



## Repairing Standard Enforcement Order

Ordered by the Private Rented Housing Committee

**prhp ref: RP/15/0031**

Re 8 Howgate Street, Dumfries, DG2 7AE being the subjects registered in the Land Register of Scotland under title number DMF 559 ('the Property')

The Parties:-

Mr Andrew Tolmie, 8 Howgate Street, Dumfries, DG27AE ('The Tenant')

Mr Victor Singh, residing at Beechwoodbank, Nith Bank, Dumfries, DG1 2RZ ('The Landlord')

### **NOTICE TO VICTOR SINGH ("the Landlord")**

Whereas in terms of their decision dated 13<sup>th</sup> May 2015 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 reasonably fit for human habitation, that the structure and exterior of the Property (including drains, gutters and external pipes) are in a reasonable state of repair and in proper working order and that 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, 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 following:-

1. **The roof is to be repaired where necessary to ensure that the Property is wind and watertight.**
2. **The flooring in the second floor bedroom is to be repaired or replaced.**
3. **The hole in the wall of the bedroom on the second floor is to be repaired**
4. **Missing doors are to be replaced.**
5. **Dampness in the walls of the lounge, second floor bedroom and within a cupboard in the rear bedroom on the first floor is to be eradicated.**
6. **The flushing mechanism of the downstairs toilet is to be repaired or replaced.**
7. **The defective stair treads on the staircase leading from the ground floor are to be repaired so that the staircase is safe to use.**
8. **The boiler is to be repaired or replaced to eradicate a leak.**
9. **The patio doors are to be repaired or replaced to ensure that they have an effective lock and can open and close easily.**
10. **The light fitting in the lounge and the external light to the rear of the Property are to be repaired or replaced.**
11. **Works are to be carried out to ensure that the electrical sockets are safe and appropriately sited and the Landlord is required to produce a certificate from a suitably qualified electrician confirming that the electrical system is safe.**

12. The boundary fence is to be repaired or replaced.

13. The gable wall is to be inspected and repairs carried out where necessary to ensure that the Property is wind and watertight.

The Private Rented Housing Committee order that the works specified in this Order must be carried out and completed within the period of forty two days 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.

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 type written on this and the preceding page(s) are executed by Martin McAllister, solicitor, chairperson of the Private Rented Housing Committee at Saltcoats on 13<sup>th</sup> May before Andrew Blair, Solicitor, 51 Hamilton Street, Saltcoats.

A. BLAIR

M. MCALLISTER

\_\_ witness

chairman



## **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**

**prhp ref: RP/15/0031**

**Re 8 Howgate Street, Dumfries, DG2 7AE being the subjects registered in the Land Register of Scotland under title number DMF 559 ('the Property')**

#### **The Parties:-**

**Mr Andrew Tolmie, 8 Howgate Street, Dumfries, DG27AE ('The Tenant')**

**Mr Victor Singh, residing at Beechwoodbank, Nith Bank, Dumfries, DG1 2RZ ('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) of The Housing (Scotland) Act 2006 ("the 2006 Act") in relation to the Property, determined that the Landlord has failed to comply with the duty imposed by Section 14 (1)(b) of the 2006 Act and made a repairing standard enforcement order in terms of Section 24(2) of the said Act.**

#### **Background**

- 1. By application dated 20<sup>TH</sup> January 2015 the Tenant applied to the Private Rented Housing Panel for a determination of whether the Landlord has failed to comply with the duties imposed by Section 14 (1) (b) of the 2006 Act.**
- 2. The application by the Tenant stated that he considered that the Landlord has failed to comply with his duty to ensure that the Property meets the repairing standard. He contended that the Property is not wind and watertight and in all respects reasonably fit for human habitation; that the structure and exterior of the house (including drains, gutters and external**

pipes) are not in a reasonable state of repair and in proper working order; that the installations in the Property for the supply of water, gas and electricity and for sanitation, space heating and heating water are not in a reasonable state of repair and in proper working order and that the house does not have satisfactory provision for detecting fires and for giving warning in the event of fire or suspected fire.

