



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

1/1, 45 Lyon Street, Dundee (hereinafter referred to as “the House”)

**Michael Gow, 1/1, 45 Lyon Street, Dundee (hereinafter referred to as “the
Tenant”)**

**Angela Jane Baird, 10 Panmure Street, Carnoustie (hereinafter referred to as “the
Landlord”)**

PRHP REFERENCE PRHP/RP/14/0185

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, taking account of the written documentation attached to the application and submitted by the parties and the parties’ oral submissions, determined that the Landlord had failed to comply with the duty imposed by section 14(1)(b) of the Act.

Background

By application dated 4 August 2014 (hereinafter “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,...
(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,...
(f) the house has satisfactory provision for detecting fires and for giving warning in the event of fire or suspected fire.”

The Tenant complained of the following defects in the House: draughts coming through windows, floors, the front door and via an Aga stove; the absence of heating; a broken tumble dryer; the absence of an electrical safety certificate; problems with the shower and the absence of smoke detectors.

By letter of 21 November 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:

John McHugh, Chairperson
Sally Wainwright, Housing Member
Geraldine Wooley, 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 30 January 2015. The Tenant was present. The Landlord was represented by Maureen Lewis and Lisa Harris of the Landlord’s letting agents, SGL.

Following the inspection, the Committee held a hearing at the Kirkton Community Centre, Dewart Avenue, Dundee. The Tenant and the representatives of the Landlord’s agent were in attendance.

Submissions at the Hearing

The representations on the part of the Landlord were that the Landlord had some financial difficulties which made it difficult for her to address all of the identified issues at the property.

She had recently had the shower replaced and a mains powered smoke alarm fitted. They believed that an electrical safety certificate should be available following these recent works.

The Landlord's agents observed that they had not been fully aware of some of the items raised in the inspection. They also advised that some communication had taken place directly between the Landlord and the Tenant and they were unaware of all of its content.

The Landlord's agents advised that rugs had been present when the Tenant had moved in but that these seem to have disappeared.

They were aware of a dry rot problem affecting the House and neighbouring properties. A quotation has been obtained for remedial works which works the Landlord intends to perform once she has reached agreement with the proprietors of the neighbouring properties.

The Tenant confirmed that the floorboards had been in their present condition when he had moved in. He advised that draughts come through the floorboards. The Landlord had offered second hand carpeting which he had refused. He had used masking tape to cover most of the gaps in the living room.

The Tenant experienced draughts passing through the windows and had made his own temporary arrangements to improve insulation.

He believed that the front door had an excessive gap around it which was admitting draughts.

He had never used the tumble dryer, which he believed had never worked during his tenancy. He was concerned about draughts coming from behind the tumble dryer.

He had difficulty in heating the flat and was dissatisfied with the current arrangements for heating the flat (electrical convector heaters) which he found too expensive to use.

He had never used the Aga stove. He had not expected it to be in working condition during his tenancy but he was concerned about draughts coming through its chimney.

The Tenant believed that his complaint had sparked progress by the Landlord in the form of the installation of a new shower and smoke alarm as well as a new consumer unit. He was satisfied with all of these with the exception that the shower installation had left a hole in the tiled wall adjacent to the new shower which he felt should be remedied.

Hearing Date

The inspection and hearing had originally been fixed for 15 January 2015 but were postponed at the request of the Landlord to accommodate her availability. The Landlord advised in the context of her application for postponement that she would be free any time after the following week. Accordingly, the hearing was fixed for 30 January 2015. The Landlord made a second application to alter the hearing date which the Committee refused on the grounds that 30 January had been fixed in accordance with the Landlord's stated availability and the Committee considered that the hearing ought to proceed as scheduled to avoid any prejudice to the completion of the process of determining the application.

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 House is a first floor flat in a traditional tenement block.

The Landlord and Tenant entered into a tenancy agreement in respect of the House dated 20 April 2011.

The Landlord is the registered owner of the House.

The Tenant has been in occupation of the House since April 2011 and remains in occupation.

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 of 21 February 2014 issued by his representative, Dundee North Law Centre.

The inspection on 30 January 2015 revealed:

The House is in general need of upgrading.

A new shower has been installed but a hole remains in the tiled wall adjacent to the shower.

