



Repairing Standard Enforcement Order

Ordered by the Private Rented Housing Committee

prhp Ref: prhp/RP/13/0184

Re : Property at 84 Castle Terrace, Winchburgh, West Lothian EH52 6RH ("the Property")

Title No: WLN895

The Parties:-

Nicola Margaret Brown, residing sometime at 71/1 Whitson Road, Edinburgh, thereafter at 76a Dundas Street, Edinburgh and now at 5425 Peach Tree Drive, Cambridge MD 21613, United States of America and Kimberly Dawn Baumgartner, residing sometime at 71/1 Whitson Road, Edinburgh and thereafter at 76a Dundas Street, Edinburgh ("the Landlord"); and

David Docherty, residing sometime at 84 Castle Terrace, Winchburgh, West Lothian EH52 6RH ("the Tenant")

NOTICE TO NICOLA MARGARET BROWN and KIMBERLY DAWN BAUMGARTNER ("the Landlord")

Whereas in terms of their decision dated 29 May 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 wind and water tight and in all other respects fit for human habitation;

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:-

to obtain from a competent building contractor a report on the security of the remainder of the ceiling plaster in the downstairs front bedroom of the Property and thereafter to carry out such works as are necessary to make good the affected area and, if necessary, replace the plaster coating on the Artex.

The Private Rented Housing Committee order that the works specified in this Order must be carried out and completed within the period of six weeks 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 typewritten on this page are executed by George Barrie Clark solicitor, Lasswade, chairperson of the Private Rented Housing Committee at Lasswade on 29 May 2014 before this witness, Valerie Elizabeth Jane Clark, Droman House, 5 School Brae, Lasswade, Midlothian:-

 V Clark

___ witness

 G Clark

chairman



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

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Re: Property at 84 Castle Terrace, Winchburgh, West Lothian EH52 6RH ("the Property")

The Parties:-

David Docherty, residing sometime at 84 Castle Terrace, Winchburgh, West Lothian EH52 6RH ("the Tenant"); and

Nicola Margaret Brown, residing sometime at 71/1 Whitson Road, Edinburgh, thereafter at 76a Dundas Street, there and now at 5425 Peach Tree Drive, Cambridge MD, 21613, United States of America and Kimberly Dawn Baumgartner, sometime residing at 71/1 Whitson Road, Edinburgh and thereafter at 76a Dundas Street, there ("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, 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 1 December 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 house is wind and water tight and otherwise fit for human habitation, and
 - (b) the structure and exterior of the house (including drains, gutters and external pipes) are in a reasonable state of repair and in proper working order.
3. By letter dated 31 December 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 further written representation to the Committee other than the original application dated 1 December 2013. The Landlord (by letter dated 14 January 2014), made written representations to the Committee.

