



## Repairing Standard Enforcement Order

Ordered by the Private Rented Housing Committee

prhp Ref: PRHP/RP/16/0114

Re : Property at 25 (Attic 2) Mid Road, Dundee DD3 7RN ("the Property")

Title No: ANG50800

The Parties:-

**Stephanie Alexander, 25 (Attic 2) Mid Road, Dundee DD3 7RN ("the Tenant")**  
(represented by her agent Daniel Hughes, Flat 3R, 5 Canning Street, Dundee DD3 7RZ)

**Homespares Limited (also known as Homespares (GJH)), 3 Windmill Road, St Andrews, Fife KY16 9JJ ("the Landlord")**  
(represented by their agents Pavillion Properties Ltd, 86 Bell Street, Dundee DD1 1HN)

### NOTICE TO Homespares Limited ("the Landlord")

Whereas in terms of their decision dated 1 July 2016, 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 meets the repairing standard in that :-

- (a) the electric panel heaters in the living room and bedroom lack sufficient electrical connection and have defective timers;
- (b) the electric panel heater in the living room is inadequate to heat the room to allow it to be used with reasonable comfort;
- (c) the Property is not wind-tight at the front door by virtue of the gap between the door and the fixed door frame;

the Private Rented Housing Committee now requires the Landlord to carry out such work as is necessary for the purposes of ensuring that the Property 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 repair or replace the electrical panel heater in the bedroom of the Property so as to ensure that the heater has a properly working timer mechanism and has an adequate connection for the supply of electricity to it; to fix said heater securely to the wall and to make good;
- (b) to replace the electrical panel heater in the living room of the Property with one of heating output sufficient to allow the room to be used with reasonable comfort and having an adequate connection for the supply of electricity to it; and to carry out any ancillary work to the decoration of the room to make good;

- (c) thereafter, to produce to the Committee a domestic electrical installation condition report from an electrician who is, or is an employee or director of, a contractor registered with the National Inspection Council for Electrical Installation Contracting (NICEIC) or with Scotland's Electrical Trade Association (SELECT) under the Electrical Installations category, with the said report setting out any works necessary to put all electrical installations in the Property into a reasonable state of repair and into proper working order; and to carry out all works, if any, recommended in the above electrical installation condition report;
- (d) to carry out such works as are necessary to the front door frame of the Property to seal the gap between the frame and the front door to eliminate any draught.

The Private Rented Housing Committee order that the works specified in this Order must be carried out and completed within the period of 28 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.

In witness whereof these presents type written on this and the preceding page(s) are executed by David Bartos, Advocate, Parliament House, Parliament Square, Edinburgh EH1 1RF, Chairperson of the Private Rented Housing Committee at Edinburgh on 1 July 2016 before this witness:-

Tracy Whitelaw

witness

David Bartos

chairperson

TRACY WHITELOW name in full

% TERRA FIRMA CHAMBERS Address

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**Decision of Private Rented Housing Committee  
under Section 24 (1) of the Housing (Scotland) Act 2006**

Statement of Reasons for Decision of the Private Rented Housing Committee

(Hereinafter referred to as “the Committee”)

Under Section 24(1) of the Housing (Scotland) Act 2006

Case Reference Number: PRHP/RP/16/0114

**Re : 25 (Attic 2) Mid Road, Dundee DD3 7RN (“the Property”)**

**Title No: ANG50800**

**The Parties:-**

**Stephanie Alexander, 25 (Attic 2) Mid Road, Dundee DD3 7RN (“the Tenant”)  
(represented by her agent Daniel Hughes, Flat 3R, 5 Canning Street, Dundee DD3  
7RZ**

**Homespares Limited (also known as Homespares (GJH)), 3 Windmill Road, St  
Andrews, Fife KY16 9JJ (“the Landlord”)  
(represented by their agents Pavillion Properties Ltd, 86 Bell Street, Dundee DD1  
1HN)**

**The Committee comprised:-**

Mr David Bartos                      - Chairperson  
Ms Sara Hesp                         - Surveyor member

**Decision**

The Committee, having made such enquiries as it saw fit for the purposes of determining whether the Landlord have complied with the duty imposed by Section 14 (1)(b) in relation to the Property and taking account of the evidence led by the Tenant at the hearing, determined that the Landlord had failed to comply with the duty imposed by Section 14 (1)(b) of the Housing (Scotland) Act 2006.

