



Repairing Standard Enforcement Order

Ordered by the Private Rented Housing Committee

Case Reference Number: PRHP/RP/15/0339

Re: All and whole the flat 3/2, 108 Dundrennan Road, Glasgow, G42 9SH, being part and portion of the tenement of houses at the block known as 108 Dundrennan Road, aforesaid, all as more particularly described in the Disposition by the Trustees of John Thom with consent of Nevis Property Company Limited, to Abbey National Building Society, dated, 7, 10 and 12 March and recorded in the Division of the General Register of Sasines for the County of Glasgow on 27 March, all nineteen hundred and fifty two (4600/132)

("the property")

The Parties:-

Mr David Clelland, residing at the property ("the tenant")

York and District Investment Company Limited, having its registered office at 137 Scalby Road, Scarborough, North Yorkshire, YO12 6TB, a subsidiary company of Broadland Properties Limited which is related to Nevis Property Company Limited, having its registered office at 56 George Street, Edinburgh EH2 2LR, also a subsidiary company of Broadland Properties Limited, the title to the property remaining in the name of the said Nevis Property Company Limited ("the landlord")

The committee: – Sarah O'Neill (Chairperson); Carol Jones (Surveyor Member)

NOTICE TO: York and District Investment Company Limited (the landlord)

Whereas in terms of its decision dated 16 March 2016, the Private Rented Housing Committee determined that the landlord had failed to comply with the duty imposed on it by Section 14 (1) (b) of the Act, and in particular that the landlord has failed to ensure that the house meets the repairing standard in that:

- the property is not 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 property for the supply of water, gas and electricity and for sanitation, space heating and heating water are not 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 property meets the repairing standard and that any damage caused by the carrying out of any work in terms of this order is made good before the date specified in this order.

In particular the Private Rented Housing Committee requires the landlord to:

1. Replace all windows throughout the property, in order to ensure that the property is wind and watertight and in all other respects reasonably fit for human habitation.
2. Engage a suitably qualified and registered electrical contractor to repair or replace as necessary the immersion heater within the property, in order to ensure that the installation for heating water is in a reasonable state of repair and in proper working order.
3. Repair or replace the right hand window on the landing between the second and third floors of the tenement as necessary to ensure that it is in a reasonable state of repair and proper working order, and in particular to stop any water ingress when it rains.
4. Repair or replace the ceiling above the window on the landing between the first and second floors of the tenement as necessary to ensure that it is safe, and is in a reasonable state of repair and in proper working order.

The Private Rented Housing Committee orders that the works specified in this order must be carried out and completed within the period of **four weeks** from the date of service of this notice.

Rights of Appeal

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.

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. 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.

Please note that in terms of section 28(1) of the Act, a landlord who, without reasonable excuse, fails to comply with a RSEO commits an offence liable on summary conviction to a fine not exceeding level 3 on the standard scale. A landlord (and that includes any landlord's successor in title) also commits an offence if he or she enters into a tenancy or occupancy arrangement in relation to a house at any time during which a RSEO has effect in relation to the house. This is in terms of Section 28(5) of the Act.

IN WITNESS WHEREOF these presents typewritten on this and the preceding page are signed by Sarah Frances O'Neill, solicitor, Chairperson of the Private Rented Housing Committee, at Glasgow on the sixteenth day of March, Two Thousand and Sixteen before this witness -

Sarah O'Neill witness Sarah O'Neill chairperson

GARY CUSIAK name in full

480 ARYLE STREET Address

GLASSGOW

CASEWORKER Occupation



Determination by 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 ("the Act")

Case Reference Number: PRHP/RP/15/0339

Re: Flat 3/2, 108 Dundrennan Road, Battlefield, Glasgow G42 9SH

("the property")

The Parties:-

Mr David Clelland, residing at the property ("the tenant")

York and District Investment Company Limited, having its registered office at 137 Scalby Road, Scarborough, North Yorkshire, YO12 6TB, a subsidiary company of Broadland Properties Limited which is related to Nevis Property Company Limited, having its registered office at 56 George Street, Edinburgh EH2 2LR, also a subsidiary company of Broadland Properties Limited, the title to the property remaining in the name of the said Nevis Property Company Limited ("the landlord")

The committee: – Sarah O'Neill (Chairperson); Carol Jones (Surveyor Member)

Decision

The committee, having made such enquiries as it saw fit for the purposes of determining whether the landlord has complied with the duty imposed by Section 14 (1) (b) of the Housing (Scotland) Act 2006 ("the Act") in relation to the property, and taking account of all the available evidence, determines that the landlord has failed to comply with the duty imposed on it by Section 14 (1) (b) of the Act. The committee

therefore issues a Repairing Standard Enforcement Order. The committee's decision is unanimous.

