



Repairing Standard Enforcement Order

Ordered by the Private Rented Housing Committee

prhp Ref: PRHP/RP/15/0263

Re : Property at 1 Leslie Road, Aberdeen AB4 4HU("the Property")

Sasine Description: ALL and WHOLE the flatted dwellinghouse 1 Leslie Road, Aberdeen, part of the Premises into which the ground floor of the Building 104 and 106 Clifton Street and 1 Leslie Road, Aberdeen is divided, on part of the Piece of grounds on the east side of Clifton Road aforesaid in the City and County of Aberdeen more particularly described in and disposed by Disposition in favour of Agnes Marr Black and another, recorded in the Division of the General Register of Sasines applicable to the County of Aberdeen on 18th July 1912.

The Parties:-

Steven Smith, 1 Leslie Road, Aberdeen AB24 4HU ("the Tenant") and

Peter Mearns, sometime 6a St Swithin Street, Aberdeen, now 130 Hamilton Place, Aberdeen AB15 5BB ("the Landlord")

NOTICE TO PETER MEARNES ("the Landlord")

Whereas in terms of their decision dated 5 January 2016, the Private Rented Housing 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:-

- (a) the Property is wind and water tight and in all other respects fit for human habitation,
- (b) 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,
- (c) 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
- (d) the Property has satisfactory provision for detecting fires and for giving warning in the event of fire or suspected fire,

the Private Rented Housing Committee now requires the landlord 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 Landlord:-

1. To carry out such works, being repair or replacement, to the window in the kitchen area of the Property to render it safe and to render the Property wind and water tight.
2. To replace the broken/missing glazing in the main entrance door to the Property with glass which meets current safety regulations.
3. To refit the detached section of skirting board in the living room/kitchen of the Property.
4. To obtain from a suitably qualified damp specialist a report and estimate in respect of the dampness at the base of the staircase leading from the street-level door to the main entrance door to the Property and to instruct suitably qualified contractors to carry out all remedial works specified in the report.
5. To exhibit a current Gas Safety Certificate in respect of the gas installation in the Property, including the central heating boiler.
6. To exhibit a current Electrical Installation Condition Report in respect of the Property and to instruct a suitably qualified electrician to remedy any defects specified in the report.
7. To replace the cooker within the Property.
8. To instruct a suitably qualified contractor to carry out such repairs as are necessary to ensure the Sadia hot water geyser in the Property is in proper working order, or to replace same.

9. To install in the Property interlinked, mains-wired smoke detectors and a heat alarm in the kitchen of the Property, all of which comply with the revised Domestic Technical Handbook and the Scottish Government's guidance on the requirements for smoke alarms.

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

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 these presents typewritten on this and the preceding page are executed by George Barrie Clark, solicitor, Lasswade, chairperson of the Private Rented Housing Committee at Lasswade, on 5 January 2016, before this witness, Valerie Elizabeth Jane Clark, Droman House, 5 School Brae, Lasswade, Midlothian.

V Clark _____ witness

— G Clark _____ chairman



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

prhp Ref: PRHP/RP/15/0263

Re : Property at 1 Leslie Road, Aberdeen AB24 4HU ("the Property")

The Parties:-

Steven Smith, 1 Leslie Road, Aberdeen AB24 4HU ("the Tenant") and

Peter Mearns, sometime 6a St Swithin Street, Aberdeen, now 130 Hamilton Place, Aberdeen AB15 5BB ("the Landlord")

Decision

The Committee, having made such enquiries as it saw fit for the purposes of determining whether the Landlord has complied with the duty imposed by Section 14 (1)(b) in relation to the house concerned, and taking account of the evidence led on behalf of the Tenant at the hearing, determined that the Landlord had failed to comply with the duty imposed by Section 14 (1)(b) of the Act.

Background

1. By application dated 18 September 2015, received on 29 September 2015, the Tenant applied to the Private Rented Housing Panel for a determination of whether the Landlord 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 Landlord had failed to comply with his duty to ensure that the house meets the repairing standard and in particular that the Landlord had failed to ensure 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,
 - (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,
 - (e) any furnishings provided by the Landlord under the tenancy are capable of being used for the purpose for which they are designed, and
 - (f) the house has satisfactory provision for detecting fires and for giving warning in the event of a fire or suspected fire.

