



REPAIRING STANDARD ENFORCEMENT ORDER
Ordered by the Private Rented Housing Committee

RE: Property at 19B Arklay Street, Dundee DD3 7LG as more particularly described in Land Certificate Title Number ANG25278 (hereinafter referred to as “the House”)

The Parties:

Jean Cameron, 19B Arklay Street, Dundee DD3 7LG (hereinafter “the Tenant”)

Mr James Bain, 11 Marchmont Road, Greenlaw, Duns, TD10 6YQ (hereinafter referred to as “the Landlord”)

PRHP REFERENCE PRHP/RP/13/0160

NOTICE TO

Mr James Bain, the Landlord

WHEREAS in terms of their decision dated 7 May 2014 the 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 meets the repairing standard in that:

*“(a) the house is wind and water tight 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 and
(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 Committee now requires the landlord to carry out such work as is necessary for the purposes of ensuring that the House 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:

1. To repair or replace the living room and bedroom windows as necessary. Such works include but are not restricted to repairing the broken glass and misting casements, replacing broken catches, seals and repainting to a satisfactory standard.
2. To repair or replace the front door, the locking mechanism and door frame.
3. To replace the electric shower in the bathroom with an equivalent model to the one in place in the House at present.
4. To have both electricity sockets in the living room properly installed and fixed by a properly qualified and certified electrician. Thereafter to provide an inspection report from a qualified and certified electrician to confirm that the electrical system in the property is safe and fit for use.
5. To overhaul and repair the cast iron rainwater goods as listed in paragraph 3.1 of the Graham & Sibbald report dated 14 October 2013 referred to in the Committee's decision to bring them up to a reasonable standard of repair.
6. To hack off and patch the damaged areas of wall and brickwork at the rear of the property. Also, if necessary, to co-operate and co-ordinate with the local authority in order to effect those works or any of them which may be common to the property.

The Committee order that the works specified in this Order must be carried out and completed within 90 days from the date of service of this Notice.

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 the decision.

Where such an appeal is made, the effect of the decision and 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 Maurice O'Carroll, Chairperson of the Private Rented Housing Committee at _____ on the _____ day of May, Two Thousand and Fourteen in the presence of the undernoted witness:

Chairperson

M O'Connell

Witness

A Ross

ASHLEY ROSS

Witness Address: PRHP, EUROPA BUILDING, 450 ARGYLE STREET,
GLASGOW G2 8EH



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 19B Arklay Street, Dundee DD3 7LG (hereinafter referred to as “the House”)

Jean Cameron (hereinafter referred to as “the Tenant”)

Mr James Bain, 11 Marchmont Road, Greenlaw, Duns, TD10 6YQ (hereinafter referred to as “the Landlord”)

PRHP REFERENCE PRHP/RP/13/0160

DECISION

The Committee having made such enquiries as are fit for the purposes of determining whether the Landlord has complied with the duty imposed by section 14(1)(b) of the Housing Scotland Act 2006 (hereinafter “the Act”) in relation to the House, and taking account of the evidence led at the hearing and of the written documentation attached to the application and submitted by the parties, determined that the Landlord had failed to comply with the duty imposed by section 14(1)(b) of the Act.

Background

By application dated 22 November 2013 (hereinafter referred to as the “Application”) the Tenant applied to the Private Rented Housing Panel (hereinafter “the PRHP”) for a determination of whether the Landlord had failed to comply with the duties imposed by section 14(1)(b) of the Act.

The Application 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 the following paragraphs of section 13(1) of the Act:

*“(a) the house is wind and water tight 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 landlord under the tenancy are in a reasonable state of repair and in proper working order and
(e) any furnishings provided by the landlord under the tenancy are capable of being used safely for the purpose for which they are designed.”*

The Tenant complained of a number of defects in the House.

By letter of 10 February 2014, the President of the PRHP intimated a decision to refer the application under section 23(1) of the Act to a Private Rented Housing Committee (hereinafter referred to as “the Committee”).

The Committee comprised the following members:

Maurice O'Carroll, Chairperson
Michael Scott, Housing Member
David Godfrey, Surveyor Member

The Committee served Notice of Referral in terms of Paragraph 1 of Schedule 2 to the Act upon the Landlord and the Tenant.

The Committee inspected the House on 24 April 2014. Both the Tenant and the Landlord were present.

Following the inspection, the Committee held a hearing at Douglas Community Centre, Balmoral Avenue, Dundee. Both the Landlord and Tenant appeared at the hearing in person and neither party was represented. The Committee considered the written evidence submitted by or on behalf of the parties and heard representations from both the Tenant and the Landlord.

