



Repairing Standard Enforcement Order

Ordered by the Private Rented Housing Committee

PRHP/RP/13/0136

Re:

All and whole the flat on the top floor known as Flat 3, 44C Portobello High Street, Edinburgh, EH15 1DA being part of the subjects more particularly described in the Disposition by Scottish Midland Co-operative Society Limited recorded in the Division of the General Register of Sasines for the County of Midlothian on 21 December 1984.

("the Property")

The Parties:-

**Mrs Norma Arthur
resident at the Property**

("the Tenant")

and

**Mr Mohammed Afzal
150 Craigmaddock Road
Edinburgh
EH4 3PP**

("the Landlord")

The Committee comprised:

**Mr Ron Handley – Chairperson
Ms Susan Napier – Surveyor
Ms Helen Barclay – Housing Member**

NOTICE TO THE LANDLORD

Whereas in terms of their decision dated 10 February 2014, the Private Rented Housing Committee determined that the Landlord had failed to comply with the duty imposed by Section 14 (1)(b) of the Housing (Scotland) Act 2006 and in particular that the Landlord had failed to ensure that the Property was wind and watertight and in all other respects fit for human habitation.

The Private Rented Housing Committee now requires the Landlord to carry out the following works (or other such works as are necessary for the purposes of ensuring that the Property meets the Repairing Standard):-

- (a) The Landlord is to carry out all appropriate investigations (including but not limited to an inspection of all roof areas, gutters and downpipes) to identify the source of water ingress in the ceilings throughout the Property and in the walls in the double bedroom.
- (b) Carry out such works as are necessary to eradicate the water ingress in the ceilings throughout the Property and the dampness in the walls in the double bedroom.
- (c) Carry out repairs/adjustments to the windows in the living room and in the double bedroom to ensure that they are wind and watertight.
- (d) Provide the Committee with a valid Landlord's Gas Safety Certificate which relates to the system for space heating and heating water within the Property.
- (e) Provide the Committee with a copy of the Electrical Safety Certificate (dated 13 November 2013).
- (f) Make good any damage resulting from the remedial works carried out in accordance with this Order.

The Private Rented Housing Committee order that the works specified in this Order must be carried out and completed on or before 30 April 2014.

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 this and the preceding page are subscribed by Ronald G Handley, Solicitor and Chairperson of the Private Rented Housing Committee on 10 February 2014 before this witness:

J Handley

witness

JANE HANDLEY

name of witness

LESLIE LAY

address of witness

DUNDEE

R Handley

chairperson



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

PRHP/RP/13/0136

Re: The residential dwellinghouse at

**Flat 3
44C Portobello High Street
Edinburgh
EH15 1DA**

("the Property")

The Parties:-

**Mrs Norma Arthur
resident at the Property**

("the Tenant")

and

**Mr Mohammed Afzal
150 Craigmaddock Road
Edinburgh
EH4 3PP**

("the Landlord")

The Committee comprised:

**Mr Ron Handley – Chairperson
Ms Susan Napier – Surveyor
Ms Helen Barclay – Housing Member**

The Committee's Decision

The Committee, having made such enquiries as it saw fit for the purposes of determining whether the Landlord had 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 the evidence before it, unanimously determined that the Landlord had failed to comply with the duty imposed by Section 14(1) (b).

Background

1. On 31 October 2013 Mrs Arthur applied to the Private Rented Housing Panel ("the PRHP") for a determination as to whether or not Mr Afzal had failed to comply with the duties imposed by Section 14(1) (b) of the Act.
2. Following receipt of Mrs Arthur's application, the President of the PRHP intimated that the application should be referred to a Private Rented Housing Committee in accordance with Section 22(1) of the Act.

The Application

3. In her application Mrs Arthur alleged that Mr Afzal had failed to comply with the duty to ensure that the Property met the Repairing Standard (as defined in the Act).
4. In particular Mrs Arthur submitted in her Application Form that:
 - (i) A periodical electrical inspection of all wiring, light switches, fans and electrical points should be carried out by a qualified, registered electrician.
 - (ii) A Gas Safety Certificate should be made available.
 - (iii) An Energy Performance Certificate should be made available.
 - (iv) An inspection of the plumbing should be carried out by a registered plumber.
 - (v) The floor in the bathroom should be replaced.
 - (vi) There were leaks in the ceiling and the roof, guttering and drains should be checked.
 - (vii) The windows required to be repaired.