Background

1. By application dated 6 December 2015, the tenant applied to the Private Rented Housing Panel ("the panel") for a determination that the landlord had failed to comply with its duties under Section 14(1) of the Act.

2. In his application, the tenant stated that he believed the landlord had failed to comply with its duty to ensure that the property met the repairing standard as set out in sections 13(1) (a) (b) (c) and (f) of the Act. His application stated that the landlord had failed to ensure 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
- the house has satisfactory provision for detecting fires and for giving warning in the event of fire or suspected fire

3. The tenant made the following complaints in his application form and in his notification letter to the landlord:

1. For over ten years, we have requested that the windows be repaired and have had no response. Some glass is missing and boarded up. Other windows have cling film holding broken glass in place. There is no mastic in any windows. The windows are not wind and watertight.
2. No hot water since August.
3. Landing windows were broken six weeks ago.
4. Plaster ceilings on landing are falling down due to water.

4. The tenant stated in his application form that the following work required to be carried out at the property:

- New windows required
- Hot water needs fixed

- Landing windows and plaster ceiling on landing need to be fixed.
5. On 24 December 2015, the President of the panel issued a minute of decision stating that she considered that in terms of section 23 (3) of the Act there was no longer a reasonable prospect of the dispute being resolved between the parties at a later date; that she had considered the application paperwork submitted by the tenant, comprising documents received between 10 December 2015 and 16 December 2015; and intimating her decision to refer the application to a panel committee for determination.
 6. The President of the panel wrote to the tenant and to the landlord's agent, Edzell Property Management, on 12 January 2016, notifying them under and in terms of the 2006 Act of her decision to refer the application under Section 22(1) of the Act to a private rented housing committee and that an inspection and a hearing would take place on 15 February 2016. No written representations were received from the tenant. Written representations dated 1 February were received from the landlord.
 7. On 2 February, the committee issued a direction to the landlord, requiring it to provide copies of: 1) the title deed (disposition) in its favour relating to, and confirming its ownership of, the property and 2) the report of the survey of the property carried out on behalf of Edzell Property Management when it took over as letting agent in December 2010, which is referred to in the application paperwork submitted by the tenant, by 12 February 2015. No response to the direction was received by that deadline.

The inspection

8. The committee inspected the property on the afternoon of 15 February 2016. The weather conditions at the time of the committee's inspection were dry and bright. The tenant and his wife, Mrs Pam Clelland, who also lives at the property, were both present at the property during the inspection. Mr Richard Taylor, solicitor with Edzell Property Management, the landlord's agent, was also present at the inspection. Photographs were taken during the inspection and are attached as a schedule to this decision.

The property

9. The property is a top floor flat within a four storey red sandstone tenement, estimated to be in the region of 115 years old. The property comprises: a hallway, living room, bedroom, dining room/kitchen with pantry and bathroom. It is located in a predominantly residential area within the Battlefield district of Glasgow and around 3 miles south of the city centre.

The hearing

10. Following the inspection, the committee held a hearing at Wellington House, 134-136 Wellington Street, Glasgow G2 2XL. Both Mr and Mrs Clelland were present at the hearing. The landlord was represented by Mr Taylor.

The evidence

11. The evidence before the committee consisted of:

- The application form completed by the tenant.
- Sasines search sheet (number 4600/132) relating to the property.
- Registers Direct copy of Land Register title GLA2996 relating to the neighbouring flat 3/1, 108 Dundrennan Road, Glasgow G42 SNH.
- Letter of notification from the tenant to the landlord's agent, notifying it of the various issues complained about in his application form, together with certificate of posting dated 8 December 2015.
- Letter from the landlord's agent to the tenant dated 31 August 2015.
- The landlord's written representations.
- The committee's inspection of the property.
- The oral representations of the parties.

Summary of the issues

12. The issue to be determined was whether the property meets the repairing standard as set out in Section 13 of the Act, and whether the landlord had complied with the duty imposed on it by section 14 (1) (b).

Findings of fact

13. The committee made the following findings in fact:

- The tenant has lived in the property since around 1980. He and his wife entered into a tenancy agreement at that time with Nevis Property Company Limited. The landlord is now York and District Investment Company Limited. There was no written tenancy agreement before the committee, but the

committee is satisfied that there is a tenancy in place, and no representations have been received from the landlord to the contrary. Mr Taylor told the committee that the landlord's agent agreed that there was a tenancy in place. The tenancy is a tenancy of a house let for human habitation, which does not fall within the exceptions set out in section 12 (1) of the Act. The provisions set out in Chapter 4 of the Act therefore apply.

