



Repairing Standard Enforcement Order

Ordered by the Private Rented Housing Committee

prhp Ref: PRHP/RP/13/0026

Re: Property at 2/L, 4 Arklay Street, Dundee, DD3 7JF ("the Property")

Title No: ANG12426

The Parties:-

STOBMUIR ENTERPRISES LIMITED, 3 Rennell Road, Dundee ("the Landlord")

MS BARBARA KANE formerly residing at 2/L, 4 Arklay Street, Dundee, DD3 7JF ("the Tenant")

NOTICE TO STOBMUIR ENTERPRISES LIMITED ("the Landlord")

Whereas in terms of their decision dated 18 February 2014, 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 Property has satisfactory provision for detecting fires and for giving warning in the event of fire or suspected fire.
- (b) The Property is wind and watertight and in all other respects reasonably fit for human habitation;
- (c) The structure of and exterior of the Property (including drains, gutters and external pipes) are in a reasonable state of repair and in proper working order;
- (d) The installations in the Property for the supply of water, gas and electricity and for sanitation, space heating and heating water are in a reasonable state of repair and in proper working order;
- (e) Any fixtures, fittings and appliances provided by the Landlords under the tenancy are in a reasonable state of repair and in proper working order;

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 of repair or replacement to the rones, gutters and downpipes on the rear elevation of the Property, sufficient to render them compliant with the repairing standard.
- (b) Once the works specified in (a) above are carried out, to carry out such works as required to prevent further water ingress to the bedroom at the rear of the Property and to carry out such works of repair and redecoration as are necessary to render the room properly habitable.
- (c) To produce a clear gas safety certificate confirming that the gas system within the Property is compliant with the relevant regulations.
- (d) To produce an electrical installation condition report confirming that the electrical system within the Property is compliant with the relevant regulations.
- (e) To repair or replace the double glazed window within the bedroom at the rear of the Property.

- (f) To complete the works of refurbishment to the bathroom, sufficient to render it compliant with the repairing standard.
- (g) To complete the works of refurbishment to the kitchen, sufficient to render it compliant with the repairing standard.
- (h) To complete the works of refurbishment to the bedroom, sufficient to render it compliant with the repairing standard.
- (i) To repair the two smashed windows in the common areas, namely above the rear close door and in the stairwell.
- (j) To replace the missing drain cover located outside the rear close door.

The Private Rented Housing Committee order that the works specified in this Order must be carried out and completed within the period of 6 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 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 18 February 2014 before this witness:-

L Johnston

_____ witness

E Miller

_____ Chairman

Lindsay Johnston
Secretary
Thorntons Law LLP
Whitehall House
33 Yeaman Shore
Dundee
DD1 4BJ



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

prhp Ref: PRHP/RP/13/0026

Re: Property at 2/L, 4 Arklay Street, Dundee, DD3 7JF ("the Property")

The Parties:-

MS BARBARA KANE formerly residing at 2/L, 4 Arklay Street, Dundee, DD3 7JF ("the Tenant")

STOBMUIR ENTERPRISES LIMITED, 3 Rennell Road, Dundee ("the Landlord")

