

Determination by Private Rented Housing Committee

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

Re: Top flat, 5 Castle Street, Dumfries DG1 1DJ, being part and portion of ALL and WHOLE the subjects comprising the top floor flatted dwellinghouse situated at and known as and forming 5 Castle Street, Dumfries; Which subjects form part and portion of the subjects more particularly described in and disposed by Disposition in favour of the Trustees for William Brown and Sons recorded in the Dumfries Burgh Register on 20th May 1930 ("the Property").

The Parties:-

Mrs Astra Penny, residing at Top flat, 5 Castle Street. Dumfries DG1 1DJ ("the Tenant")

J G Armstrong Holdings Limited, a company registered under The Companies Acts and having their registered office at Sterling House, Wavell Drive, Rosehill, Carlisle CA1 2SA ("the Landlords")

Decision

The Committee, having made such enquiries as it saw fit for the purposes of determining whether the Landlords have complied with the duty imposed by Section 14 (1) (b) in relation to the property, and taking account of the evidence led by both the Landlord and the Tenant, in writing and at the hearing, determined that the Landlords have failed to comply with the duty imposed by Section 14 (1) (b) of the Act.

Background

- 1 By application dated 13th January 2010 the Tenant applied to the Private Rented Housing Panel for a determination of whether the Landlords have failed to comply with the duty imposed by Section 14 (1) (b) of The Housing (Scotland) Act 2006 ("the Act").
- 2 The application by the Tenant states that the Tenant considers that the Landlords have failed to comply with their duty to ensure that the house meets the repairing standard and in particular that the Landlords have failed to ensure that:-
 - (a) the house is wind and watertight and in all other respects reasonably fit for human habitation (Section 13 (1) (a) of the Act), and
 - (b) 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 (Section 13 (1) (b) of the Act).
- 3 By letter dated 19th January 2010 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 Landlords and the Tenant by letter dated 19th June 2010.

ground floor. The flat consists of one bedroom, living room, kitchen and bathroom. The flat is accessed via a common hallway and stair leading from Castle Street, Dumfries. Within the flat there is a small set of wooden stairs which leads to the attic of the building. Within the attic of the building there are a further two rooms which are accessible from the Property.

- c. It was never intended by the Landlords that the Tenant should occupy the upper floor of the property (the attic space) as living space. The property had been advertised to the Tenant at the time she took occupancy, as a one bedroom property. The Landlords have not consented to allowing the Tenant to use the upper floor attic space as living accommodation.
- d. The Property has suffered extensively from water penetration resulting in dampness throughout the rear wall of the subjects.
- e. The Landlords have carried out extensive repairs to the Property and in particular has carried out repairs to the roof, guttering, chimneys and rear wall of the Property.
- f. The bedroom and the kitchen of the Property have been subject to widespread water penetration and/or dampness over a considerable period of time.
- g. In the attic space within the Property, the external walls have been subject to widespread water penetration and or dampness over a considerable period of time.
- h. The walls of the bedroom and part of the kitchen wall exhibit significant visible staining and detached plaster work. In the attic space the walls of the Property, large portions of the plaster work has detached from the walls.
- i. There is no evidence of any continuing water penetration or dampness at the Property.
- j. The window installations within the Property appear to be appropriate for the Property and exhibit no significant problems.
- k. Extensive repairs are required within the habitable rooms (kitchen and bedroom) of the Property to repair the damage caused by the widespread past water penetration and dampness. The full extent of the work required cannot be accurately determined until stripping works have commenced to these areas to allow further opening up and detailed inspection of the sealed timbers, lintels, joists etc.
- l. The recent roof refurbishment has been undertaken to a good standard and appears to have incorporated an adequate scope of works to address past issues in relation to water penetration and dampness.

Reasons for the Decision

- 10 The issues to be determined by the Private Rented Housing Committee are whether or not the property meets the Repairing Standard in terms of Sections 13 (1) (a) and 13 (1) (b) of the Act as at the date of the hearing. The committee considered the submissions of the parties, their observations at the inspection and the documents submitted. They were satisfied that the Tenant had intimated the required works to the Landlords as required by the Act.
- 11 The Committee were satisfied that following the extensive repair works carried out by the Landlords the structure and exterior of the house (including the drains, gutters and external pipes) are now in a reasonable state of repair and in proper working order. Accordingly the Committee were satisfied that the Property met the standard as specified in Section 13 (1) (b) of the Act.

