



Repairing Standard Enforcement Order

Ordered by the Private Rented Housing Committee

prhp Ref: PRHP/RP/14/0103

Re: Property at Flat B3, 18 Cecil Street, Glasgow G12 8RH ("the Property")

Title No: GLA209302

The Parties:-

Dr Haradhan and Mrs Shakuntala Datta, residing care of Clyde Property Residential Letting, 1A Helena Place, Clarkston Toll, Glasgow G76 7RB ("the Landlords")

Miss Josephine Dick ("the Tenant")

NOTICE TO DR HARADHAN and MRS SHAKUNTALA DATTA ("the Landlords")

Whereas in terms of their decision dated 10 September 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 ("the Act") and in particular that the landlord has failed to ensure that the property meets the Repairing Standard in respect of:-

Section 13(1)(a): the house is wind and watertight and in all other respects reasonably fit for human habitation.

Section 13(1)(e): any furnishings provided by the Landlord under the tenancy are capable of being used safely for the purpose for which they are designed.

The Private Rented Housing Committee now requires the Landlord to carry out such work as is necessary for the purposes of ensuring that the Property 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:

1. To instruct and complete the works specified in the Specialist Report prepared by Wise Property Care in terms of the survey undertaken by them on 27 June 2014 (the work being that required to the property designated as Flat B3, 18 Cecil Street, Glasgow G12 8RH in said Report).
2. To re-decorate and re-carpet the property as necessary.

The Private Rented Housing Committee requires that the works specified in this Order must be carried out and completed within 8 weeks 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 that 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.

Please note that in terms of Section 28(1) of the Act, a Landlord who, without reasonable excuse, fails to comply with a RSEO commits an offence liable on summary conviction to a fine not exceeding level 3 on the standard scale. A Landlord (and that includes any Landlord's successor in title) also commits an offence if he or she enters into a tenancy or occupancy arrangement in relation to a house at any time during which a RSEO has effect in relation to the house. This is in terms of Section 28(5) of the Act.

In witness whereof these presents typewritten on this and the preceding page(s) are executed by Richard Mill, Solicitor, chairperson of the Private Rented Housing Committee at Edinburgh on the Tenth day of September Two Thousand and Fourteen before this witness:-

M Murray

witness

R Mill

chairman

Margaret Johnstone Murray
21 Stafford Street
Edinburgh
EH3 7BJ

Legal Secretary

Ref PRHP/RP/14/0103

Private Rented Housing Committee

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

Re: Flat B3, 18 Cecil Street, Glasgow G12 8RH (“the Property”)

Title Number: GLA209302

The Parties:-

**MISS JOSEPHINE DICK, residing at Flat B3, 18 Cecil Street, Glasgow G12 8RH
 (“the Tenant”)**

**DR HARADHAN and MRS SHAKUNTALA DATTA, residing care of Clyde
Property Residential Letting, 1A Helena Place, Clarkston Toll, Glasgow G76 7RB
 (“the Landlords”)**

Committee members:-

**Richard Mill (Chairman), Sara Hesp (Surveyor Member) and Susan Brown
(Housing Member)**

Decision

The committee, having made enquiries for the purposes of determining whether the Landlords have complied with the duty imposed by Section 14(1)(b) of the Housing (Scotland) Act 2006 (“the Act”) in relation to the Property, determined that the Landlords have failed to comply with the duty imposed by Section 14(1)(b) of the Act in respect that the Property does not meet the Repairing Standard in respect of Sections 13(1)(a) and (e) of the Act for the reasons set out below.

Background

1. By application dated 7 April 2014 the Tenant applied to the Private Rented Housing Panel for a determination of whether the Landlords have failed to

comply with the duties imposed by Section 14(1)(b) of the Act in respect of the Property.

2. In the application the Tenant stated that the Landlords had failed to comply with the duty to ensure that the house meets the Repairing Standard stating that an external common pipe required to be repaired which was causing water damage and dampness within the property and that in particular there was dampness affecting the walls in the hallway and living room wall and that the carpet in the hallway was wet and mouldy.

