



Repairing Standard Enforcement Order

Ordered by the Private Rented Housing Committee

Reference Number:- PRHP/RP/16/0141

Re: Property at 3 Main Street, Dundee, DD3 7EY all as more particularly described in and registered in Land Certificate ANG65900 (hereinafter referred to as “the property”).

The Parties:-

Miss Amandine Keriman (“the Tenant”)

Mr. Lindsay Watson, Dundee City Council, Private Sector Services Unit, Dundee House, 50 North Lindsay Street, Dundee, DD1 1NB (“the Third Party”)

Mr. Keith Wilson, 44 St. Lukes Avenue, Carluke, ML8 5AT (“the Landlord”)

NOTICE TO

Mr. Keith Wilson, 44 St. Lukes Avenue, Carluke, ML8 5AT (“the Landlord”)

Whereas in terms of their decision dated 22 June 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 (“the Act”) and in particular the Landlord has failed to ensure that: the house is wind and watertight and in all other respects fit for human habitation, any furnishings provided by the landlord under the tenancy are capable of being used safely for the purpose for which they are designed, the house has satisfactory provision for detecting fires and for giving warning in the event of fire or of suspected fire and the house has satisfactory provision for giving warning if carbon monoxide is present in a concentration that is hazardous to health .

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 repair or replace the skylight window in the bathroom.
- (b) To obtain an Electrical Installation Condition Report (EICR) by a suitably qualified electrician and to carry out all works identified as required within the said report and, once all of the said necessary works have been carried out, to produce a further report by a suitably qualified and registered electrician confirming that said works have been carried out.
- (c) To produce a Portable Appliance Test (PAT) on all portable electrical appliances and equipment supplied by the Landlord and located within the property and to repair or replace any appliance supplied by the landlord and identified by the PAT as defective.
- (d) To provide and install a heat detector in an appropriate location within the kitchen.
- (e) To install two further smoke detection devices within the hallway of the property and to ensure that all smoke detection devices are hard wired and interlinked.
- (f) To provide compliant and appropriately positioned carbon monoxide detector within the property which CO detector should be powered by a battery designed to operate for the working life of the detector which is usually between five and seven years. The detector should incorporate a warning device to alert the users when its working life is due to expire and should be replaced on or before the expiry date. A hard wired mains operated CO detector with fixed wiring (not plug in types) may be used as an alternative, provided they are fitted with a sensor failure warning device.
- (g) To repair or replace the floor covering in the kitchen.

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.

Please note that in terms of Section 28(1) of the Act, a landlord who, without reasonable excuse, fails to comply with an 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 an RSEO has effect in relations to the house. This is in terms of Section 28(5) of the Act.

In witness whereof these presents type written on this page and the preceding page are executed by Patricia Anne Pryce, Chairperson of the Private Rented Housing Committee at Glasgow 22 June 2016 before this witness:-

P Pryce

Signed

Date 22 June 2016

Patricia Anne Pryce, Chairperson

N Pryce

WITNESS

NICHOLAS PRYCE

55 BLYTHSWOOD ST, GLASGOW



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

Reference Number: PRHP/RP/16/0141

Re: Property at 3 Main Street, Dundee, DD3 7EY ("the Property ")

The Parties:-

Miss Amandine Keriman ("the Tenant")

**Mr. Lindsay Watson, Dundee City Council, Private Sector Services Unit,
Dundee House, 50 North Lindsay Street, Dundee, DD1 1NB ("the Third Party")**

Mr Keith Wilson, 44 St. Lukes Avenue, Carluke, ML8 5AT ("the Landlord")

Decision

The Committee, having made such enquiries as it saw fit for the purpose of determining whether the Landlord has complied with the duty imposed by Section 14 (1) (b) of the Housing (Scotland) Act 2006 ("the Act") in relation to the property concerned and, taking account of the evidence submitted by the Landlord and the Third Party and the application by the Third Party Tenant, determined that the Landlord has failed to comply with the duty imposed by Section 14 (1) (b) of the Act.

The Committee consisted of:-

Patricia Anne Pryce	-	Chairperson
Ian Murning	-	Surveyor Member

Background

1. By application comprising of all documents received on 7 April 2016, from the Third Party, the Third Party applied to the Private Rented Housing Panel for a determination as to whether the Landlord had failed to comply with the duties imposed by Section 14 (1) (b) of the Act.

