

Determination by a Private Rented Housing Committee  
Statement of Decision of the Private Renting housing Committee  
(Hereinafter referred to as "the Committee")

Under Section 24(1) of the Housing (Scotland) Act 2006

Case reference number : prhp/ml6/15/09

Re:- Property at 6A Cairnhope Avenue, Airdrie, ML6 9EH ("the property")

Land Register Title number : - LAN29910

The Parties:-

Thomas Clark residing at 6A Cairnhope Avenue, Airdrie, Lanarkshire, ML6 9EH ("the tenant")

And

James Alexander Kirkwood residing at 2 Strathnaver Crescent, Airdrie, ML6 6ES and John Alexander Cowell residing at 19 Inchwood Place, Cumbernauld, G68 9EA as individuals and as partners of and Trustees of the firm of C K Properties having a place of business at 6 Lithgow Place, College Milton North, East Kilbride, G74 1GL ("the landlords")

**The Committee comprised:-**

Mr James Bauld - Chairperson  
Mr Michael Links - Surveyor member  
Mr Christopher Harvey - Housing member

**Decision:-**

The Committee unanimously decided that the Landlord had failed to comply with the duties 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 16 February 2009 the tenant applied to the Private Rented Housing Panel (prhp) for a determination that the landlord had failed to comply with the duty imposed by Section 14(1)(b) of the 2006 Act.
2. The application made by the tenant stated that the tenant considered that the landlord had failed to comply with their duty to ensure that the house met the repairing standard, and, in particular the landlords had failed to ensure that :-
  - a. the house was wind and water tight and was not in all respects reasonably fit for human habitation
  - b. the installations in the house for the supply of water, gas and electricity and sanitation, space heating and heating water were in a reasonable state of repair and in proper working order.
  - c. the fixtures fittings and appliances provided by the landlord under the Tenancy were in a reasonable state of repair and in proper working order
  - d. the house had satisfactory provision for detecting fires and for giving warning in the event of fire or suspected fire.

A detailed list of defects complained of was attached to the application and was headed "part 5"

3. The tenant has provided evidence of notification of these defects to the landlord at the address given in the Tenancy Agreement. A copy of a letter dated 16 June 2008 and addressed to the landlords was produced 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 27 March 2009 the Committee served Notice of Referral under and in terms of Schedule 2, paragraph 1 of the 2006 Act upon the parties. The Notice of Referral to the Tenant was served upon his agent Mr T Craig of Airdrie Citizens Advice Bureau. In terms of Paragraph 13 of the PRHP (Application and Determinations) (Scotland) Regulations 2007, service of any formal communication upon the known agent of a party is deemed to be served upon that party.
6. The Committee inspected the property on the morning of 3 June 2009. The tenant was present during the inspection. The landlords were neither present nor represented at the inspection.

## The Evidence

7. The evidence before the Committee consisted of:-
  - Application form
  - Copy Tenancy Agreement
  - Notification to landlords of issues of claimed disrepair
  - Extract of Title from the Land Register

## Summary of Issues

8. The issues complained of by the tenant in the application before the Committee can be summarised as follows:-
- The ceiling had collapsed in the bathroom
  - Light fittings in the bathroom were damaged
  - The shower curtain support had collapsed
  - Tiles in the bathroom were discoloured due to water damage
  - The bath could not be used due to dirt falling from the exposed ceiling
  - The hall carpet was damaged due to water penetration
  - The storage heaters throughout the property were not working properly
  - The cooker, fridge and freezer within the kitchen were not working properly
  - Water damage to the wall in the hall was causing fungus to grow
  - The kitchen ceiling was bevelled owing to water damage and fungus was starting to grow
  - There were no smoke detectors within the property

During the course of the inspection and during the course of the hearing the tenant accepted that the only matters which now remained outstanding were the storage heaters, the cooker, fridge and freezer, the smoke alarms and the hall carpet. It was agreed that the landlord had undertaken repairs to the ceilings and walls in the bathroom, kitchen and hall and that they were now generally of a satisfactory standard. In addition, the landlord had repaired the bathroom light fittings. The tenant had cleaned the bathroom tiles and bath, which is now usable. The shower curtain remains to be re-installed although the tenant agreed he no longer wished this matter to be considered by the Committee.

