



Repairing Standard Enforcement Order

Ordered by the Private Rented Housing Committee

prhp Ref: PRHP/RP/14/247

Re: Property at ground floor right 10 Raeburn Place, Rosemount, Aberdeen, AB25 1PS ("the Property")

Title No: ABN63942

The Parties:-

MR GEOFFREY CHALMERS c/o 32 King Street, Aberdeen, AB24 5AX (represented by his agent Mr Cliff Caie, Lett's & Co. Properties, 32 King Street, Aberdeen ("the Landlord"))

MISS SHEILA ANDERSON residing at GFR 10 Raeburn Place, Rosemount, Aberdeen, AB25 1PS ("the Tenant")

NOTICE TO MR GEOFFREY CHALMERS ("the Landlord")

Whereas in terms of their decision dated 22 April 2015, 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 ("The Act") and in particular that the landlord has failed to ensure that the property is:-

- (a) The installations in the Property 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;
- (b) Any fixtures, fittings and appliances provided by the Landlords under the tenancy are 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 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 carry out such works as are necessary to identify any sources of water ingress to the Property, particularly to the roof, and to rectify these and make good any damage caused by such ingress.
- (b) To obtain a timber specialist report over the Property and any related common parts and to carry out any works required by such report.
- (c) To provide a clear electrical installation condition report over the Property confirming that there are no items categorised as C1 or C2.
- (d) To provide a clear gas safety certificate over the gas system within the Property.

The Private Rented Housing Committee order that the works specified in this Order must be carried out and completed within the period of 4 months 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.

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 type written on this and the preceding page are executed by Ewan Kenneth Miller, Solicitor, Whitehall House, 33 Yeaman Shore, Dundee, DD1 4BJ, Chairperson of the Private Rented Housing Committee at Dundee on 22 April 2015 before this witness:-

L. JOHNSTON

E. MILLER

_____ witness

Chairman

Lindsay Johnston
Secretary
Thorntons Law LLP
Whitehall House
33 Yeaman Shore
Dundee
DD1 4BJ



Statement of decision of the Private Rented Housing Committee under Section 24 (1) of the Housing (Scotland) Act 2006

prhp Ref: PRHP/RP/14/247

Re: Property at GFR 10 Raeburn Place, Rosemount, Aberdeen, AB25 1PS ("the Property")

The Parties:-

MS SHEILA ANDERSON residing at GFR 10 Raeburn Place, Rosemount, Aberdeen, AB25 1PS ("the Tenant")

MR GEOFFREY CHALMERS c/o 32 King Street, Aberdeen, AB24 5AX (represented by his agent Mr Cliff Caie, Lett's & Co. Properties, 32 King Street, Aberdeen) ("the Landlord")

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) in relation to the house concerned, and taking account of the evidence led by both the Landlord's agent and the Tenant at the hearing, determined that the Landlord had failed to comply with the duty imposed by Section 14 (1)(b) of the Act.

Background

1. By application dated 15 October 2014 the Tenant applied to the Private Rented Housing Panel 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 his duty to ensure that the house meets the repairing standard and in particular that the Landlord had failed to ensure that:-
 - (a) The structure of and exterior of the Property (including drains, gutters and external pipes) are in a reasonable state of repair and in proper working order;
 - (b) The installations in the Property 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;
 - (c) Any fixtures, fittings and appliances provided by the Landlords under the tenancy are in a reasonable state of repair and in proper working order;
3. By letter dated 12 February 2015 the President of the Private Rented Housing Panel intimated a decision to refer the application under Section 22 (1) of the Act to a Private Rented Housing Committee.
4. The Private Rented Housing Committee served Notice of Referral under and in terms of Schedule 2, Paragraph 1 of the Act upon both the Landlord and the Tenant.

5. Following service of the Notice of Referral the Tenant provided an update to the Committee with photographs dated 2 March 2015. The Landlord's representative, by letter dated 24 February 2015 made written representations to the Committee.
6. The Private Rented Housing Committee comprising Mr E K Miller (Chairman and Legal Member), Mr C Hepburn (Surveyor Member) and Mr J Wolstencroft (Housing Member) inspected the Property on the morning of 10 April 2015. The Tenant and the Landlord's representative were present during the inspection.
7. Following the inspection of the Property the Private Rented Housing Committee held a Hearing at The Credo Centre, John Street, Aberdeen and heard from both the Tenant and the Landlord's representative.
8. The Tenant submitted that she felt there was an ongoing problem in relation to water penetration and damp particularly around the area between the chimney breast and living room/kitchen window. She did not take the view the Landlord's works in eradicating the problem had been successful. She also highlighted alleged problems with both the living room/kitchen window and also the rear bedroom window. She was of the view that these were not properly wind and watertight. The Tenant also provided an electrical installation condition report that she had commissioned herself, which stated that the electrical system was unsatisfactory. She acknowledged that the Landlord's electrician had already carried out some works to address these points. The Tenant confirmed that the boiler had been repaired and that a board above the bedroom window had been replaced and was now in order.

The Landlord's representative advised that whilst they were aware there was still some damp showing around the chimney breast/living room window area, works had been carried out by tradesmen over the last few months. The Landlord's representative was of the view that assuming that the repairs had been effective, it would still take some time for the wall to dry out. The Landlord's representative was of the view that the windows were properly wind and watertight. The Landlord's representative accepted that some works were required to ensure compliance with gas and electrical safety standards.

