



REPAIRING STANDARD ENFORCEMENT ORDER
Ordered by the Private Rented Housing Committee

RE: Property at 19d Court Street, Dundee DD3 7QS as more particularly described in Land Certificate Title Number ANG30557 (hereinafter referred to as "the House")

The Parties:

Sharon Newton, 19d Court Street, Dundee DD3 7QS (hereinafter "the Tenant")

KKG Properties, Block 1a, Dunsinane Avenue, Dundee and Kenneth Alexander James Adams, 21 Wood Road, Birkhill, Angus; Kevin Adams, 16 Rosewood Terrace, Dundee; and Grant Adams, 37 Old Glamis Road, Dundee as individuals and as partners thereof (hereinafter "the Landlord")

PRHP REFERENCE PRHP/RP/13/0055

**NOTICE TO
KKG PROPERTIES; KENNETH ALEXANDER JAMES ADAMS; KEVIN ADAMS; AND
GRANT ADAMS**

WHEREAS in terms of their decision dated XX December 2013 the 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 House meets the repairing standard in that:

"(d) any fixtures, fittings and appliances provided by the landlord under the tenancy are in a reasonable state of repair and in proper working order..."

The Committee now requires the landlord to carry out such work as is necessary for the purposes of ensuring that the House 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 Committee requires the Landlord:

To remove and relocate or replace the blinds in the living room in such a way that effective and functioning blinds are present which do not impede the normal use (including opening and closing) of the windows.

The Committee order that the works specified in this Order must be carried out and completed within 28 days from the date of service of this Notice.

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 the decision.

Where such an appeal is made, the effect of the decision and 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 typewritten on this and the preceding page are signed by John Miller McHugh, Chairperson of the Private Rented Housing Committee at Edinburgh on the Seventeenth day of December Two Thousand and Thirteen in the presence of the undernoted witness:

J McHugh

Chairperson

Witness

M O'Carroll

Michael O'Carroll
Witness Address

*3 PONTON STREET
EDINBURGH
EH3 9QQ*



DETERMINATION BY PRIVATE RENTED HOUSING COMMITTEE

**STATEMENT OF DECISION OF THE PRIVATE RENTED HOUSING COMMITTEE
UNDER SECTION 24(1)
OF THE HOUSING (SCOTLAND) ACT 2006**

In connection with

Property at 19d Court Street, Dundee DD3 7QS (hereinafter referred to as “the House”)

Sharon Newton (hereinafter referred to as “the Tenant”)

KKG Properties, Block 1a, Dunsinane Avenue, Dundee and Kenneth Alexander James Adams, 21 Wood Road, Birkhill, Angus; Kevin Adams, 16 Rosewood Terrace, Dundee; and Grant Adams, 37 Old Glamis Road, Dundee as individuals and as partners thereof (hereinafter referred to as “the Landlord”)

PRHP REFERENCE PRHP/RP/13/0055

DECISION

The Committee having made such enquiries as are fit for the purposes of determining whether the Landlord has complied with the duty imposed by section 14(1)(b) of the Housing Scotland Act 2006 (hereinafter “the Act”) in relation to the House, and taking account of the evidence led at the hearing and of the written documentation attached to the application and submitted by the parties, determined that the Landlord had failed to comply with the duty imposed by section 14(1)(b) of the Act.

Background

By application dated 15 July 2013 (hereinafter referred to as the “Application”) the Tenant applied to the Private Rented Housing Panel (hereinafter “the PRHP”) for a determination of whether the Landlord had failed to comply with the duties imposed by section 14(1)(b) of the Act.

The Application stated that the Tenant considered that the Landlord had failed to comply with the duty to ensure that the House meets the repairing standard and in

particular that the Landlord had failed to ensure compliance with the following paragraphs of section 13(1) of the Act:

“(a) the house is wind and water tight and in all other respects reasonably fit for human habitation...

(c) the installations in the house 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,

(d) any fixtures, fittings and appliances provided by the landlord under the tenancy are in a reasonable state of repair and in proper working order....”

The Tenant complained of a number of defects in the House.

By letter of 30 August 2013, the President of the PRHP intimated a decision to refer the application under section 23(1) of the Act to a Private Rented Housing Committee (hereinafter referred to as “the Committee”).

The Committee comprised the following members:

John McHugh, Chairperson

Michael Scott, Housing Member

David Godfrey, Surveyor Member

The Committee served Notice of Referral in terms of Paragraph 1 of Schedule 2 to the Act upon the Landlord and the Tenant.

The Committee inspected the House on 11 December 2013. The Tenant was present. The Landlord was represented by Kevin Adams. Mr Adams was accompanied by a tradesman.

Following the inspection, the Committee held a hearing at Douglas Community Centre, Balmoral Avenue, Dundee. The Committee considered the written evidence submitted by the parties and heard representations from Mr Adams on behalf of the Landlord. The Tenant was neither present nor represented. She had indicated at the inspection that either she or her representative, Peter Kinghorn of Dundee North Law Centre would attend. The Committee clerk made contact with Mr Kinghorn by telephone and it became evident that he had not been asked to attend the hearing by the Tenant and he was, quite understandably, unavailable to do so.