The relevant aspects of the Repairing Standard put at issue are contained within Sections 13(1)(a), (b), (d) and (e) in the following terms:-

- whether the house is wind and watertight and in all other respects reasonably fit for human habitation.
 - whether 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.
 - whether any fixtures, fittings and appliances provided by the Landlords under the tenancy are in a reasonable state of repair and in proper working order.
 - whether any furnishings provided by the Landlords under the tenancy are capable of being used safely for the purpose for which they are designed.
3. The President referred the application to a Private Rented Housing Committee for determination. Notices of Referral were issued to parties on 11 June 2014.

Inspection

4. The committee inspected the Property on 2 September 2014 at 10.00 am. The committee were invited into the Property by the Tenant who directed the committee members around the Property. The Landlords were both personally present.

Hearing

5. Following the inspection of the Property the committee convened a hearing at Europa Building, 450 Argyle Street, Glasgow later the same morning at 11.00 am. The Tenant and the Landlords appeared personally. The Landlords presented some additional papers at the Hearing. This included a Report by Wise Property Care.

Summary of the issues

6. The issues to be determined by the committee are whether or not the Property meets the Repairing Standard to the extent put at issue in the application,

namely in terms of Sections 13(1)(a), (b), (d) and (e) of the Act as at the date of the hearing.

Findings in Fact

7. The committee makes the following findings in fact:
 - 7.1 The title to the subjects known as Flat B3, 18 Cecil Street, Glasgow G12 8RH is held by the Landlords. Their interest is registered in the Land Register of Scotland under title number GLA209302 on 26 August 2011.
 - 7.2 The Property which is the subject of this application is a garden flat situated on the basement floor. It comprises a living room, kitchen, bathroom and one bedroom.
 - 7.3 On 30 November 2012 the Tenant entered into a Short Assured Tenancy Agreement ("the Agreement"). A copy of the Agreement was produced. A valid tenancy was created in terms of the said Agreement. The Tenant has been in occupation of the Property from the commencement date of the Agreement. The rent was stated to be £695 per calendar month. The minimum term of the Agreement was for a period of 6 months from and including 30 November 2012 and expiring on 30 May 2013.
 - 7.4 Upon taking up occupation of the Property the Tenant identified a number of issues which she was unhappy about and communicated this to the Landlords' agent accordingly. Her complaints in this respect were first marked on an inventory sheet where she provided comments in respect of the condition of certain aspects of the property. The Tenant completed her analysis on the inventory sheet on 3 December 2012. This was communicated to the Landlords' agent. The comments included the Tenant's concerns regarding the smell of mould and dampness in the hall of the property. The Tenant subsequently communicated the same concerns verbally shortly thereafter, both in person and by telephone.
 - 7.5 The Tenant's concerns which had been raised were not acted upon. In early 2013, the Tenant again complained of the damp and mould problem which, in her view, was becoming worse. The Tenant had detected what she considered to be a serious damp problem in the hallway. The walls were affected. The floor was affected. The hall carpet was wet and mouldy.
 - 7.6 Over succeeding months, numerous exchanges of correspondence took place between the Tenant and the Landlords' agent. An apparent attempt was being undertaken on behalf of the Landlords to resolve the difficulties.

- 7.7 The Landlords made enquiries regarding a possible warranty relating to previous damp proof works undertaken at the property. No applicable warranty existed.
- 7.8 The Landlords sought to advance the matter with the assistance of the Property Factors for the tenement within which the property is situated. This was on the premise that the problems with damp in the property were part of a larger problem, including common repairs which required to be carried out.
- 7.9 By April 2014, the difficulties had not been resolved. The Tenant's enjoyment of the property was seriously adversely affected. As a result she made the current application to the Private Rented Housing Panel.
- 7.10 The property is serviced by its own internal stair leading to the accommodation otherwise described. The principal problems affecting the property which is in the form of serious damp, are situated in the hallway area at the foot of the stair area. There is also a visible area of damp in the corner of the living room in the property.
- 7.11 Property2, the Property Factors, instructed a Specialist Report from Wise Property Care. The relevant survey was undertaken on 27 June 2014. This details a range of works required to be undertaken at the property, including wet rot treatment, drainage system works and wall, ceiling and floor waterproofing. (Some of the works referred to therein relate to an adjoining flat (B2, 18 Cecil Street, Glasgow but for which there is reference to a separate quotation having been produced).
- 7.12 At the inspection the committee observed obvious signs of damp in the property at the areas referred to at paragraph 7.10 above. There were visible signs of damp in both floor and wall areas. The carpet in the hallway had already been removed by Welsh Builders, instructed by the Landlords, who had also installed a dehumidifier some weeks before. There remained obvious signs of high moisture and the smell of damp was evident. Damp meter readings were taken which disclosed a high level of moisture content.
- 7.13 The Landlords accept a breach of the Repairing Standard.

