



Repairing Standard Enforcement Order

Ordered by the Private Rented Housing Committee

prhp Ref: PRHP/RP/13/0143

Re: Property at 2G Baldovan Terrace, Dundee ("the Property")

Title No: ANG28173

The Parties:-

JOSEPH FRANCIS McGRATH and GRACE TERESA McGRATH residing at 62 Cabin Hill Gardens, Knock, Belfast ("the Landlords")

AGNIESZKA BODAK residing at 2G Baldovan Terrace, Dundee, DD4 6ND ("the Tenant")

NOTICE TO JOSEPH FRANCES McGRATH and GRACE THERESA McGRATH ("the Landlords")

Whereas in terms of their decision dated 12 May 2014, the Private Rented Housing Committee determined that the Landlords has failed to comply with the duty imposed by Section 14 (1)(b) of the Housing (Scotland) Act 2006 and in particular that the Landlords 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 Landlords under the tenancy are in a reasonable state of repair and in proper working order;

the Private Rented Housing Committee now requires the Landlords 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 Landlords:-

- (a) To obtain a structural engineer's report over the Property to ascertain whether any movement within the Property is historic or ongoing. The Landlords require to carry out any works recommended by the structural engineer's report to ensure that the structural integrity of the building is sound. The Landlords are required to exhibit the structural engineer's report to the Committee as soon as obtained.
- (b) To identify and repair all sources of water ingress to the Property. Once all areas of water ingress have been identified and repaired, the Landlords are required to carry out such works of repair and redecoration internally to ensure that the Property meets the repairing standard.
- (c) To carry out such works of repair or replacement to the cupboard door/frame within the living room to ensure that it can be opened and closed properly.
- (d) To properly repair and redecorate the bathroom ceiling.
- (e) To install a means of mechanical ventilation in the bathroom.
- (f) To properly replace the silicone seals around the bath/shower and sink.

- (g) Once the source of water ingress to the communal landing has been identified, to carry out such works of repair or redecoration as are necessary to bring the upper area of the stairwell landing back to the repairing standard.
- (h) To replace any broken or smashed glass in the stairwell landing window and to repair the hole in the stairwell landing roof.
- (i) To investigate whether the stairwell cupboard door can be opened and closed properly and carry out any works to the door/frame required to ensure this is the case.

The Private Rented Housing Committee order that the works specified in this Order must be carried out and completed within the period of 3 months from the date of service of this Notice.

A Landlords 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 12 May 2014 before this witness:-

L Johnston

witness

E 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/13/0143

Re: Property at 2G Baldovan Terrace, Dundee, DD4 6ND ("the Property")

The Parties:-

AGNIESZKA BODAK residing at 2G Baldovan Terrace, Dundee, DD4 6ND ("the Tenant")

JOSEPH FRANCIS McGRATH and GRACE TERESA McGRATH residing at 62 Cabin Hill Gardens, Knock, Belfast ("the Landlords")

Decision

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

Background

1. By application dated 6 November 2013 the Tenant applied to the Private Rented Housing Panel for a determination of whether the Landlords 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 Landlords had failed to comply with his duty to ensure that the house meets the repairing standard and in particular that the Landlords had failed to ensure that:-
 - (a) The house is wind and watertight and in all other respects reasonably fit for human habitation;
 - (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;
 - (c) The installations in the house 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 11 February 2014 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.

5. Following service of the Notice of Referral the Tenant made no written representations to the Committee other than her original application. The Landlords, by letter dated 3 March 2014, made written representations to the Committee.
6. The Private Rented Housing Committee (comprising Mr E K Miller, Chairman and Legal Member; Mr D Godfrey, Surveyor Member; and Mr J Wolstencroft, Housing Member) inspected the Property on the morning of 17 April 2014. The Committee were accompanied by Ms Sara Mazurek who assisted the Tenant by providing translation services. The Tenant was present during the inspection. The Landlords were not present during the inspection although a representative from their letting agent was present. (Craig Watson)
7. Following the inspection of the Property the Private Rented Housing Committee held a hearing at Douglas Community Centre, Balmoral Avenue, Douglas, Dundee. The Tenant was present and represented herself (with translation from Ms Mazurek). No person was present representing the Landlords.
8. The Tenant submitted that she viewed the Property as failing to meet the repairing standard. She had been resident in the Property for around 7 years and throughout that period there had been problems with water ingress into the Property. She submitted that there were numerous areas of damp penetration within the Property. She submitted that complaints to the letting agent generally fell on deaf ears and little was done in the way of carrying out repairs. In the past she had withheld rent. When this was done this tended to generate a response but unless she went to this extent repairs simply did not take place. The Tenant's principal concern was the damp penetration into the Property and the cracks and structural movement that she thought was now being caused as a result of the damp penetration.
9. There were no submissions on the day from the Landlords but the Committee noted an email the Landlord had received from the Council Building Standards Surveyor. The Committee also noted that the Landlords had recently carried out some roof repairs to try and address the water ingress to the Property.

