



Repairing Standard Enforcement Order

Ordered by the Private Rented Housing Committee

Property at 71 Garthland Drive, Dennistoun, Glasgow G31 2RF ("the house")

The Parties:-

Mr. William Fisher, 71 Garthland Drive, Dennistoun, Glasgow G31 2RF ("the Tenant")

Mr. James McKeever, Rampark, Jenkinstown, Dundalk, Country Louth, Ireland ("the Landlord")

Reference PRHP/G31/37/11

NOTICE TO Mr. James McKeever ("the Landlord")

Whereas in terms of their decision dated 21 May 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 house meets the repairing standard in that:-

(1) The installations in the house for the supply of water, gas and electricity and for the sanitation, space heating and heating water 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:-

to produce an up to date Periodic Inspection Report for the house to Private Rented Housing Panel from a qualified electrician to confirm that the installation for the supply of electricity is in a reasonable state of repair and in proper working order, and to carry out any work identified as necessary within that Report to ensure that the house meets the foregoing repairing standard ("the work").

The Private Rented Housing Committee order that the work 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 typewritten on this and the preceding page are signed by Aileen Margaret Devanny, Chairperson of the Private Rented Housing Committee, at Glasgow on Twenty Fifth day of May, Two Thousand and Eleven in the presence of the undernoted witness:-

WITNESS. S James

SARA JAMES

Panel Secretary

1140 West Campbell St. Glasgow

A Devanny



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 71 Garthland Drive, Dennistoun, Glasgow G31 2RF ("the house")

The Parties:-

Mr. William Fisher, 71 Garthland Drive, Dennistoun, Glasgow G31 2RF ("the Tenant")

Mr. James McKeever, Rampark, Jenkinstown, Dundalk, Country Louth, Ireland ("the Landlord")

Reference PRHP/G31/37/11

DECISION

The Committee, having made such enquiries as is fit for the purpose 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 presented and the written representations, determined that the Landlord had failed to comply with the duty imposed by Section 14(1) (b) of the Housing (Scotland) Act 2006 (hereinafter referred to as "the Act")

Background

1. By application dated 9 January 2011 and received on 21 February 2011 the Tenant applied to the Private Rented Housing Panel (hereinafter referred to as "PRHP") for a determination of whether the Landlord had failed to comply with the duties imposed by Section 14(1) (b) of the Act.

2. The application by the Tenant 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 Sections 13(1) (a), and (c) of the Act which state that " (a) the house is wind and watertight and in all other respects reasonably fit for human habitation; and (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". The Tenant's application related to complaints of a defective electrical installation and electrical faults with the lights which regularly tripped the circuit breaker; the windows not being wind and watertight; repairs needed to the rear door to the close; and the gas heating and hot water systems not working properly. The Tenant submitted to PRHP a copy of the Lease with a copy of the Form AT5, and copy letter dated 9 February 2011 which he had sent to the Landlord with notification of the required repairs. Said letter of 9 February was sent to the Landlord by recorded delivery post.

3. By letter dated 9 March 2011, PRHP gave intimation that the President of the PRHP had made a decision to refer the application under Section 23(1) of the Act to a Private Rented Housing Committee.

The Committee comprised the following members:

Mrs. Aileen Devanny, Legal Member
Mr. Alan English, Surveyor Member
Mr. Chris Harvey, Housing Member

4. The Private Rented Housing Committee served Notice of Referral under and in terms of Schedule 2 Paragraph 1 of the Act upon the Landlord and the Tenant. Following service of the Notice of Referral the Landlord's agent indicated that she wished to attend a hearing before the Committee. The Landlord's agent submitted written representations along with correspondence she wished to refer to. The Tenant did not submit any further representations after the Notice of Referral. The Landlord's agent in written representations indicated that on each occasion that the Tenant had intimated a complaint, a workman had been sent by the Landlord to resolve the problem and she referred to various invoices for works carried out to the property.

5. The Private Rented Housing Committee inspected the house on the morning of 13 May 2011. Present at the inspection was the Tenant and Mrs. Caroline Fisher, the Landlord's agent, Ms. Heather Mortimer, Ms. Helen McGuire from the letting agents, and Mr. Michael McGinnis, a tradesman who had carried out works at the property for the Landlord.

6. Following the said inspection the Private Rented Housing Committee held a hearing at the offices of PRHP, 140 West Campbell Street, Glasgow.

Submissions at the Hearing

7. The Committee considered the application with the accompanying correspondence from the Tenant and the written evidence submitted by the Landlord's agent. The Committee heard evidence and representations from the said Ms. Heather Mortimer; Ms. Helen McGuire; Mr. Michael McGinnis; the Tenant and Mrs. Caroline Fisher.

