



Repairing Standard Enforcement Order

Ordered by the Private Rented Housing Committee

Property at Flat 0/2, 130 Berkeley Street, Glasgow G3 7HY, being the subjects more particularly described in Land Certificate number GLA147141 (Hereinafter referred to as "the house")

Ms. Flaura Wilson, formerly of Flat 0/2, 130 Berkeley Street, Glasgow G3 7HY ("the Tenant")

Mr. Randeep Singh Kohli, of Kohli Properties, 3 Redlands Terrace, Glasgow G12 0RW (represented by Mrs. Kuldip Kohli and Ms. Claire Vine of said Kohli Properties) ("the Landlord")

PRHP REFERENCE G3/125/12

NOTICE TO Mr. Randeep Singh Kohli("the Landlord")

Whereas in terms of their decision dated 20 November 2012, the Private Rented Housing Committee having 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 meets the repairing standard in 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 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 specialist damp proofing as may be required to eradicate the dampness in the house in order to prevent mould growth and condensation and to ensure that the house is wind and watertight and in all respects reasonably fit for human habitation.*

The Private Rented Housing Committee order that the works specified in this Order must be carried out and completed within the period of 60 days 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.

IN WITNESS WHEREOF these presents typewritten on this and the preceding page are signed by Aileen Margaret Devanny, Chairperson of the Private Rented Housing Committee, at Glasgow on Third day of December, Two Thousand and twelve in the presence of the undernoted witness:-

WITNESS... **A Ross**

ASHLEY ROSS

EUROPA BUILDING, 450

ARGYLE ST, GLASGOW

PANEL CLERK

A Devanny



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**

In connection with

**Property at Flat 0/2, 130 Berkeley Street, Glasgow G3 7HY
(Hereinafter referred to as "the house")**

**Ms. Flaura Wilson, formerly of Flat 0/2, 130 Berkeley Street, Glasgow G3 7HY ("the
Tenant")**

**Mr. Randeep Singh Kohli, of Kohli Properties, 3 Redlands Terrace, Glasgow G12
0RW (represented by Mrs. Kuldip Kohli and Ms. Claire Vine of said Kohli
Properties) ("the Landlord")**

PRHP REFERENCE G3/125/12

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)(b) in relation to the house concerned, and taking account of the evidence led by the Landlord at the hearing and the written documentation attached to the application and written representations submitted by the parties, determined that the Landlord had failed to comply with the duty imposed by Section 14(1)(b) of the Housing (Scotland) Act 2006 (hereinafter referred to as "the Act")

Background

1. By application dated 5 July 2012 and received on 6 July 2012 the Tenant applied to the Private Rented Housing Panel (hereinafter referred to as "PRHP") for a determination of whether the Landlord had failed to comply with the duties imposed by Section 14(1) (b) of the Act.
2. The application by the Tenant stated that the Tenant considered that the Landlord had failed to comply with the duty to ensure that the house meets the repairing standard and in particular that the Landlord had failed to ensure compliance with Section 13(1)

(a) of the Act which states that " the house is wind and watertight and in all other respects reasonably fit for human habitation". The Tenant's complaint of disrepair within the application relates to dampness in the flat and in particular the basement which had been converted into living areas. She submitted copies of correspondence which had passed between her and Kholi Properties concerning her complaint and further submitted e-mail correspondence dated January 2012 which had passed between the previous tenant and Kholi Properties complaining of a problem of damp and a response from an office administrator of the Landlord acknowledging that extensive work to the house is required. A copy of the short assured tenancy agreement between the Landlord and the Tenant was submitted as a production.

3. By letter dated 9 July 2012 the President of the Private Rented Housing Panel intimated a decision to refer the application under Section 23(1) of the Act to a Private Rented Housing Committee.

The Committee comprised the following members:

Mrs. Aileen Devanny, Legal Member
Mr. Robert Buchan, Surveyor Member

4. The Private Rented Housing Committee served Notice of Referral under and in terms of Schedule 2 Paragraph 1 of the Act upon the Landlord and the Tenant. Following service of the Notice of Referral the Tenant made no further written representations to the Committee beyond confirming on 6 September 2012 that on 23 July 2012 she had been re-housed in other accommodation by the Landlord. She confirmed that the Landlord did install extractor fans and provided dehumidifiers but complained that the use of these increased her electricity costs. She stated that cutlery and teabags in the kitchen were affected by mould. The Landlord's agent submitted in written representations that 2 additional extractor fans had been installed on the external windows in the kitchen area and they had upgraded the existing fan to a Humidistat. They had also given guidance to the Tenant on heating and ventilating the house.

5. Having received confirmation from the Tenant that the tenancy had been lawfully terminated, the Committee decided on 2 October 2012 to continue to determine the application on public interest grounds in terms of Schedule 2 Paragraph 7(3) of the Act due to the nature of the alleged complaint which could raise health concerns for future tenants.

6. The Private Rented Housing Committee inspected the house on the morning of 20 November 2012. The Landlord's agents Mrs. Kuldip Kohli and Ms. Claire Vine were present. They explained that the house has been re-let and they had the permission of the new tenants to provide access.

7. Following the said inspection the Private Rented Housing Committee held a hearing at the offices of the Private Rented Housing Panel at Europa Building, 450 Argyle Street, Glasgow.

