



Repairing Standard Enforcement Order

Ordered by the Private Rented Housing Committee

prhp Ref: PRHP/RP/16/0149

Re : Property at 7 Warddykes Road, Arbroath, DD11 4AS being the subjects registered in the Land Register of Scotland under Title Number ANG46595 ("the Property")

The Parties:-

Ms Lynn Fraser, residing at 7 Warddykes Road, Arbroath, Angus, DD11 4AS ("the Tenant")

and

Elizabeth McColgan Nuttall, formerly known as Elizabeth McColgan ("the Landlord") who's agent is Rockford Properties Ltd, 50 Castle Street, Dundee, DD1 3AQ ("the Landlord's Agent")

NOTICE TO Elizabeth McColgan Nuttall ("the Landlord")

Whereas in terms of their decision dated 29 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 that the landlord has failed to ensure that:-

- (a) the house is wind and watertight and in all other respects reasonably fit for human habitation;
- (b) 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; and
- (c) any fixtures, fittings and appliances provided by the landlord under the tenancy 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 to:-

- (a) arrange for a construction professional to identify and carry out remedial works to address any subsidence damage to the property, such works to include repairing any cracks and defective roughcast, and produce a completion certificate from a qualified structural engineer, or insurance loss adjuster on their behalf, following completion of the said works;
- (b) repair or replace the windows in all upstairs rooms to make them wind and watertight;
- (c) repair or replace the rotary airer in the back garden to ensure it is in proper working order; and
- (d) carry out any works required following the completion of the above works in order to make good decoration.

The Private Rented Housing Committee order that the works specified in this Order must be carried out and completed within the period of three 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 printed on this and the preceding page are subscribed by Ruth O'Hare, Chairperson at Aberdeen on 29 June 2016 before this witness undernoted

Ruth O'Hare

Signed

Ruth O'Hare
Chairperson

Suzanne Douglas

Signed .

Suzanne Douglas, c/o Aberdeen City Council, Marischal College, Broad Street, Aberdeen



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

prhp Ref: PRHP/RP/16/0149

Re : Property at 7 Warddykes Road, Arbroath, Angus, DD11 4AS ("the Property")

The Parties:-

Ms Lynn Fraser, residing at 7 Warddykes Road, Arbroath, Angus, DD11 4AS ("the Tenant")

and

Elizabeth McColgan Nuttall, formerly known as Elizabeth McColgan ("the Landlord") who's agent is Rockford Properties Ltd, 50 Castle Street, Dundee, DD1 3AQ ("the Landlord's Agent")

The Committee comprised:-

Mrs Ruth O'Hare - Chairperson

Mr David Lawrie - Surveyor member

Decision

The Committee unanimously determined that the Landlord had failed to comply with the duties imposed by Section 14 (1)(b) of the Housing (Scotland) Act 2006 ("the Act") The Committee accordingly made a Repairing Standard Enforcement Order ("RSEO") as required by Section 24(2) of the 2006 Act.

Background

1. By application received 14 April 2016 the Applicant 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 stated that the Applicant considered that the Landlord had failed to comply with her duty to ensure that the house meets the repairing standard and in particular that the Landlord had failed to ensure that:-
 - (a) the house is wind and watertight and in all other respects reasonably fit for human habitation;
 - (b) 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; and
 - (c) any fixtures, fittings and appliances provided by the landlord under the tenancy are in a reasonable state of repair and in proper working order.
3. In particular the Tenant submitted that the windows upstairs in the property did not fit and were draughty, the house was showing signs of subsidence, the bath was insecure and the rotary airer in the back garden was broken.

4. By letter dated 11 May 2016 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.
5. The Private Rented Housing Committee served Notice of Referral under and in terms of Schedule 2, Paragraph 1 of the Act upon the Landlord, the Landlord's Agent and the Applicant.
6. For the avoidance of doubt the Committee clarified with the Landlord's Agent that Elizabeth McColgan Nuttall, formerly Elizabeth McColgan was the sole owner of the property.
7. By email dated 14 June 2016 the Landlord made written representations to the Committee. She explained that she had a large portfolio of rental properties, all of which were maintained to a high standard. The Landlord acknowledged there were ongoing issues of disrepair at the property however advised that there had been no unreasonable delay in addressing matters of disrepair identified by the Tenant. The Landlord's insurers were presently dealing with a claim in respect of the alleged subsidence at the property and this would require to be addressed before the issues with the windows could be looked at. By email dated 14 June 2016 the Tenant made written representations to the Committee. She confirmed that the bath had been fixed. The Tenant further advised that the Landlord's insurers had carried out an inspection of the property on 3rd June 2016.
8. The Private Rented Housing Committee attended the Property on the morning of 15 June 2016. The Tenant was present and allowed access to the Property. The Landlord was represented by Angela Mackie on behalf of the Landlord's Agent. The Committee proceeded to inspect the property.

