



Repairing Standard Enforcement Order

Ordered by the Private Rented Housing Committee

prhp Ref: PRHP/AB12/34/13

Re: Property at 25 Kincorth Crescent, Aberdeen, AB12 5AE ("the Property")

Title No: KNC10304

The Parties:-

MR WESLEY THEVARAJAH residing at 50 Faygate Way, Lower Earley, Reading, RG6 4DA ("the Landlord")

MISS TRACY DUNCAN formerly residing at 25 Kincorth Crescent, Aberdeen, AB12 5AE ("the Tenant")

NOTICE TO MR WESLEY THEVARAJAH ("the Landlord")

Whereas in terms of their decision dated 10 March 2014, 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 is:-

- (a) The Property is wind and watertight and in all other respects reasonably fit for human habitation;
- (b) The structure of and exterior of the Property (including drains, gutters and external pipes) are in a reasonable state of repair and in proper working order;
- (c) The installations in the Property 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;

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 carry out such works as are necessary to ensure a current and clear gas safety certificate can be issued confirming compliance with the relevant regulations.
- (b) To carry out such works to the Property as are required to allow a suitably qualified electrician to issue a clear electrical installation condition report confirming compliance with the relevant regulations, and in particular to test and repair/replace the cooker and bathroom fan.
- (c) To remediate the damage caused to the bathroom by excessive condensation and to bring it up to an appropriate decorative standard.
- (d) To carry out such works of repair or replacement as are necessary to the downpipe and drain at the front of the Property, sufficient to ensure compliance with the repairing standard.

The Private Rented Housing Committee order that the works specified in this Order must be carried out and completed within the period of 6 weeks 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 are executed by Ewan Kenneth Miller, Solicitor, Whitehall House, 33 Yeaman Shore, Dundee, DD1 4BJ, Chairperson of the Private Rented Housing Committee at Dundee on 10 March 2014 before this witness:-

L Johnston

witness

E Miller

Chairman

Lindsay Johnston
Secretary
Thorntons Law LLP
Whitehall House
33 Yeaman Shore
Dundee
DD1 4BJ



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

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Re: Property at 25 Kincorth Crescent, Aberdeen, AB12 5AE ("the Property")

The Parties:-

**MISS TRACY DUNCAN formerly residing at 25 Kincorth Crescent, Aberdeen, AB12 5AE
("the Tenant")**

**MR WESLEY THEVARAJAH residing at 50 Faygate Way, Lower Earley, Reading, RG6
4DA ("the Landlord")**

Decision

The Committee, having made such enquiries as it saw fit for the purposes of determining whether the Landlord had complied with the duty imposed by Section 14 (1)(b) in relation to the house concerned determined that the Landlord had failed to comply with the duty imposed by Section 14 (1)(b) of the Act and resolved to impose a Repairing Standard Enforcement Order on the Property.

Background

1. By application dated 23 February 2013 the Tenant 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 by the Tenant stated that the Tenant considered that the Landlord had failed to comply with his duty to ensure that the house meets the repairing standard and in particular that the Landlord had failed to ensure that:-
 - (a) The Property is wind and watertight and in all other respects reasonably fit for human habitation;
 - (b) The structure of and exterior of the Property (including drains, gutters and external pipes) are in a reasonable state of repair and in proper working order;
 - (c) The installations in the Property 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;
 - (d) Any fixtures, fittings and appliances provided by the Landlords under the tenancy are in a reasonable state of repair and in proper working order;
 - (e) Any furnishings provided by the Landlords under the tenancy are capable of being used safely for the purpose for which they are designed;
3. By letter dated 10 April 2013 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 Tenant.
5. Following service of the Notice of Referral the Tenant made no further written representation to the Committee other than her original application. The Landlord made no formal written representations to the Committee.
6. The Private Rented Housing Committee (comprising Mr E K Miller (Chairman and Legal Member), Mr A Anderson (Surveyor Member) and Mrs L Robertson (Housing Member) inspected the Property on the morning of 29 November 2013. Neither the Tenant nor the Landlord were present or represented. Access to the Property was provided by a friend of a friend of the Landlord but who was otherwise unaware of the issues relating to the Property.
7. Following the inspection of the Property the Private Rented Housing Committee held a hearing at The Credo Centre, John Street, Aberdeen. Neither party was present or represented.
8. The Tenant's application submitted that there were a number of faults in the Property which, despite numerous complaints, had failed to be rectified. The reports were varied and included no working central heating or hot water, various issues with the beds in the Property, mould infestation and damp. The Landlord's agent at the time had agreed to let the Tenant out of the lease and as a result she had since been re-housed.
9. There was no formal submission from the Landlord. Recent emails had been received from him advising that he was willing to carry out whatever works were necessary to ensure compliance.