6. The Private Rented Housing Committee inspected the Property on the morning of 14 March 2014. The Tenant and the Landlord were not present and the Committee was not able to gain access to the Property to carry out the inspection.
7. Following the attempted inspection of the Property the Private Rented Housing Committee held a hearing at Kirkliston Community Centre, 16-18 Queensferry Road, Kirkliston. Neither the Tenant nor the Landlord was present or represented at the hearing. The Committee noted that it appeared that the Tenant might have been vacated the Property. The Committee had, however, no evidence before it as to whether the tenancy had been lawfully terminated and whether, therefore, the application could be regarded as having been withdrawn in terms of Schedule 2 paragraph 7(1) of the Act. In addition, however, the view of the Committee was that the nature of the defects alleged in the application, if substantiated, would raise significant health/safety issues for occupants. The Committee decided, for these reasons, to continue the consideration of the application to a later date and the Parties were so advised.
8. The Private Rented Housing Committee inspected the Property on the morning of 29 May 2014 and was admitted to the Property by a friend of the Landlord. Neither the Tenant nor the Landlord was present or represented at the inspection or the subsequent hearing. The Committee comprised George Clark (chairman), Ian Murning (surveyor member) and Helen Barclay (housing member). Iain Maclean attended as Clerk to the Committee. Following the inspection, the Committee held a hearing at Strathbrook Partnership Centre, Broxburn. Neither the Landlord nor the Tenant was present or represented at the hearing.
9. The Tenant, in his application submitted as follows:- the plaster skimming in the downstairs bedroom (his children's playroom) had come down. This had pulled down some Artex, which had been confirmed to be 4% asbestos. He wished a full external roof replacement, the water damaged asbestos ceiling to be removed and replaced and a full clean-up of the downstairs room and all items in that room. In his view, the Landlord had been more concerned with the cost involved than investigating and fixing the situation.
10. The Landlord, in her written response of 14 January 2014 submitted as follows:- the Tenant had reported by e-mail on 22 October 2103 that a portion of the ceiling in the bedroom had fallen down. The Landlord was living in the USA and, by telephone later that evening, she informed the Tenant that she would immediately look into getting the matter investigated. The Tenant, however, refused to allow her to send a friend to look at the Property and it was agreed that the Tenant would obtain three quotes for the repair work. She also contacted her insurance company the following day and, as the Tenant had said there was asbestos in the Artex ceiling, she also instructed ASL Asbestos to investigate the situation. They reported that the risk was very low and carried out an environmental clean-up and an air test. ASL Asbestos were to have repaired the ceiling after the work was carried out, but advised the Landlord that they could not complete the repairs due to emotional and mental stress caused by the Tenant, who was alleging the company were not qualified to carry out the work. The Landlord accepted that there had been a short delay, but this had, in part, been due to the fact that the Tenant had withheld payment of rent and this had caused the Landlord a problem with funding the repairs. The delay had, however, only been for a week or so. The Landlord had subsequently undertaken roof repairs, as a result of slipped slates and the Tenant was of the view that the ceiling had come down due to water leakage through the roof, but the Landlord stated that, whilst repairing the roof and checking there was no ongoing leakage of water from the roof to the affected ceiling resulted in further delay in fixing the ceiling, she was of the view that it was not a leak from the roof that had caused the ceiling plaster to come down.

Summary of the issues

11. The issues to be determined were whether the Property met the repairing standard as laid down in Section 13 of the Act and whether the Landlord had complied with the duties imposed on landlords by Section 14(1)(b) of the Act.

Findings of fact

12. The Committee finds the following facts to be established:-
- The tenancy is a Short Assured Tenancy.
 - The Tenant has vacated the Property.
 - In the front downstairs bedroom, a section of ceiling plaster, measuring approximately 1.5 metres by 1 metre, adjacent to the front wall of the building, is missing, exposing the underlying Artex above. There is a hairline crack which runs across the ceiling into the cornice, but this appears to be long-standing. The most likely cause of the missing plaster is a failure of the bonding between the plaster coating and the original Artex.
 - The surveyor member of the Committee tested areas of ceiling and walls and found no evidence of an ongoing problem of water penetration in the first floor attic room above the front downstairs bedroom.
 - The roof to the front of the Property appeared to be in good condition, apart from one slipped slate, which the Landlord should replace. There was no evidence of water penetration through the roof.
 - The Committee noted a copy Invoice dated 2 January 2013 from Henderson & Bell (Asbestos) Limited, trading as ASL Asbestos, 5 Mitchell Street, Edinburgh, confirming that they had assessed and instructed all health and safety compliance and had carried out asbestos removal works and a full environmental clean-up, including a property decontamination in accordance with current regulations.
 - The Committee also noted an Invoice from Livingston Roofing dated 10 December 2013, in respect of stripping the front elevation of the roof, checking the condition of the sarking beneath and reslating.

Reasons for the decision

13. The Committee was of the view that, as the bonding between the plaster and the Artex above it had failed, causing part of the ceiling in the front downstairs bedroom to fall down, this raised a question about the integrity of the bonding on the remainder of the ceiling in that room. Accordingly, the Committee decided that a competent contractor should inspect and report on the condition of the ceiling plaster and, thereafter, carry out such repairs as are necessary to reinstate it to a safe and secure condition. There was no evidence of any ongoing problem of water penetration through the roof. The Committee noticed that the downpipe from the rhone on the rear dormer was missing and would comment that this is likely to cause a problem in the short to medium term, so would advise that this be attended to by the Landlord, but, as this did not form part of the application, it could not be the subject of a Repairing Standard Enforcement Order.

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 **G Clark** Date 29/5/2014
Chairperson