The Inspection

9. During the inspection the Committee members examined the various areas of complaint raised by the Tenant.
10. Upon approach to the property the Committee noted cracks in the render externally. Upon entering the property, the floors in the downstairs hall and kitchen were uneven and there were cracks in the walls of the downstairs cupboard next to the stairs.
11. The Committee proceeded upstairs and inspected the three bedrooms. In each of the rooms there were gaps between the window frames and the sashes. Cracks were noted in the walls of the rear double bedroom and in the front single bedroom. The Committee then inspected the bathroom. Repairs had been carried out to the bath to secure it and it appeared stable. The Committee noted gaps between the window frame and sash.
12. The Committee attended the back garden and viewed the rotary ailer. The spindles were broken and bent.
13. The Tenant had made reference to problems with subsidence at the neighbouring property, at 6 Wardykes Road. The Committee therefore considered it appropriate to make enquiries at that property during the course of the inspection. The Committee noted from discussions with the owner that there had been a subsidence problem at the property caused by a defective drain in June 2015. Works had been carried out and the property was now stable. The Committee reported the outcome of its discussions with the neighbour to both the Tenant and the Landlord's Agent.
14. During the inspection photographs were taken by the surveyor member and a schedule of photographs is attached to this decision.
15. The inspection was concluded and the Committee members travelled to the venue for the hearing.

The Hearing

16. The hearing took place in the Arbroath Library. The Landlord was represented by the Landlord's Agent. The Tenant was present.
17. As a preliminary point the Landlord's Agent produced a letter dated 17 May 2016 and a technical report on a possible subsidence claim dated 4 November 2015, both from Crawford Specialist Property Services which had been instructed by the Landlord's insurer. The Committee noted that the Tenant had not had sight of the report. The Committee asked the Tenant whether she wished time to consider same. The Tenant advised that she was content to proceed with the hearing and had no opposition to the Committee considering the report. The Committee therefore considered there was good reason to receive the document in view of its relevance to the proceedings before it and in particular the allegations of subsidence at the property.
18. The Committee noted the report of 4 November 2015 listed a number of cracks and damage to the property that were indicative of an episode of subsidence, albeit the precise cause had not been determined. The report recommended further enquiries as to the cause of the subsidence. The letter of 17 May 2016 confirmed that the cause of the subsidence had been identified as a nearby defective drainage system which had been rectified. The letter further noted that the property damage would be repaired and a schedule of works prepared. A timetable for the works was proposed which envisaged completion of the repairs in August 2016.
19. The Tenant then made submissions to the Committee. She confirmed that the bath had been fixed and this was no longer an issue she required the Committee to determine.
20. The Tenant made submissions regarding the upstairs windows. It had been an ongoing problem since the tenancy commenced in May 2014. She had raised it with the Landlord's Agent at that stage and again when the tenancy had renewed in June 2015. She had been told the windows would be fixed. The problem was especially bad in the winter months with the cold winds and it was hard to keep the house heated.
21. The Tenant made submissions regarding the subsidence. The issue had arisen after works had been carried out to the neighbouring property at 6 Warddykes Road in June and July 2015. There had been no significant cracks in the house prior to that. It was only around that time that she started to notice problems. She had mentioned the issue to the Landlord when they had met in August 2015. On 14 September 2015 she had emailed the Landlord's Agent to raise it again. A copy of the email was within the papers she had submitted with her application. A loss adjuster from the Landlord's insurers had come out to the property in October 2015 however repairs had yet to be carried out. There had been no explanation given to the Tenant as to why there had been such delay. The Tenant advised that she had felt unsafe in recent months but was reassured somewhat now that the bath had been fixed. She confirmed that she had agreed with the Landlord that she would vacate the property in September and she hoped to obtain housing with the local authority.
22. Finally the Tenant made submissions regarding the rotary airer in the rear garden. She advised that it had been damaged during a period of high winds. The Landlord's Agent had been informed and had advised the Tenant that it was not a fixture of the property and would not be fixed.
23. The Landlord's Agent made submissions regarding the outstanding issues. She advised that she was not aware of the background to the allegations of disrepair as narrated by the Tenant and was therefore unable to comment on any previous communications between the Landlord, Landlord's Agent and the Tenant. She did confirm that the information received from the Tenant had been reported to the Landlord. The Landlord's Agent then advised the Committee that the Landlord was now personally dealing with the subsidence issue and the windows through her insurer. She made reference to the letter

and report produced by Crawford Specialist Property Services and highlighted the timeline for the repairs. With regard to the rotary airer, the Landlord's Agent was aware that it had been broken. The Landlord's Agent had taken the view that there was no requirement on the Landlord to repair or replace the item as it was not a fixture of the property.

24. The Committee noted that there had been reference in previous correspondence between the Landlord's Agent and the Tenant about an outstanding gas safety inspection, albeit this was not one of the issues of disrepair that had been raised by the Tenant in her application. The Tenant advised that she was not aware of having been provided with an up to date gas safety certificate. The Landlord's Agent advised that as far as she was aware this had been carried out. The Landlord's Agent provided the Committee with the certificate by email following the hearing.

