not in a reasonable state of repair and in proper working order.
- The door situated on the first floor landing is fitted with a lock. As this has been supplied as part of the subjects of let, then it must comply with the repairing standard. Unless the tenants are supplied with a key to the lock, then the locking mechanism is not capable of being used for its intended purpose. The tenants have not been supplied with the key to this lock.
- The Committee was satisfied that by virtue of these defects the condition of the house, and in particular the common areas, constituted a breach of section 13(1)(b) and 13(1)(c).
- **The Committee determined that all these matters required to be attended to before the house could be said to meet the repairing standard.**

19. The Committee was satisfied that the existence of the issues of disrepair complained of had been brought to the attention of the landlord via his agent. The landlord is designed as care of his agents in the Lease entered into between the parties. The Committee considered that the landlord had been given ample time to carry out the necessary repairs but had failed to do so by the date of the inspection. The Committee accordingly determined that the landlord had failed to comply with the duty imposed by Section 14(1)(b) of the 2006 Act and proceeded to make a RSEO.

20. The decision of the Committee was unanimous.

### **Right of Appeal**

21. **A landlord or tenant aggrieved by the decision of the Committee may appeal to the Sheriff by summary application within 21 days of being notified of that decision.**

22. The appropriate respondent in such appeal proceedings is the other Party to the proceedings, and not the prhp or the Committee which made the decision.

### **Effect of Section 63**

23. Where such an appeal is made, the effect of the decision and of any Order made in consequence of it is suspended until the appeal is abandoned or finally determined.

24. Where the appeal is abandoned or finally determined by confirming the decision, the decision and the Order made in consequence of it are to be treated as having effect from the day on which the appeal is abandoned or so determined.

Signed... **I Montgomery** Date... 17th December 2008  
Chairperson. 



**Repairing Standard Enforcement Order**

Ordered by the Private Rented Housing Committee

Re: - Property at 44B Urquhart Road, Aberdeen AB24 5LT (also known as Flat 2, 44 Urquhart Road, Aberdeen AB24 5LT) ("the property")

Land Register Title number: - **ABN45175**

**The Parties:-**

Mr John Monaghan and Ms Louise Byrne residing at 44B Urquhart Road, Aberdeen AB24 5LT (also known as Flat 2, 44 Urquhart Road, Aberdeen AB24 5LT) ("the tenants")

Mr Stephen George Donnelly, designed in the Lease as care of AM-PM leasing, 441 Union Street, Aberdeen AB11 6DA and in the property Title Deed as residing at Steading 1, Maidencraig, Lang Stracht, Aberdeen. ("the landlord")

**Notice to Stephen George Donnelly ("the landlord")**

Whereas in terms of their decision dated 17<sup>th</sup> December 2008, 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:-

(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 purpose 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 the works specified in the attached schedule of work, the terms of which form part of this Order.

The Private Rented Housing Committee orders that the works specified in this Order must be carried out and completed by Friday 20<sup>th</sup> February 2009 or within 21 days from the date of service of this Notice, whichever is the later.

A landlord or tenant aggrieved by the decision of the Committee may appeal to the Sheriff by summary application within 21 days of being notified of that decision. The appropriate respondent in such appeal proceedings is the other Party to the proceedings, and not the prhp or the Committee which made the 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. Where the appeal is abandoned or finally determined by confirming the decision, the decision and the Order are to be treated as having effect from the day on which the appeal is abandoned or so determined.

Signed.. I Montgomery Date..... 14th January 2009

(Mrs I. R. Montgomery, Chairperson)

Witnessed by: S James Date..... 14th January 2009.



### Notice to Stephen George Donnelly ("the landlord")

#### Schedule of work ordered by the Private Rented Housing Committee

The Private Rented Housing Committee requires the landlord to carry out such works as are necessary to:-

- Restore the electricity supply to the common areas;
- Restore all electrical light fittings in the common areas to a state of proper working order, or, in the alternative, replace with a new electrical lighting system containing at least the same number of individual functional units as the original system;
- Repair or replace the intercom system either in its present location or, if preferred by the landlord, relocating it to the main external door giving access from the street;
- Supply appropriate keys for existing lock on the door on the first floor landing, or replace lock and supply existing keys;
- In the event that the landlord chooses to replace the lock then he may do so either by replacing the existing lock in the door on the first floor landing, or he may choose instead to install a locking mechanism to the main entrance door giving access from the street.

Any damage caused by the carrying out of the work specified in this Order must be made good (Housing (Scotland) Act 2006 section 24(2)(b)).

A landlord who, without reasonable excuse, fails to comply with a Repairing Standard Enforcement Order commits an offence. A landlord who is guilty of an offence under this subsection is liable on summary conviction to a fine not exceeding level 3 on the standard scale. (Housing (Scotland) Act 2006 section 28(1) and (7)).

Signed... **I Montgomery** ..

Date... 14th January 2009

Mrs I. R. Montgomery, Chairperson

Signature of witness. **S James** ..

Date... 14th January 2009.

Name, address and occupation of witness (Please print):-

SARA JAMES  
C/O PRHP - 3rd Floor, 140 West Campbell St, Glasgow, G2 4TZ  
Civil servant.