



Statement of decision of the Private Rented Housing Committee under Sections 26 and 27 of the Housing (Scotland) Act 2006

prhp Ref: PRHP/RP/13/0143

Re: Property at 2G Baldovan Terrace, Dundee, DD4 6ND ("the Property")

The Parties:-

AGNIESZKA BODAK residing at 2G Baldovan Terrace, Dundee, DD4 6ND ("the Tenant")

JOSEPH FRANCIS McGRATH and GRACE TERESA McGRATH residing at 62 Cabin Hill Gardens, Knock, Belfast ("the Landlords")

Background

1. On 12 May 2014, the Private Rented Housing Committee ("the Committee") issued a determination which decided that the Landlords had failed to comply with the duty imposed by Section 14(1) of the Housing (Scotland) Act 2006 ("the Act"). On the same date, the Committee issued a Repairing Standard Enforcement Order ("RSEO") in respect of the Property. The RSEO made by the Committee required the Landlords:-
 - (a) To obtain a structural engineer's report over the Property to ascertain whether any movement within the Property is historic or ongoing. The Landlords require to carry out any works recommended by the structural engineer's report to ensure that the structural integrity of the building is sound. The Landlords are required to exhibit the structural engineer's report to the Committee as soon as obtained.
 - (b) To identify and repair all sources of water ingress to the Property. Once all areas of water ingress have been identified and repaired, the Landlords are required to carry out such works of repair and redecoration internally to ensure that the Property meets the repairing standard.
 - (c) To carry out such works of repair or replacement to the cupboard door/frame within the living room to ensure that it can be opened and closed properly.
 - (d) To properly repair and redecorate the bathroom ceiling.
 - (e) To install a means of mechanical ventilation in the bathroom.
 - (f) To properly replace the silicone seals around the bath/shower and sink.
 - (g) Once the source of water ingress to the communal landing has been identified, to carry out such works of repair or redecoration as are necessary to bring the upper area of the stairwell landing back to the repairing standard.
 - (h) To replace any broken or smashed glass in the stairwell landing window and to repair the hole in the stairwell landing roof.
 - (i) To investigate whether the stairwell cupboard door can be opened and closed properly and carry out any works to the door/frame required to ensure this is the case.

2. The Committee had ordered in the RSEO that the works specified were to be carried out and completed within a period of 3 months.
3. There was a subsequent delay to a reinspection of the Property as the Landlords had lodged an appeal against the original Decision of the Committee. The appeal was unsuccessful. Accordingly, on 19 January 2015, the Property was reinspected by Mr David Godfrey, Surveyor Member of the original Committee. The Tenant was present and provided access. The Landlords were not present, although they were represented by their agent Struan Baptie.

The Surveyor Member reported to the Committee on the results of the reinspection. The Surveyor Member reported that no works listed in the RSEO had been completed. The Tenant had advised that some minor works had been carried out in relation to the replacement of a light in the communal stairway and the addition of a smoke detector.

In advance of the reinspection the Landlords had submitted to the Committee that all the works in the RSEO had been completed. A form received by the Committee on 6 January 2015 from the Landlords stated *"Works have been completed to conform with the repairing standard as required by the legislation"*.

The form indicated that the Landlords wished the Committee to grant a revocation of the RSEO. The form stated that the reasons for seeking a revocation were as follows:-

"The Property fully meets the repairing standard with regard to:-

- i. Wind and watertightness.*
- ii. State of repair of structure and exterior (inc. drains, gutters and external pipes).*
- iii. State of repair of electricity, gas and water installation.*
- iv. Adequacy of furnishings supplied.*
- v. Satisfactory means of detecting fire.*

None of the other requirements of the RSEO are relevant to the requirements of the legislation."

Subsequent to the reinspection, the surveyor's reinspection report was circulated to all parties. The Landlords then submitted that they were anxious to do all the works required and that they had been trying to do so but they were unable to gain the co-operation of the Tenant in relation to access.

The Committee considered the submission of the Landlords received prior to the reinspection, the terms of the reinspection report itself and also the correspondence received from the Landlords following the reinspection.

The Committee was dissatisfied with the responses from the Landlords. The Landlords response of 4 January 2015 indicated that works had been completed. This was clearly not the case. The Landlords seemed to be suggesting that it was for him to determine what the requirements of the RSEO were and what requirements were relevant and what were not. Works required by an RSEO are not subject to negotiation by a landlord subsequent to the issuing of a decision. Works required by an RSEO are the Committee's findings of what are required to meet the repairing standard. Landlords have a right of appeal to the Sheriff should they disagree with the findings of a Committee. The Committee had understood that the Landlords had lodged a late appeal to the original decision of the Committee and that this had been unsuccessful. On that basis the Committee was of the view that it was for the Landlords to comply with the terms of the RSEO. It was not for the Landlords to decide what they did or did not want to do. In any event the Landlords appeared to have done nothing.