Summary of the issues

10. The issues to be determined were:-
 - 1) Whether the living room floor was sloping to an extent that rendered it a breach of the repairing standard.
 - 2) Whether there was water ingress into the living room sufficient to render it a breach of the repairing standard.
 - 3) Whether the cupboard door in the living room was warped and a breach of the repairing standard.
 - 4) Whether the walls in the living rooms were stained.
 - 5) Whether there were plaster cracks in the Property sufficient to render it a breach of the repairing standard.
 - 6) Whether the central heating system was in proper working order and compliant with the repairing standard.
 - 7) Whether the bathroom was suffering from damp and was a breach of the repairing standard.
 - 8) Whether the seals around the shower and sink in the bathroom required to be replaced.

- 9) Whether the kitchen was suffering from water penetration.
- 10) Whether the electric lights in the kitchen were safe.
- 11) Whether the main bedroom was suffering from damp/water ingress.
- 12) Whether the second bedroom had sufficient heating and was compliant with the repairing standard.
- 13) Whether repair works were required to the walls in the communal stairwell to comply with the repairing standard.
- 14) Whether the cupboard door in the stairwell was warped and failed to meet the repairing standard.

Findings of fact

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

- The living room floor was not level and sloped towards the gable wall to a noticeable degree. Whilst, at this stage, it may not yet be a breach of the repairing standard, the Committee were concerned that this may be as a result of ongoing structural movement within the Property.
- There was significant water penetration into the living room and this was a breach of the repairing standard.
- The cupboard door in the living room did not close properly and was a breach of the repairing standard.
- The walls in the living room were badly damaged by water penetration and were a breach of the repairing standard.
- There were numerous plaster cracks in the Property. Whilst not necessarily a breach of the repairing standard, the Committee were again concerned it was as a result of ongoing movement within the Property.
- The central heating was compliant and met the repairing standard.
- The bathroom was damp and was in breach of the repairing standard.
- The seals around the sink and shower in the bathroom required to be replaced and were in breach of the repairing standard.
- There was water penetration in the kitchen and a breach of the repairing standard.
- The electric light in the kitchen was working and was not a breach of the repairing standard.
- The main bedroom was suffering from water penetration and was a breach of the repairing standard.
- The second bedroom appeared to be compliant with the repairing standard. The Committee did note that there was a large hole within the ceiling of the communal stairwell and this may be contributing to the bedroom being cold. This would require to be repaired as part of the works required.

- In relation to the communal stairwell outside the Property, there was evidence of significant water penetration and damage and this was a breach of the repairing standard. There was a hole in the ceiling and part of the mutual window was smashed.

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 living room floor which the Tenant claimed was bevelling. The Committee noted that there was a slope in the floor. The Committee's primary concern was that the Tenant indicated that this was a developing problem and had not previously existed. Whilst the Committee was satisfied that the movement in the floor was not yet a breach of the repairing standard, there may well be an ongoing issue within the building that was a breach of the repairing standard. As can be noted from the remainder of this Decision, the Committee was concerned about extensive water penetration going on within the building for a significant number of years. This may have now reached a stage where it may be affecting the structural integrity of the Property. The Committee also noted that there appeared to be a suggestion that other properties within the block had had works done on them and that a load bearing wall may have been removed in another property within the tenement. Given the potential safety implications the Committee was satisfied that it would be appropriate to require the Landlord to obtain a structural survey over the larger tenement to ensure that there were no ongoing issues and that any movement was historic. The Committee did also note that there were numerous plaster cracks throughout the Tenant's property. Again a structural survey was required to ascertain whether there was ongoing movement or whether this was historic settlement.

The Committee inspected the window in the living room, which the Tenant had claimed was letting in water. It appeared to the Committee that the window itself was not the cause of the water penetration but rather this was likely to be stemming from defects in the roof. There was evidence of extensive water penetration and damp on both sides of the windows in the lounge. The plaster in the living room was badly damaged. The Committee was surprised that this matter had been left for so long by the Landlords and his agent. It must have been readily apparent that water penetration was occurring and been so for a considerable period of time. Works to address this should have been carried out a significant period of time ago. The Committee noted that the Landlords had had roof works carried out recently. As can be noted from comments later in this Decision, the Committee was of the view that the works that had been carried out were inadequate and had not addressed all of the points of water ingress within the Property. While some areas of damp throughout the Property showed some signs of having been dealt with, there were many other areas where the damp levels remained high. The Landlords would require to carry out further investigation works to identify the continuing points of water penetration. The Landlords would then require to carry out further and more substantive works to address these. The Committee noted that in terms of their title deeds the Landlords owned the roof exclusively and accordingly there was no requirement to liaise with other owners to have roof works carried out.

