



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

prhp Ref: PRHP/DD11/3/11

Re: Property at 3 Hill Terrace, Arbroath, Angus, DD11 1AH ("the Property")

### The Parties:-

MISS ELINOR JAMIESON formerly residing at 3 Hill Terrace, Arbroath, Angus, DD11 1AH ("the Tenant")

EWAN GRANT DAVIES residing at 5 Esk Gardens, Carnoustie, Angus, DD7 6HG ("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 by both the Landlord and the Tenants 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 29<sup>th</sup> December 2010 the Tenants 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 Tenants stated that the Tenants 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 Property is wind and watertight and in all other respects reasonably fit for human habitation;
  - (b) 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 27<sup>th</sup> January 2011 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 Tenants.
5. Following service of the Notice of Referral the Tenants made no further written representation to the Committee other than their original application dated 29<sup>th</sup> December 2010. The Landlord made no written representations to the Committee.
6. The Private Rented Housing Committee inspected the Property on the morning of 18<sup>th</sup> March 2011. The Committee comprised Mr E K Miller, Chairman and Legal Member; Mr D Godfrey, Surveyor Member; and Mr A McKay, Housing Member accompanied by the Clerk, Mr Shea. The Tenant was not present having vacated the Property in the interim.

The Landlord was not initially present but did appear to give access after a phone call from the Clerk.

7. Following the inspection of the Property the Private Rented Housing Committee had intended to hold a Hearing at Arbroath Community Centre and attended at these premises. The Tenant did not appear at the Hearing. The Landlord had indicated at the inspection that he did not intend to appear at the Hearing.
8. At the Hearing the Committee considered the Tenant's written application to the Committee, comments from the Landlord during the inspection and from the visual inspection of the Property carried out by the Committee.

One preliminary matter had arisen during the course of the inspection. The Landlord, upon arrival, had indicated that he was not the Landlord and that the Property was owned by a Mr Roy McGregor of 4 Paradise Cottage, Woodville, Arbroath. The Chairman pointed out to the Landlord that he was still the owner of the Property and therefore the Landlord, on the basis that a print from Registers Direct showed that he still owned it. The Landlord after some discussion admitted that he still did own the Property but had received funds from Mr McGregor in relation to it several years ago and that they were effectively co-owners/co-investors. The Committee were satisfied that, in legal terms the sole owner remained Mr Davies as per the extract received from the Registers of Scotland notwithstanding any private arrangement between Mr Davies and Mr McGregor to the contrary.

#### **Summary of the issues**

9. The issues to be determined are:-
  - a. Whether works are required to the shower/wet room flooring to prevent flooding and damp penetration;
  - b. whether repair works were required to the kitchen cupboards;
  - c. whether works are required to the front windows to allow them to be opened and shut properly and generally compliant with the repairing standard;
  - d. whether a Gas Safety Certificate was available;
  - e. whether the front door was presently wind and watertight or whether it required repair;
  - f. whether the oven unit was properly fixed to its surrounding housing.

#### **Reasons for the decision**

10. The Committee based its decision primarily on the evidence obtained during the course of the inspection of the Property.

The Committee inspected the wet room. It was apparent that there had been a water penetration from the shower down behind some of the wall tiles of the shower and this had caused some damp penetration through to the bedroom as well. The Landlord would therefore require to repair or replace the tiles sufficient to stop damp penetration occurring. The Tenant had complained of excessive flooding within the shower room. During the course of the inspection the Committee had had the Landlord run the shower. It was apparent that after a minute or two the water ran away from the drain in the floor within the wet room and pooled around the toilet. The Committee were of the view that whilst it was reasonable to expect a certain amount of water to spread within a wet room the level of pooling around the toilet was above what could be reasonably be expected. It was clear that the fall of the floor was away from the drain adjacent to the shower.

Subsequent to the Hearing and after undertaking investigation it was apparent from all wet room manufacturers recommendations that there should be a fall towards the drain within a wet room. Accordingly the Committee were satisfied that remedial works would require to be undertaken to create a fall towards the drain and to minimise the pooling of water around the sink and toilet within the wet room.

The Committee inspected the kitchen cupboard. It was apparent that this had been fixed and there did not appear to be any issue with this. The Committee were satisfied this met the repairing standard.

The Committee noted that the front facing window in the bedroom was painted shut. There was also a significant level of rot within the frame. The front facing lounge window, whilst capable of being open and closed properly was also in poor condition and would require remedial works. The Committee were of the view that the Landlord would need to allow the bedroom window to open and close smoothly. The Landlord would also require to carry out works to both lounge and bedroom windows to repair any rot damaged areas and to repaint the windows.

The Landlord advised during the course of the inspection that a Gas Safety Certificate was available. The Committee therefore required the Landlord to produce to them a current clear Gas Safety Certificate for the Property.

The Committee inspected the front door. Whilst it was not in the best of condition it was nonetheless wind and watertight and therefore met the repairing standard.

The Committee inspected the oven unit. There did not appear to be any difficulty with this and the Committee were satisfied this met the repairing standard also.

#### **Decision**

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

#### **Right of Appeal**

14. 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**

15. 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

**E Miller**

Date..... 5/4/2011 .....



## Repairing Standard Enforcement Order

Ordered by the Private Rented Housing Committee

**prhp Ref:** PRHP/DD11/3/11

**Re:** Property at 3 Hill Terrace, Arbroath, Angus, DD11 1AH ("the Property")

**Title No:** ALL and WHOLE those subjects being the eastmost ground floor flatted dwellinghouse forming part of 3, 4 and 5 Hill Terrace, Arbroath and being the subjects registered in the Land Register of Scotland under Title Number ANG45832

**The Parties:-**

**EWAN GRANT DAVIES** residing at 5 Esk Gardens, Carnoustie, Angus, DD7 6HG ("the Landlord")

**MISS ELINOR JAMIESON** formerly residing at 3 Hill Terrace, Arbroath, Angus, DD11 1AH ("the Tenant")

**The Parties:-**

### NOTICE TO EWAN GRANT DAVIES ("the Landlord")

Whereas in terms of their decision dated 5th April 2011, 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 the property is:-

- (a) The Property is wind and watertight and in all other respects reasonably fit for human habitation;
- (b) 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 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:-

- (a) To repair or replace the wall tiles within the wet room to ensure no further water leakage and damp penetration to the bedroom;
- (b) To carry out such works to the wet room floor as are necessary to ensure that there is a fall towards the drain and that the pooling of water within the wet room is restricted;
- (c) To produce a current and clear Gas Safety Certificate over the Property and to exhibit this to the Committee;
- (d) To carry out such works as are necessary to the front bedroom window to allow it to be capable of being opened and shut smoothly;
- (e) To carry out repair works to the front bedroom and lounge windows to repair the rot damaged areas and to repaint the windows after this has been done.

The Private Rented Housing Committee order that the works specified in this Order must be carried out and completed within the period of 28 days 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 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 5th April 2011 before this witness:-

**L Johnston** <sub>witness</sub>

  
Lindsay Johnston  
Secretary  
Thorntons Law LLP  
Whitehall House  
33 Yeaman Shore  
Dundee  
DD1 4BJ

**E Miller** <sub>Chairman</sub>