Submissions at the Hearing

During the course of the inspection the Tenant had withdrawn her complaints relating to the central heating, the radiators and the washing machine. She advised that her father had repaired the heating system and radiators. She had disposed of the old washing machine and replaced it with a new one at her own cost.

The hearing only therefore dealt with the question of the living room windows. Mr Adams, on behalf of the Landlord, advised that the blinds in question had been

present before the start of the tenancy commencing. He did not know where they had come from.

He advised that the Tenant's mother had occupied the property before she did and that he was unclear whether the blinds had been put up by the Tenant's mother.

The Landlord's view is that the blinds are not included in the lease and accordingly, it has no obligation in respect of them.

Mr Adams advised that he had previously offered to take down the blinds but the Tenant was unhappy with that because she wanted to retain blinds of some kind. The Landlord had been unwilling to provide replacement blinds.

The Landlord's view is that the windows operate as intended and that the blinds are the only problem. The Landlord regards the presence of the blinds as the sole responsibility of the Tenant.

Summary of the Issues

The issue to be determined is whether the House meets the repairing standard as laid down in section 13 of the Act and whether the Landlord has complied with the duty imposed by section 14 (1)(b).

Findings in Fact

The Committee confined their inspection to the items of complaint detailed within the Tenant's Application.

The Committee made the following findings in fact:

The Landlord and the Tenant entered into a Tenancy agreement in respect of the House on 1 September 2010.

The Landlord was recorded on the Lease as KKG Properties.

The registered owners of the House are Kenneth Alexander James Adams, 21 Wood Road, Birkhill, Angus; Kevin Adams, 16 Rosewood Terrace, Dundee; and Grant Adams, 37 Old Glamis Road, Dundee as partners of the firm of KKG Properties, Block 1a, Dunsinane Avenue, Dundee.

The Tenant took possession of the House from 1 September 2010 and has remained in occupation since.

The provisions of Chapter 4 of Part I of the Act apply to the tenancy.

The Tenant notified the Landlord of the defects in the house which are now the subject of the Application by recorded delivery letter dated 23 November 2012 issued on her behalf by Dundee North Law Centre and addressed to KKG Properties.

The inspection on 11 December 2013 revealed:

The property is a first floor flat in a three storey block of six flats.

In the living room, there are vertical blinds affixed to the window frame. The windows themselves are capable of being opened in the intended manner but when opened they make contact with the fittings and slats of the blinds which impede the opening of the windows.

The inspection did not extend to any other areas having regard to the Tenant's withdrawal of her other complaints.

Reasons for the Decision

The Repairing Standard

The complaints regarding the malfunctioning heating, the loose radiators and the broken washing machine were all formally withdrawn by the Tenant from the Application and so we make no finding in respect of them.

As regards the living room windows, the original complaint had been that they required to be made secure and did not open. The windows themselves appear secure and to open as intended. The issue relates solely to the blinds impeding the windows when they open.

The Tenant confirmed during the inspection that she wishes blinds of some kind to remain.

The provisions of section 19 of the Act apply to the Landlord. This section requires the Landlord to inspect the property before the start of the tenancy to identify works required to meet the repairing standard.

If items present at the commencement of the lease are intended not to be included in the lease, then they must be positively identified in the lease as being excluded from it. That is not the situation in relation to the blinds in this case. The blinds were present at the commencement of the lease and not the subject of a specific exclusion.

We are therefore of the view that the lease includes the blinds and that the repairing standard applies to both the windows and the blinds.

The Committee consider that the defect with the blinds/windows identified by the Inspection constitutes a breach of the repairing standard.

Gas Safety

Although the Tenant had withdrawn her complaint regarding the central heating, she claimed that the central heating problems had been addressed by her father. She also suggested that she had never seen a Landlord's Gas Safety Certificate. The Committee was therefore concerned about the question of gas safety. We

asked Mr Adams about the position and he produced at the hearing a Landlord's Gas Safety Certificate dated 12 June 2013 which confirmed that the central heating system was in safe working order.

Repairing Standard Enforcement Order

Having decided to make a Repairing Standard Enforcement Order, the Committee considered the length of time which should be provided for compliance. The Committee elected to impose a period of 28 days having regard to the potential risk to the health and safety of the occupants of the House and to the fact that the defect identified should be relatively easy to remedy.

Decision

The Committee, considering the terms of section 13(3) of the Act, determined that the Landlord had failed to comply with the duty imposed by section 14(1)(b) of the Act.

The Committee proceeded to make a Repairing Standard Enforcement Order as required by section 24(2) of the Act.

The decision of the Committee was unanimous.

Right of Appeal

Section 64 of the Act provides a right of appeal to a landlord or tenant aggrieved by a decision of a private rented housing committee. An appeal may be made to the Sheriff within 21 days of the Landlord or Tenant being informed of the decision.

Where such an appeal is made, the effect of the decision and 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.

J McHugh

John McHugh
Chairperson

Date: 17 December 2013