**Background:-**

1. By application received on 30 March 2016, the Tenant applied to the Private Rented Housing Panel (“PRHP”) for a determination that the Landlord had failed to comply with the duty to ensure that the Property met the repairing standard in section 13 of the Housing (Scotland) Act 2006.

2. In her application the Tenant complained that the Landlord had failed to meet the repairing standard in that:
  - (1) there was mould growing under the wallpaper in the bathroom;
  - (2) wall tiles in the bathroom had not been replaced after the toilet had been changed and mould was growing under them also;
  - (3) the electric heating panels in the Property did not work properly and were inadequate to heat the rooms in it ;
  - (4) the front door frame was broken allowing cold air to enter the Property.
3. The mould issue had been raised by the Tenant initially in an e-mail to her Landlord's agents dated 27 October 2015. The heating issue had been raised by the Tenant in an e-mail to the Landlord's agents dated 18 November 2015. All of the matters complained of had been raised by her agent Mr Hughes in his e-mails to the Landlord's agents dated 14 March and 21 March both 2016.
4. The President of the Private Rented Housing Panel decided under section 23 of the 2006 Act to refer the application to a Private Rented Housing Committee. That decision was intimated to the Tenant, to the Landlord, and to their agents by letters of the Panel's Clerk dated 10 May 2016 and entitled "Notice of Referral, Inspection and Hearing". The Committee comprised the persons stated above. The intimation of the Notice of Referral to the Landlord and their agents included a copy of the Tenant's application to the Panel. An inspection of the Property and hearing at Caledonian House, Greenmarket, Dundee DD1 4QX was fixed for 20 June 2016 at 10 hrs and 13.30 hrs respectively.

### **The Inspection**

5. The Committee inspected the Property on the date and time fixed. The Tenant's agent was present. Neither the Tenant, nor the Landlord, nor the Landlord's agents attended the inspection. The weather was dry, bright and sunny. The inspection revealed that the Property is an attic flat taking entry from the top floor of a tenement in the Hilltown area of Dundee. The Committee carefully inspected the matters which were the subject of complaint.

### **The Evidence**

6. The evidence before the Committee consisted of:-
  - The application form
  - Copy tenancy agreement dated 21 October 2015
  - E-mails from the Tenant to the Landlord's agents dated 27 October, 18 and 24 November 2015 and 29 February 2016
  - E-mails from the Tenant's agent to the Landlord's agents dated 14 March and 21 March both 2016
  - E-mails from the Landlord's agents to the Tenant dated 27 and 28 October 2015, and to the Tenant's agent dated 18 March and 25 March both 2016

- Copy tenancy agreement dated 21 October 2015
- Registers Direct copy of Land Register title ANG50800
- The oral evidence of the Tenant

### **The Hearing**

7. At the conclusion of the inspection the Committee held a hearing at the place and time fixed. The Tenant appeared accompanied by her agent Mr Daniel Hughes. There was no appearance by or on behalf of the Landlord. During the course of the hearing the Tenant put forward her evidence in relation to various factual matters of which she had complained in her application.
8. With regard to the bathroom complaints, the Tenant said that there had been mould under the wallpaper and behind the bath. She had attempted to remove the mould using a spray but had been unsuccessful. Steam was generated when bathing or washing. During work some two weeks earlier the Landlord had covered up the wallpaper in the bathroom and the tiling above the toilet with "wet wall panels". This work also involved the installation of an extractor fan and the Dimplex air heater.
9. The Tenant confirmed that when she had taken entry there had been no heating but that the Landlord had installed electric heating panels. The timers on these did not work. In particular they did not switch off. In the bedroom the hinges could not hold the panel. The Landlord supplied an electrical extension lead for the bedroom as the electrical cable of the panel was too short to reach the socket. The panel was unable to heat the living room above 15 degrees. She had checked with a thermometer.
10. With regard to the front door, when the door was closed, there was a gap between it and the door frame. Wind came through the gap and up the stairs into the hallway and then the living room. Although the Landlord had put a weather strip around the door frame on the outside this did not prevent the draught.
11. The Committee found the evidence of the Tenant credible and reliable and accepted it.

