



Repairing Standard Enforcement Order
Ordered by the Private Rented Housing Committee

prhp Ref:EH23/103/12

Re : The flatted dwelling house known as "Culina One" within Harvieston House, by Gorebridge, Midlothian, EH23 4QA ("the Property")

The Parties:-

Mr Asher Israel Katchalskiy, residing at "Culina One" within Harvieston House, by Gorebridge, Midlothian, EH23 4QA ("the Tenant")

Messrs M.C & R Jackson, residing at Salmon Hall, Workington, Cumbria CA14 1LW (represented by their agent Mr G Jack of Let Assured Ltd, Cargarrivelea, Carllops, West Linton, EH23 4QA) ("the Landlord")

NOTICE TO Messrs M.C & R Jackson, residing at Salmon Hall, Workington, Cumbria CA14 1LW ("the Landlord")

Whereas in terms of their decision dated 25th October 2012, 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 property is:-

- (a) The installations in the house for the supply of water, gas and electricity and for sanitation, heating and heating water in a reasonable state of repair and in proper working order in terms of section 13(1)(c) of the Act.
- (b) The property has satisfactory provision for detecting fires and giving warning in the event of fire or suspected fire in terms of section 13(1)(f) of the Act.

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 obtain from an NICEIC registered electrical contractor a full inspection & report on the electrical system, including lighting. Thereafter, to carry out all recommendations within the report & provide an electrical safety & compliance certificate, which should be made available to the panel prior to re-inspection.
- (b) Facilitate an inspection by the Senior Fire Safety Officer, Lothian & Borders Fire & Rescue Service; obtain the senior fire safety officers report, carry out all & any works recommended by the Senior Fire Safety Officer; then make his report available to the panel prior to re-inspection.
- (c) Install satisfactory mains wired smoke detectors in compliance with the current statutory regulations.
- (d) To investigate & repair the leak to the bathroom ceiling.

The Private Rented Housing Committee order that the works specified in this Order must be carried out and completed within the period of three months 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 are executed by Paul Doyle, solicitor, 24 Haddington Place, Edinburgh, chairperson of the Private Rented Housing Committee at Edinburgh on 25th October 2012 before this witness:-

R Hymes
_____ witness

P Doyle
_____ chairman

Secretary
24 Haddington Place
Edinburgh



Statement of Reasons for Decision of the Private Rented Housing Committee under Section 24 (1) of the Housing (Scotland) Act 2006

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Decision

The Committee, having made such enquiries as it saw fit for the purposes 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 led by both the Landlord and the Tenant at the hearing, determined that the Landlord had failed to comply with the duty imposed by Section 14 (1)(b) of the Act.

Background

1. By application dated 5th June 2012 the Tenant applied to the Private Rented Housing Panel 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 Tenants stated that the Tenants considered 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:-
 - (a) The exterior of the house in a reasonable state to repair and in proper working order in terms of Section 13(1)(b) of the Act.
 - (b) The installations in the house for the supply of water, gas and electricity and for sanitation, heating and heating water in a reasonable state of repair and in proper working order in terms of section 13(1)(c) of the Act.
 - (c) The fixtures, fittings and appliances provided by the landlord under the tenancy in a reasonable state of repair and in proper working order in terms of s.13(1)(d) of the Act.
 - (d) The property has satisfactory provision for detecting fires and giving warning in the event of fire or suspected fire in terms of section 13(1)(f) of the Act.
3. By letter dated 1st August 2012 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 served Notice of Referral under and in terms of Schedule 2, Paragraph 1 of the Act upon both the Landlord and the Tenant.
5. Following service of the Notice of Referral the Tenant made no further written representation to the Committee other than their original application dated 5th June 2012. The Landlord made no written representation to the Committee, but we have copies of the correspondence passing between the parties between April & July 2012.
6. The Private Rented Housing Committee inspected the Property on the morning of 4th October 2012. The Tenant and the Landlord's representative, Mr G Jack were present during the inspection. The Committee was made up of the following members

