



Repairing Standard Enforcement Order

Ordered by the Private Rented Housing Committee

prhp Ref: Prhp/G1/54/11

Re : Property at Flat 1/5, 145 Albion Street, Herald Building, Glasgow G1 1QT ("the house")

Title No: GLA195793

The Parties:-

Miss Michelle McGurn, Flat 1/5, 145 Albion Street, Herald Building, Glasgow G1 1QT ("The Tenant")

Front Door Investments Limited (also known as F D Investments Ltd) (in administration), c/o J.B. Cartwright and G.D. Frost, joint administrators, PricewaterhouseCoopers, L.L.P., Erskine House, 68 – 73 Queen Street, Edinburgh EH2 4NH (represented by their agents D.J. Alexander, 49A Bath Street, Glasgow G2 2DL) ("the Landlord")

NOTICE TO Front Door Investments Limited ("the Landlord")

Whereas in terms of their decision dated 18th July 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 :-

- (a) the house is not wind-tight in the living room by virtue of the gap between the floor and skirting board which runs below the window;
- (b) the bed and mattress being part of the furnishings provided by the Landlord under the tenancy are not capable of being used safely for their designed purposes;

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 carry out such works as are necessary in the living room of the house to seal the gap between the floor and the said skirting board to eliminate any draught ; and
- (b) to replace the divan double bed and mattress in the house with new items that can be used safely.

The Private Rented Housing Committee order that the works specified in this Order must be carried out and completed within the period of 21 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(s) are executed by David Bartos, Advocate, Parliament House, Parliament Square, Edinburgh EH1 1RF, Chairperson of the Private Rented Housing Committee at Edinburgh on 20 July 2011 before this witness:-

C Bartos witness

D Bartos chairperson

CLARE BARTOS name in full

21 WHITE DALES Address

EDINBURGH

EH10 7JQ

PBL Facilitator Occupation

Determination by Private Rented Housing Committee

Statement of Reasons for Decision of the Private Rented Housing Committee

(Hereinafter referred to as "the Committee")

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

Case Reference Number: Prhp G1/54/11

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Title No: GLA195793

The Parties:-

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Front Door Investments Limited (also known as F D Investments Ltd) (in administration),

c/o J.B. Cartwright and Graham.D. Frost, joint administrators,
PricewaterhouseCoopers, L.L.P., Erskine House, 68 – 73 Queen Street, Edinburgh EH2 4NH (represented by their agents D.J. Alexander, 49A Bath Street, Glasgow G2 2DL) ("the Landlord")

The Committee comprised:-

Mr David Bartos - Chairperson
Mr Michael Links - Surveyor member
Mrs Susan Brown - Housing member

Background:-

1. By application received on 7 March 2011, the Tenant applied to the Private Rented Housing Panel ("PRHP") for a determination that the landlord had failed to comply with the duty to ensure that the house met the repairing standard in section 13 of the Housing (Scotland) Act 2006. Her application was received on 7th March 2011. Her application named "Mark Taylor/F D Investments Ltd" as the landlord.
2. In her application the Tenant complained that the Landlord had failed to meet the repairing standard in that the flat was not wind and watertight and

in all other respects reasonably fit for human habitation (section 13 (1)(a) of the 2006 Act); the fixtures, fittings and appliances provided under the tenancy were not in a reasonable state of repair and in proper working order (section 13 (1)(d) of the 2006 Act); and the furnishings provided by the landlord under the tenancy were not capable of being used safely for the purpose for which they had been designed (section 13 (1) (e) of the 2006 Act). Her application related to the matters which she had raised in her earlier complaints in 2010 with the additional complaint that the living room was not wind-tight due to a draught coming from a gap between the skirting below the window and the floor boards.

