



**PRIVATE RENTED HOUSING COMMITTEE**  
**STATEMENT OF DECISION UNDER SECTION 24(1) OF THE HOUSING (SCOTLAND)**  
**ACT 2006**

**prhp Ref: prhp/ky11/89/11**

**PROPERTY:**

**5, Elizabeth Street, Dunfermline KY11 4AZ**

**INSPECTION & HEARING**

**24 August 2011**

## **The Parties:-**

**Mrs Elizabeth Sword (represented by Maureen Stewart, Frontline Fife, 1-2, Segal House, Pittencrieff Street, Dunfermline KY12 8AZ her agent (hereinafter referred to as "the Tenant"))**

**Mrs Anna Kennedy-Stewart, 29A Mill Street, Alloa, Clackmannanshire (hereinafter referred to as "the Landlord")**

## **Decision**

**The Committee, having made such enquiries as is 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, and taking account of the evidence led by the Tenant at the hearing, 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 dated 28 April 2011 the Tenant applied to the Private Rented Housing Panel (PRHP) 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 by the Tenant stated that the Tenant considered that the Landlord had failed to comply with her duty to ensure that the house meets the repairing standard and in particular that the Landlord had failed to ensure 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.
3. By letter dated 12 May 2011 the President of the PRHP intimated a decision to refer the application under Section 22 (1) of the Act to a Private Rented Housing Committee (PRHC).

The Committee comprised the following members:

Mr. David M Preston, Legal Member  
Mr. David Godfrey, Surveyor Member  
Mr. Tom Keenan, Housing Member

4. PRHP served Notice of Referral under and in terms of Schedule 2, Paragraph 1 of the Act upon both the Landlord and the Tenant. Following service of the Notice of Referral no written representations were received from the Tenant and the Landlord made no response to the Notice.

5. The PRHC inspected the Property on the morning of 24 August 2011. The Tenant and her partner, Mr William Miller were present. The Landlord was not present and was not represented.
6. Following the inspection of the Property the PRHC held a hearing at Abbeyview Community Centre. The hearing was attended by the Tenant, accompanied by Mr Miller and Mrs Maureen Stewart, her representative. The Landlord did not attend and was not represented. The Committee drew no inference from the non-attendance of the Landlord in their deliberations. At the hearing, the Tenant produced a copy of a Lease between the Secretary of State for Defence and the Tenant dated 11 August 1980, a letter from the Landlord dated 11 August 2011 purporting to intimate a change in ownership of the property, and a Gas Safety Certificate dated 12 August 2010. The Committee heard evidence and submissions from both the Tenant and her representative.
7. The Tenant had incorporated into her application the terms of the letters from Environmental Services, Fife Council dated 22 January and 10 September, both 2010.

The letter of 22 January 2010 referred to a total of 5 issues in respect of which it was alleged that the property failed to meet the repairing standard as follows:-

- 7.1. Waste water from the wash hand basin in the bathroom, the kitchen sink and the washing machine was noted to be backing up into the bath.
- 7.2. the concrete canopy to the rear of the property is defective and water is leaking on to the back step.
- 7.3. the paintwork on the exterior doors, windows and harling are showing signs of deterioration.
- 7.4. the tenant has reported problems of condensation and draughts in and around the property's steel single glazed windows.
- 7.5. the tenant was unable to produce a copy of a valid gas safety certificate for the property.

The letter of 10 September intimated that items 7.2, 7.3 and 7.4 remained unresolved but in addition to those issues:-

- 7.6. there is an area of what appears to be rising or penetrating damp in the cupboard adjacent to the bathroom the wall of which indicates high moisture levels.

