

A Repairing Standard Enforcement Order

Ordered by the Private Rented Housing Committee

prhp Ref: KY16/175/10

Re : Property at 63 Hepburn Gardens, St Andrews, Fife ("the Property")

Land Register Title No: FFE26224

The Parties:-

Kumar and Meera Kymal, care of Eve Brown Limited, 12a Hope Street, St Andrews, Fife ("the Landlord")

Helena Wood, Camilla Scrimgeour, Alix Carruthers and Nicholas Winton, 63 Hepburn Gardens, St Andrews, Fife ("the Tenants")

NOTICE TO

Kumar and Meera Kymal, care of Eve Brown Limited, 12a Hope Street, St Andrews, Fife

Whereas in terms of their decision dated 4 May 2011, 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 structure and exterior of the house (including drains, gutters and external pipes) 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. Inspect the roof of the property and replace any missing, damaged or slipped slates and ensure that all guttering is cleared and in proper working order.
2. Replace, make safe or remove the broken chair.

The Private Rented Housing Committee orders that the work should be carried out within a period of 8 weeks 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 4 May 2011 before this witness:-

R Graham

..... Witness

Rachel Graham
Unit 3.5, The Granary Business Centre
Coal Road
Cupar
Fife

J Lea

..... Chairman



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

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**Kumar and Meera Kymal, care of Eve Brown Limited, 12a Hope Street, St Andrews, Fife
("the Landlord")**

**Helena Wood, Camilla Scrimgeour, Alix Carruthers and Nicholas Winton, 63 Hepburn
Gardens, St Andrews, Fife ("the Tenants")**

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 and the Tenants 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 30 November 2010, the Tenants 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 Housing (Scotland) Act 2006 ("the Act").
2. The application by the Tenants stated that they considered that the Landlord had failed to comply with the duty 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 any furnishings provided by the Landlord under the tenancy are capable of being used safely for the purpose for which they are designed.
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 Tenants.
5. Following service of the Notice of Referral, the Tenants made further representations to the Committee.
6. The Private Rented Housing Committee (comprising Mrs Judith Lea, Chairman and Legal Member, John Wolstencroft, Housing Member and Geraldine Wooley, Surveyor Member) inspected the Property on 15 April 2011. The Tenants were all present and the Landlord was represented by Mr Brown of Eve Brown Limited at the inspection.

7. Following the inspection of the Property, the Private Rented Housing Committee held a hearing at St Andrews Town Hall and heard representations from the Tenants and on behalf of the Landlord.
8. The Tenants confirmed that new central heating had been installed throughout the property and the property was now warm enough. The Tenants stated that the decorative items were not such an issue but they were worried about the damp which had appeared on the new wallpaper which had been installed above the stairs and had ongoing concerns about missing slates and the state of the gutters. The Tenants also had ongoing concerns with regard to the cracks around the rear bedroom window and were concerned that the plaster which had been put on in the en suite shower had not been painted.
9. Mr Brown, on behalf of the Landlord, queried whether the issue of the gutters and the damp in the front bedroom had been raised in the original application. He however accepted that they had been included in the statement of condition documents lodged by the Tenants prior to and with the application. Mr Brown stated that loose wallpaper beside the radiators was often caused by the Tenants putting things on the radiators. Mr Brown stated that the Landlord would look at the damp in the front bedroom and the damp patch which had appeared near the skylight. In connection with the crack round the rear bedroom window, Mr Brown indicated that this had been looked at and was not considered to be a structural problem and there was no damp in this area.

Decision

10. The Committee considered all the matters raised in the Tenants application but noted that a number of these matters had been rectified by the Landlord prior to the inspection and hearing.

11. Heating

The Tenants confirmed that a new central heating system had now been installed in the property and that they were happy with this. It was accordingly not necessary for the Committee to consider the issues raised with regard to the heating system.

12. Fixtures and Fittings

In their application and at the inspection the Tenants raised a number of minor issues with the fixtures and fittings. The Landlord's agent made it clear that he considered these matters to be trivial and not a breach of the Repairing Standard. The Committee agreed in respect of the undernoted items:

- a) As there was a shower screen in place, the Committee did not consider that a shower rail and curtain was required.
- b) Although there is a fixing nut missing from the toilet flush handle, the Committee consider it is in working order.
- c) The wash hand basin plug is available and usable despite the chain being broken.
- d) The stair carpet was dirty but not worn or uneven, the Committee considered that it was in a reasonable state of repair.
- e) The fridge door is capable of being opened despite the absence of a handle.
- f) The downstairs bedroom cupboard handle is loose and would require a screw to fix it but this does not prevent the door being opened.

13. Furnishings

The Committee considered that the bedside table was capable of being safely used for the purpose for which it was designed as was the table in the lounge, albeit that it has a small hole in it. The Committee did not consider that this would breach the Repairing Standard. In connection with the ironing board cover and the vacuum cleaner, the Tenants confirmed that both these items work and the Committee consider that they are capable of being used for the purpose for which they are designed. The Committee however considered that the damaged chair which was held together with sellotape could

be potentially dangerous and accordingly should either be fixed or removed from the property.

14. Damp

The Tenants confirmed that the damp in the bathroom had now been resolved. There appeared from inspection to be a possible ongoing problem with damp in the front double bedroom evidenced by stained and peeling wallpaper to the left of the dormer window. The inspection took place during a warm sunny day and after a dry spell. The Tenants stated that the damp on the sloped ceiling had always looked like that and were unable to say whether it got worse in wet weather. The Tenants however pointed out that there were missing and slipped slates at the front dormer windows and it was clear from the inspection that there may be a problem with missing, slipped or damaged slates. The Tenants confirmed that the damp hanging wallpaper on the landing had been fixed but it was clear from inspection that a fresh damp mark was now evident. It was not clear to the Committee whether this is an ongoing damp problem, but it could be due to problems with slates on the roof. The Committee accordingly could not be satisfied that the property is wind and water tight and accordingly found a breach of Section 13(1)(a) and resolved to make an Order in respect of this.

15. Cracked Masonry Above Rear Bedroom Window

The Committee noted that there was a crack along the top and down the sides of this window. There was no internal evidence of damp and no external sign of a structural problem. The Committee considered that it was likely to have occurred as a result of the installation and subsequent expansion and contraction of woodwork associated with the new windows. The Committee accordingly did not find a breach of the Repairing Standard.

16. Gutters

It was clear from inspection that the gutters at the front of the property required to be cleared as they have grass growing in them and the Committee accordingly considered that they are not in proper working order and found a breach of Section 13(1)(b) of the Act. The Committee resolved to make an Order in respect of this.

17. Re-plastering in the Bathroom

The Tenants were concerned that although the en suite bathroom had been re-plastered, it had not been painted. The Committee noted that there were only small areas of re-plastering and did not consider that the lack of paint on this small area was a breach of the Repairing Standard.

18. The Committee accordingly determined that the Landlord has failed to comply with the duty imposed by Section 14 (1)(b) of the Act and proceeded to make a Repairing Standard Enforcement Order as required by Section 24(2).

19. The decision of the Committee was unanimous.

20. Given that none of the work required is significantly dangerous, the Committee consider it reasonable to allow a period of eight weeks for the work to be done.

Right of Appeal

21. 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

22. 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 4 May 2011
Chairperson