In particular the application stated that:-

- 2.1 There are missing slates on the roof causing leaks.
  - 2.2 There are faulty windows in bedrooms causing dampness and condensation.
  - 2.3 There are broken and missing floorboards and also sagging flooring.
  - 2.4 There is a hole in a wall.
  - 2.5 There are doors missing.
  - 2.6 There is dampness in cupboards.
  - 2.7 The Extractor fan in the bathroom is blocked.
  - 2.8 The toilet cisterns do not flush properly.
  - 2.9 The staircase requires to be repaired.
  - 2.10 The boiler cupboard is draughty.
  - 2.11 The boiler is faulty and loses pressure.
  - 2.12 The patio doors are unsafe, have no lock and are draughty.
  - 2.13 There is a faulty light fitting.
  - 2.14 There are electrical sockets which are badly fitted or inappropriately sited.
  - 2.15 There is dampness to walls.
  - 2.16 There is an unresolved issue with shared garden and sole use of garage.
  - 2.17 There is a broken boundary fence.
  - 2.18 The gable of the building is in disrepair.
  - 2.19 The exterior light is faulty.
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3. The President of the Private Rented Housing Panel, having considered the application, referred the application under Section 22 (1) of the Act to a Private Rented Housing Committee. The Committee members are Martin McAllister (Chairperson), George Campbell (Surveyor Member) and Jim Riach (Housing Member).
  
  4. The Private Rented Housing Committee served a Notice of Referral under and in terms of Schedule 2, Paragraph 1 of the Act upon both the Landlord and the Tenant, dated 10<sup>th</sup> March 2015
  
  5. The Committee attended at the Property on 7<sup>th</sup> May 2015 for an inspection. The tenant was in attendance with Ms Zara Crocket who is also a party to the Lease. The Property is an end terrace dwellinghouse with rooms on the ground, upper and attic floors. There is a garden area to the rear of the property accessed through patio doors from the living room of the Property. There is also a garage. The Property is unfurnished and the Tenant advised that he and his partner were in the process of moving

out and giving up the tenancy. The Committee found the following on inspection :

- 5.1 There is evidence of missing slates.
- 5.2 There is no evidence of faulty windows and it was noted that some hinges had been replaced.
- 5.3 The flooring in the bedroom in the top floor is sagging and there are significant gaps between the floorboards. The floor is uneven.
- 5.4 There is a hole in the wall of the bedroom on the second floor.
- 5.5 There are doors missing in the Property- the downstairs toilet, a downstairs cupboard, the door between a bedroom on the first floor and the staircase leading to the second floor and a bedroom door.
- 5.6 Significant dampness readings were found in a cupboard in the rear bedroom on the first floor.
- 5.7 The extractor fan is functioning.
- 5.8 The toilet cistern in the upstairs bathroom is functioning. The toilet cistern in the downstairs toilet flushes but there is a fault in its mechanism.
- 5.9 The staircase from the ground to first floor has no carpeting. It is constructed from wood and the original treads appear to be worn. Additional treads have been added at some time in the past. The additional treads have some spring and are loose in places. There is no handrail or banister.
- 5.10 The boiler cupboard is beside the front door. The boiler is fixed to the wall and there are some holes in the wall of the cupboard where pipes enter the Property.
- 5.11 The boiler appears to be functioning and there is a jug situated below the boiler. The jug contains some water.
- 5.12 The patio doors are situated in the living room. A lock is fitted but is inoperative. The door opens with difficulty and the runners appear to be worn.
- 5.13 The light fitting in the living room is not functioning.
- 5.14 An electrical socket in the living room is loose. It is noted that a double socket is situated above the sink.
- 5.15 Significant dampness readings exist on the chimney breast walls in both the living room and the bedroom on the top floor.
- 5.16 The Committee notes that the rear garden appears to be shared by others living in adjoining properties.

5.17 It is noted that the boundary fence at the rear of the garden is broken.

5.18 The gable is constructed from brick and the Committee notes that it appears that some repairs have been carried out in the past. The Committee could not carry out a close inspection of the gable wall but from a distance it appears that some pointing may be defective.

5.19 There is an exterior light at the rear of the property which is not working.

5.20 There is a smoke alarm on the ground floor and on an upper floor. They are wired to main electrics, are linked and are in working order.

6. Following the inspection of the Property the Private Rented Housing Committee held a hearing at Best Western Station Hotel, 49 Lovers Walk, Dumfries, DG1 1LT.