8. The Tenant advised the Committee that she had lived at the property for 38 years. She explained that her husband had been an employee of the Ministry of Defence and had been given the tenancy. Following upon his death, she had been granted the Lease. Subsequently the Landlord's interest had changed hands on a number of occasions. The Landlord at the time of the application was as per the application form and the Notice of Referral. The Tenant had recently received the letter dated 11 August referred to which intimated that ownership of the property had been transferred to Mrs Kennedy-Stewart and Mr Tanfer Gunduz She also advised that subsequent to the letter of 22 January 2010, she had made her own arrangements to rectify issue 7.1. It was accepted that the Landlord had made arrangements for the gas safety certificate to be obtained, which was dated 12 August 2010. The Tenant further advised that the Landlord had visited the property on 22 August 2011 with Mr Gunduz and a contractor. She had indicated to the Tenant that she would consider the replacement of 2

windows at a time, but in view of the fact that she had responsibility for other properties, she could not afford to do more.

9. No representations or submissions were made by or on behalf of the Landlord.

#### **Summary of issues**

10. The issue to be determined was whether the property 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**

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

11.1. On 11 August 1980, the Tenant entered into a lease with the Secretary of State for Defence for the rent of the property. The landlord's interest in the Lease had been assigned on a number of occasions and, at the time of the application and at the date of the hearing, the Landlord for the purposes of the application is as identified in the application. This is a regulated lease under the Housing (Scotland) Act 1988. The provisions in Chapter 4 of the Act apply.

11.2. For the purposes of this application, the Landlord is as identified in the application form.

11.3. By letters dated 22 January and 10 September 2010, the tenant duly notified the Landlord of the required works to the property. The Landlord failed to respond to the latter or make arrangements for the investigation or rectification of the required works, apart from arrangements being made for the gas safety certificate to be issued on 12 August 2010.

11.4. The property is a ground floor flat and comprises lounge, kitchen, 3 bedrooms, and bathroom. The house is not a listed building.

11.5. With regard to the points raised in the application the inspection revealed:-

11.5.1. The problems relating to waste water had been resolved by the Tenant.

11.5.2. Inspection of the concrete canopy to the rear of the property revealed that it is seriously defective and in a dangerous condition and requires to be replaced or removed as a matter of urgency. There is a serious risk of debris falling to ground and, indeed on to people in the vicinity of the rear entrance to the property.

11.5.3. The condition of the paintwork on the exterior doors as at the date of inspection meets the repairing standard, as a result of the efforts of the Tenant. The painting of the harling being purely decorative is not an issue for the PRHC. The condition of the windows fails to meet the repairing standard.

11.5.4. Despite the efforts which had clearly been made by the Tenant to minimise problems, the condition of the windows had deteriorated to the extent that there was clear evidence of considerable condensation which

was adversely affecting areas of the surrounding walls to the extent that the fabric of the building is being compromised. The condition of the windows has also resulted in excessive draughts. Accordingly the windows are not wind and watertight and fail to meet the repairing standard.

11.5.5. The wall in the cupboard adjacent to the bathroom indicated high readings on the protimeter. From its own experience and knowledge and in the absence of any representations from the Landlord the Committee determined that the cause of this dampness was faulty tiling, grouting and seals in the bath, particularly in the shower area. In addition the shower screen was in need of attention. The Landlord has failed in her duty under Section 14(1)(b) of the Act in this regard.

11.5.6. As at the date of the hearing the Landlord has failed to provide a valid Gas Safety Certificate and the Committee considers that in this respect the property fails to meet the repairing standard as defined in section(13)(1)(c).