The Evidence

5. The Committee had before it various documents which included documents from Registers Direct, a copy of the Tenancy Agreement, a copy of the Application Form, responses from Mrs Arthur and Mr Afzal, copies of various e-mails and a letter of 10 October 2013 from Mrs Arthur to Mr Afzal intimating the defects.

The Inspection

6. The Committee noted that intimation of the date and time of the inspection had been sent to Mrs Arthur and Mr Afzal. At 10:00am the Committee duly attended at the Property – Mrs Arthur was in the Property awaiting the Committee. At 10:10am Mr Afzal had not attended and he had not contacted the PRHP offices to advise that he would not

be attending the inspection. In the absence of any other information the Committee determined that the inspection should commence.

7. The Chairperson introduced the Committee to Mrs Arthur. Also in attendance at the inspection representing Mrs Arthur were Vivian Angus and Elizabeth Law (both from Cyrenians Homeless Prevention Service).
8. In the course of the inspection Mrs Arthur drew the Committee's attention to various windows which she claimed were "draughty". She also drew the Committee's attention to marks/stains in the ceiling in various locations within the Property and suggested that these were signs of water ingress. Mrs Arthur also pointed out that there was dampness in the walls in the double bedroom. She accepted that a leak in the bathroom had been repaired and that the floor in the bathroom had been replaced. She advised that the lock in the front door (leading to the communal stairway) was not working properly.
9. At around 10:20am Mr Wasim Aslam (on behalf of Mr Afzal) phoned Mrs Arthur on her landline number to advise that he had experienced problems starting his car but would be attending the inspection at around 10.35am. On his arrival at the Property the Chairperson brought to his attention the various issues which had been highlighted by Mrs Arthur in the course of the inspection.
10. At the inspection both parties confirmed that they would be attending the Hearing scheduled to take place at 11:00am in Leith Community Centre.

The Hearing

11. Both parties duly attended the Hearing (as did Ms Angus and Ms Law). The Chairperson introduced the Committee to those present and summarised the background to the application. He reminded the parties that the Committee were concerned with whether or not the Property met the Repairing Standard. He also reminded the parties that the Committee could only take account of the issues that had been intimated to Mr Afzal in accordance with the Act.
12. At the Hearing Mrs Arthur confirmed that although the electric light in the living room had in the past "shorted" on a number of occasions, this was no longer a problem. Furthermore she was not aware of any problems with the electrical system. Mr Aslam confirmed that work had been carried out by a qualified electrician. The Committee noted that an Electrical Safety Certificate (dated 13 November 2013) had been issued.
13. Mr Aslam advised the Committee that a maintenance contract was in place for the gas central heating system in the Property. Mrs Arthur advised that there had been a problem with the gas pressure. Mr Aslam thought that the problem may be as a consequence of the low water pressure and that when central heating systems had not been operating for a while, it was likely that some adjustments had to be made ensure that there was adequate water pressure in the system. Mr Aslam

reminded Mrs Arthur that if there were any problems she should immediately contact either Transco (if there were concerns of a gas leak) or the Maintenance Engineer. Mr Aslam also confirmed that a Gas Safety Certificate would be made available.

14. In regard to the suggestion that Mr Afzal be required to produce an Energy Performance Certificate, the Chairperson indicated that although the Committee would discuss this issue, it seemed unlikely that a failure to produce this document would result in the Property failing to meet the Repairing Standard.
15. Mrs Arthur confirmed that works had been carried out in regard to the plumbing within the Property and that she was not aware of any current problems. She confirmed that the flooring in the bathroom had been replaced.
16. The Chairperson advised that it appeared to the Committee (following the inspection) that there had been water ingress in the Property. Mrs Arthur advised that this was a long-standing problem which had never been fully resolved. Mr Aslam accepted that this was an issue which required to be addressed.
17. The Committee reminded the parties that it had been suggested that some of the windows within the Property were not wind and watertight. Mr Aslam advised that the windows in the Property had been replaced with UPVC tilt and turn windows. In regard to the suggestion that the windows in the living room and the double bedroom were not wind tight, Mr Aslam advised that these windows might require some adjustment and he undertook to investigate these matters. He accepted that the wood base frames had not been replaced and undertook to investigate further.
18. Mrs Arthur advised that the "fridge space" under the worktop in the kitchen (next to the sink) had a hole in it and consequently cold air was entering the kitchen. She also advised that the main front door (leading to the communal stairway) was not working properly.