Summary of the issues

9. The issues to be determined are:-
 - a. Whether there was water/damp penetration into the Property in the living room/kitchen.
 - b. Whether the living room/kitchen window was properly wind and watertight.
 - c. Whether the bedroom window as properly wind and watertight.
 - d. Whether the electrical installation system within the Property was safe.
 - e. Whether the gas system within the Property was in proper working order and met the appropriate standards.

Findings of fact

10. The Committee found the following facts to be established:-
 - The area between the chimney breast and the living room/kitchen window still showed high damp meter readings. There was a material possibility that the repairs carried out to date had been unsuccessful in addressing the cause of the problem.
 - The living room/kitchen window met the repairing standard.

- The bedroom window met the repairing standard.
- The electrical system within the Property did not meet the repairing standard.
- The gas system within the Property did not meet the repairing standard.

Reasons for the decision

11. The Committee based its decision primarily on the evidence obtained during the course of the inspection.

The Committee first inspected the area where the Tenant alleged there were damp problems arising from a defective roof. This was manifesting itself in the area between the chimney breast and the living room/kitchen window. The Committee took a number of damp meter readings and high moisture levels were recorded in this area. The Committee noted that repair works had been carried out to the roof of the Property on 10 December 2014. The Landlord's representative produced a report at the hearing from a contractor which stated that it would take some time for the wall to dry out following the roof repairs. The Committee could not conclude definitively whether or not the repairs had been fully effective and had eradicated the problem. The roof repairs had been carried out some 4 months ago and it had been a relatively dry winter. Despite this, high moisture readings will still be evident in the area. From an external inspection of the Property, the Committee noted that it appeared there had been ongoing issues with the roof and water penetration down the party wall for some considerable time. Evidence of staining was present all the way down the wall and weed growth could be seen in the joints. On that basis, it was possible that due to the excessive amounts of water that had been absorbed by the wall historically, it would take some considerable time for it to dry out. The Committee did, however, note that there was still weed growth around the chimney and this may also be contributing to the issue.

The Committee considered the position. It was possible that the roof repairs of December 2014 had been effective and it was simply the case that the damp in the Property was manifesting itself as a result of the wall taking a long period of time to dry out. However, the meter readings were still high and there was a material possibility that the cause of the water penetration had not yet been properly identified and rectified. The Committee considered how the issue could best be resolved. The Committee was prepared to give a relatively long period within a Repairing Standard Enforcement Order ("RSEO"). This would allow the Landlord time to monitor the damp penetration and to see if it did begin to dry out now that the warmer spring/summer months were arriving. If the Landlord monitored the damp and if it was apparent that no improvements were being made, then the Landlord would still have time to carry out further investigatory works and remedial works to address the problem. Alternatively, the Landlord could take more proactive steps and carry out further investigatory works on the roof now. The Committee was of the view that it was for the Landlord to take such appropriate steps as they saw fit within the period of the RSEO with a view to ensuring that it was readily apparent at the point of a reinspection that the issues had been addressed.

The Committee was also conscious that it was readily apparent that water ingress had been occurring for some time. The Tenant had indicated that when the floor in the living room had been lifted that she could see damp timbers. The Committee was of the view that given the historic levels of water penetration it was highly likely that some rot had set in amongst the timbers. Accordingly it would be appropriate for the Landlord to obtain a timber specialist report and to carry out any works required by this, possibly in conjunction with the other owners in the block if the works were required to communal parts.

The Committee considered the position in relation to the living room/kitchen window. This comprised 4 double glazed panes. On the bottom left pane the seal would appear to have failed and there was some misting within the pane. However this was relatively minor and

did not prevent the window performing its primary job of being wind and watertight. On that basis the Committee was satisfied that this window met the repairing standard.

In relation to the rear bedroom window, the Tenant had indicated that in the winter months there would be some moisture on the bottom pane and it would pool at the bottom. The window looked to be in good order to the Committee on the day of the inspection. The symptoms being described by the Tenant, simply sounded like condensation and on that basis the Committee was satisfied that the bedroom window met the repairing standard.

As stated above, at the inspection the Tenant produced an electrical installation condition report. There were a number of items marked C2 on this that required attention. The Landlord's electrician had carried these out and the Landlord's representative indicated that he had already instructed the electrician to complete these. The electrician had simply not had time to do all of these before the Committee inspection. It was accepted that these required to be attended to ensure compliance with the repairing standard.

A gas safety certificate was also presented by the Landlord's representatives. The Landlord's representative had omitted to note that there was one item highlighted by the report in relation to the hob, where one of the rings did not work. The Tenant confirmed that this was still the case. The Landlord's representative accepted that this was the case and that this would require to be attended to.

Overall the Committee considered that an RSEO was required, potentially to address an ongoing water penetration issue and to deal with the gas and electrical safety points. The Committee considered the period that would be given within the RSEO. In order to allow the time for the Landlord to carry out further roof investigatory works to identify the cause of any potential water ingress and to allow a period of drying out, the Committee was of the view that 4 months would be appropriate.

Decision

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

Right of Appeal

15. **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

16. 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.

E. MILER

Signed
Chairperson

..... Date..... 22/5/15