

A Repairing Standard Enforcement Order

Ordered by the Private Rented Housing Committee

prhp Ref: DD2/155/11

Re : Property at 1 Charleston Road, Dundee being All in Whole 0.0540 hectare with house 1 Charleston Road, Dundee thereon, referred to in Disposition to Andrew Mackay Fotheringham and Isobel Gail Fotheringham, recorded in the General Register of Sasines on 3 March 1993 ("the Property")

The Parties:-

Denise Blackwood formerly of 1 Charleston Road, Dundee. ("the Tenant")

Mr Brian Sproul, Roseangle Cottage, Rosemill Road, Bridgefoot, Dundee ("the Landlord")

NOTICE TO

Mr Brian Sproul, Roseangle Cottage, Rosemill Road, Bridgefoot, Dundee

Whereas in terms of their decision dated 10 May 2012, The Private Rented Housing Committee having 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 comply with the duty to ensure that:- the house is wind and water tight and in all other respects reasonably fit for human habitation and that the installations in the house 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 of the work in terms of this Order is made good.

In particular, the Private Rented Housing Committee requires the Landlord to:-

1. Provide an up to date Periodic Inspection Report by a suitably qualified electrician on the condition of the electrical installations in the house and any appliances.
2. To provide a gas safety certificate by a gas safe engineer on the gas installations and any appliances.
3. Provide evidence that the converted roof space now complies with the current building regulations.

The Private Rented Housing Committee orders that the work should be carried out within a period of 28 days from the date of service of this notice.

A landlord or a tenant aggrieved by this 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 variation is suspended until the appeal is abandoned or finally determined, and where the appeal is abandoned or finally determined

by confirming the decision, the variation will be treated as having effect from the day on which the appeal is abandoned or so determined.

In witness whereof these presents type written on this and the preceding page are executed by Judith V Lea, solicitor, Unit 3.5 The Granary Business Centre, Coal Road, Cupar, Fife, KY15 5YQ, chairperson of the Private Rented Housing Committee at Cupar on 10 May 2011 before this witness:-

M Smith

..... Witness

J Lea

..... Chairman

Maxine Smith
Unit 3.5, The Granary Business Centre
Coal Road
Cupar
Fife



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

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The Parties:-

Denise Blackwood formerly of 1 Charleston Road, Dundee. ("the Tenant")

Mr Brian Sproul, Roseangle Cottage, Rosemill Road, Bridgefoot, Dundee ("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 in relation to the house concerned, and taking account of the evidence led by the Landlord at the hearing, determined that the Landlord had failed to comply with the duty imposed by Section 14 (1)(b) of the said Act.

Background

- 1. By application dated 6 September 2011 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:- the house was wind and water tight and in all other respects reasonably fit for human habitation, that 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, that any fixtures and fittings and appliances provided by the Landlord under the tenancy are in a reasonable state of repair and in proper working order, and that the installations in the house 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. 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. The tenant left the property in October 2011 and indicated that she wished the application treated as withdrawn.**