Summary of the issues

10. The issues to be determined were:-
 - (1) Whether the door to the bathroom met the repairing standard.
 - (2) Whether there was working central heating system and hot water available.
 - (3) Whether the internals for the cooker and the ignition were in proper working order.
 - (4) Whether the fire in the living room was in proper working order.
 - (5) Whether the beds, mattresses and bedding at the Property met the repairing standard.
 - (6) Whether the toilet seat was broken and whether the toilet brush met the repairing standard.
 - (7) Whether there was damp and mould infestation in the bedrooms and bathroom.
 - (8) Whether there was a blocked drain at the front of the Property.

Findings of fact

11. The Committee found the following facts to be established:-
 - 1) The door to the bathroom met the repairing standard.
 - 2) The Committee was not able to ascertain whether the central heating and hot water system at the Property was in proper working order.

- 3) The Committee was unable to ascertain whether the internals of the cooker and the ignition were broken.
- 4) The Committee were unable to ascertain whether the fire in the living room was in proper working order. Part of the surround was sellotaped to the wall and this appeared to the Committee to be a breach of the repairing standard.
- 5) The beds and mattresses, so far as remaining in the Property, appeared to have been replaced. There was no breach of the repairing standard.
- 6) The toilet seat was not broken and the toilet brush was not present. There was evidence of previous extensive damp in the bathroom. This had damaged the condition of the walls and these would require to be remediated and redecorated.
- 7) The gully of the drain at the front of the Property was blocked and required to be repaired.

Reasons for the decision

12. The Committee based its decision primarily on the evidence obtained during the course of the inspection.

The door to the bathroom was in proper working order and appeared to comply with the repairing standard.

As the Property was empty the Committee was unable to determine whether the central heating system and hot water supply were in proper working order. In any event the Committee would require sight of a current and clear gas safety certificate confirming that the gas appliances and heating system within the Property met the repairing standard and the relevant regulations.

The Committee inspected the internals of the cooker and the ignition switch. The ignition switch did appear to be broken. This issue would, in any event, require to be addressed to allow the issue of the clear gas safety certificate referred to. There did not appear to the Committee to be anything immediately wrong with the inside of the cooker but in any event the Committee would require sight of an electrical installation condition report confirming that the electrical installations in the Property met the relevant regulations. As a result this issue could be addressed as part of the obtaining of the condition report, if required.

The Committee inspected the fire in the living room. The Committee could not test the fire itself but this point would be covered by the issue of a clear gas safety certificate. The Committee did also note that part of the surround of the fire was sellotaped to the wall to hold it in place. This appeared to the Committee to be a clear breach of the repairing standard and would require to be addressed.

The Committee inspected the beds/mattresses within the Property. These all appeared to be compliant with the repairing standard.

The toilet seat was not broken and there was no toilet brush present. Accordingly the Committee did not view this as a breach of the repairing standard in this regard.

The Committee inspected the three bedrooms for mould infestation/damp. Pictures that the Tenant had provided had shown extensive mould. However it appeared that the Property had been repainted since the Tenant had left and there was no sign of any new mould infestation. Damp meter readings were taken and there did not appear to be any damp penetration. It appeared to the Committee that the likely cause of the mould infestation had been condensation caused by insufficient heating and ventilation by the Tenant rather than any breach of the repairing standard.

The Committee inspected the bathroom at the Property. There was evidence of previous condensation/mould damage and peeling paint to the walls of the bathroom. The Committee was of the view that the bathroom would require to be redecorated to bring it up to the repairing standard. The extractor fan requires to be tested and repaired/replaced if necessary.

The Committee inspected the downpipe and drain at the front of the Property. This was heavily overgrown with vegetation and it was clear it was not draining properly. This would require to be addressed by the Landlord to ensure compliance with the repairing standard.

The Committee considered how long the Landlord would require to carry out the works required to meet the repairing standard. The Committee were of the view that 6 weeks would be sufficient.

Decision

13. The Committee accordingly determined that the Landlord had failed to comply with the duty imposed by Section 14 (1)(b) of the Act.
14. The Committee proceeded to make a Repairing Standard Enforcement Order as required by section 24(1).
15. The decision of the Committee was unanimous.

Right of Appeal

16. 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

17. 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.

E Miller

Signed Date..... 10/3/14
Chairperson