The Committee considered the written evidence submitted and heard representations from the Landlord's agents, Mrs. Kohli and Ms. Vine. After hearing representations, the Committee adjourned to consider all the evidence and the representations, and to make their determination.

Submissions at the Hearing

7. It was pointed out by the Committee Chairperson at the start of the hearing that the Committee was there to determine whether the house met the repairing standard in terms of the Act.

The Landlord's agents explained that works had been carried out in 2011 to frame and line some of the walls with plasterboard in an attempt to eradicate the damp and, in July 2012, improved ventilation and extractor fans had been installed. Receipts for this work were provided. The agents submitted that the Landlord had actively tried to upgrade the tenement and resolve the common repair issues which they felt is a contributing cause of the dampness but had had no success in getting other owners to take action. Attempts had been made to seek assistance from the Local Authority but they had not taken action. They felt that it would be unfair to penalise the Landlord because of the common repair problems where others should contribute to the costs.

Summary of the issues

8. The issue to be determined is whether the house 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) (b).

Findings in Fact

9. The Committee made the following findings in fact:-

9.1. On 11 May 2012 the Tenant entered into a lease with the Landlord for the let of the house. The Tenant has continued in occupation of the house from that date until 23 July 2012. The lease is a short assured tenancy in terms of the Housing (Scotland) Act 1988. The provisions outlined in Chapter 4 of the Act apply.

9.2. The Tenant notified the Landlord of the required works to the house and submitted an application to the Panel on 6 July 2012. It is clear from e-mail correspondence that the Landlord's agents were aware of the Tenant's complaints about dampness on 5 June 2012. There was e-mail correspondence submitted by the Tenant confirming that the previous tenant also complained about dampness at the house to Kholi Properties in January 2012.

9.3. The inspection by the Committee on 20 November 2012 revealed:-

The house is a ground floor and basement flat in a traditional sandstone tenement block built over 100 years ago. The repairing complaints in the house relate to dampness in the house particularly in the basement rooms. The Committee confined their internal inspection to these rooms in the house as well as the entrance to the flat and stairwell leading to the basement. Some storage/cupboard areas of the basement were not able to be viewed at the time of inspection.

The weather at the time of inspection was dry but it had been raining earlier.

Findings internally: the smell of dampness was very obvious on entry to the flat and high instrumental moisture meter readings registered in the walls of the basement indicated extensive dampness not just at floor level but in some instances to a level 6 feet above floor level. As well as in the basement, high meter readings were also found on the walls of the stairwell leading to the basement and at the entrance to the flat. There was also some evidence of mould staining on some walls of the stairwell.

The Committee inspected the exterior of the property and observed no obvious sign of water penetration although from the height of some readings above floor level, the Committee suspected that there was more than one cause of the dampness and it was possible that one source was water penetration from an upper floor.

Reasons for the Decision

10. In considering the repairing standard and dampness issue the Committee carried out an internal and external inspection of the house and in particular closely examined the specific defects highlighted by the Tenant in the application and detailed in the correspondence. In addition the Committee carefully considered the written documentation and oral evidence submitted. The Committee considered the representations of the Landlord's agents in relation to the repairing standard.

Visual inspection of the interior of the house as well as the pungent smell of dampness indicated the presence of dampness in the house and this was confirmed by the high damp meter readings obtained.

The Committee considered that the degree of dampness in the house was to a level that the house could not be said in all respects to be reasonably fit for human habitation and the house did not meet the repairing standard laid down in Section 13(1) (a) of the Act which states the repairing standard is met if "the house is wind and water tight and in all other respects reasonably fit for human habitation". Such dampness threatens the health of any occupants as well as creating conditions conducive to the outbreak and spread of timber decay in hidden elements of the building. Although some work had been undertaken to line the walls with plasterboard, there was no evidence of any specialist work to eradicate the dampness and the work undertaken could only have covered the dampness, not prevented it. Whilst the extractor fans might have alleviated

condensation, it would have no effect on mitigating the penetrating and rising dampness.

The Landlord's agents acknowledged that the tenement in which the house was situated needed upgrading but blamed the problem on common repairs and to other owners who refused to contribute to the repair costs.

The Landlord's agents seem to imply that by having problems obtaining the financial contributions from other owners discharges the Landlord's repairing standard obligation. However, the Tenant's contract of let is with the Landlord and not the Factor or other owners in the tenement and the Landlord has a duty to ensure that the house meets the repairing standard, and that includes any external works to make the house free from dampness, for which the Landlord is responsible, either solely or in common with others. Such repairs should be carried out within a reasonable time of the Landlord becoming aware that the work is required. In the circumstances, the Committee considers that the Landlord has had a reasonable time to carry out repairs and has failed in his duty under Section 14(1) (b) of the Act and had not complied with the repairing standard detailed in Section 13(1) (a) of the Act.

Decision

11. The Committee, considering the terms of Section 13(3) of the Act, determined that the Landlord had failed to comply with the duty imposed by Section 14(1) (b) of the Act.

12. The Committee proceeded to make a Repairing Standard Enforcement Order as required by Section 24(2).

13. The decision of the Committee was unanimous.

Right of Appeal

14. 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

15. 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 Devanny

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Chairperson, 20 November 2012