2. The application by the Third Party stated that the Third Party considered that the Landlord had failed to comply with his duty to ensure that the property meets the repairing standard and the Third Party brought forward the following breaches:-
- That there was no Energy Performance Certificate displayed at the property.
 - That the Tenants did not have a copy of the Gas Safety Certificate provided to them by the Landlord.
 - That there was no carbon monoxide detector in the property.
 - That there was an insufficient number of smoke detectors within the property given the size and configuration of the property as there was only one smoke detector located in the hallway fitted in the property.
 - That there was no heat detector fitted in the kitchen of the property.
 - That there were hatches in the lowered ceilings of the property which were covered by loose boards, some of which did not fit correctly.
 - That sections of the wall and ceiling are missing in the bathroom allowing steam to enter the void above the ceilings and that there is also an opening into this ceiling void in the hallway which will cause damp throughout the property.
 - That a light pendant is hanging from a panel in the hall ceiling with the cable snagged by the cover board.
 - That the window in the bathroom is broken and does not open and there is no extractor fan in the bathroom.
 - That the bath panel is loose and does not fit correctly.
 - That the floor covering in the kitchen is torn and rucked causing a tripping hazard.
 - That the wall in the kitchen is under repair.
 - That the tiles in the kitchen are broken leaving sharp edges at knee height.
 - That there is a cupboard door missing in the kitchen.
 - That the radiator in the hall is leaking.
 - That the walls in the property have been plastered but never decorated.
 - That there is a large hole cut out of plaster at the top of the access stairs of the property.
 - That there are damp patches both at ceiling and floor level throughout the property.

The Third Party and Tenant consider that the Landlord is in breach of his duties under the Housing (Scotland) Act 2006 in relation to the repairing standard and in particular the Landlord has failed to ensure:-

- (i) The house is wind and watertight and in all other respects reasonably fit for human habitation.
- (ii) 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.
- (iii) Any fixtures, fittings and appliances provided by the Landlord under the tenancy are in a reasonable state of repair and in proper working order.

- (iv) Any furnishings provided by the landlord under the tenancy are capable of being used safely for the purpose for which they are designed.
 - (v) The house has satisfactory provision for detecting fires and for giving warning in the event of fire or of suspected fire.
 - (vi) The house has satisfactory provision for giving warning if carbon monoxide is present in a concentration that is hazardous to health.
3. By Minute dated 7 April 2016 the President of the Private Rented Housing Panel intimated a decision to refer the application under Section 23(1) of the Act to a Private Rented Housing Committee.
 4. On 9 May 2016, the Private Rented Housing Committee (“the Committee”) wrote to the Landlord, the Third Party and the Tenant to advise that the Committee intended to inspect the property on 16 June 2016 at 10.00 hours. The letter further confirmed that a Hearing had been arranged in relation to the application, which Hearing would be held in Caledonian House, Greenmarket, Dundee, DD1 4QX commencing at 12.30 hours. Finally, the letter confirmed that any written submissions had to be received by the Committee by 30 May 2016.
 5. On 16 May 2016, the Committee received a request from the Landlord to postpone the inspection and the hearing until after 20 June 2016 as he was currently in Japan and was due to return to Dundee until 18 June 2016. The Third Party confirmed in writing on 20 May 2016 he had no objection to this request. The Tenant confirmed in writing on 23 May 2016 that she had no objection to this request. The Committee granted request and the inspection was rearranged for 10.00 hours on 21 June 2016. The hearing was rearranged to take place at 11.30 hours, being held in Caledonian House, Greenmarket, Dundee, DD1 4QX. All parties were advised of the new dates and times.
 6. On 23 May 2016, the Committee issued a Notice of Direction in terms of Schedule 2 Paragraphs 2(1) and 3(1)(b) of the Housing (Scotland) Act 2006 and Regulation 14 of the Private rented Housing Panel (Applications and Determinations)(Scotland) Regulations 2007, which Notice required the Landlord to provide to the Committee an Electrical Installation Condition Report (EICR) by a suitably qualified and registered electrician and a Portable Appliance Test on all portable electrical appliances and equipment supplied by the Landlord and located within the property, a report by a suitably qualified Gas Safe registered engineer to address the state of repair and working order of all gas appliances within the property and an Energy Performance Certificate in respect of the property. The said documents were to be lodged with PRHP no later than midday on 3 June 2016.

7. On 20 June 2016, the Committee received a further request from the Landlord to postpone the rearranged inspection and hearing which had been arranged for 21 June 2016. The Committee denied this request in all of the circumstances of the application as the Landlord's previous request to postpone had already been granted to after the date when he advised the Committee he would be available. The inspection and the hearing took place on 21 June 2016.

The Inspection

8. On 21 June 2016, the Committee attended at the property for the purposes of inspection of the property. The Landlord and the Third Party were present at the property. The Tenant was not present at the property.