7.1 The Tenant indicated that the gas heating and hot water systems had been repaired and were at that time in proper working order and this complaint need not be considered by the Committee. He indicated that he felt the light bulbs were blowing repeatedly, perhaps 2/3 times a week, and tripping the circuit breaker and the fuse box was warm to the touch at these times, all of which indicated a defect in the electrics; he complained of draughts from the windows and he stated that water stains on the window ledges and the curtains moving were indicative of the windows not being wind and watertight; and he complained that the rear timber door to the close was in need of repair. The Tenant complained of high heating bills which he felt were consistent with the property not being wind and watertight.

7.2 The Landlord's agent and witnesses for the Landlord acknowledged that some stone mastic repairs were required around the external windows but that these repairs would not lead to draughts at the windows or water ingress; the windows closed tight shut and were wind and watertight although they conceded that some rubber seals were slightly perished at points; the water stains on the window ledges were they felt caused by condensation; the electrics and the fuse box had been examined but no faults could be found; and the timber door was the original door and of an acceptable standard although the Landlord's agent did offer to fit a draught excluder if requested by the Tenant. The Landlord's agent indicated that she had recently taken over management of the property and could not confirm when the last Periodic Inspection Report of the electrical installation had been carried out by a qualified electrician. The Landlord's agent concluded by stating that any repairs required by the Committee would be carried out.

Once evidence had been given, and representations made on the application, the Committee adjourned to consider the evidence and representations, and to make their determination.

Summary of the issues

8. 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 had complied with the duty imposed by Section 14(1) (b).

Findings in Fact

9. The Committee made the following findings in fact:-

9.1. The Tenant entered into a lease with the Landlord for the rent of the house on 30 September 2010.

9.2. The Tenant notified the Landlord of the required works to the house and the required works were specified in a letter to the Landlord dated 9 February 2011.

9.3. The house is a ground floor four bed-roomed flat in a sandstone tenement built around 1900. The Committee confined their inspection to the items specified in the application and the alleged breaches of repairing standard.

The inspection revealed: - that the single glazed timber windows were in reasonable condition and were of a tight fit when closed and there was no evidence of the windows not being wind and watertight. The water-stains on the window ledges are most likely due to condensation and not water ingress. Stone mastic repairs are required around the external windows but these repairs will not have an impact on the Tenant's use and enjoyment of the flat or whether the property is wind and watertight. These stone mastic repairs are not the subject of a complaint by the Tenant in the application. The original timber rear door is in reasonable condition and proper working order having regard to the age and character of the property. The Committee carried out a visual examination of the fuse box and the electrical fittings, and from that visual inspection observed two light bulbs which were not working in the bathroom. This was the only evidence seen of electrical faults. However, the faults narrated by the Tenant may be indicative of a problem with the electrical installation. The Landlord's agent was unable to provide re-assurance about a recent electrical check by a qualified electrician and was unable to produce a Periodic Inspection Report.

Reasons for the Decision

10. In considering the repairing standard issue the Committee carried out an inspection of the house and in particular closely examined the specific defects highlighted by the Tenant in the application. In addition the Committee carefully considered the written documentation submitted and oral evidence at the hearing. The Committee considered the representations of the Tenant and the Landlord's agent in relation to the repairing standard.

Inspection of the house indicated that the windows in the flat are wind and watertight and in a reasonable state of repair and proper working order; and rear door is in reasonable state of repair and proper working order having regard to the age and character of the house. The stone mastic repairs around the external windows are not the subject of complaint in the application and these repairs do not impact on whether the windows are wind and watertight and do not have an impact on the premises used

by the Tenant. Accordingly, the Committee cannot make an order for the stone mastic works.

However, the installation for the supply of electricity must in terms of Section 13(1) (c) of the Act be in a reasonable state of repair and in proper working order. The Committee did consider that the electrical installation may be faulty given the problems narrated by the Tenant and, accordingly, the electrical installation should be checked by a qualified electrician. The Landlord's agent could not say if a recent check of the installation had been undertaken by a qualified electrician and she was unable to produce a Periodic Inspection Report. The Committee would require production of such a Report to be satisfied that the electrical installation meets the repairing standard. The Committee considered that a period of 28 days from service of the Notice on the Landlord would be a reasonable period of time for an electrical inspection to be carried out by a qualified electrician and for submission of the Periodic Inspection Report to the Panel. If that Report identifies any works required to ensure compliance with Section 13(1) (c), then these works will require to be completed within the period of 28 days from service of the Notice on the Landlord.

Decision

11. 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.

12. The Committee proceeded to make a Repairing Standard Enforcement Order as required by Section 24(2), which Order is referred to for its terms.

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.

...
A Devanny
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Chairperson,
21 May 2011