- The registered landlord for the property is York and District Investment Company Limited, which is a subsidiary company of Broadland Properties Limited.
- No title deed in respect of the property could be located by the Registers of Scotland, and the landlord failed to respond to the committee's direction to provide a copy of the title deed in its favour. Mr Taylor undertook at the hearing to provide a copy of the title deed to the committee, but this had not been received as at the date of this decision. The committee determines on the basis of the evidence before it, including the Sasines search sheet, that the title to the property remains in the name of Nevis Property Company Limited, which is also a subsidiary company of Broadland Properties Limited.
- The tenancy of the property is managed by the landlord's agent, Edzell Property Management, 1008 Pollokshaws Road, Glasgow G41 2HQ. This company took over from J.A. MacTaggart as the landlord's agent in 2010.
- The committee in its inspection carefully checked the items which were the subject of the complaint. The committee observed the following:
 - i. The windows throughout the property, which were original timber sash and case windows of some considerable age, were in a very poor state of repair. The frames were rotting, the cords were broken, some glazing is cracked or missing completely and the tenant stated that none of the windows could be safely opened or closed.
 - ii. There was cellophane over the cracked glass in the living room bay window.
 - iii. The bottom pane of the pantry window was missing and was boarded up.
 - iv. The kitchen window was propped up with wood to keep the pane in place.
 - v. The immersion heater/hot water tank in the kitchen was of some age.
 - vi. There was no central heating system within the property.
 - vii. The right hand window on the landing between the second and third floors of the tenement was in a poor state of repair. There was a gap at the side of the frame and the timber is damaged. The left hand lower window frame has been replaced recently.
 - viii. There was a sizeable hole in the ceiling above the window on the landing between the first and second floors exposing the lath beneath the plaster

which had fallen off. This appeared to have been caused by water ingress from the window on the landing above.

Reasons for decision

14. Following its inspection and the hearing, the committee determined that:

- the property is not wind and watertight and in all other respects reasonably fit for human habitation.
- the structure and exterior of the property (including drains, gutters and external pipes) are not in a reasonable state of repair and in proper working order.
- the installations in the property for the supply of water, gas and electricity and for sanitation, space heating and heating water are not in a reasonable state of repair and in proper working order

15. The complaints before the committee as set out in the tenant's application and the committee's determinations in relation to each of these are set out below.

1. Windows

16. The tenant told the committee that he had repeatedly asked both the landlord's current agent and its previous agent, J.A. MacTaggart, to repair the windows over a period of 9 or 10 years. He said that he was repeatedly told that they would be repaired, but that this had not been done. He said that the pantry window had been missing for around 3 years, and that the cellophane had been fixed to the living room bay window by a glazier instructed by the landlord's agent at least 6 years ago. He said that the windows had not been maintained for over 10 years, and that the glazier had told him the window frames were so rotten that they could not be repaired. Mrs Clelland told the committee that none of the windows could be opened or washed, and that she was concerned about the safety issues arising from their poor state of repair. The tenant said that the property was inspected once every three years, and that every three years the Private Rented Housing Panel was involved in a rent case regarding the property, but the rent was never increased.

17. Mr Taylor did not dispute the need for the windows to be replaced. He produced a written instruction dated 11 December 2015 from the landlord's agent instructing a company called React to quote for the replacement of windows at the property. It was clear, however, that the windows had not been replaced, and the tenant told the committee that no-one had been to the property to measure the windows. The chairperson asked Mr Taylor about the letter from the landlord's agent to the panel dated 1 February 2016, which stated that the

landlord had agreed to replace the windows and that the work would be carried out 'as soon as the weather permits'. Mr Taylor said that the letter had been incorrect and had been sent out without being checked. He said that he had spoken to the contractor earlier on the day of the hearing, and that they were coming to the property at 5pm that day to quote for a replacement of all the windows. He said that he expected the work to be done within the next two weeks.

18. On the basis of its inspection and the other evidence before it, the committee has no hesitation in finding that the windows throughout the property are not in a reasonable state of repair and in proper working order. It also finds that the property is not wind and watertight and in all other respects reasonably fit for human habitation.

