



## **Repairing Standard Enforcement Order**

### **Ordered by the Private Rented Housing Committee**

**Title Number ANG43739**

**Re: The residential dwellinghouse at**

**BF1,  
18 – 20 Church Street  
Edzell  
DD9 7TQ**

**("the Property")**

**The Parties:-**

**Ms K Scott formerly resident at the Property**

**("the Tenant")**

**and**

**Balhousie Care Limited  
Incorporated under the Companies Acts  
(Registered Number SC166652)  
c/o Mr Brian Scott  
17 Reform Street  
Kirriemuir  
DD8 4BS**

**("the Landlords")**

### **NOTICE TO THE LANDLORD**

Whereas in terms of their decision dated 11 May 2011, the Private Rented Housing Committee determined that the Landlords had failed to comply with the duty imposed by Section 14 (1)(b) of the Housing (Scotland) Act 2006 and in particular that the Landlords had failed to ensure that:

- (a) the Tenant was provided with a Landlord's Gas Safety Certificate to confirm that the installation for the supply of space heating and water was in a reasonable state of repair and in proper working order;
- (b) the external wall in the living room was watertight and in all respects reasonably fit for human habitation.

The Private Rented Housing Committee now requires the Landlords to carry out such works as are necessary for the purposes of ensuring that the Property 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) provide the Committee with a valid Landlord's Gas Safety Certificate which relates to the system for space heating and heating water within the Property;
- (b) carry out such works as are necessary to eradicate the dampness within the living room to ensure that the Property is reasonably fit for human habitation.

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

In witness whereof this and the preceding pages are subscribed by Ronald G Handley, solicitor, chairperson of the Private Rented Housing Committee at Dunfermline on the eleventh day of May 2011 before this witness:

**J Handley**

witness

**R Handley**

chairperson

JANE HANDLEY

name in full

23 LESLIE WAY

address of witness

DUNBAR

EH42 1GP

COLLEGE MANAGER

occupation



**Decision by the Private Rented Housing Committee**

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

Title Number ANG43739

Re: The residential dwellinghouse at

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("the Landlords")

**The Committee's Decision**

~~The Committee, having made such enquiries as it saw fit for the~~  
~~purposes of determining whether the Landlords had complied with the~~  
~~duty imposed by Section 14(1)(b) of the Housing (Scotland) Act 2006~~  
~~("the Act") in relation to the Property, and taking account of the written~~  
~~evidence before it, unanimously determined that the Landlords had~~  
~~failed to comply with the duty imposed by Section 14(1)(b). The~~  
~~Committee therefore requires that the Landlords carries out such work~~  
~~as are necessary for ensuring that the Property meets the Repairing~~  
~~Standard and that any damage caused by the carrying out of any work in~~

**pursuance of this Order is made good. The Committee issued a Repairing Standard Enforcement Order as annexed to this Statement of Reasons.**

### **The Background**

1. On 14 February 2011 the Tenant applied to the Private Rented Housing Panel ("the PRHP") for a determination as to whether or not the Landlords had failed to comply with the duties imposed by Section 14(1)(b) of the Act.
2. Following receipt of the Tenant's application, the President of the PRHP intimated that the application should be referred to a Private Rented Housing Committee in accordance with Section 22(1) of the Act.

### **The Application**

3. In her application the Tenant alleged that the Landlords had failed to comply with their duty to ensure that the Property met the Repairing Standard (as defined in the Act). It was submitted that the Landlords had failed to ensure that the Property was wind and water tight and in all respects reasonably fit for human habitation; that the installations in the Property for the supply of water, gas and electricity and for sanitation, space heating and heating water were not in a reasonable state of repair and not in proper working order; the fixtures, fittings and appliances provided by the Landlords under the Tenancy Agreement were not in a reasonable state of repair and not in proper working order.
4. In particular the Tenant suggested in her Application Form that the shower in the bathroom had not worked properly since 29 December 2009 and that there had been an infestation of slugs in April 2010 (although this issued had been dealt with prior to the application to the PRHP being made). The Tenant also suggested that the boiler had not been serviced since 29 December 2009 and no "Service Certificate" had been made available. It was further submitted that black mould was present in the bathroom and in the living room. Although some efforts had been made to remedy this problem, the dampness was still present within the Property.