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 the Landlord 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 21 May 2013 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 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 and in particular that the Landlord had failed to ensure that:-
 - (a) The Property has satisfactory provision for detecting fires and for giving warning in the event of fire or suspected fire.
 - (b) The Property is wind and watertight and in all other respects reasonably fit for human habitation;
 - (c) The structure of and exterior of the Property (including drains, gutters and external pipes) are in a reasonable state of repair and in proper working order;
 - (d) The installations in the Property for the supply of water, gas and electricity and for sanitation, space heating and heating water are in a reasonable state of repair and in proper working order;
 - (e) Any fixtures, fittings and appliances provided by the Landlords under the tenancy are in a reasonable state of repair and in proper working order;
3. By letter dated 26 June 2013 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 written representation to the Committee, the Tenant having given the Landlord notice to quit on 5 June 2013. The Landlord made no written representations other than to acknowledge that the Property required to be completely refurbished and undertook not to re-let the Property until such refurbishment works had been completed.
6. The Private Rented Housing Committee (comprising Mr E K Miller, Chairman and Legal Member; and Mr C Reid-Thomas, Surveyor Member; and Mr J Blackwood, Housing Member) inspected the Property on the morning of 3 February 2014. The Tenant was not present nor represented. Dr El-Bakary and Mrs A Taylor from the Landlord were present during the inspection.
7. Following the inspection of the Property, The Private Rented Housing Committee held a Hearing at Douglas Community Centre, Balmoral Avenue, Douglas and heard from Dr El-Bakary of the Landlord. The Tenant was not present nor represented.
8. The Tenant had submitted, via written representation from a Wendy Sneddon of Positive Steps Charity, that she felt the Property was in very poor order. Of particular concern was damp penetration along the rear elevation of the flat that was affecting the bedroom. The Tenant was also concerned about the central heating boiler and the fact that the gas meter had been removed from the living room recently. The Tenant also had concerns regarding electrical safety and about the overall condition of the communal parts of the block. The Tenant submitted that the Landlord paid little or no attention to her request for repairs to be carried out.
9. The Landlord submitted that some of the damage to the Property had been carried out by the Tenant. The Landlord advised that he was happy to carry out repairs and to maintain the Property to the appropriate standard. The Landlord knew that the Property did not currently meet the repairing standard and that he would require to carry out further works. He was happy to be guided by the Committee in this regard. The Landlord highlighted that some of the works required were communal and it was proving difficult to get the consent of all the other owners within the block.

Preliminary issue

10. The Landlord submitted that he did not think that the Committee had the jurisdiction to deal with this matter. He was of the view that the Tenant had quit the Property before submitting her application. The Committee considered this point. The Committee noted that the Tenant's application to The Private Rented Housing Panel was dated 21 May 2013 and had been received on 28 May 2013. It was apparent from the other documentation before the Committee that the Tenant had not given an indication of her intention to quit the Property until early June. Accordingly it was clear that the tenancy was ongoing at the point that the submission was made to the Private Rented Housing Panel. In terms of Schedule 2 paragraph 7(3) of the Act it is competent for a Committee to continue with an application even though a tenancy has been terminated. In this particular case a previous Committee had made a decision to continue with this case in view of the seriousness of the allegations and the safety issues highlighted in the Tenant's application. This had been issued by a Chairperson of the Panel on 22 August 2013. In view of the foregoing timescales the Committee was satisfied it had jurisdiction to continue and hear the case.

Summary of the issues

11. The issues to be determined are:-
 - (1) Whether there was damp penetration along the rear of the Property.
 - (2) Whether the gas system within the Property was safe.

- (3) Whether there was an appropriate smoke detection system within the Property.
- (4) Whether the electrical system within the Property was in proper working order.
- (5) Whether the rear bedroom window was in proper working order and met the repairing standard.
- (6) Whether the bathroom met the repairing standard.
- (7) Whether there was a leak under the kitchen sink.
- (8) Whether the front door was in proper working order and met the repairing standard.
- (9) Whether repairs were required to the bedroom door and wardrobe doors.
- (10) Whether the stair window paintwork met the repairing standard.
- (11) Whether the deadlight above the rear close door was smashed.
- (12) Whether the vent pipes on the rear elevation met the repairing standard.
- (13) Whether there was plaster cracking and damp staining at the top of the stairwell and whether decoration was required.
- (14) Whether parts of the stonework was failing and the chimneyheads were weathered.
- (15) Whether there was a drain cover missing outside the rear close door.

Findings of fact

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

- 1) There was significant damp penetration to the rear of the Property. This appeared to be caused by defective rainwater goods.
- 2) Parts of the central heating system had been removed from the Property and had not yet been reinstated. There was no gas safety certificate available and it was clear the repairing standard was not being met.
- 3) There was a working hardwired smoke detector compliant with the relevant regulations in the Property.
- 4) The electrical system within the Property did not appear to be safe and there were loose sockets in the Property.
- 5) The double glazed window in the bedroom required to be repaired/replaced.
- 6) Ongoing works in relation to the bathroom were required.
- 7) The front door required some attention to ensure compliance with the repairing standard.
- 8) There were general works required to the bedroom to render it habitable.
- 9) Whilst the stair window paintwork was poor this met the repairing standard. There was a smashed window above the rear close door and another in the stairwell, both of which needed to be replaced.
- 10) The vent pipe end pieces on the rear elevation met the repairing standard.