6. Given the nature of the alleged repairs and health and safety issues which arise from the alleged repairs for potential future tenants, the President of the Private Rented Housing Panel considered whether in terms of Schedule 2 of Paragraph 7 of the Housing (Scotland) Act 2006, the case should be continued with and referred to a Committee or whether the case should be abandoned. In order to assist with the making of the decision the President required the Landlord to produce certificates, receipts and a written undertaking. These were not produced and accordingly the matter was considered by a Private Rented Housing Committee who decided to continue to determine the application. The matter accordingly was referred to a full Committee.
7. On 25 November 2011 a Direction was issued to the Landlord requiring the Landlord to provide an up to date Periodic Inspection Report by a suitably qualified electrician on the condition of the electrical installation and any appliances, a gas safety certificate by a gas safe engineer on the gas installation and any appliances, tradesmen's receipts for completion of works to the heat protection glass panel in the oven, the cracked floor tile and the defective downpipes, and written confirmation that the converted roof space is only being used for storage and not for living accommodation, all by 19 December 2011. The Landlord did not comply with the Direction.
8. A Private Rented Housing Committee (comprising Mrs Judith Lea, Chairman and Legal Member, Geraldine Wooley, Surveyor Member and John Wolstencroft, Housing Member) inspected the Property on 4 May 2012. The Committee were able to carry out an external inspection of the property. The Committee tried to gain access but there was no answer at the property. The property looked as if it was being lived in and a dog was present within the property which barked when the Committee knocked on the door.
9. Following the inspection of the Property, the Private Rented Housing Committee held a hearing at Douglas Community Centre, Dundee. The Landlord arrived 30 minutes late and stated that he had been unable to find the Community Centre. The Committee had already considered their decision but reconvened to hear the Landlord. The Tenant was not present or represented.
10. The Landlord advised that he had left a message with his Tenants to let the Committee in. He stated that the previous Tenant had been taking drugs and had destroyed his house. He advised that he had had the property rewired last year and had sent the receipts through the post but that they had gone astray. He indicated that he had copies. The Committee enquired as to whether he had copies with him to give to the Committee but he indicated that he had just come back from abroad and had not had time to get them. The Landlord advised that he had replaced the downpipes and had a Periodic Inspection Report for the property but did not have a copy with him. He advised that all the electrics had been taken out of the roof space, which was a floored loft and should be used for storage rather than as a bedroom. He advised that he had issued a new lease which was only for a 2 bedroom property. He confirmed that the new lease was in similar terms to the lease which the previous Tenant had. He advised that the Calor gas canisters had belonged to the previous Tenant and they had now been removed. He indicated that he had two gas safety certificates, one which was valid until November 2012 but he did not have a copy with him. He advised that he had had the glass panel repaired on the oven and had a receipt in connection with general work carried out by a joiner but he did not have a copy with him. He stated that he had spent £5,000 on the property.
11. The Landlord stated that he was not aware of any leak from the landing window and that the front door handle had been repaired as had the patio door handle. He stated that the loose bath panel had been fixed and that the Tenants wanted to replace the flooring and the taps and he had given some months rent free in order for this to be done. He stated that he did not intend to do anything with regard to the moss on the roof because with this type of roof it would do more damage to take it off and there was no water ingress.
12. The Landlord stated that he felt hard done by because the Tenant had destroyed his home and he had no redress. The Landlord stated that he could arrange for access if required.

13. Decision

It was clear from the external inspection that the front and rear downpipes have been replaced and there was no longer any evidence of leakage at the rhones. The external wood stain to the windows and doors was satisfactory. The front roof pitch was mossed but the Committee did not consider that this was a serious issue and there was no evidence of water ingress.

14. As the Committee was not able to carry out an internal inspection it was not possible to ascertain whether the front panel on the oven had been repaired, whether the landing window leaked, whether the front door handle and patio door handle had been rectified, whether the bath panel was still loose and whether the cold water tap and cracked floor tile had been repaired. It was clear from external inspection that the Landlord has carried out some work at the property and given that these matters may not be a serious breach of the Repairing Standard, the Committee did not consider that it was necessary to adjourn the case in order to obtain access to inspect these. This would result in the new Tenants being inconvenienced when they are not a party to the proceedings.
15. The Committee however was seriously concerned by the fact that the Landlord had failed to comply with the Direction issued by a previous Committee to provide an up to date Periodic Inspection Report, a gas safety certificate and confirmation with regard to the converted roof space. The Landlord states that he has all these documents but gave no reasonable explanation for why he has not produced them. The Committee accordingly cannot be satisfied that the electric and gas supply and appliances in the property are in a reasonable state of repair and in proper working order. The Committee accordingly considered this a breach of Section 13(1)(c) and resolved to make an Order that the Landlord produce these documents as required by the previous Direction.
16. The Landlord stated that the electrics have been taken out of the roof space and that it is not being used as a bedroom. He indicated that the lease to the new Tenants provided that the property was let as a 2 bedroom property and this was stated in the lease. He however also stated that the lease was similar to the lease which had been given to the previous Tenant. There is a copy of this lease in the papers and it makes no mention of the number of bedrooms. The Committee was accordingly not satisfied that steps had been taken to ensure that this area is not used as living space, which would be a breach of Section 13(1)(a) of the Repairing Standard. The Committee accordingly proceeded to make an order requiring the Landlord to produce evidence that the converted roof space complies with the current building regulations.
17. As the Landlord has already had ample opportunity to produce the necessary documentation and as the Landlord asserts that he already has evidence with regard to these matters, the Committee considered it reasonable that he produce the evidence within 28 days.

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

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 day on which the appeal is abandoned or so determined.

J Lea

Signed Date 10 May 2012
Chairperson