### **Findings of Fact**

12. Having considered all the evidence, including their inspection, the Committee found the following facts to be established:-
  - (a) On 21 October 2015 the Tenant entered into a lease of the Property from the Landlord. The lease was due to end on 30 April 2016. It has been continued after that date. The Tenant continues to occupy the Property under the Lease.

- (b) The Property is an attic floor flat in a tenement in the Hilltown area of Dundee at the junction with Mains Road. It comprises an entrance staircase leading from the front door which is on the top floor of the building, a hallway, one bedroom, an internal bathroom, a kitchenette and a separate living room.
- (c) As at 20 June 2016 being the date of the inspection, in the bathroom there was a "wet wall panel" above the side of the bath, and behind the toilet, and the wash basin. No mould was visible. There were no wall tiles requiring to be replaced. On the ceiling there was a ventilation panel into the loft space and an extractor fan. On the wall adjacent to the door there was a Dimplex electric air heater. The wall panel, the extractor fan and the Dimplex heater had been installed earlier in June 2016 and are shown in the schedule of photographs attached to this statement.
- (d) Within the bedroom there was a Dimplex electric panel heater as shown on said schedule of photographs. The wall hooks designed to fix it to the wall below the window had failed and the heater was on the floor leaning against the wall. The electric cable leading from the heater had a plug for fitting into an electric socket. It was too short to reach the socket had the heater been attached to the wall.
- (e) Within the living room there was a Dimplex electric panel heater of the same size as in the bedroom. It was attached to a side wall. The electric cable leading from the heater had a plug for fitting into an electric socket. It was also too short to reach the nearest electrical socket. The heater was of inadequate size to heat the living room adequately. The temperature of the room when heated did not exceed 15 degrees Celsius.
- (f) The timers in both panel heaters did not work properly.
- (g) The front door of the Property is surrounded by a wooden door frame. There is a metal draught excluder on the outside of the frame and a plastic seal on the inside of the frame. The photograph of the frame in schedule of photographs attached to this statement is referred to.
- (h) Viewed from the inside at the bottom left corner there is a gap between the frame and the door through which light can be seen when the door is closed as shown in the photograph "Front door (inside)" in the said schedule of photographs. The width of the door frame at that point is narrower than higher up on the door and frame. Draughts of air pass through the gap at that point and into the internal stair area and hallway.
- (i) That none of the above defects have been repaired or attended to.

## **Reasons for Decision**

13. In the bathroom the principal issue related to the mould said to be under the wallpaper and tiling. The Tenant complained as a consequence the Property was not reasonably fit for human habitation (2006 Act, s.13(1)(a)).
14. The Committee found that there was nothing in the nature of the Property which caused dampness in the bathroom and might have peeled wallpaper before the installation of the wet wall panelling wallpaper. Use of the bathroom for washing caused condensation but the newly installed extractor fan combined with the ventilation panel should be adequate to deal with this. The Committee concluded that the the bathroom did not render the Property not reasonably fit for human habitation. There was no failure to meet the repairing standard in section 13(1)(a) of the 2006 Act.
15. Wallpaper is not part of the structure of a property. It is decoration which lies on the surface of the structure. In these circumstances the duty to keep the structure in a reasonable state of repair does not apply and there was no failure to meet the repairing standard in section 13(1)(b) of the Act. In any event the wallpaper has been covered up by the wet wall panel.
16. The Committee saw no evidence of tiling which was not in a reasonable state of repair. There was no breach of the repairing standard in section 13(1)(b) in that respect. Complaints (1) and (2) are refused.
17. Turning to the electric heating panels, the Tenant's complaint had two elements. Firstly it was claimed that the panels did not work properly. Secondly it was claimed that they were in any event inadequate to heat the space in the flat. Each can be considered in turn.
18. The first issue is whether either heater was in a reasonable state of repair and in proper working order. The Committee's findings in fact are stated above. A wall-mounted electric heater which is not capable of being attached to an electricity supply without the use of an extension lead is not in a reasonable state of repair nor in proper working order. Where a heater has a timer that does not function it is not in proper working order. It follows that in respect of the heaters in both rooms the Committee concluded that the Property did not meet the repairing standard in section 13 (1) (c) of the 2006 Act. Equally where such a heater which has become detached from the wall to which it was fixed, it is not in a reasonable state of repair. The Committee concluded that the Property did not meet the said repairing standard in relation to the bedroom heater for this reason also.
19. The second issue is whether the heat generated by the heaters was such as to leave the Property not reasonably fit for human habitation. In order for a dwellinghouse in Scotland to be reasonably fit for human habitation it must be fit to be used with reasonable comfort. It follows that there must be at least some form of heating provision to allow that use with reasonable comfort.
20. On the basis of the inspection the Committee noted that while the living room was considerably larger than the bedroom and unlike the bedroom