Reasons for the Decision

8. The committee determined the application having regard to the bundle of papers (which had been made available in advance to both parties, together with the additional papers provided by the Landlords at the Hearing), their inspection, together with the evidence taken at the Hearing.
9. The committee were only able to formally consider the Tenant's complaints which formed part of her intimated application. The

committee were also under an obligation to look at the Tenant's complaints as they were as at the time of the Hearing on 2 September 2014.

10. The committee was satisfied having regard to all of the available evidence that the Tenant had timeously intimated her legitimate concerns and complaints regarding the Property. The committee were similarly satisfied that the Landlords and their agents had been given more than sufficient opportunity to resolve the Tenant's complaints and the problems with the Property but had failed, or at least, delayed to do so.
11. The Landlords were candid and frank in submitting to the committee that they accepted that the repairing standard was not met. There was, as a matter-of-fact, no dispute about this. The committee were less satisfied regarding the explanations given by the Landlords regarding the delay in remedying the problems which they accepted existed.
12. Both parties confirmed at the Hearing that the works specified within the Specialist Report prepared by Wise Property Care based upon their inspection of the property on Friday 27 June 2014 was the work which was required to be undertaken to remedy the defects which have led to the Repairing Standard not being met. The committee had the opportunity of considering the terms of said Specialist Report and concluded that the Report does sufficiently specify in detail the works required to be undertaken.
13. In the circumstances the committee had little hesitation in concluding that the appropriate Repairing Standard Enforcement Order to be made principally involved the implementation and completion of the works specified within the said Report together with ensuring that any damage caused by the carrying out of such works is made good, together with the requirement to re-decorate and re-carpet.
14. The Application raised issues in terms of Sections 13(1)(a), (b), (d) and (e) of the Act. At the Hearing clarification was sought from the applicant who indicated that they were not insisting upon an alleged breach of Section 13(1)(d). The applicant maintained that there was a leaking pipe situated above the door which accesses the rear of the property which leaks when it rains. The Written Application does make reference to an external pipe. At the time of the inspection the applicant drew the committee's attention to an external pipe which had been repaired already. No reference to the pipe leaking around the doorway was brought to the committee members' attention. The committee were not satisfied that they had sufficient evidence upon which to make any relevant findings in respect of this other pipe referred to by the Tenant. The committee also concluded that this issue was de minimis. In these

circumstances the committee did not find any breach of Section 13(1)(b).

15. The committee's findings as set out in this Decision amounted to a clear breach of Section 13(1)(a) and (e). For the avoidance of doubt the committee's reasoning in respect of the breach of Section 13(1)(e) relates to the carpets which the committee considers "soft furnishings" within the property.

Decision

16. The committee makes a Repairing Standard Enforcement Order as they are obliged to do in terms of Section 24(1). The decision of the committee was unanimous.
17. Please note that in terms of Section 28(1) of the Act, a Landlord who, without reasonable excuse, fails to comply with a RSEO commits an offence liable on summary conviction to a fine not exceeding level 3 on the standard scale. A Landlord (and that includes any Landlord's successor in title) also commits an offence if he or she enters into a tenancy or occupancy arrangement in relation to a house at any time during which a RSEO has effect in relation to the house. This is in terms of Section 28(5) of the Act.

Right of Appeal

18. 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 of the Act

19. 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 date on which the appeal is abandoned or so determined.

R Mill

Signed Date 10 September 2014
Chairman