



Repairing Standard Enforcement Order

Ordered by the Private Rented Housing Committee

Dundee 22/5/15
Confirmed a true and correct copy
Notary Public

prhp Ref: PRHP/RP/15/38

Re: Property at 417 Clifton Road, Aberdeen, AB24 4EB ("the Property")

Title No: ABN17795

The Parties:-

MS SHARON TIERNEY c/o Stonehouse Lettings, 60 Rosemount Place, Aberdeen, AB25 2XJ (represented by her agent Ms Amanda Craig of Stonehouse Lettings) ("the Landlord")

JAMIE ERICKSON residing at 417 Clifton Road, Aberdeen, AB24 4EB ("the Tenant")

NOTICE TO MS SHARON TIERNEY ("the Landlord")

Whereas in terms of their decision dated 26 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 ("The Act") and in particular that the landlord has failed to ensure that the property is:-

- (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) 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;

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 landlord:-

- (a) to carry out such works of repair or replacement to the rear door / frame of the Property as are sufficient to render it wind and watertight and properly compliant with the repairing standard.
- (b) to carry out such works of repair or replacement as are necessary to the bathroom at the Property to ensure it is fully compliant with the repairing standard including (a) the repair or replacement of the cracked and leaking cistern, (b) the repair or replacement of the bath panels, (c) the repair of the damaged flooring beneath the bathtub together with repairs to plasterboard linings and (d) the installation of proper silicone around the edge of the bath.

The Private Rented Housing Committee order that the works specified in this Order must be carried out and completed within the period of 2 months 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 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 26 May 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/15/38

Re: Property at 417 Clifton Road, Aberdeen, AB24 4EB ("the Property")

The Parties:-

JAMIE ERICKSON residing at 417 Clifton Road, Aberdeen, AB24 4EB ("the Tenant")

MS SHARON TIERNEY c/o Stonehouse Lettings, 60 Rosemount Place, Aberdeen, AB25 2XJ (represented by her agent Ms Amanda Craig of Stonehouse Lettings) ("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) in relation to the house concerned, and taking account of the evidence led by both the Landlord's agent and the Tenant at the hearing, determined that the Landlord had failed) to comply with the duty imposed by Section 14 (1)(b) of the Act.

Background

1. By application dated 29 December 2014 the Tenant applied to the Private Rented Housing Panel for a determination of 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 that the Tenant considered that the Landlord had failed to comply with his duty to ensure that the house meets the repairing standard and in particular that the Landlord had 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;
3. By letter dated 19 March 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 Landlord and the Tenant.
5. Following service of the Notice of Referral the Tenant made no further written representation to the Committee other than their original application. The Landlord made no written representation to the Committee.
6. The Private Rented Housing Committee (comprising Mr E K Miller, Chairman and Legal Member; Mr A Anderson, Surveyor Member; and Mr M Scott, Housing Member) inspected the Property on the morning of 18 May 2015. The Tenant was present. The Landlord's agent was present.

7. Following the inspection of the Property, the Private Rented Housing Committee held a Hearing at The Credo Centre, John Street, Aberdeen and heard from both the Tenant and the Landlord's agent.
8. The Tenant submitted that there were two principal issues with the Property. There was clearly a problem in the bathroom which had resulted in the bath panels being cracked and missing with water leaking from the bath . This had resulted in rotten floorboards and a hole under the bathtub. The Tenant was also of the view that the toilet was leaking. The Tenant also complained about the rear door from the kitchen. The Tenant submitted that she had been trying to have these issues addressed since 2012. The Tenant also intimated that she had agreed an increase in rental with the Landlord in 2014 where the rent was increased by £75 per calendar month and it had been agreed that this rental increase would be used to fund the necessary repairs.
9. The Landlord's agent accepted that works were required to the bathroom and conceded that, in her view, the bathroom did not meet the repairing standard. They had been unable to gain instructions from the Landlord to carry out the works. The Landlord's agent accepted the Tenant's submission that the rent increase had been agreed to allow the Landlord to help fund the repairs. The Landlord's agent also accepted that works were required to the back door of the Property.

Summary of the issues

10. The issues to be determined were:-
 1. Whether the back door to the Property was properly wind and watertight and met the repairing standard.
 2. Whether the bathroom at the Property was in proper working order and met the repairing standard.

Findings of fact

11. The Committee finds the following facts to be established:-
 1. The back door was not properly wind and watertight and would require to be repaired or replaced.
 2. The bathroom did not meet the repairing standard. There were a number of defects in the bathroom
 - a. The silicone seal around the bath edge had failed.
 - b. The bath panels were either missing or cracked.
 - c. There were significant damage due to water penetration to the floorboards and there was a large hole under the bathtub. The floor was very soft and was unsafe. There was a large hole in the plasterboard linings behind the bath.
 - d. The toilet cistern was cracked and leaking.

Reasons for the decision

12. The Committee based its decision primarily on the evidence obtained during the course of the inspection. The property comprised a self-contained ground floor flat in a purpose built block of two flats built around 1910. Accommodation comprised Entrance Hall, Front Bedroom, Lounge with Kitchenette off (in rear projection), Rear Bedroom and Bathroom.

The Committee first inspected the rear door. The Committee noted that there was daylight showing down the side of the door and accordingly it could not be said to be properly wind and watertight. The door itself was quite difficult to close and the door

and/or the frame required some adjustment. Alternatively the Landlord may wish to simply replace the door. It was for the Landlord to decide how they wished to address the problems with the door but the Committee required such works to be carried out as were necessary to the door and/or the frame to ensure it was properly wind and watertight.

The Committee then inspected the bathroom at the Property. The Committee noted that there was a leak underneath the toilet and determined that the cistern was cracked and leaking. The toilet would need to be repaired or replaced as a result.

The Committee noted that there was significant rot in the floor underneath the bathtub. Water penetration had clearly been going on for some time and a large hole had developed in the floor and the flooring itself was very soft and dangerous. The Committee also noted that the end bath panel was missing and that the side bath panel was cracked and ill fitting. The Committee also noted that the silicone seal between the bath and the wall appeared to have failed and this would be allowing water to penetrate. The Committee noted that there was a large hole to the plasterboard linings behind the bath.

The Landlord's agent indicated that the Landlord was of the view that a Peter Cox Guarantee that she held should cover some of the works required. The Committee was of the view that this would not be the case. The Guarantee would not be valid where a Landlord had allowed water to penetrate the timbers. In any event the Landlord had clearly not progressed this matter given that the Tenant had been complaining about it since 2012. It did not appear to be in dispute that the Tenant had agreed to increase the rent payable in return for the Landlord carrying out repairs. Whilst it was outwith the jurisdiction of the Committee, it seemed highly inappropriate for the Landlord to take the extra funds from the Tenant and then fail to put them to the agreed purpose.

The Committee also noted that the Property had an inadequate smoke detection system in that there were only two battery powered smoke alarms. The Landlord's agent did advise that they had a quote from a contractor to install a compliant smoke detection system but the Landlord had felt it was too expensive and was looking at other options. The Committee was in no doubt that had the Tenant complained about this issue also, they would have included this within an Order. The Committee would highlight that the legal obligation upon the Landlord to carry out these works as soon as possible.

The Committee considered how long the Landlord would require to carry out the required works and determined that a two month period would be ample.

Decision

13. The Committee accordingly determined that the Landlord 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 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

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.

Signed  Date 26/5/15
Chairperson