

Repairing Standard Enforcement Order

Ordered by the Private Rented Housing Committee

Case reference number : PRHP/RP/14/0267

Re:- Property at Flat 1/1, 8 Byres Road, Glasgow, G11 5JY ("**the property**")

Land Register Title Number: **GLA204050**

The Parties:-

Daniel Dominguez, formerly residing at Flat 1/1, 8 Byres Road, Glasgow, G11 5JY ("**the former tenant**")

And

Marco Polo UK Limited, a company incorporated under the Companies Acts (Registered Number SC184185) having their registered office at 16 Comely Park, Dunfermline, KY12 7HU per their agents Cairn Letting, 34 Gibson Street, Glasgow, G12 8NX ("**the landlord**")

Notice to Marco Polo UK Limited

Whereas in terms of the decision dated 5th February 2015 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 the landlords had failed to ensure that:-

- (a) the house is wind and watertight and in all respects reasonably fit for human habitation

The Private Rented Housing Committee now requires the landlords to carry out such work as is necessary for the purpose of ensuring that the house concerned meets the repairing standard and that any damage caused by the carrying out of the works in terms of the order is made good.

In particular the Private Rented Housing Committee requires the landlords to carry out the following work

To carry out all necessary works to ensure that the property is rendered wind and watertight, to complete all necessary internal works arising from water ingress, including eradicating

mould, dampness and damage found within the bedroom, and to thereafter undertake redecoration

The Private Rented Housing Committee orders that the works specified in this order must be carried out within three months of the date of this Order.

A landlord or tenant aggrieved by the decision of the Committee may appeal to the Sheriff by summary application within 21 days of being notified of that decision. The appropriate respondent in such appeal proceedings is the other party to the proceedings and not the PRHP or the Committee which made the decision.

Where such an appeal is made the effect of the decision or 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 are to be treated as having effect from the day on which the appeal is abandoned or so determined.

James Bauld

Signed.....

James Bauld, Chairperson

Date... *5 February 2015*

Natalie Walker

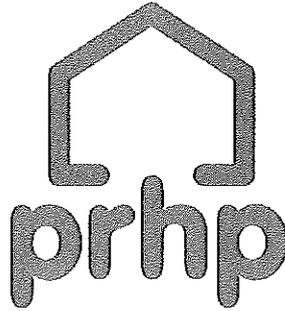
Signature of Witness

Date... *5 February 2015*

Name: *NATALIE WALKER*

Address: 7 West George Street, Glasgow, G2 1BA

Designation: Senior Court Administrator



Determination by Private Rented Housing Committee

Statement of Decision of the Private Rented Housing Committee

(Hereinafter referred to as "the Committee")

Under Section 24(1) of the Housing (Scotland) Act 2006

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The Committee comprised:-

Mr James Bauld	- Chairperson
Mr Kingsley Bruce	- Surveyor member
Ms Elizabeth Dickson	- Housing member

Decision:-

The Committee unanimously decided that the landlord had failed to comply with the duties imposed by Section 14(1)(b) of the Housing (Scotland) Act 2006 ("**the 2006 Act**"). The Committee accordingly proceeded to make a Repairing Standard Enforcement Order (RSEO) as required by Section 24(2) of the 2006 Act.

Background:-

1. By application dated 14th November 2014, the former tenant Daniel Dominguez applied to the Private Rented Housing Panel (PRHP) for a determination that the landlord had failed to comply with the duties imposed by Section 14(1) (b) of the 2006 Act.
2. In the application made by the former tenant he complained that the landlord had failed to comply with the duty to ensure that the house met the repairing standard and in particular that the house was not wind and water tight and in all respects reasonably fit for human habitation. He complained that one of the walls in the room which he occupied within the property was damp and stained with mould. He complained that there was water penetration.
3. By letter dated 20th November 2014 the president of the PRHP intimated the decision to refer the application under Section 22(1) of the 2006 Act to a Private Rented Housing Committee. Intimation of said referral was also made to the landlord.
4. On 11th December 2014 a Minute of Continuation was issued confirming that the committee would continue to deal with this application despite a request from the tenant seeking to withdraw the application. The minute of continuation was intimated upon the landlord and the tenant by letter dated 12th December 2014. By this date, the tenant had left the property and was no longer being treated as a party to the application in terms of the Housing (Scotland) Act 2006, Schedule 2, paragraph 7.
5. On 18th December 2014, formal notification was served upon the landlord that an inspection and hearing would take place on 14th January 2015 at 10 am.
6. The Committee inspected the property on 14th January 2015. The landlord's representatives were present during the inspection and access to the property was gained.
7. Following the inspection of the property the committee held a hearing within the offices of the PRHP at Europa House, Argyle Street, Glasgow. The landlord's agents were again present during the hearing and represented the landlord.

Summary of Issues

8. At the hearing the Committee noted that the matters which were to be determined from the tenant's application related solely to the question of whether the property was wind and water tight and whether the property was affected by dampness and mould.

