



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

In connection with

**Property at 607 Wellesley Road, Methil, Fife KY8 3PD
(hereinafter referred to as "the house")**

**Mrs. Amanda Moug, formerly of 607 Wellesley Road, Methil and now care of
Lynn Herbert & Co., Solicitors, 82 High Street, Leven, Fife KY8 4NB (whose
agent is Lynn Herbert of Lynn Herbert & Co., as aforesaid) ("the Tenant")**

**Mr. Navid Siddique and Mrs. Farhat Siddique, both residing at 30 Queens
Meadow, Coaltown of Balgonie, Fife KY7 6GZ
(whose agent is Mr. Stevie Drummond, care of 84 Kier Hardie Street, Methil)
("the Landlord")**

PRHP REFERENCE- KY8/9/09

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 written and oral 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 dated 2 February 2009 and received on 5 February 2009 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.

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 and in particular that the Landlord had failed to ensure compliance with Section 13(1)(a),(b),(c) and (f) of the Act which states that " the house is wind and

watertight and in all other respects reasonably fit for human habitation; 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; 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; and the house has satisfactory provision for detecting fires and for giving warning in the event of fire or suspected fire". The Tenant's complaint of disrepair within the application related broadly to repairs being needed to ensure the house is wind and watertight with particular reference to the windows which require repair; that there are signs of water ingress to the hall and sitting-room as a result of repairs required to the structure and exterior of the house; that the gas boiler is not secured to a fire retardant material; that the sitting-room gas fire is not operable; that the doors in the house do not close properly and a wardrobe door has fallen off; that there are holes in the plasterwork of most rooms; that the kitchen floor covering is in poor condition and the kitchen floor is uneven with holes; that there are diffusers absent from the kitchen and bathroom strip lights; that there is rubble and rubbish lying outside around the access stairwell; that the gas supply serving the house has been disconnected and there is no current gas safety certificate for the house; and that there are no smoke detectors in the house.

In the documentation submitted by the Tenant in relation to the application, it was stated that Mrs. Amanda Moug has rented the house from the Landlord since 13 October 2007. She had occupied it with her husband and paid rent of £360 per month. It was stated that the Landlord has failed to provide a written lease for the house but a document was signed by the Landlord to enable Housing Benefit to be paid directly to him. It was submitted that the Tenant had an Assured Tenancy in terms of the Housing (Scotland) Act 1988. The documentation stated that the Landlord was advised by Fife Council Environmental Services in a letter dated 27 October 2008 that repairs were required to the house. In addition the Tenant's agent wrote to the Landlord requiring him to carry out repairs as detailed in the said letter from Fife Council and requiring reconnection of the gas supply which it was alleged had been disconnected on the authorisation of the Landlord.

The Tenant submitted to PRHP, as part of the application, copies of letters sent by her agent to the Landlord spanning a period from November 2008 to February 2009 notifying him of required repairs, a copy letter sent to NPower by her agent relating to the gas supply and a reply from Nationalgrid, copy letter sent by Fife Council Environmental Services dated 27 October 2008 to the Landlord identifying required repairs to the house, and copy of an Initial Writ and certified copy interlocutor relating to the grant of an interim interdict against the Landlord to prevent interference with the Tenant's occupation of the house.

3. By letter dated 11 March 2009, PRHP served a Notice of Referral under and in terms of Schedule 2 Paragraph 1 of the Act upon the Landlord and the Tenant's agent and this gave intimated that the President of PRHP had made a decision to refer the application under Section 23(1) of the Act to a Private Rented Housing Committee (hereinafter referred to as "the Committee"). The Notice, and a copy of the application and accompanying documentation received with the application was sent recorded delivery to the Landlord and the Tenant's agent.

The Committee comprised the following members:

Mrs. Aileen Devanny, Legal Member
Mr. Ian Mowatt, Surveyor Member
Mr. John Wolstencroft, Housing Panel Member

4. Following service of the Notice of Referral, the Tenant's agent indicated in a letter that the Tenant would attend the hearing before the Committee and that the Tenant did not want to make written representations. The Landlord did not submit written representations or indicate if he would attend or send a representative. Notification of the date and time of the inspection and the date, time and place of the hearing was sent by PRHP to the Landlord and the Tenant's agent on 22 April 2009. A copy of the letter indicating that the Tenant would attend and that she wished to send no written representations was sent with the Notification.