- 12 The Committee were satisfied that on the evidence of the Landlords, it was never intended that the attic space of the Property would be used for human habitation. The Committee accepted the Landlords' explanation that they had understood the Tenant would use the attic space of the Property for storage.
- 13 It was the Committee's decision that (as it was not intended that the attic space would ever be used for human habitation) the attic space of the property had to be considered as only a storage area in terms of the tenancy and not as a living space. Although the attic space had been extensively affected by the past water penetration and dampness it was accepted by the Committee that those issues in the attic area had been addressed by the recent extensive works carried out by the Landlords to the Property. Although there were missing areas of plaster work etc. in the attic space the Committee did not consider that these issues resulted in a failure by the Landlords to meet the Repairing Standard 13 (1) (a) within the attic space of the property. The attic space was and remained a suitable storage area. The Committee did not have to consider whether it was fit for human habitation as it was never intended to be used for that purpose in terms of the lease between the parties.
- 14 It was clear from the evidence of all parties that extensive works had been carried out to the roof and walls of the building. The living areas of the property had suffered from extensive dampness and this was referred to in the reports from DM Hall, Surveyors. The kitchen and bedroom on the second floor of the property were not in the Committee's view fit for human habitation. There were large areas of missing plaster work and past significant staining on the walls caused by past water penetration/dampness. These defects were primarily in the bedroom of the property, but were also observed in the kitchen area of the property. The Committee were satisfied that the kitchen and bedroom on the second floor of the property (being living areas in terms of the tenancy agreement) were not fit for human habitation and that accordingly the property did not meet the Repairing Standard as required by Section 13 (1) (a) of the Act.

Decision

- 15 The Committee accordingly determined that the Landlords had failed to comply with the duty imposed by Section 14 (1) (b) of the Act. In particular the Committee determined that the Landlords had failed to ensure that the property met the Repairing Standard at all times during the tenancy and in particular that the property did not meet the Repairing Standard as the bedroom and the kitchen on the second floor of the property were not in all reasonable respects reasonably fit for human habitation.
- 16 The Committee proceeded to make a Repairing Standard Enforcement Order as required by Section 24 (2) of the Act. The Committee determined that the Landlords are required to carry out works to the bedroom and kitchen at the property as are necessary to bring those parts of the property up to a reasonable standard which is fit for human habitation.

Right of Appeal

- 17 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

- 19 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 S Cowan

.....
Andrew S Cowan, Chairperson
17th June 2010

C A Millar

..... (Sign)
Witness

Name: Carol Anne Millar
Address: 7 West George Street, Glasgow G2 1BA
Occupation: Legal Secretary

Repairing Standard Enforcement Order

Ordered by the Private Rented Housing Committee

Re: Top flat, 5 Castle Street, Dumfries DG1 1DJ, being part and portion of ALL and WHOLE the subjects comprising the top floor flatted dwellinghouse situated at and known as and forming 5 Castle Street, Dumfries; Which subjects form part and portion of the subjects more particularly described in and disposed by Disposition in favour of the Trustees for William Brown and Sons recorded in the Dumfries Burgh Register on 20th May 1930 ("the Property").

The Parties:-

Mrs Astra Penny, residing at Top flat, 5 Castle Street. Dumfries DG1 1DJ ("the Tenant")

J G Armstrong Holdings Limited, a company registered under The Companies Acts and having their registered office at Sterling House, Wavell Drive, Rosehill, Carlisle CA1 2SA ("the Landlords")

NOTICE TO J G Armstrong Holdings Limited, a company registered under The Companies Acts and having their registered office at Sterling House, Wavell Drive, Rosehill, Carlisle CA1 2SA ("the Landlords")

Whereas in terms of their decision dated 15th June 2010, 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 is wind and watertight and in all other respects reasonably fit for human habitation.

The Private Rented Housing Committee now requires the Landlord to carry out such repairs as are 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 Committee requires the Landlord to carry out works to the bedroom and kitchen of the property as are necessary to bring those parts of the property up to a reasonable standard which is fit for human habitation.

The Committee further determined that any damage caused by the carrying out of any work in pursuance of the necessary repairs to the Property is to be made good by the Landlord.

The Private Rented Housing Committee order that the works specified in this Order must be carried out and completed within three calendar month 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.

A S Cowan

.....
Andrew S Cowan, Chairperson
17th June 2010

C A Millar

Witness.....

Name in full Carol Anne Millar

Address 7 West George Street, Glasgow G2 1BA