

Repairing Standard Enforcement Order

Ordered by the Private Rented Housing Committee

Ref: PRHP/G13/78/12

**Re: Property at 91c Menzies Road, Aberdeen AB11 9AP (first floor right)
("the Property")**

**Title: Subjects at 91c Menzies Road, Aberdeen
forming Title Number KNC17486**

The Parties:-

**Thomas Peter Meryn Richards, and Rosalind Richards per their Agents
Aberdein Considine, Solicitors, 7-9 Bon Accord Crescent, Aberdeen ("the
Landlord")**

Iremino Martins Nkemnacho, 91c Menzies Road, Aberdeen ("the Tenant")

**NOTICE TO Thomas Peter Meryn Richards, Rosalind Richards and
Lorna Richards per their Agents Aberdein Considine,
Solicitors, 7-9 Bon Accord Crescent, Aberdeen
("the Landlord")**

Whereas in terms of their decision dated 15th 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:-

(1) The structure and exterior of the house (in this case the windows) are in a reasonable state of repair and in proper working order - Section 13(1)(b) of the said Act.

the Private Rented Housing Committee now requires the landlord to carry out such works as are necessary for the purpose of ensuring the house meets the repairing standard and that any damage caused by the carrying out of any works in terms of this order is made good.

In particular but without prejudice to the foregoing generality the Private Rented Housing Committee requires the Landlord:-

- To replace the windows throughout the flat to render the windows substantially draught free and to ensure the windows open and close freely. To ensure whichever glazing unit is installed in the kitchen allows easy ventilation of the kitchen either by way of a fan unit in the window or by some other means.

The Private Rented Housing Committee order that the work specified in this Order must be carried out and completed within a period of **ten 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 and the one preceding page are executed by Anne McCamley, Solicitor, Chairman of the Private Rented Housing Committee at Edinburgh on the Sixteenth day of November, Two Thousand and Twelve before Murdoch McCamley, Chartered Accountant, Elleric, Wester Coates Terrace, Edinburgh.

M McCamley

(witness)

A McCamley

Chairman

Determination by the Private Rented Housing Committee

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

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Iremino Martins Nkemnacho, 91c Menzies Road, Aberdeen ("the Tenant")

Decision

The Committee, having made such enquiry as it sees fit for the purposes of determining whether the Landlord has complied with the duty imposed by Section 14(1)(b) of the said Act in relation to the property concerned, and taking account of the evidence led by both the Landlord and the Tenant at the Hearing determines that the Landlord has failed to comply with the duty imposed by Section 14(1)(b) of the Act.

Background

- 1. By application dated 18th July 2012 the Tenant applied to the Private Rented Housing Panel for a determination as to 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 he considered the Landlord had failed to comply with the duty to ensure the house meets the repairing standard and brought forward the following alleged breach:-**

- (a) All the windows need repaired, improved or replaced because they are not wind or water tight.
3. The Private Rented Housing Committee served a Notice of Referral dated 15th August 2012 under and in terms of Schedule 2, Paragraph 1 of the Act on both the Landlord and the Tenant.
 4. The Private Rented Housing Committee comprising Mrs. Anne McCamley (Chairman), Mr. Angus Anderson (Surveyor) and Mr. Mike Scott (Housing Member) inspected the property on the morning of the 15th of October 2012. The Tenant's wife was in attendance and the Landlord was represented by his Letting Agents Messrs. Aberdein Considine.
 5. After the inspection of the property the Private Rented Housing Committee held a Hearing at the Credo Centre, Aberdeen. Both the Tenant and the Landlord's Agents made submissions to the Committee.
 6. The Tenant submitted that all the windows in the flat required to be replaced. The windows let in draughts. They do not open or close properly. Some of the windows do not close at all. One of the windows is cracked. In short, in the opinion of the Tenant the windows are neither in a reasonable state of repair nor in proper working order.
 7. The Landlord's Agents submitted that various trades people had attended at the flat and the Landlord had been given numerous quotes for replacement of the windows. In the opinion of the glazing tradesmen the windows are beyond servicing and require to be replaced. The Landlord's instruction to his Agents was to await the outcome of this Committee's inspection and determination before carrying out any work.

Findings of Fact

8. Having inspected the property and taken account of the oral and written evidence and thereafter being guided by the Committee's professional Surveyor Member, the Committee finds the following to be established as regards the state of the windows:-

(a) The living room - this is a double window unit. One of the units does not open. There is foam draught strip at the top of the window which does open and remnants of the same around the lower part.

(b) Bedroom 1 (rear) - the window could not be opened. The outside frame of this double glazed unit is cracked. The crack is extensive.

(c) Bedroom 2 (front) - the window in this bedroom will not open or close properly. There is a build up of water between the glass panes.

(d) Kitchen - the kitchen window is capable of opening and closing when using a degree of force. Unfortunately the window is situated in a recess above kitchen units and it is only possible to open the window by climbing up the units. Accordingly there is no practical ventilation in the kitchen.

Having regard to the faults which we noticed on visual inspection we are satisfied the windows are not in a reasonable state of repair or in proper working order. All windows should open and close freely. The panes of glass must be in tact and must fit the window frames securely. The windows must be substantially draught free. We also take the view that the kitchen requires ventilation. The current style of window does not allow for easy ventilation. We have further determined, in our capacity as an expert tribunal, and as confirmed by the trades people, that the windows are beyond the stage where repair work is a viable option and we conclude they require to be replaced.

Decision

9. The Committee accordingly determines that the Landlord has failed to comply with the duty imposed by Section 14(1)(b) of the Act.

10. The Committee makes a Repairing Standard Enforcement Order as required by Section 24(1) of the Act.

11. The decision of the Committee is unanimous.

Right of Appeal

12. A Landlord or Tenant aggrieved by the decision of the Private Rented Housing Committee may apply to the Sheriff by summary application within 21 days of being notified of that decision.

Effect of Section 63

13. 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.

A McCamley
Signed
Chairman

Date *15th October 2012*