The Tenant and Ms Zara Crocket were present. The Landlord and Mr Robert Cameron, letting agent, were present. Evidence was provided by the Landlord, Mr Cameron and the Tenant. The chairman suggested that each specific issue be examined in turn and that the Tenant and Landlord be given the opportunity to make representations on each issue before the committee moved on to considering the next issue. This was acceptable to parties. The Tenant helpfully confirmed that some matters had been resolved satisfactorily.

## **7. Summary of the issues**

Sections 13(1)(a),(b),(c) and (f) of The Housing (Scotland) Act 2006 provide that the Property must be wind and watertight and in all respects reasonably fit for human habitation, the structure and exterior of the house (including drains, gutters and external pipes) be in a reasonable state of repair and in proper working order, the installations in the house for the supply of water, gas and electricity and for sanitation, space heating and heating water be in a reasonable state of repair and in proper working order and that the Property must have satisfactory provision for detecting fires and for giving warning in the event of fire or suspected fire.

The specific issues to be addressed are those detailed in the application.

## **8. The Hearing**

The Landlord produced a number of documents:

- (i) Gas Safety records dated 16<sup>th</sup> November 2013, 23<sup>rd</sup> August 2014 and 18<sup>th</sup> April 2015.
- (ii) Undated letter from Stevie Wight Electrical Limited.

- (iii) Undated letter from Derek Scott Plumbing and Heating Engineer.
- (iv) Letter from W Dempster Roofing dated 6<sup>th</sup> May 2015.

The Landlord said that slates on the front elevation of the Property had been replaced and he referred to the letter from W Dempster Roofing which stated that the roofer had been unable to deal with the slates on the rear elevation because of the amount of dogs' dirt in the back garden.

The Landlord said that some window hinges had been repaired and the Tenant did not dispute this.

The Landlord said that he had no knowledge of the floor in the bedroom on the top floor being uneven. The tenant said that it had always been uneven.

The Landlord said that the hole in wall referred to in the application had only recently been reported by the Tenant.

The Landlord explained that an individual who, at the time the lease commenced, had been acting as his agent had negotiated the terms of the lease and a separate Agreement relating to relief of rent for a period in exchange for the Tenant carrying out certain work including installation of four doors. The Tenant accepted that this was the case and said that, in terms of the Agreement, he had replaced four doors being two in the living room, a bedroom and the upstairs bathroom. He explained that he is a joiner.

The Landlord could not comment on whether or not there is dampness in a cupboard in a bedroom.

Both parties acknowledged that the extractor fan is working. The Landlord said that repairs had been carried out.

The Landlord and Mr Cameron indicated that they did not know whether or not the toilet cisterns are working.

The Landlord said that around fifteen years ago Richardson and Starling who are dampness, woodworm and rot specialists had carried out work to the staircase. He said that the treads had been defective and they had installed new treads which had been attached to the existing stair treads.

The Landlord said that the Tenant had constructed the boiler cupboard and this was accepted by the Tenant. Reference was made to the Gas Safety Certificate dated 18<sup>th</sup> April 2015. The Certificate states that the system is safe but that there is a "leak at return valve." Mr Cameron said that the part is on order to carry out the necessary repair. The Tenant said that, although there is still a leak at the boiler, it is not as bad as it had been. The Tenant said that an engineer had carried out work to the boiler and that it now appeared to be working.

The Landlord said that he had obtained a quotation to replace the patio doors but that relations with the Tenant had broken down. The Tenant said that the patio doors had never had an effective lock and the Landlord did not dispute this.

The Tenant said that the light fitting in the living room does not work and that the fitting shows sign of having burnt out. The Landlord said that he had sent an electrician to the Property and that he had authorised the electrician to carry out any work which was required to be done. The Tenant disputed that the electrician would have carried out the repair and referred to having asked him to do something and being told "don't push your luck."

Reference was made to the letter from Stevie Wight Electrical Limited which referred to faults and stated "This installation does not meet regulations and I recommend a full rewire of down stairs ring circuit to bring this installation up to satisfactory regulations soon as is feasibly possible." The Landlord accepted that work requires to be done to the electrics in the Property.

The Landlord said that he had not investigated the dampness.

The Tenant said that some holes on the gable had been repaired. He said that pigeons had previously been nesting in the holes.

The Tenant said that when the tenancy commenced it had been understood that this would include exclusive use of the garage and the garden. The Landlord said that, in terms of the title, the garden is shared. The Tenant conceded that this appears to be the case but that this was at odds with what he had understood at the commencement of the tenancy.

