



Repairing Standard Enforcement Order

Ordered by the Private Rented Housing Committee

prhp Ref: PRHP/RP/14/235

RE: Property at 42 Gladstone Place, Woodside, Aberdeen, AB24 2RU ("the Property")

Title No: ABN63089

The Parties:-

MARK JONATHAN BERRY and MRS FIONA KEDDIE or BERRY, Spouses residing together at 10 Herd Crescent, Johnshaven, Montrose, Angus represented by their agent Mr Dean Purdie of Dean Purdie, Solicitors, Aberdeen ("the Landlords")

MR GRANT WEBSTER residing at 42 Gladstone Place, Woodside, Aberdeen ("the Tenant")

NOTICE TO MARK JONATHAN BERRY and MRS FIONA KADIE or BERRY ("the Landlords")

Whereas in terms of their decision dated 9 April 2015 the Private Rented Housing Committee determined that the Landlords 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 Landlords has failed to ensure that:-

- (a) The Property is wind and watertight and in all other respects reasonably fit for human habitation;
- (b) The structure of and exterior of the Property (including drains, gutters and external pipes) are in a reasonable state of repair and in proper working order;
- (c) Any fixtures, fittings and appliances provided by the Landlords under the tenancy are in a reasonable state of repair and in proper working order;

the Private Rented Housing Committee now requires the Landlords 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 Landlords:-

- (a) to carry out such works as are necessary to render the Property and, in particular, the rear elevation properly wind and watertight and free from damp penetration and water ingress. The Landlords will require to carry out any redecoration works that are required after such repair/remedial works have been done.
- (b) To replace any areas of damaged plasterboard within the lounge and bedroom of the Property and to carry out any appropriate redecoration required.
- (c) Such works of repair or renewal to the kitchen sink/draining board to ensure that the draining board connects into the plumbing system and that excess water is properly disposed of.

The Private Rented Housing Committee order that the works specified in this Order must be carried out and completed within the period of 3 months from the date of service of this Notice.

A Landlords 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.

Please note that in terms of section 28(1) of the Act, a Landlords 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 Landlords (and that includes any Landlords'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 type written on this and the preceding page are executed by Ewan Kenneth Miller, Solicitor, Whitehall House, 33 Yeaman Shore, Dundee, DD1 4BJ, Chairperson of the Private Rented Housing Committee at Dundee on 9 April 2015 before this witness:-
L. JOHNSTON

E. MILLER

__ witness

Chairman

Lindsay Johnston
Secretary
Thorntons Law LLP
Whitehall House
33 Yeaman Shore
Dundee
DD1 4BJ



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

prhp Ref: PRHP/RP/14/235

RE: Property at 42 Gladstone Place, Woodside, Aberdeen, AB24 2RU ("the Property")

The Parties:-

MR GRANT WEBSTER residing at 42 Gladstone Place, Woodside, Aberdeen ("the Tenant")

MARK JONATHAN BERRY and MRS FIONA KEDDIE or BERRY, Spouses residing together at 10 Herd Crescent, Johnshaven, Montrose, Angus (represented by their agent Mr Dean Purdie of Dean Purdie, Solicitors, Aberdeen) ("the Landlords")

Decision

The Committee, having made such enquiries as it saw fit for the purposes of determining whether the Landlords have complied with the duty imposed by Section 14 (1)(b) in relation to the house concerned, and taking account of the evidence led by both the Landlords and the Tenant at the inspection and hearing, determined that the Landlords had failed to comply with the duty imposed by Section 14 (1)(b) of the Act.

Background

1. By application dated 3 October 2014 the Tenant applied to the Private Rented Housing Panel for a determination of whether the Landlords 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 Landlords had failed to comply with their duty to ensure that the house meets the repairing standard and in particular that the Landlords had failed to ensure that:-
 - (a) The Property is wind and watertight and in all other respects reasonably fit for human habitation;
 - (b) The installations in the Property 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;
3. By letter dated 26 January 2015 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 Landlords and the Tenant.
5. Following service of the Notice of Referral the Tenant made no further material written representation to the Committee other than their original application. The Landlords, via representations from their representative Mr Purdie, submitted written representations dated 17 February 2015.

6. The Private Rented Housing Committee, comprising of Mr E K Miller (Chairman and Legal Member), Mr A Anderson (Surveyor Member) and Mrs L Robertson (Housing Member) inspected the Property on the morning of 25 March 2015. The Tenant was present and represented himself. The Landlords were not present nor represented during the inspection.
7. Following the inspection of the Property the Private Rented Housing Committee held a Hearing at The Credo Centre, John Street, Aberdeen. The Landlords were present and represented by their solicitor Mr Purdie of Dean Purdie, Solicitors. The Tenant was not present nor was he represented.
8. During the course of the inspection, the Tenant indicated that there were issues in relation to water penetration at the rear elevation of the flat. He pointed out several areas where he believed there was water ingress. In relation to the water ingress in the bedroom, the Tenant confirmed that he had removed the plasterboard as it had become heavily bowed and he had had to insert a hole in it to release water. He had been previously willing to replace this himself (and confirmed that he still had the plasterboard the Landlords had provided to him) but subsequent to his offer to do the works he had received eviction notices and was therefore no longer minded to do the works. The Tenant also highlighted that the kitchen draining board was not connected to the plumbing and water had to be manually collected and disposed of. The Tenant acknowledged that the Landlords had done some works along the rear elevation to try and address the damp penetration but was of the view that these had not been entirely successful, although there had perhaps been some improvement in the leak to the bedroom.
9. The Landlords and their agent submitted that they had had issues with the Tenant in the recent past and there had been a breakdown in communication. They have not had access to the Property for some time and were unaware of its overall condition. They accepted that some works may be required and highlighted that they had already carried out works along the rear elevation. They were happy to address any works that the Committee felt were required to ensure that the repairing standard was met.

