



Determination by a 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

Re: - Property at 3 Baxter Court, Torry, Aberdeen AB11 8LG, being the property more particularly described as first floor flat 3 BAXTER COURT, TORRY, ABERDEEN, part of lands and estate of BALNAGASK, described in Disposition to Aberdeen Corporation, recorded in the general Register of Sasines on 23rd December 1949. ("the property")

The Parties:-

Mr Raymond and Mrs Thelma Jackson residing at 3 Baxter Court, Torry, Aberdeen AB11 8LG ("the tenants")

and

Mr John Enson Milne, represented by Thomson Properties, No 3 Summerhill Court, Lang Stracht Shopping Centre, Aberdeen AB15 6TW ("the landlord")

The Committee comprised:-

Ms I. R. Montgomery - Chairperson.
Mr A. Anderson - Surveyor member.
Ms L. Robertson - Housing member.

Decision:-

The Committee unanimously determined that the Landlords had failed to comply with the duty 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 21st August 2008 the tenant applied to the Private Rented Housing Panel (**prhp**) for a determination of whether the landlords had failed to comply with the duty imposed by Section 14(1)(b) of the 2006 Act.
2. The application stated 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 :-
 - the house is wind and watertight and in all other respects reasonably fit for human habitation (section 13(1)(a));
 - the structure and exterior of the house are in a reasonable state of repair and in proper working order (section 13(1)(b)); and
 - any fixtures, fittings and appliances provided by the landlord under the tenancy are in a reasonable state of repair and in proper working order (section 13(1)(d)).
3. The tenants produced evidence of notification of these defects to the landlord in the form of a copy letter sent care of his agent and proof of posting.
4. The President of the **prhp** decided to refer the application under Section 22(1) of the 2006 Act to a Private Rented Housing Committee ("a Committee").
5. On 18th September 2008 the Committee served Notice of Referral under and in terms of Schedule 2, paragraph 1 of the 2006 Act upon the Parties. In terms of paragraph 13 of the PRHP (Applications and Determinations) (Scotland) Regulations 2007, service of any formal communication upon the known agent of a party is deemed to be service upon that party.
6. The Committee inspected the property on the morning of 5th December 2008. Mrs Jackson was present during the inspection. The landlord was represented at the inspection by Mr R. Thomson of Thomson Properties.

The evidence

7. The evidence before the Committee consisted of:-
 - Application form;
 - Notification to landlord of issues of claimed disrepair;
 - Proof of postage relative to letter of notification;
 - Email from landlord's agent with photographs attached;
 - Letter from Thomson Properties dated 6th March 2008;
 - Written representations from the tenants dated 27th September 2008;

- Letter from Thomson Properties dated 29th August 2008;
- Letter from Thomson Properties dated 29th September 2008;
- Written representations from the landlord's agent dated 30th September 2008;
- Copies of correspondence relative to these proceedings;
- Extract of Title from the Sasine Register.

Summary of the issues

8. The issues complained of by the tenants in the application and correspondence before the Committee can be summarised as follows:-
- the property was damp;
 - the bath had splits in it and leaked;
 - the window in the bathroom required repair;
 - the doors required to be planed; and
 - the property had no central heating or double glazing.

The inspection

9. On the day of the inspection, the tenant confirmed that the problem with the bath had been sorted and the bathroom had been redecorated thereafter. She confirmed that this issue had been resolved to her satisfaction. The Committee accepted that this was so.
10. The Committee noted that there was evidence of damp within the property. The problem was most evident in relation to the kitchen windows which were black with mould and had condensation running down the frames and glass. There was a noticeable smell of damp in the kitchen, and damp was also evident in the bathroom despite that room having been redecorated as recently as October 2008. The tenant complained of a smell of damp in the clothes closet in the main bedroom, but the Committee members were unable to detect any such smell at the time of the inspection.
11. The Committee inspected the doors within the property and noted that they had shifted out of alignment with the door frames. Some doors did not open and shut freely, their movement impeded by the doorframe, while other doors had dropped resulting in gaps between the door and frame.

12. The window in the bathroom was stiff to open. The male surveyor member was able to open it with some difficulty. The shorter female member was unable to do so.
13. The property has neither gas central heating nor double glazing. It does have a system of storage heating.