2. Hot water

19. The committee observed at its inspection that the hot water tank in the kitchen was of some considerable age. The tenant told the committee that there had been no hot water in the property since August 2015. Mrs Clelland said that a plumber had been sent by the landlord's agent on 7 September 2015, but that he had been there for a very short time, and had said that the immersion heater was unfixable. She said that, since that time, every month when she had gone to the offices of the landlord's agent to pay the rent, she asked to speak to someone about the hot water, but was always told there was no-one available.
20. The committee found the tenant and Mrs Clelland to be credible witnesses, and accepted their evidence. Again, Mr Taylor produced a written instruction to React dated 11 December 2015, requesting that they repair the immersion heater. In the letter from the landlord's agent to the panel dated 1 February 2016, it was stated that the hot water issue had been addressed on or around 11 December 2015. The tenant said no-one had been out to look at the heater since September, but that he had spoken to the landlord's agent just after New Year and had been told that it would be fixed.
21. On the basis of its inspection and the other evidence before it, the committee determines that the installations in the house for heating water are not in a reasonable state of repair and in proper working order.

3. Landing windows

22. The committee observed that the right hand window on the landing between the second and third floors of the tenement was in a poor state of repair. There was a gap at the side of the frame and the timber was damaged. The tenant said that the windows had been broken by tradesmen some months ago. He told the

committee that the left hand window had been fixed, but the right hand window had not. He said that it was not secure, and that when it rained, water came in through the window, flooding the common landing. On the basis of the evidence before it, including its inspection, the committee determines that this right hand window on the landing is not in a reasonable state of repair and proper working order.

4. Landing ceiling

23. The committee observed at its inspection that there was a sizeable hole in the ceiling above the window on the landing between the first and second floors, exposing the lath beneath the plaster which had fallen off. This appeared to have been caused by water ingress from the window on the landing above. The committee considers that the ceiling may be unsafe and that further falling plaster cannot be ruled out particularly given the flooding which could occur from the window above during any future rainfall. The committee therefore determines that the close ceiling is not in a reasonable state of repair and proper working order.

24. Mr Taylor told the committee that the landing windows and ceiling were common repairs issues, and that the landlord's agent had done what was required of it, by reporting these to the property factor for the tenement, which was responsible for addressing these. With its representations of 1 February, the landlord's agent had enclosed an email from the property factor, Redpath Bruce, stating that the window repairs had been fully completed on 25 January 2016. The email also stated that the works regarding the collapsed ceiling had been put to a quotation, and that given the sum involved for this work, the property factor was required to write out to all owners before further action was taken. Mr Taylor confirmed to the committee that there had been no further update from the property factor since that time.

25. The committee noted that any repairs to the landing windows and ceiling will constitute common repairs. While the committee has not seen the title deed for the property, the land certificate for flat 3/1 within the same tenement includes reference to Deed of Declaration of Conditions, recorded G.R.S. (Glasgow) 11 May 1950 by the Trustees of John Thom relating to the whole tenement. This provides that the owners of the flats within the tenement are jointly responsible for maintenance and repair of common parts, including the common close and staircase and stair landings.

26. Section 15 of the Act states:

'(1) Where a house forms part only of any premises, the reference in section 13(1) (b) [i.e. the requirement to ensure that the structure and exterior of a

house is in a reasonable state of repair and in proper working order] includes reference to any part of those premises which the owner of the house is responsible for maintaining (solely or in common with others) by virtue of ownership, any real burdens or otherwise’.

(2) Nothing in subsection (1) requires the landlord to carry out any work unless any part of the premises, or anything in the premises, which the tenant is entitled to use is adversely affected by the disrepair or failure to keep in proper working order.’

27. The effect of this is that the landlord is required to ensure that the structure and exterior of premises which include a flat which it owns is in a reasonable state of repair and in proper working order, where it has a responsibility to maintain the common parts of those premises. This applies where any part of those premises which the tenant is entitled to use is adversely affected by the disrepair or failure to keep in proper working order.

28. The committee accepts that the landlord’s agent had raised the common repairs issues with the property factor, and had believed that the landing windows had been repaired. It was also clear that action to address the landing ceiling repairs was being taken by the property factor. It is clear, however, that the landlord has a legal obligation to maintain the landing windows and close ceiling. It is equally clear that the disrepair or failure to keep those common parts in a reasonable state of repair and in proper working order has resulted in part of the property which the tenant is entitled to use i.e. the close and the stairwell being adversely affected.

29. In other words, the landlord has a duty to comply with the repairing obligation here, regardless of the fact that others share the responsibility to carry out and pay for common repairs. While the landlord is entitled to pursue the other owners in the tenement to pay for their share of the repairs, this is a matter for the landlord and does not affect its legal responsibility to ensure that the property meets the repairing standard.

Observations by the committee

30. While the tenant had ticked the box on his application form to indicate that the property did not have satisfactory provision for detecting fires and for giving warning in the event of fire or suspected fire, there was no evidence that this complaint had been notified to the landlord. The committee was therefore unable to make any order in respect of this matter.