The Landlord accepted that the boundary fence requires to be repaired.

The Landlord said that he knows that work requires to be done to the Property and he said that the relationship with the Tenant had broken down which prevented him from doing it.

## **9. Findings in fact**

The Committee found:

9.1 There are missing slates which may be causing water ingress and/or dampness.

9.2 The windows appear to be functioning properly.

9.3 The flooring in the second floor bedroom is defective because it is uneven, slopes and has excessive gaps between floor boards.

9.4 There is a hole in a bedroom wall.



- 9.5 There are doors requiring to be fitted in the Property.
- 9.6 There is dampness in the cupboard of the rear first floor bedroom.
- 9.7 The extractor fan is functioning.
- 9.8 The flushing mechanism of the cistern in the downstairs toilet is faulty.
- 9.9 There are safety issues with the staircase leading from the ground to first floors. There are defective treads.
- 9.10 There are no significant issues relating to the boiler cupboard.
- 9.11 The boiler leaks.
- 9.12 The patio doors do not lock and are difficult to open and close.
- 9.13 The light fitting in the living room does not work.
- 9.14 The electrical system is faulty.
- 9.15 There is dampness in the walls of the living room and the bedroom on the second floor.
- 9.16 The Committee arrived at no decision with regard to the garden and garage. It considered it a matter not relevant to whether or not the Property meets the repairing standard.
- 9.17 The boundary fence at the rear of the garden is broken.
- 9.18 The gable wall has defective pointing.
- 9.19 The external light at the rear of the Property is not functioning.
- 9.20 The smoke detectors installed in the Property are adequate and in working order.

## **10.Reasons**

The inspection of the Property assisted the Committee in arriving at its findings in fact. The Committee accepted the evidence from the Landlord, Mr Cameron and the Tenant. Neither the Landlord nor Mr Cameron's evidence was in conflict with the evidence of the Tenant with the exception of what the Landlord stated in relation to the Tenant preventing him from carrying out

work and the Committee considered that this was not relevant. It also had the benefit of the information contained within the documents produced by the landlord. The report from the electrician highlighted serious issues with the electrical system and the Committee noted that the Landlord accepted that work requires to be done. The Committee had particular concerns about the condition of the staircase leading from the ground floor. The condition of the treads raised safety issues for any person using the staircase and the situation is made worse by the fact that the staircase does not have a handrail or banister. The question raised about the use of the garden and garage is not something relevant to whether or not the Property meets the repairing standard.

## **11. Decision**

The committee had to determine whether or not there are any of its findings in fact that constituted a failure by the landlord to ensure that the property meets the repairing standard in terms of the duty imposed by Section 14 (1) (b) of the Act.

The Committee accordingly determined that the Landlord has not complied with the duties imposed by Section 13(1)(a), 13(1)(b) and 13(1)(c) of the Act and determined that a repairing standard enforcement order be made in the following terms:

- 1. The roof is to be repaired where necessary to ensure that the Property is wind and watertight.**
- 2. The flooring in the second floor bedroom is to be repaired or replaced.**
- 3. The hole in the wall of the bedroom on the second floor is to be repaired**
- 4. Missing doors are to be replaced.**
- 5. Dampness in the walls of the lounge, second floor bedroom and within a cupboard in the rear bedroom on the first floor is to be eradicated.**
- 6. The flushing mechanism of the downstairs toilet is to be repaired or replaced.**
- 7. The defective stair treads on the staircase leading from the ground floor are to be repaired so that the staircase is safe to use.**
- 8. The boiler is to be repaired or replaced to eradicate a leak.**
- 9. The patio doors are to be repaired or replaced to ensure that they have an effective lock and can open and close easily.**

**10. The light fitting in the lounge and the external light to the rear of the Property are to be repaired or replaced.**

**11. Works are to be carried out to ensure that the electrical sockets are safe and appropriately sited and the Tenant is required to produce a certificate from a suitably qualified electrician confirming that the electrical system is safe.**

**12. The boundary fence is to be repaired or replaced.**

**13. The gable wall is to be inspected and repairs carried out where necessary to ensure that the Property is wind and watertight.**

**The Landlord is required to carry out the work within forty two days of intimation of the repairing standard enforcement order.**

### **Right of Appeal**

**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**

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.

M. MCALLISTER

Signed  
Chairperson

Date 13th May 2015