A new electrical consumer unit has been installed.

A mains powered smoke alarm has been installed.

There are exposed, sanded floor boards in all parts of the House except the bathroom.

Duct tape has been applied to most of the gaps between the floorboards in the living room.

Dry rot is evident in the living room flooring.

The windows are in poor condition and in need of overhaul or replacement. The Tenant has applied temporary materials to the windows to reduce draughts.

The front door has uneven gaps around it likely to be improved by adjustment.

There is an Aga stove present in a fireplace in the kitchen.

The tumble dryer does not work. Plaster from the wall behind it has been removed.

Heating is available via portable electrical convector heaters and a fixed wall heater in the bathroom. The tenant is using his own gas canister heater.

Reasons for the Decision

Flooring

Dry rot is present in the living room flooring and is likely to be present in other areas which were not visible to the Committee during its non-invasive inspection.

It is likely that draughts will be found in the areas where uncovered floor boards are present. That is a feature of such flooring. Carpeting is desirable to address the problem.

The Committee did not consider that the exposed floorboards, which the parties are agreed were a feature of the House since the start of the tenancy, constituted a breach of the repairing standard.

Windows

The windows are in poor condition and are not capable of providing adequate resistance to draughts and moisture.

Front door

The front door requires adjustment or the fitting of draught exclusion to minimise gaps between the door and the frame.

Aga

The chimney which provided ventilation to the long unused Aga is allowing draughts into the kitchen.

Heating

The current heating arrangements are less than ideal however the provision is adequate to meet the repairing standard.

Tumble dryer

The tumble dryer is not working.

Electrical Safety

No certificate has been produced in respect of the recent electrical work.

Shower

The Committee members observed a hole in the tiled wall adjacent to the new shower which is likely to allow water to pass into it when the shower is in use.

Fire Detection

A mains powered smoke alarm was in operation. There is no breach of the repairing standard in this regard.

The Repairing Standard

The Committee consider that the defects in relation to the rotten flooring; the windows; the front door; the Aga's ventilation arrangements; the shower wall; the tumble dryer and the absence of an electrical safety certificate constitute breaches of the repairing standard.

Observations

The House is in need of general upgrading in particular to heating and insulation arrangements for the improved comfort of occupants.

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 nature of the defects identified.

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.

John M McHugh
Chairperson

Date: 3 February 2015



REPAIRING STANDARD ENFORCEMENT ORDER
Ordered by the Private Rented Housing Committee

RE: Property at 1/1, 45 Lyon Street, Dundee being ALL and WHOLE the subjects known as and forming the eastmost house on first floor, 45 Lyon Street, Dundee as more particularly described in Disposition by the Trustees of James Whyte McLean recorded in the Division of the General Register of Sasines for the County of Angus on 27 November 1970. (hereinafter referred to as “the House”)

The Parties:

Michael Gow, 1/1, 45 Lyon Street, Dundee (hereinafter “the Tenant”)

Angela Jane Baird, 10 Panmure Street, Carnoustie (hereinafter “the Landlord”)

PRHP REFERENCE PRHP/RP/14/0185

NOTICE TO ANGELA JANE BAIRD

WHEREAS in terms of their decision dated 3 February 2015 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,...

(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,...

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 windows in order that they are reasonably wind and watertight.

- 2 To arrange for an inspection by an independent expert in the treatment of dry rot, to carry out all timber replacement and works recommended and to produce a certificate or report from such an expert confirming that the recommended works have been completed.
- 3 To block the chimney in the kitchen relating to the Aga so as to provide a reasonable level of prevention of draughts.
- 4 To provide an electrical safety certificate issued by a qualified electrician which indicates that the electrical installations at the House are in safe, working condition.
- 5 To put the tumble dryer in working order or to replace it with a working tumble dryer.
- 6 To repair the hole in the wall adjacent to the shower.
- 7 To make adjustments to the front door so that it provides a reasonable level of prevention of draughts.

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 John Miller McHugh, Chairperson of the Private Rented Housing Committee at Edinburgh on the third day of February Two Thousand and Fifteen in the presence of the undernoted witness:

Chairperson

Witness

John Miller McHugh

Witness Address

*31 Newton St
Edinburgh*