## The Hearing

9. The tenant attended the hearing in person. Mr James Kirkwood, one of the landlords also attended the hearing.

At the hearing the landlord was questioned with regard to the condition of the hall carpet. His position was that the carpet was exceptionally dirty but was otherwise acceptable. The tenant's position was that the carpet needed replacing owing to substantial water damage.

10. The Committee then questioned the parties with regard to the storage heaters. The landlord indicated that so far as he was aware all the storage heaters were working properly. He claimed that he had been to the flat on 4 occasions to reset the heaters as the overloads had tripped. The landlord indicated that he was an electrician and that the storage heating system should last at least 20 years. He indicated that he had last inspected the storage heaters in September or October of 2008 and had not at any time since then inspected them. He also confirmed that he had not inspected the storage heaters since receiving notification of the hearing. The tenant's view was that the storage heaters were inoperable. He indicated that the landlord, when he had last attended at the property indicated that power was getting into the storage heaters but had no idea why they were not working. The landlord then indicated to the Committee that storage heaters work on the basis of gathering energy through the night and releasing the heat through the day. He explained his failure to attend at the property after

receiving the notification by saying that he thought that the information in the application was out of date although it had been received after February 2009.

11. The tenant indicated to the Committee that the cooker which consisted of a separate hob and a wall mounted double oven was not working. The tenant also indicated that the fridge and freezer within the kitchen had also not been working although that he the tenant had arranged for a repair to be done to the fridge which had now rendered it in to current working order. The landlord indicated to the Committee that he believed all of the appliances were working and did not know any different from that. He believed that one ring on the hob was not working and that the oven was satisfactory although he accepted that the door of the oven was damaged. The tenant indicated that the oven was not working, that the door on the top oven was completely damaged with a glass external insulating panel missing and that two rings on the hob were completely inoperable and a third was broken. The tenant also indicated that the freezer was not working and needed its gas cylinder replaced but that he had arranged for the gas cylinder at the back of the fridge to be topped up and it was now working. The tenant indicated that he used to be involved in ice-cream sales and thus had knowledge of refrigeration. The landlord's position was that any such repair to any such fridge or freezer would be dangerous as these domestic appliances cannot have the gas cylinder recharged.
12. It was noted that during inspection by the Committee that there were no smoke detectors within the property. At the hearing the landlord accepted that there were no smoke detectors and that he had made no attempt to install them at all.

#### **Findings of Fact**

13. Having considered all the evidence the Committee finds the following facts to be established:-
  - a) The subjects of let comprise a ground floor flat in a tenemental building which is approximately 40 years old. The flat consists of a livingroom, 2 bedrooms, box room, kitchen, bathroom and hallway.
  - b) The hall carpet has been significantly damaged by water penetration and is in a state of disrepair
  - c) The hob in the kitchen has a broken ceramic plate and only one functioning ring. The hob is in a state of disrepair and is not in proper working order.
  - d) The double oven mounted in the wall of the kitchen is in a state of disrepair and not in proper working order. The door of the top oven does not have the insulating glass exterior panel. The bottom door is loose on its hinges. The oven is in a state of disrepair and is not in proper working order.
  - e) The fridge and freezer within the kitchen are both in a state of disrepair and neither is proper working order.
  - f) There are no smoke alarms within the property
  - g) The storage heaters within the property are not working, are not in reasonable state of repair and are not in proper working order.

#### **Reasons for Decision**

14. The Committee considered the issues of disrepair set out above in paragraph 13 and reached the following conclusion:-