- 11) Whilst the stairwell would benefit from some remedial works, it did nonetheless meet the repairing standard.
- 12) The exterior of the Property, whilst it might benefit from some minor repair/remedial works, appeared to meet the repairing standard.
- 13) There was a drain cover missing just outside the rear close door.

Reasons for the decision

13. The Committee based its decision primarily on the evidence obtained during the course of the inspection.

By way of general explanation it was clear that the Property was in the course of being extensively refurbished and was not currently habitable. Some works were ongoing. The Landlord would require to complete all the work to the various rooms within the Property before a reinspection could occur and a decision made as to whether compliance with the repairing standard had been achieved.

The Committee inspected the rear bedroom. There were very high levels of moisture evident in the rear wall. It was apparent from an external view of the Property that the gutters and downpipes at the rear elevation of the Property were damaged. As a result, water was running down the rear elevation and causing significant damage to the Property. The Landlord would require to carry out such works of repair or replacement to the rhones, gutters and downpipes as were necessary to ensure compliance with the repairing standard. Thereafter the Landlord would require to carry out such works to the bedroom as were required to repair any damage caused by the water ingress. The Landlord would also require to carry out works of redecoration.

The Committee also noted that the central heating boiler/central heating system had not yet been reinstated. The Landlord would require to do this and produce a clear gas safety certificate confirming compliance with the relevant regulations before the RSEO could be lifted.

There did appear to be a working hardwired smoke detection system compliant with the relevant regulations within the Property.

The Committee noted that there were loose sockets in the hall and living room which had been poorly fixed to the wall. In any event there were extensive works being done to the Property and in due course the Landlord would require to produce an electrical installation condition report to the Committee confirming that compliance with the relevant regulations had been met. The Tenant had complained that the electric shower had been removed by the Landlord but this appeared to have been replaced in the interim.

The Committee noted that in the bedroom there was evidence of damage to the bedroom door and the wardrobe doors. These would require to be repaired/replaced as part of the general refurbishment of the Property.

The Committee noted that the kitchen was currently dismantled and this would require to be properly reinstated compliant with the repairing standard.

The Committee noted that the bathroom suite had been replaced. Some works were still ongoing however and these would require to be completed before the RSEO could be lifted.

The Committee noted that the stairwell was not in the best of condition and had an unpleasant aroma. However it did generally meet the repairing standard. There was a smashed window above the rear close door and a smashed window on the stairwell. Both of these would require to be replaced.

The Committee did not see anything untoward with the two vent pipes on the rear elevation and accordingly compliance with the repairing standard was achieved.

As highlighted, whilst the stairwell was in need of some attention the damp staining and plaster cracking referred to in the Tenant's submission was not particularly evident and the Committee was satisfied that the repairing standard was being met.

The exterior of the building was in reasonable condition. Whilst some minor repair works were required the Committee was satisfied that the repairing standard was being met in relation to the general exterior of the building.

The Committee did note that a drain cover was missing just outside the rear close door and this would require to be replaced.

The Committee considered the works that were required. The Committee was conscious that these were numerous and would take the Landlord a reasonable period of time to effect. The Landlord was of the view that he could manage to do the works within 3-4 months. The Committee was satisfied that it would be in order to give a period of 6 months to ensure that the Landlord had time to properly complete the works to an appropriate standard. The Committee would highlight to the Landlord that it is a criminal offence to re-let the Property whilst an RSEO is in place.

Decision

14. The Committee accordingly determined that the Landlord had failed to comply with the duty imposed by Section 14 (1)(b) of the Act.
15. The Committee proceeded to make a Repairing Standard Enforcement Order as required by section 24(1).
16. The decision of the Committee was unanimous

Right of Appeal

17. **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

18. 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 Date 18/2/2016
Chairperson