On 24 April 2009 the Tenant's agent wrote to PRHP and acknowledged the Notification of inspection and hearing and alleged that the Tenant had been unlawfully evicted from the house. She confirmed that the Tenant would attend the inspection. On 8 May 2009 a Notice from PRHP was served on the Landlord advising that the Committee would be continuing with the application and would require entry to the house to carry out the inspection and enclosing a copy of the letter received from the Tenant's agent advising of the alleged eviction.

5. The Committee inspected the house on the morning of 13 May 2009. Neither the Tenant nor the Landlord were present. At the inspection Mr. Stevie Drummond attended for the Landlord to open the house for the inspection. He was unaware of any hearing following the inspection but stated that he would attend as the Landlord's representative. He indicated that he believed that the Landlord was unaware of the hearing and in explanation said that mail addressed to the Landlord had been intercepted by the Tenant. It was pointed out by the Committee that all mail sent to the Landlord had been addressed to 30 Queens Meadow, Coaltown of Balgonie, an address which corresponds to the Landlord's residence detailed in the Land Certificate for the house. The hearing was delayed to allow Mr. Drummond an opportunity to speak with the Landlord, and to ascertain if the Landlord wished to attend or to confirm Mr. Drummond as his representative. The Landlord Mr. Siddique telephoned the offices of PRHP and confirmed that Mr. Drummond would attend the hearing as his representative.

6. Following the said inspection the Committee held a hearing at Levenmouth Child Care Centre, Ajax Way, Methil. The Landlord did not attend and was represented by Mr. Drummond. Neither the Tenant nor her representative attended.

Submissions at the Hearing

7. The Committee considered the representations made by Mr. Drummond at the hearing.

At the hearing Mr. Drummond expressed surprise that the application had been brought by Mrs. Amanda Moug as he believed that it was her husband Donald Moug who was the tenant or joint tenant of the house. He indicated that the Tenant had been evicted for smashing windows and not paying rent. He had the principal copy of the letter dated 27 October 2008 from Fife Council Environmental Services and addressed the Committee on the repairs stated therein. He stated that the gas fire in the sitting-room had been removed by the Tenant and the Tenant was responsible for the broken glazing in the sitting-room and kitchen windows. Mr. Drummond agreed that there were no smoke detectors in the house and the house had no gas safety certificate. He stated that the reason for the absence of the gas safety certificate was that the Tenant had interfered with the gas supply but stated that a gas safety certificate would be obtained. He disputed that the Landlord was responsible for the disconnection of the gas supply and blamed this on the Tenant. Mr. Drummond stated that he was aware of the water ingress problems in the hall and that repairs to rectify this would be undertaken. It was his recommendation to the Landlord that the wardrobe stated in the application be removed. He stated that works were proposed for the house including the installation of double glazed window units in the kitchen and sitting-room. He indicated that he was commissioned by the Landlord to carry out the works.

Once Mr. Drummond had made representations on the application, the Committee adjourned to consider the evidence and written and oral 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 has entered into a lease with the Landlord for the rent of the house at 607 Wellesley Road, Methil. There is no written lease for the house. The Tenant continued to occupy the house under the lease until she was evicted in or around April 2009. The lease between the Landlord and the Tenant is a tenancy to which Chapter 4 of the Act applies.

9.2. Fife Council Environmental Services and the Tenant's agent notified the Landlord of the required works to the house and the Landlord was aware of the required repairs.

9.3. The house is an upstairs flatted house built over commercial shop premises and comprises a sitting-room, kitchen, two bedrooms and bathroom. The flat is accessed from the rear of the building by a communal courtyard and outside stone stairway. The building was constructed around 1910. The house has single glazed timber

windows and a gas central heating radiator system. There are wooden laminate floors throughout with the exception of the kitchen which has a vinyl floor covering.

The weather at the time of inspection on 13 May 2009 was dry and sunny.