The Committee also considered the Landlord's submission received post-reinspection, where the Landlords indicated that they were having difficulty obtaining access to the

Property. The Committee noted that at no point prior to the reinspection had the Landlords indicated that they were having difficulties obtaining access. At no point during the course of the reinspection had the agent, Mr Baptie, indicated that his clients were having difficulties obtaining access to carry out the repairs set out in the RSEO. There was a suggestion made by the Tenant at the reinspection that the Landlord had sought to carry out redecoration works only within the flat. The Tenant's solicitor had advised the Tenant not to allow redecoration works only as this would serve to disguise the fact that the required repairs had not been attended to. The Tenant had always made access available when required by the Committee and there had been no issues with this. During the course of the original inspection and hearing, the Tenant had appeared to the Committee to be a credible witness who was concerned at having to live in conditions that were clearly below the repairing standard. The Committee was satisfied with the Tenant's account of events

It seemed to the Committee that the Landlords had only raised the suggestion of access difficulties after the reinspection had occurred, when it was clear that no works had been done. The Landlords did not produce any form of tangible evidence that they had not been able to obtain access to the Committee other than their representation that that was the case. In any event there were a number of items listed in the RSEO which would have been able to be dealt with without access being taken to the flat itself. The Landlords could have attended to these but had clearly chosen not to do so. For the foregoing reasons, the Committee was satisfied that the access difficulties cited by the Landlords were not credible and were simply a belated attempt to justify their inaction.

4. The Committee then considered what steps to take. In terms of Section 26(1) of the Act, it was for the Committee to decide whether a landlord had failed to comply with an RSEO made by the Committee without reasonable excuse. In terms of sub-section (2), where the Committee decides that a landlord has failed to comply without reasonable excuse with an RSEO, the Committee must (a) serve notice of the failure on the local authority; and (b) decide whether to make a Rent Relief Order ("RRO").
5. The Committee, after discussion, accepted it was clear that no works had been undertaken by the Landlords. The Landlords had misrepresented the position in their communications of 4 January 2015. No credible reason was given why they had not carried out the works between the disposal of their appeal and the date of the reinspection. For the reasons given above, their complaints about the Tenant not giving access did not appear credible to the Committee. Accordingly the Committee was satisfied that the Landlords had failed to comply with the RSEO without reasonable excuse. Accordingly the Committee was obliged in terms of the Act to serve notice of the failure on the local authority and resolved to do so.
6. The Committee then decided whether or not to make an RRO. The Committee was conscious that at the point of the original inspection on 17 April 2014, it was clear that the problems in the tenement had been ongoing for some time. There was significant evidence of water penetration into the flat. The water penetration had reached an extent where areas of plaster within the lounge had become eroded. There were numerous damp areas within the Property and generally the Committee had been satisfied that the Property fell well below the repairing standard. It was clear that the Landlords had been ignoring their responsibilities for some time. Nearly a year had passed since the original inspection yet the Landlords appeared to have made no tangible effort to address the problems.

The Committee was of the view that a maximum 90% RRO was appropriate. The Tenant had been suffering for a considerable period prior to the inspection by the Committee from living in a damp property. That had been continuing for a further year. There were health and safety risks being caused to the Tenant and the Landlords had done nothing to address these. The Landlords had shown, by their correspondence of 4 January 2015, a disregard for the original decision of the Committee and their obligation to comply with the repairing standard. There were significant problems within the Property and the Landlords required to address these. They had shown no meaningful indication that he

wished to do so. In the circumstances the Committee was satisfied that a 90% RRO was the appropriate measure to take.

7. The Committee also considered the terms of Section 28 of the Act. Sub-section (1) specifies that a landlord who, without reasonable excuse, fails to comply with an RSEO commits an offence. As highlighted above, the Landlords had failed to comply with his legal responsibilities in terms of the Act. There had been an ongoing failure for a significant period of time to maintain the Property to the appropriate standard. The repairs required were not issues that had arisen only recently. Accordingly, in the circumstances, the Committee was of the view that Section 28(1) had been breached and therefore also resolved to report the matter to the Police for consideration for prosecution.

Decision

8. The Committee accordingly determined that in terms of the Act the Landlords had failed to comply with the RSEO.
9. The Committee determined to serve a Notice of Failure to Comply with the RSEO on the relevant local authority within which the Property was situated and to report the matter to the Police for consideration for prosecution. The Committee was also satisfied that it was appropriate to grant an RRO at 90% in terms of the Act.
10. The decision of the Committee was unanimous.

Right of Appeal

11. **A Landlords 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

12. 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 **E. Miller**
Chairperso

..... Date..... 17/6/15



Rent Relief Order

Ordered by the Private Rented Housing Committee

prhp Ref: PRHP/RP/13/0143

Re: Property at 2G Baldovan Terrace, Dundee, DD4 6ND ((hereinafter referred to as "the house"))

The Parties:

AGNIESZKA BODAK residing at 2G Baldovan Terrace, Dundee, DD4 6ND ("the Tenant")

JOSEPH FRANCIS McGRATH and GRACE TERESA McGRATH residing at 62 Cabin Hill Gardens, Knock, Belfast ("the Landlords")

NOTICE TO JOSEPH FRANCIS McGRATH and GRACE TERESA McGRATH ("the Landlord")

Whereas in terms of their decision dated 16 April 2015 the Private Rented Housing Committee ("the Committee") 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 Committee.

The Committee 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 90% 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 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. Where the appeal is abandoned or finally determined by confirming the decision, the Rent Relief Order will take effect 28 days after the date on which the appeal is abandoned or the decision is confirmed.

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 16 April 2015 before this witness:-

L. Johnston _____ witness

Lindsay Johnston
Secretary
Thorntons Law LLP
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DD1 4BJ

E. Miller _____ Chairman