



REPAIRING STANDARD ENFORCEMENT ORDER

BY THE

PRIVATE RENTED HOUSING COMMITTEE

PRHP Ref: **prhp/G72/93/11**

PROPERTY

Flat 1/2, 198 Main Street, Cambuslang G72 2EN registered under Title Number LAN142405

PARTIES

Ms Brenda McGeown, Flat 1/2, 198 Main Street, Cambuslang G72 2EN

Tenant

and

Mrs Helen Henderson, per Messrs Grant Wilson, Property Managers, 65 Greendyke Street, Glasgow G1 5PX

Landlord

REPAIRING STANDARD ENFORCEMENT ORDER ('RSEO')

1. **WHEREAS** in terms of their decision dated ** 2011 the Private Rented Housing Committee ('the Committee') determined that the Landlord has failed to comply with the duty imposed by section 14(1) 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 to 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 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 work ('the Works');-
 1. To carry out repairs to the area of wall in the living room affected by dampness by replacing plasterwork where necessary, applying fungicidal treatment to the affected area where necessary and decorating.
 2. To provide a Periodic Inspection Report in respect of the electrical system in the property.
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 6 weeks 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 *GLASGOW* on the *TWENTY* day of October two thousand and eleven before this witness, *ANNA MACGREGOR, SOLICITOR, MERRI BORDIE LLP, 2, Blythwood Square, Glasgow G2 6AP.*

D Preston

Chairman

A MacGregor

Witness



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

prhp Ref: prhp/G72/93/11

PROPERTY:

Flat 1/2, 198 Main Street, Cambuslang, G72 2EN

INSPECTION & HEARING

28 September 2011

The Parties:-

**Ms Brenda McGeown, Flat 1/2, 198 Main Street, Cambuslang, G72 2EN
(hereinafter referred to as "the Tenant")**

**Mrs Helen Henderson, represented by Diane Harte, Messrs Grant
Wilson, Property Managers, 65, Greendyke Street, Glasgow G1 5PX,
(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) of the Housing (Scotland) Act 2006 (hereinafter referred to as "the Act") in relation to the property, and taking account of the evidence led by the Landlord and the Tenant at the hearing, determined that the Landlord has failed to comply with that duty.

Background

1. By application dated 3 May 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) of the Housing (Scotland) Act 2006 ("the Act").
2. The application 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 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 21 July 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 (hereinafter referred to as "the Committee").

The Committee comprised the following members:

Mr. David M Preston, Legal Member
Mr. Alan English, Surveyor Member
Mr. Scott Campbell, 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 or the Landlord.

5. The Committee inspected the Property on the morning of 28 September 2011. The Tenant and Ms Yvonne Hogan of Messrs Grant & Wilson on behalf of the Landlord were present.
6. Following the inspection of the Property the Committee held a hearing at PRHP offices, 140 West Campbell Street, Glasgow which was attended by the Tenant, and the Landlord accompanied by her daughter, Leanne Graham and Ms Diane Harte.
7. The application by the Tenant referred to dampness in the living room and in the kitchen, a faulty light and the electrical system generally which she contended required to be checked.
8. The Tenant advised the Committee that she had moved into the property in February 2011 and had been made aware of the dampness problem in the living room, which she had been advised would be attended to. She had now been in the flat for over 6 months and the problem was still evident. She advised that in the past few days she had been visited by a decorator who had advised that the wall was to be treated and painted. The Tenant had objected to the decoration being limited to the affected area of the wall, and was concerned that unless the cause of damp had been resolved, the mould was likely to return. She referred to a patch of damp staining on the ceiling of the kitchen which had been there when she moved in but had not got any worse since. She advised that one of the wall lights in the living room was not working and that there was an intermittent fault in the switch on a power point in the bedroom.
9. The Landlord advised the Committee that the dampness problem in the living room was related to a common repair in respect of which extensive work had been carried out in 2009. She submitted a historical report in respect of the common repairs. The work had extended to the whole building, but had not resolved the issue related to the particular problem evident in the property. The property had no factor and the Landlord had made attempts to obtain approval for the further works from the other proprietors, which together with problems with contractors had caused further delays in having work carried out. She reported that the contractors had now completed the common repair within the previous week and she had been advised that following an inspection of the property by the contractor, that the source of the dampness had been eliminated. She had now instructed the remedial work within the property, comprising re-plastering where necessary, treatment with fungicidal paint on affected areas and redecoration of the living room, which she anticipated would commence within the next fortnight. She advised that she had specifically instructed that the whole room should be decorated and not just the affected area. She advised that she understood that the damp in the kitchen was historic and was related to a leaking washing machine in the upstairs flat which she believed had been fixed. She advised that she was

unaware of the electrical issues raised by the Tenant until this had been raised by the Tenant at the hearing.

10. Ms Harte advised that at the commencement of the tenancy, the Tenant had been made aware of the damp problem and that it was being attended to. She advised that the Tenant had signed a disclaimer in respect of the problem. She also advised that an electrician had attended the property and she understood that the electrical problems had been resolved. In response the Tenant advised that the electrician's visit had been restricted to a problem with a light in the shower and had not dealt with the issue raised in the application.

Summary of issues

11. 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).

Findings in Fact

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

- 12.1. On 16 February 2011, the Tenant entered into a Short Assured Tenancy with the Landlord for the rent of the property. The provisions in Chapter 4 of the Act apply.

- 12.2. The property is a first floor flat and comprises living room, kitchen, bedroom, and shower room.

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

- 13.1. There was evidence of dampness in the wall of the living room in the form of mould on the wall in the corner adjacent to the window.

- 13.2. There was a patch of damp staining on the ceiling in the kitchen. However the Committee believes that the source of the damp has been rectified and makes no order in this regard.

- 13.3. The right hand wall light in the living room on the wall affected by the dampness was not working.

- 13.4. The switch on the socket in the bedroom was found to be working on inspection, but was reported by the Tenant as being faulty.

Reasons for the decision

14. The Committee was satisfied that the Tenant's concerns had been intimated to the Landlord and had been detailed in the application to PRHP which had been copied to the Landlord per her agents.

15. The evidence from the inspection of the property left the Committee in no doubt that the property failed to meet the repairing standard as defined in s13(1) of the Act.
16. The Committee was satisfied that the Landlord had taken extensive steps to have common repairs carried out and had some sympathy with the difficulties and delays she had encountered. However the function of the Committee was to determine the issue, regardless of such difficulties.
17. The Committee accepted the evidence of the Landlord that the historic leak in a washing machine in the upstairs flat had been repaired. The Tenant confirmed that the staining had not become any more extensive since she moved in.
18. The Committee noted the representations by Ms Harte regarding a disclaimer signed by the Tenant. However the Committee considered that such a disclaimer would amount to an agreement to exclude or limit the Landlord's duty under s14(1) of the Act, which is prohibited by s17 of the Act and is accordingly of no effect.

Decision

19. The Committee accordingly determined that the Landlord had failed to comply with the duty imposed by Section 14(1) of the Act.
20. The Committee proceeded to make a Repairing Standard Enforcement Order as required by section 24(1).
21. 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 3 October 2011