The hearing

14. Mrs Jackson attended the hearing and gave oral evidence. She was represented by her employer, Mr John Moyer. Mr Moyer stated that he was an accountant by profession and was attending the hearing in order to assist Mrs Jackson to present her case effectively. The landlord was represented by Mr Richard Thomson and Ms Lesley Little, both of Thomson Properties.
15. Mrs Jackson stated that the damp problem in the flat was only a problem in the winter months when the weather got colder. She stated that the landlord's agents had provided her with a de-humidifier, but this had not solved the problem. She stated that she is aware of the need to heat and ventilate the property and does so as best she can. She explained that she takes her washing to work to reduce the condensation in the property. In relation to the wardrobe in the bedroom, she stated that there had been a leak which had been sorted and the problem with damp had improved. She acknowledged that there is no longer any black mould in the wardrobe, but complained that she was still aware of a bad smell. She stated that the problem with the bathroom window is also seasonal and gets worse in winter. She stated that the landlord's agent had arranged to have the doors planed and this had resolved the problem at the time. However, the doors had since shifted again and were causing problems again. Mrs Jackson acknowledged that the landlord's agents had made efforts to try to address the issues, but she did not consider that these efforts had been successful.
16. Mr Moyer submitted that the property was damp and cold and suffered from a lack of proper maintenance. He submitted that in general the condition of the property was not very good. He acknowledged that the rent charged for the property is very low, but argued that a low rent does not justify failing to keep the flat in proper order. He argued that the property did not meet the repairing standard in its current condition.
17. Mr Thomson stated that he had been under the impression that a number of the problems had been resolved and expressed his regret that this was not in fact the case. Ms Little added that she had not appreciated that the doors had deteriorated again to the extent that they have, and stated that she would have arranged for someone to come out to carry out further work had she appreciated the extent of the problem. Mr Thomson stated that work would be carried out again to plane the doors and try to fill the gaps. In relation to the windows, Mr Thomson acknowledged that metal framed windows always conduct the cold and advised that in 2005 enquiries had been made regarding the cost of replacing the windows. He stated that the bathroom had been redecorated and but

acknowledged that there is a general problem with damp in the flat. He acknowledged that the windows in the kitchen and bathroom do not meet the repairing standard in their present condition. He stated that the leak in the bedroom cupboard had been fixed. He stated that cavity wall insulation had been installed to try and address the problem of damp in the flat, but he acknowledged that the windows do not at present function correctly. He explained that the building has subsidence issues that have affected both the doors and the windows.

Findings of fact

18. Having considered all the evidence, the Committee finds the following facts to be established:-

- a) The windows are metal framed;
- b) The bathroom and kitchen windows are particularly badly affected by damp and are not wind tight;
- c) There is localised damp and black mould surrounding the kitchen windows;
- d) There is localised damp around the bathroom window and the wallpaper is beginning to come off the wall;
- e) There is evidence of subsidence within the property;
- f) The kitchen door sticks and does not open and close freely, and there are noticeable gaps at both top and bottom between the door and the door frame;
- g) The bedroom and bathroom doors both have clearly visible gaps between the door and the door frame;
- h) There was no evidence of continuing damp in the wardrobe on the day of the Committee's inspection.

Other issues of concern.

19. The Committee noted that the property appeared to be subject to subsidence. The Committee saw no evidence of distress in the actual door facings and so had no reason to suspect that there had been recent sudden movement. However, the fact that the doors had shifted again after remedial work was carried out as recently as 2007 suggests that there is a problem with subsidence in the building. The Committee did not require to carry out further investigation into the issue of subsidence in order to deal with the matters which were the subject of this application. However, the Committee considered that the issue of subsidence is a matter which should be monitored by the landlord in the interests of safety, and appropriate measures taken should these be considered necessary.