### **The Evidence**

5. The Committee had before it documents which included Land Register documents, a copy of the Application Form, a copy of the Tenancy Agreement, photographs and various emails dated 7, 10, 18 and 28 November 2010 and 2, 6, 7 and 31 January 2011.

## **The Inspection**

6. The Committee inspected the Property on 4 May 2011 at 10.00am. The Tenant was not present at the inspection and Mr Whittet represented the Landlords.

## **The Hearing**

7. A Hearing was arranged for 11.00 am in Inglis Memorial Hall after the inspection. Ms Kay attended the Hearing and the Landlords were again represented by Mr Whittet.
8. The Chairman welcomed Ms Kay and Mr Whittet to the Hearing and reminded them of the issues to be considered by the Committee. The Committee advised Ms Kay that during the inspection the shower had been tested and it was found that the hot and cold water controls were functioning and that the shower appeared to be in proper working order. Ms Kay did not dispute this finding.
9. The Tenant accepted that the infestation of slugs (referred to in the Application Form) had been resolved.
10. In regard to the gas boiler Ms Kay advised that the Landlords had failed to provide a Safety Certificate. Mr Whittet was unable to produce the relevant Certificate at the Hearing but undertook to make further enquiries.
11. The Committee asked Ms Kay to provide further information about the dampness in the Property. She told the Committee that the main area affected was in the living room. Whilst accepting that some efforts had been made to eradicate this problem, these efforts had been largely unsuccessful. The dampness within the Property had caused her some health difficulties. Ms Kay referred the Committee to the various photographs she had made available and explained that the dampness in the bathroom had been in the area behind the cistern.

## **Summary of the issues**

12. The issue to be determined by the Committee was whether the Landlords had complied with the requirements of the Act in ensuring that the Property met the Repairing Standard.

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## **Findings**

13. The Committee found the following facts to be established:
  - The Tenant and the Landlords entered into a Tenancy Agreement that related to the Property.

- The Property is a two-room ground floor flat in a two-storey dwelling house. The Property comprises a bathroom, kitchen, living room and bedroom.
- The shower (in the bathroom) is in a reasonable state of repair and in proper working order.
- The Property is heated by a gas central heating system.
- The bathroom window opens and is in a reasonable state of repair. The extractor fan in the bathroom is in proper working order.
- There was no evidence of dampness in the bathroom.
- The Landlords are required to have a Landlord's Gas Safety Certificate that relates to the system for space heating and heating water within the Property. The Landlords are required to provide the Tenant with a copy of this Certificate. No such document was made available to the Tenant (or to the Committee).
- There is dampness in the area immediately above the skirting board in the external wall of the living room.

#### **Reasons for the Decision**

14. As indicated, in the course of the inspection the Committee were able to test the shower and found that the hot and cold water controls were functioning and that the shower was in proper working order.
15. The Tenant submitted (in her Application Form) that there was dampness in an area behind the WC cistern. She made available a photograph, which supports her claim. However the Committee found no evidence of dampness in the bathroom (having carried out tests with a Protimeter). We noted that the bathroom window opened properly and was in a reasonable state of repair. The extractor fan in the bathroom was in proper working order. The Committee considered that any dampness which had been in the bathroom was likely to have been caused by condensation.
16. The Committee noted that there was evidence of dampness in the external wall of the living room. This was confirmed by testing the area with a Protimeter.
17. The Property is centrally heated. At the Hearing the Tenant advised the Committee that the boiler had not been serviced since December 2009 - she had not been issued with a Service Certificate. Mr Whittet was unable to provide a copy of the Landlord's Gas Safety Certificate (relative to the system for space heating and heating water within the Property) and could not confirm that such a Certificate had been issued. In these circumstances the Committee were not satisfied that the

installation for the supply of space heating and water heating in the Property was in proper working order and in a reasonable state of repair.

### **Decision**

18. The Committee determined that the Landlords had failed to comply with the duty imposed by section 14(1) (b) of the Act.
19. The Committee proceeded to make a Repairing Standard Enforcement Order as required by section 24(1) of the Act.
20. The decision of the Committee was unanimous.

### **Right of Appeal**

21. A Landlord(s) or Tenant aggrieved by the decision of a PRHP 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. 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.

Signed..... **R Handley** ..... Date..... 11 / May / 2011 .....

Chairperson