The inspection revealed :- no smoke detectors in the house; no current Gas Safety Certificate for the house; the gas boiler attached to a plasterboard panel; the absence of a gas fire in the sitting-room; signs of significant water ingress in the entrance vestibule off the hall caused by lack of external maintenance and possibly contributed to by an ill fitting external door; no visible signs of water ingress in the sitting-room; the kitchen windows and the sitting-room window in poor and dangerous condition with broken or absent glazing, and rotten timber sills; the remaining timber windows have gaps and some are poorly fitting; doors which do not close properly and some doors in poor repair, in one instance with a broken panel window and in another instance a large dent; the wardrobe door has been detached and the wardrobe generally is in poor state of repair with a broken mirror; minor mainly cosmetic plasterwork holes; damaged kitchen vinyl floor covering; the absence of diffusers on the kitchen and bathroom strip lights; and some rubbish and builder's materials in the courtyard near the stairaccess to the house.

Reasons for the Decision

10. In considering the repairing standard issue the Committee carried out an internal and external 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 from the Tenant and oral representations of Mr. Drummond in relation to the repairing standard.

The Landlord's representative agreed that there is no smoke detectors or current Gas Safety Certificate and he accepted that these items would need to be attended to. The Committee consider that to comply with Section 13(1)(f) of the Act the Landlord will require to instal a mains powered smoke alarm conform to British Standard in accordance with guidance issued by the Scottish Ministers. A Gas Safety Certificate is required to confirm that the house meets the repairing standard laid down in Section 13(1)(c) that the installation for the supply of gas is in a reasonable state of repair and proper working order. There were no gas appliances in use at the time of the inspection and it was unclear from Mr. Drummond if the gas had been reconnected. However, it follows if a Gas Safety Certificate is issued that the installation for the supply of gas will require to be in proper working order as required by Section 13(1)(c) of the Act.

The Committee noted that the combi-boiler is attached to a plasterboard panel not a plywood panel as had been suggested. Since plasterboard is a fire retardant material it follows that no safety issue arises therefrom and the Committee are satisfied that this item does not breach the repairing standard specified in Section 13(1)(d) of the Act. It should be noted that the heating system was not in operation at the time of inspection and no checks of the gas boiler or the heating system were undertaken by the Committee as this did not form part any alleged repair in the application. The gas fire in the sitting-room has been removed and therefore there is no longer an issue that this appliance does not meet the repairing standard laid down in Section 13(1)(d) of

the Act. This provides that "any fixtures, fittings and appliances provided by the landlord under the tenancy are in a reasonable state of repair and in proper working order."

The Committee observed signs of plasterwork damage caused by water ingress at the entrance to the hall next to the external door. Visual inspection of the exterior and structure of the house suggests that this is due to lack of external maintenance and possibly contributed to by an ill fitting external door. The cause of the water ingress should be fully investigated and repairs carried out to guttering, flashing, roof slates, and roughcasting as required to return the house to a wind and watertight condition as required in terms of Section 13(1)(a) and (b) of the Act. There was no visible signs of water ingress noted in the sitting-room by the Committee at the inspection and the Committee made no findings of a breach of repairing standard for this item.

The two kitchen windows and the sitting-room window are in poor condition. The glass is broken and timber sills rotten and the windows have been boarded up or covered with polythene as temporary repairs to try to ensure safety and to prevent wind and water ingress. Some of the remaining windows had gaps between the frames and the sills and are poorly fitting. The two kitchen windows and the sitting-room window are in such poor condition that they will require to be replaced. The remaining windows will require to be repaired as required to ensure that all windows are wind and watertight, in a reasonable state of repair and in proper working order and comply with Sections 13 (1)(a) and (b) of the Act.

Repairs are required to the internal and external doors to ensure that they close properly and that they are in proper working order and in a reasonable state of repair as required by Section 13(1)(b) and (d) of the Act. The wardrobe requires to be repaired or removed to ensure that it is in a reasonable state of repair and in proper working order to comply with Section 13(1)(d) of the Act.

Small holes of a cosmetic nature were noted in the plasterwork in some rooms. Although the plasterwork was generally not in good condition, the Committee did not consider that this repair breached the repairing standard in Section 13(1)(b) of the Act and therefore made no order for this item. The vinyl floorcovering in the kitchen is ripped and the finish uneven causing a trip hazard. The Committee considered that the repairing standard laid down in Section 13(1)(e) which provides that "any furnishings provided by the landlord under the tenancy are capable of being used safely for the purpose for which they are designed" has been breached. The Committee considered that the repairing standard would be met by the provision of a suitable new kitchen floor covering. The Committee did not consider that re-fitting of the kitchen floor itself was necessary to comply with the repairing standard.

