



Repairing Standard Enforcement Order

Ordered by the Private Rented Housing Committee

prhp Ref: PRHP/RP/13/0104

Re: Property at 52 Castle Street, Broughty Ferry, Dundee, DD5 2EJ ("the Property")

Title No: ANG30931

The Parties:-

MR GASSAN AL-SHAIBANY residing at 21 Kirkton Terrace, Carnoustie, DD7 7BZ (represented by his agent Mr Neil Hunter) ("the Landlord")

MISS JOSIE GLAISYER-HALL residing at 52 Castle Street, Broughty Ferry, Dundee, DD5 2EJ ("the Tenant")

NOTICE TO GASSAN AL-SHAIBANY ("the Landlord")

Whereas in terms of their decision dated 21 January 2014, 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:-

- (a) The Property is wind and watertight and in all other respects reasonably fit for human habitation;
- (b) 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;
- (c) 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;
- (d) Any fixtures, fittings and appliances provided by the Landlord 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 investigate the cause of damp penetration within the kitchen wall and to carry out such works as are necessary to eradicate the said damp and to redecorate the area to an appropriate standard.
- (b) To carry out such works of repair or replacement to the kitchen cupboards as are necessary to render them compliant with the repairing standard.
- (c) To carry out such works of repair or replacement to the door and the surrounding frame as are necessary to render the door and frame properly wind and watertight and otherwise compliant with the repairing standard .
- (d) To exhibit to the Committee an Electrical Installation Condition Report carried out by a suitably qualified electrician and confirming that the electrical installations within the Property meet the required standard. The Landlord is to carry out any works necessary to allow the issue of the said Certificate.
- (e) To install a shower curtain or other similar item to prevent water escaping from the shower on to the surrounding floor area. The Landlord is also to repair or replace any broken/damaged tiles behind the toilet within the bathroom.

- (f) To carry out any works to the gas installation within the Property sufficient to allow the Landlord to exhibit to the Committee a current Gas Safety Certificate confirming compliance with the relevant regulations.

The Private Rented Housing Committee order that the works specified in this Order must be carried out and completed within the period of 2 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.

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 21 January 2014 before this witness:-

_____ witness

Ewan Miller

_____ 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/13/0104

Re: Property at 52 Castle Street, Broughty Ferry, Dundee, DD5 2EJ ("the Property")

The Parties:-

MISS JOSIE GLAISYER-HALL residing at 52 Castle Street, Broughty Ferry, Dundee, DD5 2EJ ("the Tenant")

MR GASSAN AL-SHAIBANY residing at 21 Kirkton Terrace, Carnoustie, DD7 7BZ (represented by his agent Mr Neil Hunter) ("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 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 22 August 2013 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 Property is wind and watertight and in all other respects reasonably fit for human habitation;
 - (b) 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;
 - (c) 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;
 - (d) 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 4 November 2013 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 made no further written representation to the Committee other than their original application by the Tenant. The Landlord (by letter dated 7 November 2013) made written representations to the Committee.
6. The Private Rented Housing Committee (comprising Mr E K Miller, Chairman; Mr D C Godfrey, Surveyor Member; and Mr J Wolstencroft, Housing Member) inspected the Property on the morning of 17 December 2013. The Tenant was present. The Landlord was not present but his agent was present during the inspection.
7. Following the inspection of the Property the Private Rented Housing Committee held a Hearing at Douglas Community Centre, Douglas, Dundee and heard from both the Tenant and the Landlord's agent.
8. The Tenant submitted that her principal complaint was that the Landlord had failed to deal with any of the repair issues within the Property timeously. She had, on numerous occasions, contacted him via telephone and had been promised that the work would be actioned. This has not happened to the extent that she felt she required to submit an application to the Panel. The Tenant complained that there was damp within the Property, there were issues with the back door, the bathroom, the living room radiator, the kitchen units and electric sockets within the Property. As a result the Property was uncomfortable to live in and she felt it did not meet the repairing standard.
9. The Landlord's agent submitted that a good number of the issues had been caused by the Tenant, for example, the Landlord claimed that the damage to the back door and the kitchen fittings had been caused by the Tenant. The agent accepted that there were one or two items that needed attention and advised the Committee that these would be dealt with.

Summary of the issues

10. The issues to be determined were:-
 1. Whether there was damp in the kitchen wall that meant the Property did not meet the repairing standard.
 2. Whether the kitchen cupboards were in a sufficient state of repair to meet the repairing standard or not.
 3. Whether the back door was properly wind and watertight or whether it required to be repaired/replaced.
 4. Whether the electrical installations within the Property met the repairing standard.
 5. Whether the bathroom within the Property met the repairing standard.
 6. Whether the edging along the floor in the front bedroom required to be repaired.
 7. Whether there was damp in the back bedroom.
 8. Whether the gas installations within the Property were safe and met the repairing standard.
 9. Whether the radiator in the lounge was in proper working order.