Paul Doyle, Legal member
Ian Mowatt, Surveyor member
John Blackwood, Housing member.
7. Following the inspection of the Property the Private Rented Housing Committee held a hearing at Middleton Village Hall, Middleton, Midlothian and heard from both the Tenant and the Landlord's agent.
8. The tenant submitted that the property had suffered from a lack of maintenance for years in particular the tenant complained that
 - (a) The property was damp and had not been decorated since 1984
 - (b) The electrical supply within the property had not been serviced or maintained
 - (c) The toilet leaks
 - (d) The drain in the kitchen was insufficient
 - (e) The septic tank serving the property smells
 - (f) That there are inadequate fire safety measures, no fire alarm or extinguisher nor any fire route for escape.
9. The landlords submitted that they had inherited the property 14 years ago, and are aware that maintenance and repairs the property had been required, but have struggled to find the financial resources to maintain the property adequately. The landlord refers to the history of disputes with (other) tenants, and complains that the applicant has not given prior notice of all of his complaints. In any event it is the Landlord's position that the property is now sold, and as part of the sale transaction inspections have been carried out by Midlothian Council. In addition, a property maintenance company had been employed to carry out the works identified as necessary. The Landlord is sure that most of those works have now been completed.

Summary of the issues

10. The issues to be determined are
 - (a) Is the structure of the exterior of the house in a reasonable state to repair and in proper working order in terms of Section 13(1)(b) of the Act?
 - (b) Are the installations in the house for the supply of water, gas and electricity and for sanitation, heating and heating water in a reasonable state of repair and in proper working order in terms of section 13(1)(c) of the Act?

- (c) Are the fixtures, fittings and appliances provided by the landlord under the tenancy in a reasonable state of repair and in proper working order in terms of s.13(1)(d) of the Act?
- (d) Does the house have satisfactory provision for detecting fires and giving warning in the event of fire or suspected fire in terms of section 13(1)(f) of the Act?

Findings of fact

11. The Committee finds the following facts to be established:-

- (a) The tenant has lived in Harvieston House and been a tenant to the landlord (and the landlord predecessor in title) since 1979. The tenant has occupied the property since 1984. The tenancy is an assured tenancy. The property was originally one large room with a kitchenette off. With the landlords consent, the tenant has constructed timber panel walls creating a number of separate rooms within the property.
- (b) The property is situated on the ground floor to the front of a large country mansion, which is surrounded by gardens and grazing lands secluding the property from the A7 road & the neighbouring village of Gorebridge. The larger building (of which this property forms part) was divided into eleven flats some time ago. Only three flats (the property which is the subject of this application and two others) are now occupied. The remainder of the building is empty.
- (c) Committee members were welcomed into this property by the tenant, who showed Committee members around the property & explained that the interior walls were the tenants own work, carried out with consent of the landlord. The tenant told us that the interior walls had divided what had once been one large room into a number of small rooms and alcoves. It was the tenant's position that he has lived in the property since 1984; since then, no maintenance or testing has been carried out on the electrical system serving the property.
- (d) Committee members' own inspection clearly showed that a number of electricity sockets are attached to wooden facia. The tenant demonstrated that some electricity sockets did not work. The electrical wiring within the property is tired and old and requires to be overhauled. It is likely that there is more than one electrical circuit within the property. It is also likely that there is a lot of redundant wiring within the property.
- (e) A battery operated smoke alarm was provided by the landlord within the last 3 months. The property does not have the benefit of a fire alarm. There is no fire alarm within the larger building of which the property forms part.
- (f) There is no adequate provision for heating in the property. The tenant explained that the property was very cold and damp. Committee members looked for heating in the property and could find none.
- (g) The bathroom in this property has a three piece sanitary suite. Water pours into the bathroom from a point in the ceiling above the WC. The appellant has fixed a length of piping from the point where water comes into the property to direct the water to be collected into a bucket. At the time of inspection several litres of water were contained in that bucket.

Reasons for the decision

12. (a) The committee inspected the property on the morning of 4th October 2012. There are now only three flats occupied within Harvieston House, And each of the tenants in Harvieston house has made separate applications to the Private Rented House Panel.

The Committee visited each of the three flats on the morning of 4th October 2012. This property was the second of the three flats inspected by the committee.

(b) After inspecting the property, a hearing took place at Middleton Village Hall, Middleton, Midlothian. The tenant (and his 2 neighbouring tenants) was present but not represented. The landlord was not present but was represented by Mr G.Jack, of Let Assured Limited, Cargarrielea, Carllops, West Linton, EH23 4QA, who has recently been appointed as the Landlords property factor. The tenant and Mr Jack answered questions from Committee members. Mr Jack read to us a written submission from the Landlord and provided a copy of that submission. We then reserved our determination.