Diffusers in the kitchen and bathroom strip lights are missing. However, the Committee did not consider that this breached the repairing standard in Section 13(1)(d) of the Act.

Lastly, the Tenant complained that there was rubble and rubbish around the access stairwell and the rear entrance to the shop. The Committee noticed some builder's materials and rubble at the time of inspection. This did not impede access to the house. There is no written lease which defines the subjects of let. However, the definition of "house" at Section 194 of the Act includes "any yard, garden,.....or other

areawhich is,or which is capable of being occupied or enjoyed together with the living accommodation (solely or in common with others)". The courtyard area to the rear of the shop is not fenced and the Tenant would be capable of occupying or enjoying it in common with others. Section 13(1)(b) provides that the exterior of the house is in a reasonable state of repair and, therefore, technically the repairing standard is breached by the presence of rubbish in a communal yard. Accordingly, the Committee consider that the yard area should be tidied and rubbish and rubble removed to ensure compliance with Section 13(1)(b).

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).

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,
13 May 2009

.....
/

Motherwell, 20th May 2009.

Certified a True copy of the original.

A Devanny UB NP. Chairperson
Private Rented Housing Committee.



Repairing Standard Enforcement Order

Ordered by the Private Rented Housing Committee

PRHP REFERENCE- KY8/9/09

Re : Property at 607 Wellesley Road, Methil KY8 3PD, being part of the subjects registered in the Land Register for Scotland under Title Number FFE 53596; ("the house")

The Parties

Mr. Navid Siddique and Mrs. Farhat Siddique, both residing at 30 Queens Meadow, Coalton of Balgonie, Fife KY7 6GZ ("the Landlord")

Mrs. Amanda Moug, formerly of 607 Wellesley Road, Methil and now care of Lynn Herbert & Co., Solicitors, 82 High Street, Leven, Fife KY8 4NB ("the Tenant")

NOTICE TO Mr. Navid Siddique and Mrs. Farhat Siddique ("the Landlord")

Whereas in terms of their decision dated 13 May 2009, 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:-

- (1) the house is wind and water tight and in all other respects reasonably fit for human habitation,
- (2) 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;
- (3) the installations in the house for the supply of water, gas and electricity and for the sanitation, space heating and heating water are in a reasonable state of repair and in proper working order;
- (4) any fixtures and fittings and appliances provided by the landlord under the tenancy are in a reasonable state of repair and in proper working order,
- (5) any furnishings provided by the landlord under the tenancy are capable of being used safely for the purpose for which they are designed, and
- (6) the house has satisfactory provision for detecting fires and for giving warning in the event of fire or suspected fire,

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 produce a Gas Safety Certificate for the house to Private Rented Housing Panel to confirm that the installation for the supply of gas is in a reasonable state of repair and in proper working order,
- (b) to carry out such repairs as are necessary to the gutters, roof slates, flashing and roughcasting to ensure that the house is wind and watertight and the structure and exterior of the house are in a reasonable state of repair,
- (c) to replace the two kitchen windows and the sitting-room window and to carry out such other repairs as are necessary to the remaining windows to ensure that all windows are in a reasonable state of repair and proper working order;
- (d) to replace the floor covering in the kitchen to ensure that it is capable of being used safely,
- (e) to carry out repairs to the external door to ensure that it is in a reasonable state of repair, in proper working order and the house is wind and water tight,
- (f) to ensure that the communal yard is made tidy so that it is in a reasonable state of repair,
- (g) to carry out such repairs as are necessary to the internal doors to ensure that they are in a reasonable state of repair and in proper working order,
- (h) to remove the wardrobe in the bedroom or to repair the wardrobe to ensure that it is in a reasonable state of repair and proper working order, and
- (i) to carry out such works to the property as are necessary to comply with Section 13(1)(f) of the Housing (Scotland) Act 2006 by the installation of a satisfactory provision for detecting fires and for giving warning in the event of fire or suspected fire. The provisions of section 13(5) of the said Act must be regarded in relation to the said installation.

The Private Rented Housing Committee order that the works specified in this Order must be carried out and completed within the period of 56 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 Motherwell on Twentieth day of May, Two Thousand and Nine in the presence of the undernoted witness:-

WITNESS.. **A S Devanny**

ALEXANDER SUTHERLAND DEVANNY

SOLICITOR

95 STEWARTON STREET

WISHAW

A Devanny