The Committee inspected the cupboard door in the living room. This was indeed warped and did not close correctly. The Landlords required to carry out appropriate works to allow this to occur.

The Committee noted that there were numerous plaster cracks in the Property.

As highlighted above, the Committee was concerned that these may be a result of ongoing movement. Once the structural survey had been obtained and any remedial works recommended by it carried out, then the plaster cracks could be repaired and redecoration could take place.

The Committee inspected the central heating system. The Tenant had complained that this was noisy. On the day of the inspection the central heating system was not making any noise and a clear gas safety certificate was produced. On that basis the Committee was satisfied that the repairing standard had been met. The Committee was concerned to note that the Tenant advised that this was the first time she had received a gas safety certificate. The Committee would highlight to the Landlords and their agent that the obligation to produce a clear gas safety certificate is an annual one and that compliance should occur going forward.

The Committee inspected the bathroom at the Property. It was clear that damp/condensation issues had been occurring into the bathroom. The ceiling of the bathroom was in very poor condition. The Committee was satisfied that the damage went beyond anything that would have been caused by the Tenant. The Committee noted that the bathroom was very small and would benefit from the installation of an Expelair fan to assist in ventilation. Damage may well also have been caused by water ingress again. The Landlords would require to carry out such works of repair and redecoration once any sources of water ingress had been traced and dealt with. A means of mechanical ventilation also required to be installed

The Committee also inspected the seals around the shower and sink. These were subject to very heavy mould. The Tenant advised that the previous seals had not been stripped out and new silicone put in but simply the case that new silicone had been added over the existing seals (which already had mould on them). The Tenant's version of events appeared to be correct. As a result of simply adding new silicone over old mouldy silicone, the mould had spread through the new silicone very quickly. The Landlords would require to carry out a more thorough repair and strip out the existing silicone properly and replace with new.

The Committee inspected the kitchen in the Property. The Tenant confirmed that the repair works to the lights had been carried out and this now worked satisfactorily. Again the Committee noted that there was water penetration into the kitchen. Again the Landlords would require to identify the source of the water ingress and carry out appropriate repairs works. Any internal damage would then require to be made good and redecoration carried out.

The Committee inspected the main bedroom. It was clear that water penetration was still ongoing. There were very high levels of damp in the cupboard in the main bedroom and in the hallway outside the main bedroom. Again the source of the water penetration would require to be identified, repaired and any internal damage made good.

The Committee noted that the second bedroom did not appear to be suffering from any water penetration. The Tenant complained of this being cold. The Committee noted that there was a radiator in working order in the bedroom. The Committee did notice, however, that there was a large hole in the ceiling of the communal stairwell, which was located beneath that bedroom. This was allowed cold air from the stairwell to circulate beneath the room and would contribute to it being cold. The Landlords would require to repair this hole and make good.

The Committee inspected the communal stairwell. The Committee noted that the stairwell outside the Tenant's property was in very poor condition. The plaster was badly damaged and flaking. Again there was evidence of significant water penetration and damage. There was a hole in the ceiling and the glass in the mutual stairwell window was smashed in places. The Landlords had stated that these matters were *de minimis* as they were in the communal areas. The Committee disagreed. The obligation to meet the repairing standard extends to communal areas and it was clear that there were defects in the communal areas caused by water penetration. The Landlords would require to make good all these defects. The Landlords would also require to investigate whether the cupboard door/frame in the stairwell was warped and carry out any repair works necessary to ensure that the door could open and close without difficulty.

The Committee were also concerned to note that whilst not complained of in the application, the fire detection system within the Property was inadequate. There was one battery powered smoke alarm on the lower level of the Property. There was no detection system on the upper floor. The Committee would draw to the attention of the Landlords the current requirements as set out in the 2013 Domestic Technical Handbook. Whilst outwith the jurisdiction of the Committee on this decision, the Committee would fully expect the Landlords and their agent to ensure compliance with the fire detection regulations. This would require the installation of a hardwired interlinked system with alarms installed in the lounge, lower hallway and upper hallway and an optical heat alarm in the kitchen. These would all require to be interlinked.

The Committee considered how long the Landlords would take to carry out the works. The Committee was of the view that 3 months would be an appropriate period.

The Committee fully expect the Landlords and his agent to deal with these matter timeously and to organise the works. The Committee also expect the Tenant to give access when required to the Landlords tradesmen provided the works are being carried out at a reasonable time and upon reasonable notice being given.

Decision

13. The Committee accordingly determined that the Landlords 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 Landlords 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.

Signed **E Miller** Date 16/5/2014

Chairperson