The Tenant's written evidence had been produced on her behalf by Mrs Trudy Gill of the Dundee North Law Centre. She had instructed a survey report of the house which was carried out by Messrs Graham & Sibbald. The Committee had sight of the survey report dated 14 October 2013 prior to the inspection, to which it had regard. However, the Committee carried out its own inspection for the purposes of its determination of the Application.

Evidence and submissions at the Hearing

As neither party was represented at the hearing, the Committee asked questions of both parties in relation to the relevant issues. During the course of the inspection the Tenant had made it clear that, contrary to what was stated in the Application, the tumble drier was working. This was confirmed at the hearing. Accordingly,

there was no complaint in relation to alleged non-compliance with s 13(1)(e) and it was treated as withdrawn.

The hearing therefore dealt with the remaining issues in relation to s 13(1)(a)-(d). These were in relation to the following:

- (1) the exterior left front window pane of the double glazed unit in the living room had been smashed with the result that it was not wind and water tight and condensation resulted;
- (2) two dangerously loose electricity sockets at the front left of the living room and directly behind the door to the living room. The latter was completely removed from the wall with bare wires exposed;
- (3) the front door to the property giving onto the common close which was not secure following a police raid some 18 months prior to the inspection;
- (4) the shower which was not functioning and had not been for approximately one month prior to the inspection;
- (5) dampness within the kitchen, bedroom and bathroom; and
- (6) the external guttering and downpipes;

The Tenant advised that the faults had been reported to the Landlord but that he had done nothing to fix them. The Landlord accepted that repairs were necessary in relation to the first four of the above items. However, he maintained he had difficulty in reaching the Tenant to arrange for the repairs to be done. She had either not answered his calls or had changed her telephone number without informing him of her new one. Occasionally, he had been able to get through to her son, but despite being told that she would get back to him, she did not do so.

He further maintained that on one occasion he had arrived at the house with an electrician and had been denied entry by the Tenant's daughter. Since he lived in the Borders, that had resulted in an entire day being wasted. On other occasions, he had been denied access to carry out repairs by the Tenant's daughter.

He had served a Notice to Quit in the middle of 2013 because of rent arrears amounting to approximately £1200. The Tenant had made one payment of £700 in March 2013, but at the date of the hearing there were still rent arrears of £479.97. Self-evidently, the Notice to Quit had not been enforced as the Tenant was still in occupation at the time of the hearing. The tenant explained that when she had paid the £700 towards rent arrears, the Landlord had undertaken to effect repairs but had not done so.

Some three weeks prior to the hearing, the Landlord's mortgage lender had served a further Notice to Quit on the Tenant as they were enforcing their heritable security since mortgage payments had not been made. Neither the Landlord nor the Tenant were able to advise the Committee as to when the Tenant was required to vacate the House and the mortgage lender was to take entry.

At a point prior to the Tenancy, there was drainage problem connected with a downpipe at the front of the property. The Landlord informed the Committee that the necessary repairs had been effected by the local authority as it was a common drainage issue.

During the course of the inspection, the Committee noticed a disused Calor gas heater placed at the front of the House. The Tenant advised that it had been hers and used by her in the House, but that her son had put it out of the House approximately two and half weeks prior to the inspection.

Summary of the Issues

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 has complied with the duty imposed by section 14 (1)(b).

Findings in Fact

The Committee confined their inspection to the items of complaint detailed within the Tenant's Application.

The Committee made the following findings in fact:

The Landlord and the Tenant entered into a Tenancy agreement in respect of the House on 3 September 2013. The Tenant took possession of the House from that date and has remained in occupation since

The Landlord was recorded on the Lease as James Bain.

The registered owner of the House is recorded as James Bradley Dempster Bain, 11 Marchmont Road, Greenlaw, Duns. He became owner on 7 December 2007.

The provisions of Chapter 4 of Part I of the Act apply to the tenancy.

The Tenant notified the Landlord of the defects in the house which are now the subject of the Application by letter dated 8 October 2013 issued on her behalf by Dundee North Law Centre and addressed to the Landlord. A reminder was sent by recorded delivery letter on 7 November 2013.

The inspection on 24 March 2014 revealed:

The property is a ground floor flat in a three storey block of six flats.

The damage items, sockets and windows, in the living room have been referred to above. There was condensation on the broken double glazed unit and on the two casements above it. The upper units had defective seals and broken catches.

The House has a single bedroom which is at the front of the property. There was evidence of some mould in the corner of the bedroom but none of penetrating or rising dampness. The bedroom window was not windtight. There were defective seals which resulted in misting windows.

The front door to the House was not secure and the lock had not been repaired since it was damaged some 18 months previously.

The shower unit in the bathroom did not work. There was some evidence of dampness mould but none of penetrating or rising dampness. There was no extractor fan in the bathroom.