At the inspection on 21 June 2016, the Committee noted the following points:-

- (a) The property comprises five apartment first floor flat located in a building constructed of sandstone with a flat roof constructed of concrete and covered in felt and partially covered in shingles. The property is estimated to be in excess on one hundred years old.
- (b) The accommodation comprises of the front door which is located on the ground floor with a stairwell providing access to the main accommodation which comprises of four bedrooms, a living room, a kitchen and a bathroom. Only two of the bedrooms are used as bedrooms with the other two rooms being used as storage rooms by the Landlord who advised that he was in the process of attempting to change the property into a house of multiple occupation (HMO) and was carrying out works at the property. The Landlord advised that the Tenant had signed a lease accepting this process within a special clause of the lease.
- (c) There was an Energy Performance Certificate displayed in a cupboard located beside the main door of the property.
- (d) The Landlord advised that he had provided the Tenant with a copy of the Gas Safety Certificate and that he would bring the principal Certificate and a copy to the hearing to be convened later that day.
- (e) There was a battery operated carbon monoxide detector located on top of the fridge. However, this did not comply with current regulations which require CO detectors should be powered by a battery designed to operate for the working life of the detector which is usually between five and seven years. The detector should incorporate a warning device to alert the users when its working life is due to expire and should be replaced on or before the expiry date. Hard wired mains operated CO detectors with fixed wiring (not plug in types) may be used as an alternative, provided they are fitted with a sensor failure warning device.
- (f) There was no heat detector in the kitchen.

- (g) There was only one smoke detection device located in the property which was hard wired and located on the hallway ceiling opposite the kitchen.
- (h) The hatches in the ceilings of the property were covered with correctly fitting chipboard.
- (i) There were no sections of wall or ceiling missing in the bathroom. There was a lowered ceiling in this room with a large space located above the bath. The Landlord advised that this was a shelf, although it was located too high to be used as such. However, the voids of the lowered ceilings were not interconnected, each being particular to the room in which it was located. There was no evidence of mould or dampness within the bathroom.
- (j) The bath panel had been repaired and fitted correctly.
- (k) The skylight window in the bathroom had at least two cracked panes. This window was located above the bath. There were trickle vents located around this window. The window could not be opened as the Landlord had removed the cord to allow the window to open as the panes were damaged.
- (l) The light pendant in the hallway had been repaired.
- (m) The flooring in the kitchen was torn and parts of it were missing and caused a tripping hazard.
- (n) The wall under the kitchen window had been repaired.
- (o) The tiles in the kitchen had been repaired.
- (p) The missing cupboard door in the kitchen had been replaced.
- (q) There was no evidence that the radiator in the hallway was leaking.
- (r) The walls in the property had been decorated.
- (s) The large hole cut out of the plaster at the top of the stairwell had been filled.
- (t) There was no evidence of dampness in the property.
- (u) It was clear from the roof that the Landlord had carried out repairs to part of the roof.

The surveyor member of the Committee took several photographs which form the Schedule attached to this decision.

The Hearing

9. Both the Third Party and the Landlord attended the hearing. The Tenant did not attend the hearing.

Mr. Watson for the Third Party confirmed that he was employed as a Technical Officer (Enforcement) within the Housing Department of Dundee City Council and had been so employed for eight years. He had previously been employed as a police officer for thirty years.

The Landlord confirmed that he resided at 44 St Lukes Avenue, Carluke, ML8 5AT. He confirmed that he was a self-employed property developer and that he also worked for a mental health charity. He

advised that he both managed and let properties and that he gets involved in drawings, warrants and construction.

Preliminary Issue

The Committee raised with the Landlord the Notice of Direction that the Committee had issued on 23 May 2016. The Committee sought an explanation from the Landlord as to why no response had been received from the Landlord in relation to the Notice of Direction. The Landlord provided to the Committee both the principal and a copy of the Gas Safety Certificate dated 5 April 2016. He confirmed that he had provided a copy of this to the Tenant. The Committee acknowledged this and that the Energy Performance Certificate was displayed within the property.

However, the Committee requested sight of the Electrical Installation Condition Report (EICR) and the Portable Appliance Test (PAT) which the Landlord had been directed to produce in terms of paragraph one of the said Notice of Direction. The Committee also drew attention to the Landlord the terms of the final paragraph of this Notice which clearly stated that failure to produce to the document or information required without reasonable excuse is an offence. The Committee advised that they would require to consider whether or not to recommend that the Landlord be reported to Police Scotland in respect of this failure.