Summary of the issue

19. The issue to be determined by the Committee was whether Mr Afzal had complied with the requirements of the Act to ensure that the Property met the Repairing Standard.

Findings

20. The Committee found the following facts to be established:
 - On 9 June 2000 Mrs Arthur and Mr Afzal entered into a Tenancy Agreement that related to the Property. A Tenancy Agreement is still in place between the parties.

- The Property is located within a communal stair of properties and was built 80 - 100 years ago. The Property comprises a living room, double bedroom, single bedroom, kitchen, bathroom and a hallway with a store. The Property is heated by a gas central heating system.
- There is water ingress within the Property as evidenced by marks/stains in the ceilings throughout the Property.
- The wall in the double bedroom adjacent to the neighbouring tenement is damp at a high level (for about 2 metres from the ceiling). There is also dampness in the double bedroom party wall.
- The windows in the hall and in the double bedroom are not wind tight and require to be adjusted/repaired.

Reasons for the Decision

21. As indicated, Mrs Arthur accepted at the Hearing that she no longer experiences problems with the electric light located in the ceiling in the living room. It was agreed that an inspection of the electrical system has been carried out by a qualified electrician and the appropriate Safety Certificate issued.
22. The Property is heated by a gas central heating system. Mrs Arthur advised that she sometimes had difficulties operating the heating system because of a lack of pressure. Mr Aslam submitted that this may have been because of a lack of water pressure which was likely to occur if the system was not used for some time. He advised the Committee that a Gas Safety Certificate had been issued and was available for inspection. The Committee found little evidence to suggest that the central heating system was not in a reasonable state of repair or in proper working order. The Committee noted that a maintenance contract was in place and that Mrs Arthur could contact heating/gas engineers in the event of problems.
23. As indicated, Mrs Arthur suggested in the application form that she would like a copy of the Energy Performance Certificate. Although the Committee accepted that this would be of some assistance to Mrs Arthur, the Committee also considered that the failure to produce such a document would not result in a failure to meet the Repairing Standard.
24. It was suggested in the application form that there had been difficulties with the plumbing system and that there had previously been a leak under the bath. Mrs Arthur accepted at the Hearing that repairs had been effected and that the flooring had been replaced. The Committee found no evidence to suggest that the plumbing system was not in a reasonable state of repair and in proper working order.
25. It was clear from the inspection that there are significant dampness problems within the Property. The Committee noted that there was evidence of recent water ingress and of previous water ingress. The

Committee was not able to view or inspect the roof or the roof space but considered it likely that defects in the roof were causing or contributing to the water ingress.

26. It was also clear that there is dampness to walls in the double bedroom and that the source of this dampness required to be identified and remedial works executed.
27. As already indicated, Mrs Arthur advised the Committee that although the windows in the Property had been replaced by new units, the windows in the kitchen and in the double bedroom were draughty. The Committee accepted that these windows were not wind and watertight and appropriate adjustments/repairs required to be carried out.
28. In the course of the inspection and at the Hearing Mrs Arthur advised that there was a hole in the kitchen wall under the worktop next to the sink. However this issue had not been intimated to Mr Afzar and accordingly the Committee were unable to take account of it. Similarly the issue with the main front door had not been intimated to Mr Afzar. However it seemed clear that there was indeed a hole in the external wall under the worktop in the kitchen (next to the sink) and clear that the external main door leading to the communal stair was not in a reasonable state of repair. The Committee was of the view that it would be in the interests of both parties if these relatively minor issues were remedied.

Decision

29. The Committee determined that the Landlord had complied with the duty imposed by section 14(1)(b) of the Act. The Committee proceeded to make a Repairing Standard Enforcement Order as required by section 24(1) of the Act.
30. The decision of the Committee was unanimous.

Right of Appeal

31. A Landlord(s) or Tenant (s) aggrieved by the decision of a PRHP Committee may appeal to the Sheriff by summary application within 21 days of being notified of that decision.

Effect of section 63

32. 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. 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.

Signed R Handley Date 10/2/14
Chairperson