Reasons for the decision

20. There was a considerable degree of consensus in relation to the issues which form the basis of this application. The tenant agrees that the bath has been

replaced and the bathroom redecorated to her satisfaction. The landlord's agents agreed that the condition of the kitchen and bathroom windows do not currently meet the repairing standard, and that the condition of the windows is a major factor in the damp problem that adversely affects the property. The Committee considered that the tenant displayed an understanding of the need to adequately heat and ventilate the house, and that she was taking such steps to do so as could reasonably be expected of an occupier of this property. We considered that the problem of damp in the property was caused by the existence of metal framed windows. This type of window is well known for causing the type of damp problem the Committee observed in this property. The Committee considered that the problem was caused by the material from which they are made and that they cannot therefore be repaired to rectify the problem. The Committee recommends that all windows in the property be replaced with new windows of a non metal construction, but directs that the kitchen and bathroom windows **must** be so replaced. The extractor fan which is an integral part of the existing window should be reinstated or replaced in a suitable location in order to provide effective ventilation.

21. The kitchen, bedroom and bathroom doors of the property also do not meet the repairing standard. The kitchen door does not open and shut freely, and there are large visible gaps between door and frame of all three doors allowing wind to pass through, making the property cold and draughty. These defects require to be remedied.
22. The wardrobe/cupboard in the bedroom has been adequately repaired.
23. The repairing standard does not require that a property be fitted with gas central heating or double glazing if these features were not part of the subjects let to the tenant.
24. On the basis of the facts found and set out in paragraph 18 above the Committee reached the following conclusions:-
 - The Committee was satisfied that by virtue of these defects the condition of the house, and in particular the specified windows and doors, constituted a breach of section 13(1)(a) and 13(1)(b).
 - **The Committee determined that all these matters required to be attended to before the house could be said to meet the repairing standard.**
25. The Committee was satisfied that the existence of the issues of disrepair complained of had been brought to the attention of the landlord via his agent. The Committee considered that the landlord had been given ample time to carry out the necessary repairs but had failed to do so by the date of the inspection. The Committee accordingly determined that the landlord had failed to comply with the duty imposed by Section 14(1)(b) of the 2006 Act and proceeded to make a RSEO.
26. The decision of the Committee was unanimous.

Right 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 or the Committee which made the decision.

Effect of Section 63

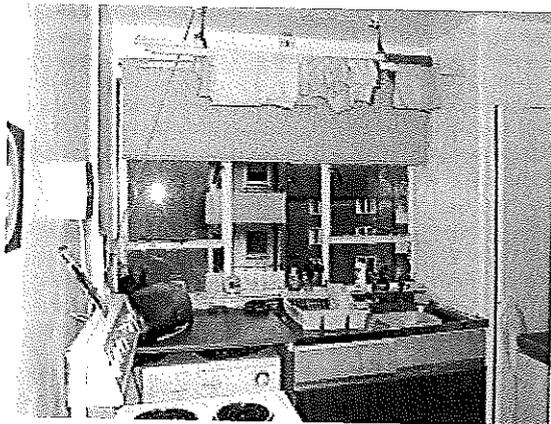
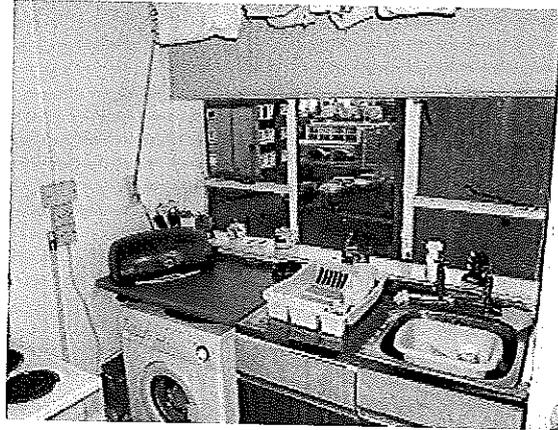
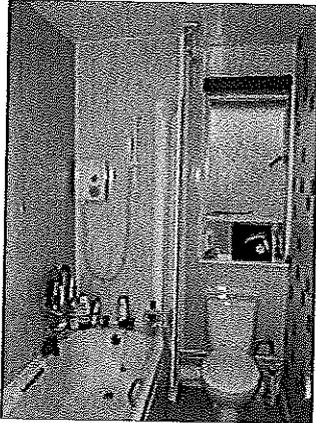
29. Where such an appeal is made, the effect of the decision and of any Order made in consequence of it is suspended until the appeal is abandoned or finally determined.
30. Where the appeal is abandoned or finally determined by confirming the decision, the decision and the Order made in consequence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

Signed. **I Montgomery** Date.....13th March 2009.....
Chairperson. 