There was standing water at the rear of the House. As noted in the survey report produced by Messrs Graham & Sibbald, the rhones to the top of the property are choked and corroded. The downpipes are corroded with dampness staining on the exterior wall adjacent to the downpipes which suggests that they are, or have been, leaking.

There was a section of the wall at the rear of the House which consisted of dislodged rendering and deteriorating brickwork, all as described in the Graham & Sibbald report at paragraph 3.3. The necessary repairs are as follows:

1. Carefully hack off and patch repair all loose/missing and dislodged render;
2. Carefully hack out and repoint all loose/missing and dislodged mortar pointing;
3. Cut out and replace all heavily deteriorating brickwork;
4. Investigate capping to chimney heads to ensure ventilated caps are fitted.

Reasons for the Decision

The Repairing Standard

The provisions of section 14(1)(b) of the Act apply to the Landlord. This section requires the Landlord to ensure that the House meets the repairing standard at all times during the tenancy. In terms of s14(2), the duty includes a duty to make good any damage caused by carrying out any work for the purposes of complying with that subsection.

As regards the living room windows, as viewed from the exterior, the bottom right hand pane had broken glass where it had been hit with a missile over a year previously. The bedroom window also requires repair.

The Committee considers that the defects to the windows within the living room and bedroom constitute a breach of the repairing standard in terms of s 13(1)(a) of the Act. The Committee therefore requires the Landlord to repair or replace the living room and bedroom windows as necessary. Such works include but are not restricted to repairing the broken glass and misting casements, replacing broken catches, seals and repainting to a satisfactory standard.

Regarding the front door, the Committee accepts that the damage to it is not the fault of the Landlord. However, the terms of s 14(1)(b) nonetheless apply. The present defect to the door constitute a breach of the repairing standard as the Landlord is obliged to ensure that the structure of the House is in a reasonable state of repair in terms of s 13(1)(b). The Committee therefore requires the Landlord to repair or replace the front door, the locking mechanism and door frame.

The Committee considered that the shower defect constitutes a breach of the repairing standard (s 13(1)(d)). Since the shower was in the property at the start of the tenancy, it requires to be in working order during the tenancy. The Landlord is therefore required to replace the electric shower in the bathroom with an equivalent model to the one there at present.

The Committee considered that the defects with the electrical socket constitute a breach of the repairing standard (s 13(1)(c)). The Committee attention was only drawn to the sockets in the living room in the right hand corner and immediately behind the door. The Landlord is required to have both of these properly installed and fixed by a properly qualified and certified electrician. The Committee requires the Landlord to provide an inspection report from a certified and qualified electrician to confirm that the electrical system in the property is safe and fit for use.

The Committee considered that the defects with the external guttering and downpipes and damaged section of the rear wall constitute a breach of the repairing standard (s 13(1)(b)). The Committee requires the Landlord to overhaul and repair the cast iron rainwater goods as listed in paragraph 3.1 of the Graham & Sibbald report. The Committee also requires the damaged areas of wall and brickwork at the rear of the property referred to above to be hacked off and patched. The necessary repairs are as detailed above by reference to the Graham & Sibbald report. If necessary, the Landlord is required to co-operate and co-ordinate with the local authority in order to effect those works which may be common to the property

Regarding dampness, the Committee accepted that there was condensation to a degree in the kitchen, bedroom and bathroom. Meter readings taken in each of these rooms demonstrated that any dampness was within acceptable tolerances. The Committee was of the opinion that any condensation was at least partly attributable to the Tenant's use of a Calor gas heater and that removal of same may now improve the condensation issue. Accordingly, the Committee decided to make no order in relation to alleged dampness in any of these three rooms.

Although it does not form part of the Repairing Standard Enforcement Order to follow hereon, the Committee recommends that an extractor fan is fitted within the bathroom of the House in order to combat condensation.

Gas Safety

The Landlord produced at the hearing a Landlord's Gas Safety Certificate dated 6 February 2014 which confirmed that the central heating system was in safe working order.

Repairing Standard Enforcement Order

Having decided to make a Repairing Standard Enforcement Order, the Committee considered the length of time which should be provided for compliance. The Committee elected to impose a period of 90 days having regard to the extent of works that required to be carried out.

Decision

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.

The Committee proceeded to make a Repairing Standard Enforcement Order as required by section 24(2) of the Act.

The decision of the Committee was unanimous.

Right of Appeal

Section 64 of the Act provides a right of appeal to a landlord or tenant aggrieved by a decision of a private rented housing committee. An appeal may be made to the Sheriff within 21 days of the Landlord or Tenant being informed of the decision.

Where such an appeal is made, the effect of the decision and 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.

M O'Carroll

Maurice O'Carroll
Chairperson

Date: 7 May 2014