31. The committee observed, however, that there were no smoke alarms within the property. This does not comply with the current statutory requirements for

rented properties. The repairing standard includes a requirement under section 13 (1) (f) of the 2006 Act that the house has satisfactory provision for detecting fires and for giving warning in the event of fire or suspected fire. In determining whether a property has satisfactory provision for detecting fires and for giving warning in the event of fire or suspected fire, section 13 (5) of the Act states that regard is to be had to any building regulations and any guidance issued by the Scottish Ministers on these matters.

32. The current Scottish Government statutory guidance states that there should be at least:

- one functioning smoke alarm in the room which is frequently used by the occupants for general daytime living purposes
- one functioning smoke alarm in every circulation space, such as hallways and landings.
- one heat alarm in every kitchen
- and all alarms should be interlinked.

33. The committee also observes that it would be open to the tenant to make a further application to the panel in respect of the absence of smoke alarms within the property, should this not be addressed by the landlord.

34. The landlord should also be aware of the extension of the repairing standard to require the installation of carbon monoxide warning detectors from 1 December 2015, if these are required and are not already installed. Scottish Government guidance on the provision of carbon monoxide alarms in private rented housing is available at:

<https://www.scottishlandlords.com/LinkClick.aspx?fileticket=t4YWI-asYF0%3D&tabid=432>

35. This guidance states that private landlords must ensure that a detection system is installed in all dwellings they rent to tenants where there is:

- a fixed combustion appliance (excluding an appliance used solely for cooking) in the dwelling or
- a fixed combustion appliance in an inter-connected space, for example, an integral garage
- a combustion appliance necessarily located in a bathroom (advice would be to locate it elsewhere) - the CO detector should be sited outside the room as close to the appliance as possible but allowing for the effect humid air might have on the detector when the bathroom door is open.

Summary of decision

36. The committee determines that the landlord has failed to comply with the duty imposed by Section 14 (1) (b) of the Act, and in particular that the landlord has failed to ensure that the house meets the repairing standard in that:

- the house is not 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 not 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 not in a reasonable state of repair and in proper working order

37. The committee therefore makes a Repairing Standard Enforcement Order as required by section 24 (2) of the Act.

Rights of Appeal

38. 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.

39. The appropriate respondent in such appeal proceedings is the other party to the proceedings and not the panel or the committee which made the decision.

Effects of Section 63 of the 2006 Act

40. 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. 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..... **S O'Neill**

.....Date..... 16/3/16

Sarah O'Neill, Chairperson



Schedule of photographs taken during the inspection of Flat 3/2, 108 Dundrennan Road,
Glasgow G42 9SH
by the Private Rented Housing Committee on the 15 February 2016.

Reference Number : PRHP/RP/15/0339



External view - Front elevation of property



Kitchen Window



Kitchen Window



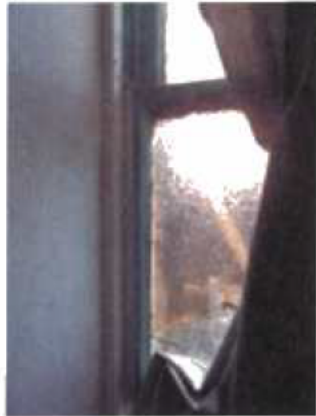
Kitchen Window



Pantry Window



Bathroom Window



Bathroom Window



Bedroom Window



Bedroom Window



Living Room Bay Window - right side



Living Room Bay Window - right side



Living Room Bay Window - centre



Kitchen - tank



Landing Window between 2nd and 3rd Floor



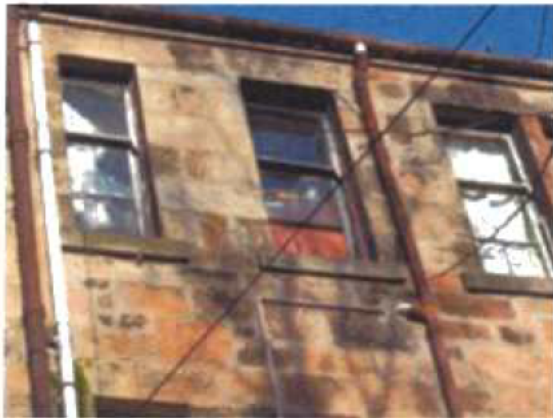
Landing Window between 2nd and 3rd Floor



Landing Window/Ceiling between 1st and 2nd Floor



Landing Window/Ceiling between 1st and 2nd Floor



Rear Elevation - subject property



Rear Elevation