PRHP reference number: - prhp/AB11/67/08

Appendix 1

Photographs taken during inspection of 3 Baxter Court, Torry, Aberdeen, AB11 8LG



Friday 13th March 2009
Certified to be a true copy of the
original.
I.R. [Signature]
Solicitor and Chairperson,
Private Rented Housing Committee.



Repairing Standard Enforcement Order

Ordered by the Private Rented Housing Committee

Re: - Property at 3 Baxter Court, Torry, Aberdeen AB11 8LG, being the property more particularly described as first floor flat 3 BAXTER COURT, TORRY, ABERDEEN, part of lands and estate of BALNAGASK, described in Disposition to Aberdeen Corporation, recorded in the general Register of Sasines on 23rd December 1949.

("the property")

The Parties:-

Mr Raymond and Mrs Thelma Jackson residing at 3 Baxter Court, Torry, Aberdeen AB11 8LG ("the tenants")

and

Mr John Enson Milne, represented by Thomson Properties, No 3 Summerhill Court, Lang Stracht Shopping Centre, Aberdeen AB15 6T ("the landlord")

Notice to John Enson Milne ("the landlord")

Whereas in terms of their decision dated 5th December 2008, the Private Rented Housing Committee determined that the landlords have failed to comply with the duty imposed by Section 14(1)(b) of the Housing (Scotland) Act 2006 and, in particular, that the landlords have failed to ensure that:-

- (a) the house is wind and water tight and in all other respects reasonably fit for human habitation; (section 13(1)(a))
- (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 (section 13(1)(b)).

The Private Rented Housing Committee now requires the landlord 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 any work in terms of this Order is made good. In particular, the Private Rented Housing Committee requires the landlords to carry out the works specified in the attached schedule of work, the terms of which form part of this Order.

The Private Rented Housing Committee orders that the works specified in this Order must be carried out and completed by Friday 24th April 2009 or within 21 days from the date of service of this Notice, whichever is the later.

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 and 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.

I Montgomery

Signed.....

.....Date..... 13th March 2009

(Mrs I. R. Montgomery, Chairperson)

Witnessed by: **S James**

.....Date..... 13/3/09

Notice to John Enson Milne ("the landlord")

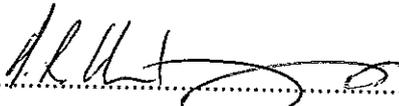
Schedule of work ordered by the Private Rented Housing Committee

The Private Rented Housing Committee requires the landlord to carry out the following works:-

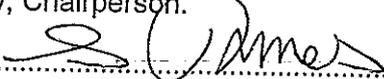
- Replace the kitchen window with a double-glazed window of non-metal construction;
- Replace the bathroom window with a double-glazed window of non-metal construction;
- Re-instate or replace the extractor fan above the kitchen window;
- Repair or replace all internal doors to allow each door to be opened and shut freely and take such remedial action as is necessary to seal up the existing gaps in the bedroom and bathroom doors.

Any damage caused by the carrying out of the work specified in this Order must be made good (Housing (Scotland) Act 2006 section 24(2)(b)).

A landlord who, without reasonable excuse, fails to comply with a Repairing Standard Enforcement Order commits an offence. A landlord who is guilty of an offence under this subsection is liable on summary conviction to a fine not exceeding level 3 on the standard scale. (Housing (Scotland) Act 2006 section 28(1) and (7)).

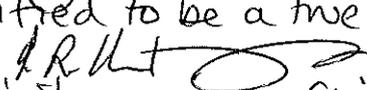
Signed..... Date..... 13th March 2009

Mrs I. R. Montgomery, Chairperson.

Signature of witness..... Date..... 13/3/09

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

SARA JAMES
3rd Floor, 140 West Campbell St, Glasgow, G2 4TZ
Civil servant

Friday 13th March 2009
Certified to be a true copy of the original

Solicitor and Chairperson
Private Rented Housing Committee.