- The landlord has failed to install smoke alarms within the property and the Committee were satisfied that this failure constituted a clear breach of Section 13 (1)(f) of the 2006 Act.
- In relation to the storage heaters, the Committee were satisfied that the storage heaters were not functioning and had not worked for a number of months. The Committee considered that this repair had been notified to the landlord and that he had failed to take steps to carry out appropriate repairs. The Committee also noted that the storage heaters appeared to be an older type and may well be coming to the end of their useful life. The Committee considered that the failure of the landlord to carry out repairs to the heaters was a breach of Section 13 (1)(c) of the 2006 Act.
- The appliances in the kitchen, namely the hob, double oven, fridge and freezer were all in a substantial state of disrepair. Three of the four rings on the hob were inoperable, the ceramic top was broken, the oven doors were broken and the freezer was not working at all. Again the Committee considered that all of these faults had been reported to the landlord and that they had failed to take steps to remedy them. The Committee considered that the landlord's failure was a breach of Section 13 (1) (c) of the 2006 Act.
- The Committee considered that the hall carpet was substantially damaged by water penetration. The Committee rejected the landlords' position that the carpet was simply dirty. The Committee felt that the damage to the hall carpet was a breach of Section 13 (1) (d) of the 2006 Act.
- The Committee determined that all of the above matters required to be attended to before the house could be said to meet the repairing standard.

15. The decision of the Committee was unanimous

### **Rights of Appeal**

- 16 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
- 17 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**

18. 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
19. 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 **J Bauld** .....  
Chairperson

Date *19 June 2009*

Signature of Witness, **G Williams** Date *19/6/09*

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

*GILLIAN WILLIAMS*  
*7 WEST GEORGE STREET, GLASGOW, G2 1BA*  
*LEGAL SECRETARY*

## **Repairing Standard Enforcement Order**

Ordered by the Private Rented Housing Committee

Case reference number : prhp/ml6/15/09

Re:- Property at 6A Cairnhope Avenue, Airdrie, ML6 9EH ("the property")

Land Register Title number:- **LAN29910**

### **The Parties:-**

Thomas Clark residing at 6A Cairnhope Avenue, Airdrie, Lanarkshire, ML6 9EH ("the tenant")

And

James Alexander Kirkwood residing at 2 Strathnaver Crescent, Airdrie, ML6 6ES and John Alexander Cowell residing at 19 Inchwood Place, Cumbernauld, G68 9EA as individuals and as partners of and Trustees of the firm of C K Properties having a place of business at 6 Linlithgow Place, College Milton North, East Kilbride, G74 1GL, ("the landlords")

### **Notice to James Kirkwood and John Cowell and C K Properties ("the landlords")**

Whereas in terms of the decision dated 10 June 2009 the Private Rented Housing Committee have determined that landlords have failed to comply with the duty imposed by Section 14 (1)(b) of the Housing (Scotland) Act 2006 and in particular the landlords have failed to ensure that:-

- a) The installations in the house for the supply of space heating are in a reasonable state of repair and in proper working order.
- b) That fixtures, fittings and appliances provided by the landlord under the Tenancy are in reasonable state of repair and in proper working order.
- c) That the house has satisfactory provisions for detecting fires and 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 purpose of ensuring that the house concerned meets the repairing standard and that any damage caused by the carrying out of the works 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 within the period of 28 days from the date of service of the Notice.

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 **J Bauld** Date..... *19 June 2009*

Signature of Witness *G Williams* Date..... *19/6/09*

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

*GILLIAN WILLIAMS*  
*7 WEST GEORGE STREET, GLASGOW, G2 1BA*  
*LEGAL SECRETARY*



Notice to James Kirkwood and John Cowell and C K Properties ("the landlords")

Schedule of work ordered by the Private Rented housing Committee

Case reference number : prhp/ml6/15/09

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

- Repair the storage heaters within the property to restore them to proper working order
- To repair or replace the cooker consisting of the ceramic hob and double wall mounted oven to restore said appliances to proper working order
- To repair or replace the fridge and freezer to ensure the appliances are restored to proper working order
- To clean or replace the hall carpet to bring it in to a reasonable state of repair
- To install hard wired smoke alarms within the property to ensure that the house has satisfactory provisions for detecting fire and for giving warning in the event of fire or suspected fire

**Any damage cause by the carrying out of the work specified in the Order must also be made good (Housing (Scotland) Act 2006 Section 14 (2)(b))**

**A landlord who, without reasonable excuse, fails to comply with 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 of the standard scale (Housing (Scotland) Act 2006 section 28 (1) and (7)).**

Signed. **J Bauld** .. Date 19 June 2009

Signature of Witness. **G Williams** Date 19/6/09

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

GUILLIAN WILLIAMS  
7 WEST GEORGE STREET, GLASGOW, G2 1BA  
LEGAL SECRETARY