3. The President of the Private Rented Housing Panel decided under section 23 of the 2006 Act to refer the application to a Private Rented Housing Committee. That decision was intimated to the Tenant and to Mr Taylor at "F D Investments Ltd" by letter of the Panel's Clerk dated 12th April 2011. The Committee comprised Mr David Bartos, Legal Member, Mr Michael Links, Surveyor Member, Mrs Susan Brown, Housing Member. The intimation to Mr Taylor included a copy of the Tenant's application to the Panel.
4. Following intimation of the notice of referral to the Committee, the Tenant intimated by means of a form dated 26th April 2011 that she did not wish to attend a hearing and that she did not wish to send in written representations. The "Landlord's Agent" intimated by means of a form dated 14th April 2011 that he did wish to attend a hearing but did not wish to send in written representations. An inspection of the flat and hearing at the offices of the Panel at 140 West Campbell Street, Glasgow was fixed for 21st June 2011 at 10 a.m. and 11 a.m. respectively. The date and times were intimated to the Tenant and to Mr Taylor at "F D Investments Ltd" by letter dated and sent on 25th May 2011.
5. By direction on its own initiative dated 13th June 2011 the Committee directed "F D Investments Limited" to address in writing to be received by no later than 12.00 hrs on 20th June 2011 whether they accepted that Front Door Investments Limited were and remain the proprietors of the flat in terms of the title number GLA195793 and whether F D Investments Ltd were acting as agents for the apparent proprietors at the time of the Short Assured Tenancy Agreement. In the same direction the Committee allowed the Tenant to make any observation or comment on these issues.
6. By e-mail of 17th June 2011 the Tenant informed the Panel and Committee that she had been informed that Front Door Investments Limited had been put into administration with Graham D Frost and J B Cartwright of PricewaterhouseCoopers LLP having been appointed as joint administrators. She enclosed a notice from one of the joint administrators that she had received confirming his appointment on 26th May 2011, noting that he "understood" that she had a lease with Front Door Investments Ltd, and informing her that he had appointed D J Alexander to manage the property on behalf of the joint administrators . She also enclosed a pro forma letter from D J Alexander dated 26th May 2011 addressed to tenants

in general of Front Door Investments Ltd intimating that they were the new managing agents and seeking payment of rent. No intimation of any change of agency had been given by either Mr Taylor, F D Investments Limited, Front Door Investments Ltd or D J Alexander. The Applicant's e-mail did not address in terms the direction of 13th June 2011. No response was received from or on behalf of F D Investments Ltd to the direction.

The Inspection

7. The Committee inspected the flat on 21st June 2011 at 10.00 a.m. The Tenant was present. There was no appearance by or on behalf of the Landlord. The inspection revealed that the flat is part of a modern flatted development in the Merchant City area of the centre of Glasgow built on the site of the former Glasgow Herald buildings. The weather at the time of the inspection was wet.

Summary of issues

8. The issues to be determined were :-
 - (1) whether the non-provision of curtains and any escape of heat through the window of the living room rendered the house not wind-tight and reasonably fit for human habitation;
 - (2) whether the house was not wind-tight due to gap between the floor boards and the skirting board which ran below the window in the living room;
 - (3) whether the mattress provided by the Landlord under the tenancy was capable of being used safely for the purpose for which it was designed;
 - (4) whether the bed provided by the Landlord under the tenancy was capable of being used safely for the purpose for which it was designed;
 - (5) the relationship between the owners of the house, Front Door Investments Ltd and the Landlord designed in the Tenant's application "F D Investments Ltd"

The Evidence

9. The evidence before the Committee consisted of:-
 - The application form together with the correspondence and photographs attached or enclosed with it
 - Copy tenancy agreement
 - Extract of title from the Land Register
 - Copies of correspondence between the parties and PRHP