The Landlord advised that he had not received the Notice of Direction until he returned home from Japan on 18 June 2016, that the Notice was served at his home address when he was in Japan, that he had no notification of the Notice until he returned home and that he had simply not had time to instruct the necessary report and tests in between his return home and the present hearing. The Landlord confirmed that he had every intention of obtaining these documents and would produce them to the Committee in early course.

The Committee accepted that the Landlord was in Japan at the time the Notice was served and that the Notice was served by post at his home address. The Committee accepted that the Landlord was not aware of the Notice until he returned home on 18 June 2016. The Committee also notes that two out of three parts of the Notice have now been complied with by the Landlord. The Committee also notes that the Landlord has undertaken to provide the Committee with obtain the EICR and the PAT in early course.

Given all of the above, the Committee has decided not to recommend referral of the Landlord to Police Scotland.

The Landlord confirmed that he had received the email dated 22 March 2016 from the Third Party which detailed all of the repairing issues which the Third Party considered were outstanding in relation to the property and which formed part of the present application.

The Landlord confirmed that he had carried out a number of repairs to the property and that he intended to carry out more work to the property as his

goal was to try and obtain an HMO licence for the property. He confirmed that the property had been let on the basis that he would continue to carry out works on the property to convert it to an HMO.

The Landlord did not dispute the findings of the inspection which had been carried out that morning. The Landlord advised that he did not realise that the carbon monoxide detector did not comply with current regulations as he thought these regulations did not come into force until July 2016. The Landlord advised that he had become confused by correspondence he had received from the Third Party in relation to this.

Mr. Watson clarified that the regulations had come into force in 2013 and that the correspondence sent to the Landlord had confirmed this.

The Landlord advised that he would accept this as he had simply been confused.

The Landlord also accepted that there were insufficient smoke detection devices in the property and that there was no heat detection device in the kitchen. He advised that he had held off installing new hard wired and interlinked devices as he would need to do that as part of his process of applying for an HMO licence and that he would need to use a higher standard of wiring for this than would be required presently and that he did not want to incur two sets of costs for this.

The Committee asked the Landlord if he was aware that the property must meet the repairing standard both at the beginning of the tenancy and throughout the tenancy. The Landlord was aware of this.

The Landlord advised that the property had suffered from water ingress in December 2015 due to torrential rain which had continued for about sixteen days. However, he confirmed that he had carried out repairs to the roof both in January 2016 and in May 2016.

The Committee questioned the Landlord about the broken panes in the skylight window in the bathroom. The Landlord advised that this had been damaged by falling pieces of masonry from a neighbouring building and that he had been working with the Third Party to try and get the joint owners of that building to carry out necessary repairs to their building to prevent a repeat of this occurring. However, he was not having much success in achieving this. The Landlord advised that he did not wish to keep repairing the window when there was every chance it could be damaged again.

The Committee pointed out to the Landlord that, in its current condition, the skylight posed a potentially serious risk to the health and safety of any user of the bathroom. The Landlord acknowledged that there was a risk.

The Committee questioned the Landlord about the ripped flooring located in the kitchen. The Landlord accepted that it was in a poor condition and that it presented a trip hazard to occupants of the property.

Given all of the circumstances, the Committee is satisfied that the property is not wind and watertight and in all other respects reasonably fit for human habitation as the skylight window in the bathroom is broken and presents a potential danger to occupants of the property. The Committee is satisfied that any furnishings provided by the landlord under the tenancy are not capable of being used safely for the purpose for which they are designed, as the ripped and trucked flooring within the kitchen is a tripping hazard to occupants of the property. The Committee is satisfied that the house does not have satisfactory provision for detecting fires and for giving warning in the event of fire or of suspected fire as there are insufficient smoke detection devices in the property for a property of its size and configuration and there is no heat detection device located within the kitchen. The Committee is satisfied that the house does not have satisfactory provision for giving warning if carbon monoxide is present in a concentration that is hazardous to health as there is non-compliant carbon monoxide detector located within the property.

Decision

- 10. The Committee accordingly determines that the Landlord has failed to comply with the duty imposed by Section 14 (1) (b) of the Act. The Committee proceeded to make a Repairing Standard Enforcement Order as required by Section 24 (1) of the Act.**
- 11. The decision of the Committee was unanimous.**
- 12. The Private Rented Housing Committee require the Landlord to carry out such works as are necessary to ensure that the property meets the Repairing Standard.**
- 13. The Committee considered that it would be reasonable to allow a period of 28 days from the date of the RSEO to carry out these works.**

Reasons for Decision

- 14. The Committee considers that the Landlord has had sufficient time to carry out the outstanding repairs.**

The Committee considers that the Landlord has failed in his duty under Section 14(1)(b) of the Act and has not complied with the repairing standard in terms of Sections 13 (1) (a) of that Act.