3. By letter dated 10 November 2015 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 Landlord and the Tenant.
5. Following service of the Notice of Referral the Tenant (by letter dated 25 November 2015, submitted on his behalf by Shelter Scotland), made written representations to the Committee. The Landlord (by letter dated received on 8 December 2015), made written representations to the Committee.
6. The Private Rented Housing Committee inspected the Property on the morning of 5 January 2016. The Tenant's mother, Kathleen Luke and Hamish Mackenzie, Private Rented sector Adviser with Shelter Scotland, represented the Tenant at the inspection and the subsequent hearing. The Landlord was not present or represented at the inspection.
7. A file of photographs, taken at the inspection, is attached to and forms part of this Statement of Decision.
8. Following the inspection of the Property the Private Rented Housing Committee held a hearing at Credo Centre, 14-20 John Street, Aberdeen AB25 1BT and heard from Kathleen Luke and Hamish Mackenzie on behalf of the Tenant. The Landlord was not present or represented at the hearing.
9. The Committee comprised George Clark (Chair) and Mike Links (surveyor member). In attendance as an observer was Ruth O'Hare.
10. The Tenant, in his written submissions, and in further written representations dated 25 November 2015, made on the Tenant's behalf by Shelter Scotland, stated as follows:-
 - When the Tenant had moved in to the Property, the Landlord had told him he could use the washhouse and had given him a key for it. Later, however, the Landlord had changed the lock and had not given him a key for the new lock. The Tenant was, therefore, being denied access to the washhouse facility. The Landlord had stated that he would create a separate utility area for the Property for the Tenant's exclusive use, but he had failed to do so.
 - The Landlord had replaced the cooker after the Tenant had accidentally broken the glass door, on or about 14 October 2014, but, on 16 September 2015, the replacement cooker had caused a fire. The Fire Brigade had been called and they had advised the Tenant that the Landlord had failed in his duty to install smoke detectors in the Property. They had put up two battery-operated smoke detectors as a temporary measure. The Tenant had reported the incident to the Landlord, but the cooker had not been replaced and the Landlord had not then installed mains-wired smoke detectors in the Property. The cooker was unusable following the fire.
 - When he had moved in to the Property, the landlord had promised to replace the cracked double glazed window unit in the living room/kitchen, but this work had not been done, although the insecure window in the bedroom had been replaced.
 - On 27 July 2013, the Tenant had advised the Landlord that there was a leak in the lobby/front door area, which had resulted in mould growth. The Landlord had not attended to the issue.
 - There were holes in the back door of the Property. This was the only means of access to the Property available to the Tenant, as the Landlord had not provided him with a key to the front door.
 - On 25 July 2013, the Tenant had complained to the Landlord about a leak from the bathroom of the flat above, into the bedroom of the Property. When the Tenant had moved in to the Property, the Landlord had told him that a leak from the flat above had been completely fixed. On 2 August, the tenant had e-mailed

the Landlord to say that it appeared to be drying out and the damp patch was disappearing, but on 26 August, he had sent a further e-mail to say the problem had returned. The Landlord had replied to say that he was intending stripping out the bath upstairs and building a new shower. The Landlord had ignored subsequent phone calls telling him that the problem was getting worse, with the Tenant having to use buckets to collect the water that was coming through the bedroom ceiling. Eventually, the Landlord had visited the Property on 26 October, but he had not agreed with the Tenant that action was required. The ceiling had collapsed on the following day.

- The Tenant had not been given a key to the main entrance door of the Property.
- The representations made on the Tenant's behalf by Shelter Scotland, repeated many of the points included in the Tenant's written submission, but added that the Property was not wind and water tight, the windows and door let in draughts and in periods of heavy rain, allowed water into the Property. After the bedroom ceiling collapsed, the Landlord had plastered over the affected area, but the Tenant did not believe that the structural problem to the ceiling had been fixed, as there were still cracks in the area which had been replastered. There was no hot water in the Property and the Tenant had been advised by Scottish Hydro Electric that the central heating system was very expensive to run, using approximately £150 worth of gas per month. There were many instances of damp in the Property, especially in the lobby area and there were patches of mould present in the Property. The Tenant had had no cooking facility since September 2015 and had no facility for washing clothes, as he had been denied access to the shared washing machine in the external outbuilding. The Landlord had done nothing to remedy the situation. There were no smoke alarms in the Property until September 2015, when the Fire Brigade installed battery-operated devices, following the incident with the cooker.
- At the inspection, the Tenant's mother commented that there were problems with the drains at the Property, resulting in a smell of urine in the bathroom. This matter was not, however, included in the Tenant's application and could not be considered by the Committee.