The Hearing

10. At the conclusion of the inspection the Committee held a hearing within the offices of the PRHP in Glasgow. Neither Tenant, nor Landlord, nor any agent of the Landlord appeared at the hearing.
11. Following discussion after the hearing the Committee was minded to determine that the landlord had failed to comply with his duty under section 14 (1) (b) of the 2006 Act to ensure that the flat met the repairing standard during the course of the tenancy. In particular the Committee was minded to find that the failure had occurred in respect of the flat not being wind-tight by virtue of the gap between the floor and skirting board and both the bed and mattress not being capable of being used safely for their designed purposes. The Committee was therefore minded to make a repairing standard enforcement order to require the landlord to carry out such work as was necessary for the purpose of ensuring that the flat met the repairing standard in respect of those failures. The Committee was minded to find that there had been no breach of the repairing standard in respect of the non-provision of curtains and the escape of heat through the windows.
12. It appeared to the Committee that given the intervening administration of Front Door Investments Ltd and the apparent change of agency to D J Alexander, it was possible that Front Door Investments (or F D Investments) had not had a fair opportunity of addressing the issue concerning the apparent discrepancy between the name of the Landlord in the tenancy agreement and the name of the owner of the house at that time (affecting the validity of the tenancy) or of appearing at the hearing and making any other submission on the application. The Committee observed that in terms of regulation 5 (4) of The Private Rented Housing Panel (Applications and Determinations) (Scotland) Regulations 2007 a representative acting for a party who ceases to act must immediately notify the Committee of that fact and the name and address of the new representative. That was not done in this case.
13. In this situation the Committee exercised its discretion not to dispose of the application but to adjourn it sine die (without allocating a date) and to issue a direction with proposed findings in fact and reasons and an indication that they were minded to make a Repairing Standard Enforcement Order. The direction required Front Door Investments Limited (in administration), F D Investments Limited, Mark Taylor to indicate whether they wished to make any submissions in relation to among other matters the proposed determination in relation to the repairing standard and the discrepancy between F D Investments Ltd and Front Door Investments Ltd. These persons and the Tenant were also invited to request a further hearing. That direction was served on the Tenant, the administrators of Front Door Investments Ltd, D J Alexander, F.D. Investments Ltd and Mark Taylor on or about 30th June 2011.

14. The Committee received a letter from a management company F M Front Door Limited, reference MAT/LM dated 7th July 2011 which indicated that the house was owned by Front Door Investments Ltd who were also known as F D Investments Ltd and that Mark Taylor who was the contact at F M Front Door Ltd was no longer involved with the house. The Committee also received a letter from D. J. Alexander dated 5th July 2011 which confirmed that they had been instructed managing agents for the house by the administrators of Front Door Investments Ltd and requested information about outstanding maintenance issues which appeared to be needing to be attended to. It noted that the Direction and related paperwork had been passed to the administrators. No other response was received to the Direction of 30th June.
15. In the circumstances and in the light that no issue has been taken by the administrators or their agents with the making of the proposed determination and no hearing has been requested, the Committee decided to make their determination to avoid any further delay.

Findings of Fact

16. Having considered all the evidence the Committee found the following facts to be established:-
 - (a) At the time of inspection the Committee found that the window of the lounge or living room of the flat filled a large part of one of the sides of the room as shown on the two photographs submitted by the Tenant with her application. It comprises 9 square glass panels adjoining a skirting board on the floor and extending up the right side of the window aperture with 7 small rectangular glass panels extending from the skirting board up the left side of the window and forming the top part of the window. Each panel was double glazed. Two of the square panels are opening and have ventilation vents above them.
 - (b) There were no curtains or blinds in place. To either side of the window was an electric heater. On inspection of the glass panels they were found to be adequately sealed in all places. There was nothing in the window to indicate that it was defective in any way. There was nothing to indicate that the window could not perform its function properly, nor that it would allow any undue escape of heat. The use of curtains would assist with the retention of heat within the living room. None have been used by the Tenant
 - (c) From the left hand end of the skirting board which runs below the window, between the skirting board and the laminate floor board there is a gap. The gap is about 1 mm wide and extends for a distance of about 15 to 25 cm from the corner and left edge of the skirting board in the direction of the window. This can cause a draught in the living room.

- (d) The flat contained a double bed and mattress which had been supplied to the Applicant as part of the Agreement. The mattress was worn and at one point near the middle the springs were close to the surface of the mattress. They caused back problems for the Applicant. The bed was a divan bed. The fabric at the back of the bed was torn leaving a hole allowing sight into the frame. Inspection of the frame revealed a broken wooden slat which would support the mattress. The broken slat undermined the stability of the bed. Both bed and mattress were worn.
- (e) The Landlord was also known as F D Investments Limited. The Landlord is in administration. The Landlord's administrators and their agents take no objection to the Committee proceeding to make a determination of the application.