Summary of the issues

10. The issues to be determined were:-
 - a. Whether there was water ingress to the Property causing damp/water penetration and generally whether the Property was properly wind and watertight.
 - b. Whether there was damage to the plasterboard within the Property that required to be repaired or replaced to meet the repairing standard.
 - c. Whether the draining board comprising part of the kitchen sink was in proper working order.

Findings of fact

11. The Committee found the following facts to be established:-
 1. The property comprises a self contained ground floor flat within a one storey and attic purpose built block which contains four flats. The building is of stone and slate construction and approximately 90 years old. Access to the upper flats is via a stone staircase at the rear elevation, adjacent to the bedroom/lounge wall of the subject property.
 2. Notwithstanding the works carried out by the Landlords, there was ongoing water penetration to the rear elevation of the Property.
 3. There was damaged plasterboard that required to be replaced.
 4. The kitchen draining board was not connected to the plumbing system and this would require to be carried out.

Reasons for the decision

12. The Committee based its decision primarily on the evidence obtained during the course of the inspection. The Committee first inspected the rear elevation of the lounge. The Committee noted that the ground level to the rear of the property was high and that this would exacerbate damp and water penetration issues. The Tenant highlighted a point in the top lefthand corner of the room where water had previously penetrated. However, upon inspection, the Committee found this area to be dry and registering normal meter readings on a damp meter. There was however a patch of wall to the left of the window around waist height where excessive damp meter readings were found and where it appeared that water penetration was ongoing in to the Property. On the right-hand ingo of the lounge window there was again evidence of water penetration and high damp meter readings. There was a hole in the plasterboard where a BT socket had been. The Committee understood that this had been created during investigations as to the cause of the water ingress. The Committee did not view it as unreasonable for the Landlords to repair this.

The Committee inspected the rear bedroom. There was some evidence of former water penetration on the window ingos. The area of plasterboard above the window had been removed. Evidence of some of the Landlords' repairs could be seen to the stone staircase externally. The Tenant acknowledged that there seemed to be less water penetration in this area and no excessive damp meter readings were found. The Committee was of the view that it might be the case that this area had been successfully repaired by the Landlords but the Landlords should carry out such further investigatory works as were required to ensure that this was indeed the case. The plasterboard would need to be repaired and the area redecorated.

When considering the dampness issues, the Committee were aware that weather conditions had been generally dry in the week preceding the inspection. The Committee did not believe the dampness that was present was due to improper heating or lack of ventilation as suggested in the Landlords' written submission, as the damp areas were co-incident with water marks/staining.

The Committee inspected the kitchen drainer. This simply drained through to the cupboard underneath. There was no connection into the plumbing system. Accordingly the Tenant needed to catch the water manually below it and dispose of it. It seemed to the Committee that this was not how the system was meant to work and at some point there must have been some proper system to collect excess water. The Landlords would require to reinstate this.

During the course of the inspection, the Committee noted that there was only one battery powered smoke alarm in the Property. This did not meet the current requirements as set out in the Domestic Technical Handbook issued in 2014. Whilst the Tenant had not complained about this, and the Committee did not make this a requirement of the RSEO, nonetheless, it was a legal requirement for the Landlords to address this and the Committee would expect them to do so.

The Committee noted that both the Landlords and the Tenant appeared to be acting reasonably in relation to this matter and it was unfortunate that there was a breakdown in communication between them. The works required were not particularly complex, although a degree of investigation would be required by the Landlords to ascertain the remedial works required to stop water penetration. The Committee would encourage the parties to work together to resolve the issues. The Committee expect the Landlords to arrange the works at a reasonable time and upon reasonable notice to the Tenant. The Committee also expect the Tenant to give access in these circumstances.

The Committee considered the timescale required for the works and determined that 3 months would be a reasonable period for the Landlords to carry out the works.

Decision

13. The Committee accordingly determined that the Landlords had failed to comply with the duty imposed by Section 14 (1)(b) of the Act.

14. The Committee proceeded to make a Repairing Standard Enforcement Order as required by section 24(1).

15. The decision of the Committee was unanimous.

Right of Appeal

16. **A Landlords 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

17. 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.

E. MILLER

Signed .
Chairperson

Date.....

12/11/2015