#### **Reasons for the decision**

12. The Committee was satisfied that the Tenant's concerns had been intimated on a number of occasions to the Landlord who had failed to respond to her concerns. In particular she had failed to arrange for the necessary work to be carried out to ensure that the property meets the repairing standard.
13. The Committee noted that the letters of 22 January and 10 September 2011 had been addressed to the Landlord at the offices of Caduceus Investments Ltd. The Committee further noted that searches of the Land Register carried out by PRHP on 23 August 2011 disclosed that the Landlord has, since 9 August 2006 been and, as at the date of the hearing continues to be the registered proprietor of the property. By letter dated 17 May 2011, Caduceus Investments Ltd advised PRHP that the management arrangement that it had with the Landlord had ended in 2008. However the Committee noted that the Gas Safety Certificate dated 12 August 2010 had been instructed by Caduceus Investments Ltd and that the letter of 22 January 2010 refers to intervention by a Mr David Stewart on behalf of Caduceus Investments Ltd in January 2010. The Committee notes in the letter from the Landlord and Mr Gunduz dated purported to intimate that ownership of the property had transferred from Caduceus Investments Ltd to Mrs Kennedy-Stewart and Mr Gunduz. However the Committee was satisfied with the search results from Registers of Scotland that Mrs Kennedy-Stewart has been the registered proprietor of the property since 9 August 2006.
14. The Landlord is responsible for ensuring that the bathroom fittings are in a reasonable state of repair and in proper working order. The Committee was satisfied that the condition of the bath seals, tiling and grouting has deteriorated resulting in the dampness evidenced in the cupboard area.
15. The Committee noted with concern that, as at the date of the hearing, the Gas Safety Certificate a copy of which was produced by the Tenant at the hearing had expired and had not been renewed by the Landlord in contravention of her responsibility under the Gas Safety (Installation & Use) Regulations 1998.

#### **Decision**

16. The Committee accordingly determined that the Landlord had failed to comply with the duty imposed by Section 14 (1)(b) of the Act.
17. The Committee proceeded to make a Repairing Standard Enforcement Order as required by section 24(1).
18. The decision of the Committee was unanimous.

### **Right of Appeal**

**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**

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 **D Preston**  
.....  
Chairperson

Date *29 August 2011* .....



**REPAIRING STANDARD ENFORCEMENT ORDER**

**BY THE**

**PRIVATE RENTED HOUSING COMMITTEE**

PRHP Ref: prhp/ky11/89/11

**PROPERTY**

**5, Elizabeth Street, Dunfermline KY11 4AZ, registered under Title Number FFE46317**

**PARTIES**

**Mrs Elizabeth Sword, 5 Elizabeth Street, Dunfermline KY11 4AZ**

**Tenant**

And

**Anna Kennedy-Stewart, sometime of 2c, Harbour View, Harbour Road, Musselburgh and now of 6f Watt's Close, Musselburgh EH21 6AW**

**Landlord**

**REPAIRING STANDARD ENFORCEMENT ORDER ('RSEO') AGAINST,**

1. **WHEREAS** in terms of their decision dated 29 August 2011 the Private Rented Housing Committee ('the 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 Act') and in particular the property fails to meet the repairing standard as set out in section 13(1) of the Act.

2. The Committee now requires the landlord carry out such work as is required to ensure the property meets the repairing standard and that any damage caused as a consequence of carrying out of any works in terms of this Order are also made good before the expiry of the Completion Date.

### **THE ORDER**

3. In particular, and without prejudice to the foregoing generality, the Committee **HEREBY ORDERS** the landlord to carry out the following repairs ('the Works');-
  1. To repair or remove the concrete canopy to at the rear door of the property
  2. To replace the single glazed metal windows throughout the property.
  3. To repair the shower screen, tiling, grouting and seals around the bath.
  4. To provide a valid Gas Safety Certificate
4. The Committee **HEREBY FURTHER ORDERS** that the Works specified in this Order must be carried out and completed before the expiry of the Completion Date of 2 months from the date of service of this Order.

### **RIGHT OF APPEAL**

5. A landlord or tenant has the right to appeal this decision to the Sheriff by summary application within 21 days of being notified of that decision.

### **EFFECT OF APPEAL**

6. In terms of section 63 of the Act, where such an appeal is made, the effect of the decision and of any order is suspended until the appeal is abandoned or finally determined by confirming the decision, the decision and any 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 consisting of this and the preceding two pages are subscribed by me, David M Preston, Chairman of the Private Rented Housing Committee, at Oban on the Twenty ninth day of August two thousand and eleven before this witness, James Tolmie, Lismore House, Oban

**D Preston**

**Chairman**

**J Tolmie**

**Witness**