



**Statement of decision of the Housing and Property Chamber
under Section 28 (1) of the Housing
(Scotland) Act 2006**

Chamber Ref: PRHP/RT/16/0122

Re: Property at Flat 1/3 (or 10C) 10 Lorimer Street, Dundee DD3 6RZ ("the Property/the house")

The Parties:-

Mark Tait, residing at 10C Lorimer Street, Dundee DD3 6RZ and, as a Third Party, Dundee City Council, Private Sector Services Department, Dundee House, 50 North Lindsay Street, Dundee DD1 1NB ("the Tenant")

Stobmuir Enterprises Limited, care of Mohamed El-Bakery, 15 Albert Street, Dundee DD4 6NS ("the Landlord")

**Tribunal Members: George Clark – Legal Chair Member
Harry Maclean – Ordinary Member**

Decision

The First-tier Tribunal for Scotland ("the Tribunal"), having made such enquiries as it saw fit for the purposes of determining whether the Landlord has complied with the Repairing Standard Enforcement Order in respect of the Property made on 23 June 2016, determined that the Landlord had failed to comply with the Order and that the failure to comply should be reported to the local authority and the police. The Tribunal also determined that a Rent Relief Order in respect of the Property should be made, the level of relief being 75%.

Background

1. By application received on 4 March 2016, the Tenant applied to the Private Rented Housing Panel (which, since 1 December 2016 has become the Housing and Property Chamber of the First-tier Tribunal for Scotland) 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.
3. By letter dated 12 May 2016, 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 inspected the Property on the afternoon of 23 June 2016. The Committee comprised George Clark (Chair) and Harry Maclean (surveyor member).

5. Following the inspection of the Property the Private Rented Housing Committee held a hearing at Caledonian House, Greenmarket, Dundee DD1 4QX and heard from both the Tenant and the Landlord.
6. Following the inspection and hearing, the Committee issued a Repairing Standard Enforcement Order ("the Order") in respect of the Property.
7. The Order required the Landlord:
 1. To instruct suitably qualified tradesmen to repair and reinstate the kitchen ceiling, to relocate the kitchen units and worktops for proper function, to make good the plaster and tiling on the kitchen walls and above the kitchen floor units and to redecorate the room when the works have been completed.
 2. To provide to the Committee an up to date Electrical Installation Condition Report covering the entire electrical installation in the Property, including lighting, sockets, heating and fire insulation.
 3. To make good the plaster and tiling in the bathroom.
 4. To carry out such repairs as are required to render the external door of the Property wind and water proof, by installing proper door stops and draught proofing strips.
 5. To provide such heating appliances as are required to ensure that there is adequate heating to the living area of the Property and
 6. To provide to the Committee written confirmation from Scottish Gas Networks that the gas supply to the Property has been properly and safely isolated.
8. The Private Rented Housing Committee ordered that the works specified in the Order must be carried out and completed within the period of 6 weeks from the date of service of Notice of the Order.
9. The surveyor member of the Committee reinspected the Property on the afternoon of 12 September 2016. The Tenant was present at the reinspection. The Landlord was not present or represented at the reinspection.
10. The surveyor member of the Committee reported that the kitchen ceiling had been plaster-boarded and reinstated to a satisfactory standard, but had not been decorated. The electrical installation was still in a poor state and no Electrical Installation Condition Report had been produced. The plaster and tiling in the bathroom had received attention and were now of an acceptable standard. No repairs had been carried out to the main entrance door to make it more draught-proof or secure. No alterations or additions had been made to the heating in the living area of the Property and no evidence had been provided of the disconnection of the gas supply to the Property. The bent gas up stand pipe was still in place next to the cooker.
11. A copy of the Reinspection Report was sent to the Parties, who were given an opportunity to comment in writing on its contents. Neither party made any written representations on the Reinspection Report.
12. The jurisdiction of the Private Rented Housing Panel transferred to the Housing and Property Chamber of the First-tier Tribunal for Scotland on 1 December 2016 and the Committee members became members of the Tribunal.
13. The Tribunal reinspected the Property on the morning of 13 January 2017. The Tenant was present at the reinspection. The Landlord was neither present nor represented at the reinspection.
14. Following the reinspection, the Tribunal held a hearing at Caledonian House, Greenmarket, Dundee DD1 4QX. The Tenant was present at the hearing. The Landlord was neither present nor represented at the hearing.

15. At the hearing, the Tenant told the Tribunal that the entrance door had twice been kicked in by youths in attempted housebreakings, but the Landlord had not responded despite having the Incident Number from Police Scotland. The only thing which had changed since the reinspection in September was that the Tenant had himself screwed two of the power points to the wall in the kitchen, as the exposed wiring represented an imminent danger. The Tenant advised that his monthly rent was £320, but that the Landlord had been prepared to accept the Tenant's £280 per month housing benefit, which is paid directly to the Landlord.

Summary of the issues

16. The issues to be determined were whether the Landlord had complied with the Repairing Standard Enforcement Order in respect of the Property and, if not, whether a Rent Relief Order should be made.