Findings of fact

11. The Committee found the following facts to be established:-

- (i) There was extensive damp penetration in the kitchen wall beneath the window and the cause of this would need to be investigated and rectified.
- (ii) The kitchen cupboards did not meet the repairing standard and required to be repaired or replaced. On the balance of probabilities the Committee determined that these had not been damaged by the Tenant.
- (iii) The back door of the Property was not properly wind and watertight and did not meet the repairing standard. The Committee were unable to determine whether the Tenant had damaged the door or not. In any event there was rot within the frame of the door and the door itself was in generally poor condition. Accordingly repair/replacement would be required by the Landlord regardless of any damage to the door that may or may not have been caused by the Tenant.
- (iv) The Committee was satisfied that there were a number of electrical sockets within the Property that did not work. The Tenant also advised that the shower was not in proper working order. The Committee determined that an Electrical Installation Condition Report was required to ensure that the electrical installations within the Property met the repairing standard.
- (v) The bathroom did not meet the repairing standard in that a shower curtain or similar protection was required. Damaged tiles needed to be replaced within the bathroom.
- (vi) The Committee determined that the edging in the front bedroom did not require to be repaired or replaced by the Landlord. The Committee accepted that a repair was required but decided, on the balance of probabilities, that the damage had been caused by the Tenant.
- (vii) There was no damp in the back bedroom.
- (viii) Despite having been requested, no Gas Safety Certificate had been produced. The Committee was satisfied that the radiator in the lounge was not working. Accordingly this would require to be repaired and an updated Gas Safety Certificate provided.

Reasons for the decision

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

The Committee first inspected the rear wall of the kitchen. The area beneath the window was tested with a damp meter and high readings were obtained. Whilst the Committee could not identify the cause of the dampness it was clear that water was penetrating into the area. The Landlord would require to investigate the cause of this and carry out appropriate remedial and redecoration works once the cause of the damp was ascertained .

The Committee then inspected the kitchen cupboards. A number of these were damaged. It was apparent that previous repairs had been attempted but these appeared to have been largely ineffectual. The Landlord's representative submitted that the Tenant had hung bags off the handles of the doors and the weight of the rubbish in these had caused the damage. The Tenant submitted that this was not the case and it was simply the case that repairs were required. On balance, the Committee preferred the evidence of the Tenant. Even if plastic bags with some rubbish in them had been hung on the doors on an occasional basis this would not have caused the level of disrepair. In addition, given the number of doors that were damaged and the fact that some were elevated units it seemed unlikely that the Tenant could have caused this in the manner suggested by the Landlord. The Committee was satisfied that the Landlord would require to repair or replace the kitchen doors where appropriate in order to meet the repairing standard.

The Committee then considered the position in relation to the rear door. The handle on the exterior side had been snapped off. The door appeared to have been the subject of some intense force at some point. The Landlord's submission was that this had been caused by the Tenant trying to force the door open whereas the Tenant claimed this was caused by storm damage/general disrepair. The Committee was unable to determine which version of events was correct however the Committee noted that the frame of the door and the door itself were suffering from some rot and on that basis did not meet the repairing standard and required to be repaired or replaced. Accordingly, given this, the Committee was satisfied that it was appropriate for the Landlord to carry out the repair.

The Committee noted during the course of their inspection that there were a number of sockets at the Property that did not work. This was accepted by the Landlord's representative in relation to the socket within the back bedroom. In relation to the inoperative sockets in the lounge the representative from the Landlord indicated that these had been damaged as a result of the Tenant removing the wardrobes from the front bedroom. The Tenant pointed out that the sockets in the front bedroom still worked and so it was highly unlikely that anything she had done had damaged them. The Committee also noted that there was an outstanding complaint that the shower was not properly working. The Committee determined that it would be appropriate for the Landlord to provide an Electrical Installation Condition Report from a suitably qualified electrician confirming that the electrical installations within the Property were in proper working order. The Landlord would require to carry out such works as were necessary to achieve this.

The Committee inspected the bathroom. There was no guard or shower curtain on the bath itself and, as a result, it was apparent that water would spill onto the floor when the shower was being used. The Committee was satisfied that it was appropriate for the Landlord to install a shower curtain or other similar item sufficient to prevent water from being splashed onto the floor. The Committee also noted that there were a number of broken tiles behind the toilet and was satisfied that these would require to be repaired or replaced. Whilst the rest of the bathroom was in generally dated condition it did, nonetheless, meet the repairing standard.

The Committee inspected the front bedroom. Some skirting board and plasterboard was missing, particularly at the front wall near the window. The Landlord's representative submitted that this had been caused by the Tenant removing the fitted wardrobes. The Tenant submitted that this damage was already present when the wardrobe was removed. In this regard the Committee preferred the evidence of the Landlord's representative and was satisfied that the damage had been caused by the Tenant in removing the wardrobes. Accordingly there was no obligation on the Landlord to repair the area.

The Committee inspected the back bedroom, which the Tenant had complained was suffering from damp. Various readings were taken with a damp meter during the course of the inspection. No excessive damp readings were obtained and the area appeared to be dry. The Tenant had indicated that she had been opening the window in the room more often and this may have helped resolve the issue. The Committee was satisfied that the back bedroom met the repairing standard in this regard.

The Committee inspected the radiator in the lounge. The heating system was switched on and all the other radiators heated up fairly quickly. The lounge radiator did not. It was apparent that there was a defect and works of repair or replacement would be required. Given that this formed part of the central heating system it would also be appropriate for an updated Gas Safety Certificate to be provided by the Landlord confirming that the gas installations met the appropriate standard.

Whilst not part of the Tenant's application, the Committee did note that there were only battery powered smoke alarms in the Property. This did not meet the requirements of the repairing standard and a hardwired system would require to be installed compliant with

the current regulations. Whilst not a part of the Repairing Standard Enforcement Order to be served on the Property the Committee did expect the Landlord to address this.

The Committee considered how long to give the Landlord to carry out the works required. The Committee was of the view that a period of 2 months would be sufficient.

Decision

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

Right of Appeal

16. **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

17. 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.

Ewan Miller

Signed ..(
Chairperson

..... Date..... 21/1/14