(c) The property is situated on the ground floor to the front of Harvieston House. At the time of inspection the property was cold. The layout of the property, together with the presence of fixture & fittings & the tenant's possessions, made access to some internal areas difficult. Committee members looked around the property for a source of heating and could see none. The tenant complained that the property was permanently cold and felt (to the tenant) to be damp. It is clear to Committee members that this property has not been provided with a source of heating.

(d) The tenant explained that the division of the property into small rooms and alcoves was all his own work, executed with encouragement from the landlord's predecessor in title. All of the dividing walls are made of timber. Committee members could see that electrical sockets were fitted onto timber facia. The tenant showed committee members electrical sockets that did not work. It is the tenant's position that although he has lived in that property for 29 years, no maintenance or testing of the electrical system has been carried out during that period. It was obvious to Committee members that the electrical system was old and tired, and that connections were failing. Committee members were concerned for the tenant's safety in a property where the interior is fitted out almost entirely of timber & the electrical circuit suffers from a want of maintenance extending over three decades.

(e) The Committee's concerns about the danger associated with a tired old electrical system which had not been maintained in a property bedecked in dried timber is enhanced when it is obvious there is a leak of high quantities of water through the ceiling in the bathroom. It was not disputed that the leak has been apparent for some time. The tenant and the landlord's agent both stated that they did not know where the leak was coming from, but did not dispute that the leak existed and significant quantities of water were entering this property. The Committee's observations and the undisputed evidence in this case draws the Committee to the conclusion that the electrical supply for this property is not safe. The Committee accordingly make a Repairing Standard Enforcing order because the property does not satisfy s.13(1)(c) of the 2006 Act.

(f) Because the Committee's concerns raise the issues of a possibility of a fire, we refer this case to the Senior Fire Safety Officer. The Committee's concerns in relation to the provision of electrical supply is such that the Committee make a requirement that when electrical works required in the Repairing Standard Enforcement Order is completed a satisfactory NICEIC Report is to be obtained & exhibited to the Private Rented Housing Panel (PRHP), so that the Committee can be satisfied that the electrical supply for this property is safe.

(g) The tenant complains that there is no provision for fire safety. The only provision for fire detection is a smoke alarm. The smoke alarm is battery operated and was provided in the summer of 2012. The Committee's observations indicate that there is no fire alarm in the property, nor in the large property of which it forms part. Because of the Committee's concerns about the quality of the electrical circuit & fittings in this property, the Committee comes to the conclusion that there is a real risk of fire in the property. The property does not comply with the requirements of section 13(1)(f) of the 2006 Act.

(h) S. 13(1)(f) of the 2006 act requires the Landlord to make satisfactory provision for detecting fires & for giving warning in the event of fire or suspected fire. This is an unusual

property because it is a divided room in what was once a country mansion house. Only a small part of the larger house is now occupied. The Committee found that the electrical supply within the property was dated and may well be compromised. Because of the nature of this property, there is an enhanced risk of fire. There is no method within this property, nor within the parts of the larger building which we saw, of giving adequate warning of fire. There is only one way to exit this property. The exterior of the property is not lit during the hours of darkness. This property has no provision for detecting fires and for giving warning of fires - other than a battery-operated smoke alarm. The property cannot, in its current condition, satisfy the requirements of paragraphs 13(1)(f) of the 2006 Act. Even if the Committee is wrong to draw the conclusion that the combination of water ingress & questionable provision of electricity supply raises a significant risk of fire, the property cannot comply with the requirements of the Act. The question that the Committee have to ask is what would happen in the event of fire, not what is the prospect of such an occurrence.

(i) We are therefore obliged to make a Repairing Standard Enforcement order because our findings and facts indicate the property cannot and does not comply with requirements of sections 13(1)(c) and 13(1)(f) of the 2006 act

Decision

13. The Committee accordingly determined that the Landlord had failed to comply with the duty imposed by Section 14 (1)(b) of the Act.
14. The decision of the Committee was unanimous.

Right of Appeal

15. **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

16. 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.

P Doyle

Signed
Chairperson

..... Date..... 25/10/2012