11. The Landlord, in written submissions received on 8 December 2015, stated as follows:-

- The Tenant had a history of verbal and online abuse towards the Landlord and his tradesmen. At the time the Tenant had moved in to the Property, there had been a shared utility room arrangement with the tenants of the flat above, but the Landlord had made arrangements to transfer the Tenant's utility facilities to a shed adjoining the Property. The first requirement was the installation of an electrical cable from the Property to the new utility room and, during that operation, the Landlord and his workmen had been verbally abused by the Tenant. Since then, the Landlord's workforce had refused to attend the Property, resulting in "an inability to provide the normal level of maintenance cover which myself and my team provide elsewhere".
- The Landlord added that he owned 14 flats and houses around the city and that these were kept to a high standard. "Only the aggressive and obstructive behaviour of Mr Smith has prevented us from maintaining his flat to the same standard".
- The Landlord then referred to the unilateral decision by the Tenant to drop his rent from the initial £520 per month to £420 per month. More recently he had dropped it again to £400 per month. The Landlord stated that he had tolerated this in view of the lack of maintenance cover provided.
- In relation to the recent incident with the cooker, the Landlord had been informed via a very aggressive e-mail of an "incident". The Landlord stated that he provided smoke detectors in all of his flats and the deficiency here was solely due to the maintenance stand-off which he had already mentioned.
- The Landlord concluded by stating that his work team had already drawn up plans to upgrade the Property after the Tenant's departure, but his workmen were unwilling to commence this work while the Tenant was still in residence.

Summary of the issues

12. The issues to be determined were whether the Property met the repairing standard as laid down in Section 13 of the Act and whether the Landlord had complied with the duties imposed on landlords by Section 14(1)(b) of the Act.

Findings of fact

13. The Committee finds the following facts to be established:-
- The tenancy is a Short Assured Tenancy which commenced on 4 May 2013.
 - The Property comprises a one-bedroomed flatted dwellinghouse in a corner tenement of flats with a ground floor shop. The Property has two entrance doors, the main door being accessed by a stair leading from street level to the storey above the shop, and the rear door, which, due to the sloping nature of the street outside, provides entry from the ground floor at the rear of the building.
 - There is an external storeroom adjacent to the Property which houses the central heating boiler. It is not at present set out as a utility room. There is a separate outbuilding, to which the Tenant does not have a key.
 - The double glazed window unit of the living room/kitchen of the Property is cracked and its seal has failed.
 - The cooker is unusable, having been damaged in a fire.
 - The Sadia hot water geyser, which is the only source of hot water to the kitchen area, is not producing hot water.
 - There is evidence of dampness at the base of the stairs adjacent to the street-level entrance door leading to the main entrance door of the Property.
 - The street-level entrance door is locked and the Tenant does not have a key to open it.
 - The glazing in the glass panel of the main entrance door to the Property at the top of the staircase leading from the street-level entrance door is partially missing, with the gap covered by cardboard. The fanlight above that door has a section of glass missing.
 - The plasterwork in the Property is unsightly in places.
 - A section of skirting board in the living room/kitchen is detached.
 - There are no mains-wired smoke detectors in the Property. There are two battery-operated smoke detectors.
 - There is no heat detector in the kitchen area of the Property.
 - There is no carbon monoxide detector in the Property.
 - Plaster repairs have been carried out to the ceiling of the bedroom of the Property. There is no visible evidence of ongoing water ingress in the repaired area.
 - The double glazed window in the bedroom has been recently installed.

Reasons for the decision

14. The parties agree that the storeroom adjacent to the Property was to be converted by the Landlord in order to provide the Tenant with a separate utility room. This work has not, however, been done and the Tenant has been denied access to the separate outbuilding which, at the commencement of the tenancy, he was authorised to use. This may be a breach by the Landlord of the terms of the lease, but it does not constitute a failure to meet the repairing standard. In the view of the Committee, the crack in the double glazed window unit in the living room/kitchen constitutes a potential safety hazard, as does the missing glazing in the main entrance door, in addition to causing the Property not to be wind and water tight. Accordingly, it does not meet the repairing standard. There is dampness at the bottom of the stair, which was confirmed by readings taken by a damp-meter at the inspection. It is likely to be penetrating dampness, meaning the Property is

not wind and water tight, so does not meet the repairing standard. The Committee is concerned about the Tenant's submission about the cost of heating the Property and the Committee has not seen a current Gas Safety Certificate or a report confirming that the central heating system is in proper working order. The cooker is manifestly unsafe and cannot be used. It is an appliance that was provided by the Landlord and is not in proper working order, so it does not meet the repairing standard. The fact that a fire occurred causes the Committee to question whether the electrical installation in the Property is in proper working order. The Sadia hot water geyser, which is the only means of providing hot water to the kitchen area is not in proper working order, so does not meet the repairing standard. The Committee is of the view that the plasterwork, whilst defective and unsightly in places, is not in such a condition as to justify being the subject of a Repairing Standard Enforcement Order. The missing section of skirting board should be replaced. The Property does not have satisfactory provision for detecting fires and for giving warning in the event of fire or suspected fire, so does not meet the repairing standard.