Observations

The Committee noted that the Landlord accepted the outstanding repairs which were noted by the Committee at the inspection. The Committee further

notes that the Landlord has carried out a large number of the repairs which form part of the application. The Committee sympathises with the Landlord in relation to the issues he is experiencing with the owners of the neighbouring property who are delaying in having repairs carried out to that property which is, in turn, damaging the skylight of the Landlord's property. However, the Committee is concerned about the current condition of the skylight and its potential danger to occupants of the property.

Right of Appeal

15. 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

16. 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.

P Pryce

Signed


Patricia Anne Pryce

Date 22 June 2016



3 Main Street Dundee DD3 &EY

Photos from inspection

PRHP/RP/16/0

21st June 2016

Surveyor Ian H Murning TD

21/06/2016

1

Front Elevation GF Entrance to First Floor Flat



21/06/2016

2

Front Elevation 1



21/06/2016

3

Front Elevation 2 - showing GF Entrance Door



21/06/2016

4

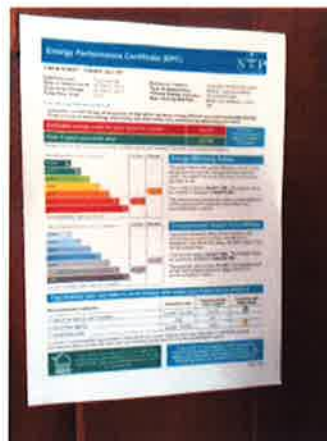
Loft Access to Flat Roof from Top Hall



21/06/2016

5

EPC



21/06/2016

6

Modern Consumer Unit



21/06/2016

7

CO Alarm in Kitchen -fitted with 3 x AA Batteries



21/06/2016

8

Wall Mounted Gas Boiler in Kitchen



21/06/2016

9

Kitchen Window Showing Repair below



21/06/2016

10

Kitchen Close up of Repaired Area



21/06/2016

11

Roof Light



21/06/2016

12

Long Hall with Ceiling Hatch



21/06/2016

13

Lowered Ceiling with void above



21/06/2016

14

Roof Light with Void above Ceiling visible



21/06/2016

15

Cracks in Roof Light Glass above Bathroom



21/06/2016

16

Photo



21/06/2016

17

Trip Hazard on Kitchen Floor



21/06/2016

18

Roof Light with Void above ceiling in View



21/06/2016

19

Mains Wired AICO Smoke Alarm on Hall Ceiling



21/06/2016

20

Ceiling Hatch Cover



21/06/2016

21

Roof above Flat showing Roof Lights and parapet walls and repair patch



21/06/2016

22

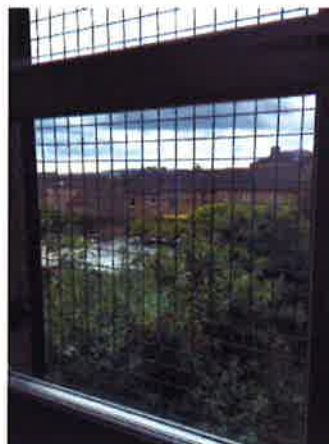
Roof to above flat East



21/06/2016

23

Rear Window showing Metal Grille



21/06/2016

24

Room



21/06/2016

25

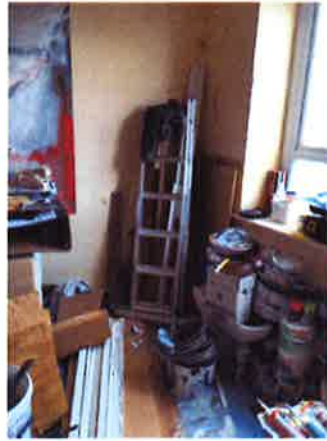
Room



21/06/2016

26

Room



21/06/2016

27

Room



21/06/2016

28

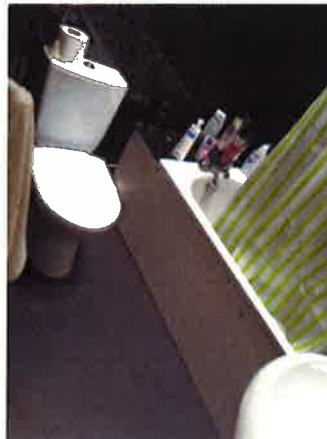
Hall Cupboard



21/06/2016

29

Internal Bathroom with Roof Light



21/06/2016

30

Room



21/06/2016

31

Room



21/06/2016

32

Access Hatch



21/06/2016

33

Room - Storage



21/06/2016

34

Room - Storage



21/06/2016

35