Findings in fact

25. Having considered all the evidence the Committee found the following facts to be established:-
- The tenancy is a short assured tenancy between the Landlord and the Tenant. The tenancy commenced in May 2014. The current term of the tenancy runs from 20th June 2015 to 19th June 2016.
 - The Property consists of a two storey terraced end dwellinghouse. The accommodation comprises a downstairs and upstairs hall, three bedrooms, bathroom, living room, kitchen/dining room.
 - There are cracks throughout the property and evidence of movement of flooring. There are distortions to the upstairs windows with gaps between the sashes and frames.
 - The damage has been caused by subsidence which can be attributed to a defective drainage system in the neighbouring property.
 - The Property is not wind and watertight. The structure and exterior of the house are not in a reasonable state of repair.
 - The rotary airer in the rear garden was in place at the commencement of the tenancy and in proper working order. The rotary airer has since been damaged through no fault of the tenant and is no longer capable of use.

Reasons for the decision

26. The Committee determined the application having regard to the terms of the application, the findings of their inspection, and the submissions and documents from the Tenant, the Landlord and the Landlord's Agent.
27. The Committee was satisfied having regard to all of the available evidence that there was sufficient information and material upon which to reach a fair determination of the application.
28. The Committee was in no doubt, from its inspection and from its reading of the report from Crawford Specialist Property Services, that the property had suffered subsidence damage as a result of a defective drain in the neighbouring property. The damage had been reported to the Landlord in August 2015 and to the Landlord's Agent in September 2015. However as at the time of the inspection no remedial works had been carried out albeit the Committee noted from the letter from Crawford Specialist Property Services that these were imminent and it was envisaged they would be completed by August 2016.
29. The gaps in the windows had been referenced in the report from Crawford Specialist Property Services as having been caused by the subsidence damage. However from the Tenant's account of matters, she had been experiencing drafts from the windows for over two years, since the commencement of the tenancy. She had reported the issue to the Landlord's Agent and had expected the windows to be repaired, or at the very least temporary measures put in place to resolve any issues with draughts. The Committee

found the Tenant's narration of the circumstances to be entirely credible. There was no persuasive evidence from the Landlord or the Landlord's Agent to counter her account of events.

30. Whilst the Committee was cognisant of the fact that the Landlord had taken action through her insurers to remedy these issues of disrepair, nevertheless it was aware that the Landlord retained ultimate responsibility for ensuring the house met the repairing standard at all times during the tenancy. The Committee had serious concerns regarding the length of time that had passed since the initial complaints had been made by the Tenant. The disrepair complained of was of a serious nature. The Committee was therefore satisfied that the landlord had failed to comply with the repairing standard in that the house was not wind and watertight and in all other respects reasonably fit for human habitation and the structure and exterior of the house was not in a reasonable state of repair.
31. With regard to the rotary airer, the Committee disagreed with the position of the Landlord's Agent. The item had been provided at the start of the tenancy by the Landlord. It had been capable of use. The Landlord had a duty to repair or replace the item which had been damaged through no fault of the Tenant and ensure it was in proper working order.
32. The Act states that where a Committee decide that a landlord has failed to comply with their duty to ensure a property meets the Repairing Standard, the Committee "must by order require the landlord to carry out such work".
33. The Committee accordingly determined to make a Repairing Standard Enforcement Order as required in terms of section 24(2) of the Act and the decision of the Committee was unanimous.

Decision

34. In respect of section 13(1)(a) of the Act the Committee determined that the Landlord had failed to comply with the duty imposed by Section 14 (1)(b) of the Act as the Property was not wind and watertight and in all other respects reasonably fit for human habitation;
35. In respect of section 13(1)(b) of the Act, the Committee determined that the Landlord had failed to comply with the duty imposed by Section 14(1)(b) of the Act as the structure and exterior of the Property (including drains, gutters and pipes) were not in a reasonable state of repair and in proper working order; and
36. In respect of section 13(1)(d) of the Act the Committee determined that the Landlord had failed to comply with the duty imposed by Section 14(1)(b) of the Act as the fixtures, fittings and appliances provide by the Landlord under the tenancy were not in a reasonable state of repair and in proper working order.
37. The decision of the Committee was unanimous.

Right of Appeal

38. 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. The appropriate respondent in such appeal proceedings is the other party to the proceedings and not the panel or the committee which made the decision.

Effect of section 63

39. 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.

Ruth O'Hare

Signec

..... Date 29 June 2016

Ruth O'Hare
Chairperson



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Schedule of Photographs in respect of Statement of Decision by the Private Rented Housing Committee dated 29 June 2016

Front view of no 6 Warddkyes Rd and 7 Wardykes Rd



Front east bedroom window



Front west bedroom window



Bathroom window



Hall cupboard door



Hall cupboard internal



Flooring in downstairs hall



External rear view of 6 Warddykes Road

