



REPAIRING STANDARD ENFORCEMENT ORDER
Ordered by the Private Rented Housing Committee

RE: Property at 2 Morgan Court, Stirling, FK7 as more particularly described in the Disposition in favour of the Landlord dated 19 August 2008 and registered in the Land Register under Title Number STG40000 ("the House")

The Parties:

Jonathan Graham ("the Tenant")

Mr Andrew Butterworth, c/o Belvoir Lettings, 79 Barnton Street, Stirling, FK8 1HJ ("the Landlord")

PRHP REFERENCE PRHP/RP/14/0215

NOTICE TO

Mr Andrew Ewan Butterworth, the Landlord

WHEREAS in terms of their decision dated 2 June 2015 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:

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

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:

1. To repair the leftmost window unit (as viewed internally) in the living room so that it fits correctly within the frame and opens and closes correctly and replace the seal fitted thereon.


The Committee order that the works specified in this Order must be carried out and completed within two calendar months from the date of service of this Notice and for written proof of having done so to be supplied to the Private Rented Housing Panel.

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.

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 are signed by Maurice O'Carroll, Chairperson of the Private Rented Housing Committee at Edinburgh on the third day of June, Two Thousand and Fifteen in the presence of the undernoted witness:

Chairperson
M. O'CARROLL 

Witness:
A. VEITCH 

Name in full: Andrew Veitch

Occupation: Advocates' Clerk

Witness Address: Advocates' Library, Parliament House, Edinburgh, EH1 1RF



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 2 Morgan Court, Stirling, FK7 0QX (“the House”)

Jonathan Graham (“the Tenant”)

Mr Andrew Butterworth, c/o Belvoir Lettings, 79 Barnton Street, Stirling, FK8
1HJ (“the Landlord”)

PRHP REFERENCE PRHP/RP/14/0215

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 (“the Act”) in relation to the House, and having taken account of the evidence led at the hearing and of the written documentation attached to the application and submitted by the parties, has made the following decision:

It has determined that the Landlord has failed to comply with the duty imposed by section 14(1)(b) of the Act in terms of section 13(1)(a) of that Act.

The decision was unanimous.

Background

By application dated 8 September 2014 (the “Application”) the Tenant applied to the Private Rented Housing Panel (“PRHP”) for a determination of whether the Landlord had failed to comply with the duties imposed by section 14(1)(b) of the Act.

By letter dated 27 October 2014, 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 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;*
- (b) the structure and exterior of the house...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 capable of being used safely for the purpose for which they are designed; and*
- (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 Tenant had intimated to Mr Joseph Curran of Belvoir Properties, the Landlord's agent, a list of some 14 items which he said required rectification by email dated 4 July 2014.

The Tenant, however, vacated the House on or about 2 February 2015. By Minute of Continuation dated 18 March 2015 intimated to the parties on 28 March 2015, the Committee decided to continue to determine the application notwithstanding the Tenant's departure.

The Committee comprised the following members:

Maurice O'Carroll, Chairperson
Ann MacDonald, Housing Member
Richard Burnett, Surveyor Member

The Committee inspected the House at 10.00am on 27 May 2015. The Tenant was not present at the inspection, although the present tenant afforded entry. Mr Curran on behalf of the Landlord was present at the inspection, together with a colleague.

Following the inspection, the Committee held a hearing at John Player Building, Stirling Enterprise Park, Stirling at 11.00am. The Tenant was not present at the hearing. Mr Curran, attended the hearing along with another colleague, Dawn McGowan. The Committee considered the written evidence submitted by the parties and heard representations from the Landlord's agents.

Evidence at the Hearing

At the hearing, the Committee discussed the background to the Application. The Landlord is habitually resident in Thailand which has been a source of difficulty in the past in relation to communication. For example, in November 2103, Stirling

Council issued a Rent Penalty Notice in respect of the House as the Landlord had not registered as such with the local authority as he required to do. The RPN was notified to the Landlord and Tenant but unfortunately not to Belvoir who act as the landlord's letting agent. Accordingly, Belvoir chased up the unpaid rent which appears to have caused some difficulty between the parties but which was subsequently resolved.

Mr Curran indicated that following complaints from the Tenant, inspections of the House had been carried out in April, July and either September or October 2014. The main complaint had been in relation to the carpets in the House, although there had been concern in relation to mould and whether the House was in fact watertight.

In relation to the carpets, Belvoir were of the view that there was no substance to the complaint and nothing was done further to it. In relation to the mould, that had been present in the main bedroom which was situated on the upper floor of the House. On 29 June 2014, roofing contractors attended the property to check the slates and were able to confirm that the roof was not the cause of any water ingress and dampness in the property. On 20 September 2014, Belvoir caused a contractor to attend in order to remove debris from the external guttering to the property.

The mould in the bedroom which occurred mainly on the back wall and behind a large wardrobe which was situated there, had been caused, in the view of Belvoir, by the lifestyle of the Tenant. At the time the damp was noticed, the Tenant and his wife had just had their first child. This had led to an increase in washing being required. The letting agents had noticed clothes drying on airers in the bedroom and condensation dripping down the windows there.

Accordingly, the letting agents removed the mould in the bedroom and redecorated as nothing further was required in their view. All of the other points of complaint from the Tenant either did not merit attention or had already been dealt with.