Findings of Fact

9. Having considered all the evidence the Committee found the following facts to be true.
10. The property is a first floor flat in a four storey tenemental block. Internally the property consists of a hall, three bedrooms, kitchen and bathroom. Each of the three bedrooms is occupied individually. The kitchen, bathroom and hall were shared. The Committee only inspected the bedroom which had been occupied by the former tenant. The property had access to a shared back court area to the rear. The property is located in a residential area which has ample local amenities and is well placed for facilities such as transport and education. The tenemental block was approximately 120 years old and appeared to be of traditional stone construction. It had a pitched and tiled roof. During the course of the inspection the committee noted clear evidence of dampness on the wall of the bedroom which was inspected. The Committee took the view that the dampness was evidence of penetrating dampness.

The Hearing

11. The landlords were represented at the hearing by Ms Kirsty Smith and Ms Nicki Munro both employees of Cairn Letting. The Committee were advised that the property was originally let to three occupants including the former tenant. Each of the three rooms within the property was individually let and the property had an HMO (House in Multiple Occupation) licence. The only room which was inspected during the inspection was the bedroom which had been occupied by the former tenant. This bedroom was situated to the rear of the property and overlooked the raised back court area. The tenant had vacated the property on or around 2nd December 2014. His deposit had been refunded and there had been no difficulty with his departure.
12. The landlord's representatives produced certain documents during the hearing. One of the documents was a survey report which had been obtained in respect of the whole tenement comprising numbers 4, 8 and 12 Byres Road. This document had been prepared by Redpath Bruce Property Management Limited. The report from Redpath Bruce noted numerous defects within the condition of the tenemental block both externally and internally. The report recommended that there were three options for the proprietors of the tenemental block.
13. The first option was that they could do nothing and simply carry out reactive maintenance repairs. That option was not recommended as it would lead to further water ingress and further rot deterioration and damage.
14. The second option was to replace the flashings, guttering, refix the ridges and re-render and repoint the chimney heads of the block. It was indicated that this option would prevent further water ingress and further problems arising in the medium term. The estimated cost of these works was in the region of £35,000-£40,000 excluding VAT and professional fees.
15. The third option recommended was a full tenement repair undertaking all repairs identified in the report. This would include a full strip and renewal of the roof coverings and leadwork, stone repairs and repointing works to front and rear elevations, the renewal of asphalt surfaces to the rear court yard area, the clearance of debris from the attic space, a rot survey and roof timbers being repaired and plaster repairs and internal repairs within the common close. The estimated cost of those works was in the region of £125,000-£150,000 excluding VAT and professional fees. The surveyors recommended that option three should be undertaken to prevent further water ingress and to return the property to a manageable state of repair.
16. The agents for the landlord also produced an email from Aegis Property Care Limited indicating that certain internal works to the particular room would be carried out. Aegis had also prepared a brief report dated 21st January 2014 indicating that they had noted water penetration in the bedroom and recommended certain interior works which involved the removal of existing plaster and the fitting of new plasterboard to walls and ceilings. The landlord's agents indicated that these works would be undertaken within the next fourteen days. The landlord's agents indicated that the property had not be re-let and would not be re-let until repairs had been concluded.
17. The Committee members questioned the landlord's representatives regarding various matters and thanked them for their attendance at the hearing and for providing the various reports and comments.

Decision and Reasons for Decision

18. The committee considered the various issues which had been raised in the application and the matters which had been discussed at the hearing. The Committee took the view that the property did not meet the required standard in terms of the 2006 Act.

19. The Committee took the view that the dampness within the bedroom was clear evidence of penetrating dampness. Accordingly the property was not wind and water tight and was not reasonably fit for human habitation. The Committee noted from their inspection that the penetrating dampness was a result of the poor state of the general exterior repair and maintenance of the tenement block. The Committee noted the terms of the report from Redpath Bruce which set out the extensive works which are required to this tenement block to reinstate it to a proper state of repair. The Committee took the view that the proposed internal repairs being suggested by the landlord would be simply cosmetic and would do nothing to address the causes of the penetrating dampness within the subjects.
20. The Committee accordingly determined to make an RSEO as required in terms of Section 24(2) of the Act
21. The decision of the Committee was unanimous.

Rights of Appeal

22. A landlord or tenant aggrieved by the decision of the Committee may appeal to the Sheriff by summary application within 21 days of being notified of that decision.
23. The appropriate respondent in such appeal proceedings is the other Party to the proceedings and not the PRHP of the Committee which made the decision.

Effects of Section 63

24. Where such an appeal is made, the effect of the decision and of any Order made in consequence of it is suspended until the appeal is abandoned or finally determined.
25. Where the appeal is abandoned or finally determined by confirming the decision, the decision and the Order made in consequence of it are to be treated as having effect from the day on which the appeal is abandoned or so determined.

James Bauld

Signed.....

James Bauld, Chairperson

Date... 5 February 2015

Natalie Walker

Signature of Witness..

Name: NATALIE WALKER

Date... 5 February 2015

Address: 7 West George Street, Glasgow, G2 1BA

Designation: Senior Court Administrator