Reasons for Decision

17. The Committee considered whether the state of the window was such that the flat could not be described as wind and water tight and in all other respects reasonably fit for human habitation. There was nothing about the window that indicated that it was not wind and water tight. In order for a dwellinghouse to be reasonably fit for human habitation it must be fit to be used in safety and with reasonable comfort (**Summers v. Salford Corporation** [1942] A.C. 283, 289 per Lord Atkin). If a dwellinghouse is such that it requires the generation of an inordinate amount of heat to render it habitable, then it may be seen as not being fit to be used with reasonable comfort and so not reasonably fit for human habitation (**Fyfe v. Scottish Homes** 1995 S.C.L.R. 209, 212 per Sheriff G. Gordon).
18. On the basis of the inspection the Committee concluded that there was nothing to indicate that the flat suffered from poor insulation because of the windows. The user of the room could seek to install and use curtains to alleviate the loss of heat. In short the Committee concluded the flat, including its living room could be used with reasonable comfort by a person such as the Tenant. That being the case the flat, including the room was reasonably fit for human habitation and the repairing standard in section 13 (1) (a) of the 2006 Act has not been breached.
19. The Tenant's complaint was that loss of heat was being caused through her landlord not providing curtains. However under the Tenancy Agreement the Landlord is not obliged to provide curtains or blinds. There is no reason why the Tenant could not have sought to install curtains or blinds of her own and no reason to think that such installation and use can not deal with her complaint of heat loss.
20. The Committee considered whether the gap between the skirting board and the laminate flooring was such that the flat could not be described as wind and water tight. Whilst the gap was small one, the Committee on the basis of its inspection concluded that it did render the flat not wind tight

and that therefore there was in that respect a breach of the repairing standard in section 13 (1) (a) of the 2006 Act.

21. The Committee considered whether the bed and mattress breached the repairing standard in section 13 (1) (d) or (e) of the 2006 Act. Under section 13 (1) (d) the landlord requires to ensure that any fixtures, fittings, and appliances provided by him are in a reasonable state of repair and in proper working order. The Committee took the view that the bed and mattress were neither fixtures of the flat, fittings of the flat or appliances, applying the plain meaning of those words. Rather they fell within the description of "furnishings" which is used for the standard under section 13 (1) (e) of the 2006 Act.
22. That duty is to ensure that at all times during a tenancy any furnishings provided by the landlord under the tenancy are capable of being used safely for the purpose for which they are designed. With regard to the bed, the Committee concluded that the broken slat undermined the stability of the bed and any mattress resting on it. That in turn could cause collapse of the bed which could injure a user. In these circumstances the Committee concluded that the bed was not capable of being used safely for the purpose for which it was designed. With regard to the mattress the Committee on its inspection accepted that the mattress was in the condition described in its findings of fact. It saw no reason to doubt and accepted the complaint of the Tenant that springs in the mattress was causing her back problems. In these circumstances the Committee concluded that the mattress was not capable of being used safely for the purpose for which it was designed. For these reasons there was both in relation to the bed and the mattress a breach of the repairing standard in section 13 (1) (e) of the 2006 Act.
23. The Landlord has been aware of the breaches in relation to the bed and mattress since 2010 and in relation to the gap between the skirting and the floor since about 12th April 2011. No work to deal with any of the said breaches of repairing standard was carried out within a reasonable time of the Landlord being made aware that work was required to remedy said breaches.
24. In the light of the letter from F M Front Door Ltd which appeared to be from the former agent Mr Taylor the Committee concluded that the F D Investments Ltd was another name used by the Landlord and that the tenancy agreement was with the owner of the house namely Front Door Investments Ltd (the Landlord).

Decision

25. 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 in relation to issues (2), (3), and (4) in the respects set out in paragraphs 20 and 22 above but not otherwise.

- 26. The Committee proceeded to make a Repairing Standard Enforcement Order as required by section 24 (2). The decision of the Committee was unanimous.

Rights of Appeal

- 27. 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.
- 28. 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

- 29. 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.
- 30. 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.

D Bartos

Signed Date: 20 July 2011.....

David Bartos, Chairperson

Signature of Witness.. **C Bartos** .. Date.....

Name, address and occupation of the witness (please print):-

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PBL FACILITATOR (EDINBURGH UNIVERSITY)