15. In his written submissions, the Landlord made several references to verbal and on-line abuse by the Tenant having been the cause of the Landlord's being unable to carry out maintenance and repairs to the Property. The Landlord was not present or represented at the hearing, so no evidence was presented to the Committee in support of the Landlord's assertions. The Committee did, however, have with its papers copies of a large number of e-mails sent by the Tenant to the Landlord and, whilst the language used by the Tenant could in some instances be regarded as intemperate, the Committee was satisfied that it did not amount to on-line abuse. Rather, it reflected the frustration and growing impatience of the Tenant that the Landlord was not dealing with the Tenant's complaints. There was no indication in the Landlord's e-mailed responses that he was concerned by the language used by the Tenant.

Decision

16. The Committee accordingly determined that the Landlord had failed to comply with the duty imposed by Section 14 (1)(b) of the Act.
17. The Committee proceeded to make a Repairing Standard Enforcement Order as required by section 24(1).
18. The decision of the Committee was unanimous.

Right of Appeal

19. **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 that decision.**

Effect of section 63

20. 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
Chairperson

G Clark

..... Date 5 January 2016

1 Leslie Road, Aberdeen AB24 4HU

Photograph Schedule - 5th January 2016



Leslie Road elevation



Clifton Road elevation



Cracked window-LR/Kit



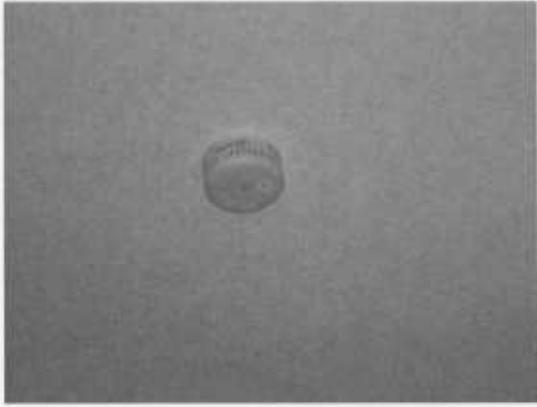
Oven



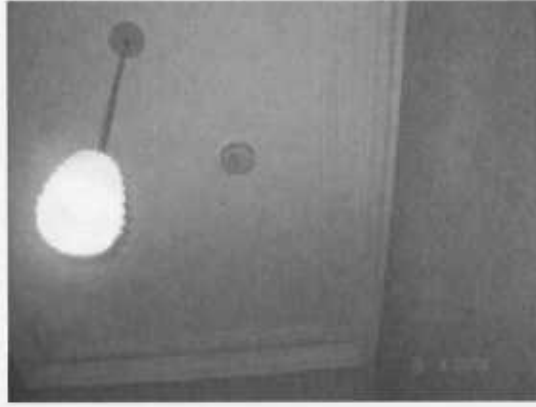
Water heater -Kit sink



Skirting Board—LR/Kit



Smoke detector – LR



Smoke detector – Hall



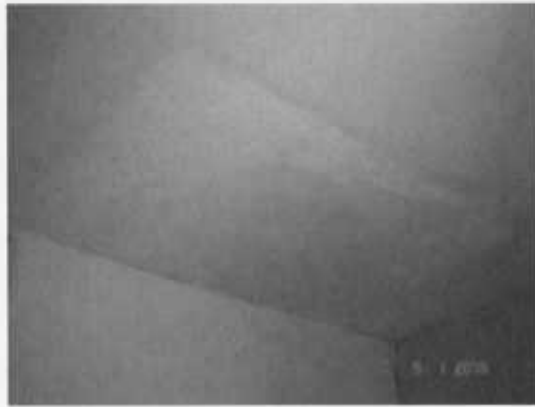
Stain – LR ceiling



Defective plaster-rear door



Plaster – Hall/Shower Rm



Plaster repair-Bedrm ceiling



Toilet



Broken glass – Hall door



Mould at Hall door frame



Main door/stair



Damp readings adjacent to main door