Unfortunately, Belvoir did not keep any documentation in the form of site notes or inspection notes in relation to these actions taken and the decisions reached by them. In addition, there is very little by way of correspondence from Belvoir to the Tenant: most of the correspondence, which was quite detailed, flowed in the other direction, from Tenant to letting agent. Accordingly, the Committee had to rely upon the evidence of Mr Curran in relation to these matters during the course of the hearing. It did note, however that the lifestyle issue had been brought to the Tenant's attention on 23 July 2014 and the reason given (being the prospective sale of the property) for not carrying out certain improvements to the House.

Summary of the Issues

The issues to be determined are: whether (a) the House meets the repairing standard as laid down in section 13(1)(a)(b)(d) and (e) of the Act; and therefore (b) whether the Landlord has complied with the duty imposed by section 14 (1)(b).

Findings in Fact

The Committee made the following findings in fact:

The Landlord and the Tenant and his wife entered into a Tenancy agreement in respect of the House on 2 June 2009, upon which date they took entry. The lease was signed by Mr Curran on the landlord's behalf. The lease was initially for six months, but was rolled over for the following five years or so until it was formally determined on 2 February 2015. The initial rent payable was £545 per calendar month.

The registered owner of the House is Mr Andrew Butterworth by virtue of a disposition in his favour dated 19 August 2008 and registered in the Land Register under Title Number STG40000. The Committee was satisfied that Belvoir had authority to act as his agent.

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

The Tenant formally notified the Landlord of the defects in the house which are now the subject of the Application on 4 July 2014, although the Committee understands that he and his wife had informally complained about what they considered to be defects on many occasions prior to that date.

Prior to inspection, the Committee issued a Direction requiring the Landlord to provide an up to date Gas Safety Certificate on or before the date of inspection. That Direction was complied with.

The inspection on 16 April 2015 revealed:

The property is a main door entry house on two floors with three bedrooms.

On entry through the front door, there is a short hallway giving access to the stairs to the left and the kitchen to the right. The living room is accessed via the kitchen to the rear of the property. It has three sets of windows on the rear facing wall. The leftmost window as seen on entering did not fit in its frame properly and the seal came away upon opening. The window was also difficult to open and close and required some effort and technique to do so.

The bedrooms are located upstairs and are adjoining each other, with the main one to the rear of the property and the smaller one to the front used for storage at the time of the inspection. The WC and bathroom is also on the upper floor. Two of the bulbs in the light fitting in the bathroom were not working, although the remaining third bulb did. The Committee was not able to establish whether the non-working bulbs within the light fitting simply required to have new replacement bulbs fitted or whether the light fitting itself was faulty.

The House is generally in a reasonable state of decorative repair. The main bedroom had been recently redecorated and showed no signs of dampness or mould.

The House has linked mains smoke detectors in the upper and lower hallway which the Committee confirmed were functional. There was a further mains smoke alarm in the living room.

A Gas Safety Certificate was provided prior to the inspection which confirmed that all gas appliances, namely the gas boiler and gas hob, were functional and safe to use.

The Committee considered all of the stated defects in the House as narrated by the Tenant in his email to Mr Curran of 4 July 2014. That email provided greater specification for the purposes of the inspection and contained some 14 items in total, in addition to the alleged dampness issue. Without going through the list in detail, it was noted that certain of the defects had already been addressed by the time of the inspection and certain of the other points raised did not in the view of the Committee constitute defects, given the general age and condition of the property.

The only defect alleged which had any substance was the fourth one on the list which stated "the window in the lounge doesn't close properly, it doesn't fit in the frame properly and the seal falls from the window casing."

Decision of the Committee and reasons

The Committee was of the view that none of the complaints in relation to paragraphs (b), (d) or (e) of section 13(1) of the Housing (Scotland) Act 2006 should be upheld. It determined that the complaint in respect of living room window should be upheld under sub-section (a) (the house is wind and water tight) in respect of the fault found as narrated above in respect of the living room window.

Accordingly, 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 to that limited extent.

The Committee was therefore of the view that it was necessary for it to make a Repairing Standard Enforcement Order in terms of section 24(2) of the Act in relation to the living room window only.

The decision of the Committee was unanimous.

Although the Committee found only a relatively minor failure to comply with the Repairing Standard, it would also like to note the following:

(i) One of the faults reported in July 2014 (faulty handle on bathroom door) was, according to the evidence of Mr Curran, only attended to in February 2015, some

eight months after it had been brought to attention of Belvoir. This is undue delay;

(ii) the fault with the window as found by the Committee has been present now for almost a full year. Mr Curran gave evidence that it had been difficult to gain entry for work to be carried out due to acrimonious relations with the Tenant. However, the present tenant had been in the House for two months by the time of the inspection and the work had not been carried out, despite the House being vacant since 2 February 2015 prior to that.

(iii) the Committee was disappointed with the lack of engagement with PRHP. No response to the Notice of Referral was provided, despite reminders being sent. This meant that the Committee were unsure until the date of inspection itself whether entry would be provided to the House and, moreover, whether the landlord's representative would attend the hearing held thereafter.

This necessitated PRHP in incurring unnecessary expense by reason of having to serve a Notice of Required Entry and the Direction dated 12 May 2015 by Sheriff's Officers. Proper engagement at the outset with the process would have avoided that unnecessary expense and procedure.

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.

M. O'CARROLL

Maurice O'Carroll
Chairperson

Date: 2 June 2015