Findings of fact

17. The Tribunal finds the following facts to be established:-
- The Landlord has carried out some of the works required by the Order, but a number of significant items remain outstanding.
 - Some of the outstanding items, namely the electrical installation and absence of an Electrical Installation Condition Report, the absence of evidence that the gas supply to the Property has been properly and safely isolated and the failure to improve the heating in the living area, all have potential health and safety risks for the Tenant and the failure to carry out repairs to the main entrance door represents a security and safety risk for the Tenant
 - The Landlord did not attend the hearing or make any written representations to the Tribunal by way of offering a reasonable excuse for having failed to comply with the Order.
 - The contractual rent for the Property is £320 every 4 weeks.

Reasons for the decision

18. The Tribunal finds that significant works required by the Order have not been carried out and that the Landlord's failure to carry out these works continues to put at risk the Tenant's health, safety and security. The Landlord has carried out no work since receiving the report following the reinspection on 12 September 2016 and a Rent Relief Order is, therefore, appropriate. The amount of relief should be significant, reflecting the Tribunal's concern that the Landlord had made only minimal efforts to comply with the Order, despite having had a reinspection report in September 2016, and that he continues to expose the Tenant to risk in respect of the electrical installation, the gas supply and the lack of security caused by the failure to repair the main entrance door.

Decision

19. The Tribunal accordingly determined that the Landlord had failed to comply with the Repairing Standard Enforcement Order in respect of the Property and that this failure should be reported to the local authority and to the police. In terms of Section 28(1) of the Act, a landlord who, without reasonable excuse, fails to comply with a repairing standard enforcement order commits an offence.
20. The Tribunal proceeded to make a Rent Relief Order in respect of the property, the amount of the relief being 75% of the contractual rent of £320 per 4-week period.

21. The Tribunal observed that the problem, pointed out in the report following the reinspection of 12 September 2016, of water leaking from the soil and vent pipe which exits below the kitchen window of the Property appears to have been resolved. The Tenant advised the Tribunal and demonstrated at the reinspection on 15 January 2017 that the toilet cistern lid does not fit and the Tribunal recommends that the landlord attends to this matter.
22. The decision of the Tribunal was unanimous.

Right of Appeal

23. **A landlord or tenant aggrieved by the decision of the Tribunal may seek leave to appeal from the First-tier Tribunal on a point of law only within 30 days of the date the decision was sent to them.**

Effect of section 63

24. 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 **G Clark** Date 15 January 2017
Chairperson

Housing and Property Chamber First-tier Tribunal for Scotland



First-tier tribunal for Scotland (Housing and Property Chamber)

RENT RELIEF ORDER: Housing (Scotland) Act 2006 Section 27

Chamber Ref: PRHP/RT/16/0122

Re: Property at Flat 1/3 (or 10C) 10 Lorimer Street, Dundee DD3 6RZ ("the Property/the house")

The Parties:-

Mark Tait, residing at 10C Lorimer Street, Dundee DD3 6RZ and, as a Third Party, Dundee City Council, Private Sector Services Department, Dundee House, 50 North Lindsay Street, Dundee DD1 1NB ("the Tenant")

Stobmuir Enterprises Limited, care of Mohamed El-Bakery, 15 Albert Street, Dundee DD4 6NS ("the Landlord")

Tribunal Members; George Clark (Legal Chair) and Harry Maclean (Ordinary member)

NOTICE TO STOBMUIR ENTERPRISES LIMITED ("the Landlord")

Whereas in terms of its decision dated 15 January 2017, the First-tier Tribunal for Scotland (Housing and Property Chamber) ("the tribunal") determined in terms of Section 26(1) of the Housing (Scotland) Act 2006 (the "said Act") that the Landlord has failed to comply with the Repairing Standard Enforcement Order in relation to the house made by the tribunal.

The tribunal determined to make a Rent Relief Order in terms of Section 27 of the said Act reducing the rent payable under the tenancy for the house by an amount of 75% of the rent which would, but for the order, be payable. The rent reduction will take effect 28 days after the last date on which the decision to make the Rent Relief Order may be appealed under section 64 of the said Act.

A landlord, tenant or third party applicant aggrieved by the decision of the tribunal may seek permission to appeal from the First-tier Tribunal on a point of law only within 30 days of the date the decision was sent to them.

If a party seeks permission to appeal and this permission is refused, the decision will be treated as having effect from the day on which the refusal is made (unless the party then seeks permission from the Upper Tribunal to appeal the decision. In that

event, if permission is refused, the decision is treated as having effect from the day on which the Upper Tribunal refuses the permission).

If permission for an appeal against the decision of the tribunal is granted, then the effect of the decision and the Rent Relief Order is suspended until the appeal is abandoned or finally determined by the Upper Tribunal. In the event that the decision is upheld, then the decision will be treated as having effect from the day on which the appeal is abandoned or so determined. The Rent Relief Order will be effective 28 days from the date on which the appeal is abandoned or so determined.

If an application for permission to appeal is received, then the tribunal will notify you of this and the eventual outcome of that application and any subsequent appeal.

Signed **G Clark**

Date 15 January 2017

Chairperson