extended from the front to the rear of the Property, the heating panel provided was of the same size as that for the bedroom. On this basis the Committee took the view that even if the heating panel was repaired it would be inadequate to provide heat to the living room to allow it to be used with reasonable comfort. Given that the living room was the main room of the Property, the Committee concluded the Property could not be used with reasonable comfort by a person such as the Tenant with the current heating provision in the living room. That being the case the Property was not reasonably fit for human habitation and the repairing standard in section 13 (1) (a) of the 2006 Act has been breached.

21. The final complaint related to the front door frame being broken and allowing air to enter the Property. Given the findings in fact set out above, the Committee is driven to find that the door frame is not in a reasonable state of repair and that the Property is not wind-tight at the door frame. Accordingly in these respects the repairing standard in section 13 (1)(b) and (1)(a) of the 2006 Act has been breached.
22. The Landlord has been aware of the defects. No work to remedy any of the said breaches of repairing standard has been carried out within a reasonable time of the Landlord being aware that work was necessary.

### **Decision**

23. The Committee determined that the Landlord had failed to comply with the duty imposed by section 14 (1) (b), of the Act in relation to the failure of the Property to meet the repairing standard as stated above. The Committee proceeded to make a Repairing Standard Enforcement Order as required by section 24 (2).
24. In so doing the Committee considered whether it should require the production of an electrical installation condition report. Given the importance of the proper and safe working of the electric heaters the Committee decided to order the production of such a report. The Landlord should be aware that provided that the property remains let on 1 December 2016 they will in any event require to have obtained such a report in satisfactory terms by that date.
25. The decision of the Committee was unanimous.

### **Re-letting prohibition**

26. The Landlord is reminded that they commits a criminal offence if:
  - (a) they fail to comply with the Order without a reasonable excuse; or
  - (b) they re-let the Property (or enters into any occupancy arrangement for it) at any time during which the Order has effect.
27. It is possible that they may be disentitled to any rent from any re-letting or occupancy agreement which is a criminal offence.



**Rights of Appeal**

- 28. A landlord or tenant aggrieved by this decision of the Committee may appeal to the Sheriff by summary application within 21 days of being notified of that decision.
- 29. Unless the lease or tenancy between the parties has been brought to an end, the appropriate respondent in such appeal proceedings is the other party to the proceedings and not the Committee which made the decision.

**Effects of Section 63 of the 2006 Act**

- 30. Where such an appeal is made, the effect of this decision and of any Order made in consequence of it is suspended until the appeal is abandoned or finally determined.
- 31. Where the appeal is abandoned or finally determined by confirming the decision, the decision and the Order made in consequence of it are to be treated as having effect from the day on which the appeal is abandoned or so determined.

**David Bartos**

Signed ....  
2016.....

...Date: 1 July

David Bartos, Chairperson

**Tracy Whitelaw**

Signature of Witness

.....Date...1 JULY 2016

Name of witness: TRACY WHITELOW

Address: 40 TERRAFIRMA CHAMBERS  
ADVOCATES LIBRARY  
GOSWICK ROAD EDINBURGH EH1 1RF

Occupation of witness:

DEPUTY CLERK



Schedule of photographs taken during the inspection of 25 (Attic 2) Mid Road,  
Dundee

**External elevations**



From Mains Road



From Mid Road

**Interior - bathroom**



David Bartos



Schedule of photographs taken during the inspection of 25 (Attic 2) Mid Road,  
Dundee



Ceiling vent



Dimplex heater



Extractor fan

David Bartos



Schedule of photographs taken during the inspection of 25 (Attic 2) Mid Road,  
Dundee



Bedroom – electric panel heater



Living room – electric panel heater



Front door (outside)



Front door (inside)

David Bartos



Schedule of photographs taken during the inspection of 25 (Attic 2) Mid Road,  
Dundee



Front door frame

David Bartos