



REPAIRING STANDARD ENFORCEMENT ORDER
Ordered by the Private Rented Housing Committee

RE: Property at 0/1, 4 Gardner's Lane, Lochee Road, Dundee DD1 5RE as more particularly described in Land Certificate Title Number ANG57400 (hereinafter referred to as "the House")

The Parties:

Lesley-Anne Dunsmuir, Property at 0/1, 4 Gardner's Lane, Lochee Road, Dundee DD1 5RE (hereinafter referred to as "the Tenant")

Robert Thomas Irwin and Hilary Carol Irwin, 5 Church Avenue, Holywood BT18 9BJ (hereinafter referred to as "the Landlord")

PRHP REFERENCE PRHP/DD1/53/13

NOTICE TO ROBERT THOMAS IRWIN and HILARY CAROL IRWIN

WHEREAS in terms of their decision dated 2 June 2014 the 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 House meets the repairing standard in that:

- "(a) the house is wind and water tight 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,*
- (d) 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 Committee now requires the Landlord to carry out such work as is necessary for the purposes of ensuring that the House 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 Committee requires the Landlord:

- 1 To instruct a report from a specialist contractor who is expert in the treatment of timber as to the cause of the problems with the flooring in the House and as to the remedial works required.

- 2 To carry out the works recommended by the specialist contractor.
- 3 To put the kitchen into state of repair whereby the floor is reasonably flat and stable; the vinyl flooring meets the base units and the kitchen units and appliances are secure and stable.

The Committee order that the works specified in this Order must be carried out and completed within 60 days from the date of service of this Notice.

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 the decision.

Where such an appeal is made, the effect of the decision and 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 typewritten on this and the preceding page are signed by John Miller McHugh, Chairperson of the Private Rented Housing Committee at Edinburgh on the Eleventh day of June Two Thousand and Fourteen in the presence of the undernoted witness:

J McHugh

Chairperson

G McHugh

Witness GILLIAN McHUGH

Witness Address c/o 3 PONTON ST
EDINBURGH



DETERMINATION BY PRIVATE RENTED HOUSING COMMITTEE

**STATEMENT OF DECISION OF THE PRIVATE RENTED HOUSING COMMITTEE
UNDER SECTION 24(1)
OF THE HOUSING (SCOTLAND) ACT 2006**

In connection with

Property at 0/1, 4 Gardner's Lane, Lochee Road, Dundee DD1 5RE (hereinafter referred to as "the House")

Lesley-Anne Dunsmuir, Property at 0/1, 4 Gardner's Lane, Lochee Road, Dundee DD1 5RE (hereinafter referred to as "the Tenant")

Robert Thomas Irwin and Hilary Carol Irwin, 5 Church Avenue, Holywood BT18 9BJ (hereinafter referred to as "the Landlord")

PRHP REFERENCE PRHP/DD1/53/13

DECISION

The Committee, having made such enquiries as are fit for the purposes of determining whether the Landlord has complied with the duty imposed by section 14(1)(b) of the Housing (Scotland) Act 2006 (hereinafter "the Act") in relation to the House, taking account of the evidence led by the Tenant at the hearing and taking account of the written documentation attached to the application and submitted by the parties, determined that the Landlord had failed to comply with the duty imposed by section 14(1)(b) of the Act.

Background

By application dated 21 February 2013 (hereinafter referred to as "the Application"), the Tenant applied to the Private Rented Housing Panel (hereinafter "the PRHP") for a determination of whether the Landlord had failed to comply with the duties imposed by section 14(1)(b) of the Act.

The Application stated that the Tenant considered that the Landlord had failed to comply with the duty to ensure that the House meets the repairing standard and in particular that the Landlord had failed to ensure compliance with the following paragraphs of section 13(1) of the Act:

“(a) the house is wind and water tight and in all other respects reasonably fit for human habitation,...

(c) 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,

(d) any fixtures, fittings and appliances provided by the landlord under the tenancy are in a reasonable state of repair and in proper working order,

(e) any furnishings provided by the landlord under the tenancy are capable of being used safely for the purpose for which they are designed ...”

The Tenant complained of the following defects in the House: the absence of heating; the kitchen floor sinking; related problems with kitchen units; uneven plasterwork; the kitchen window being insecure; and ripped lino.

By letter of 2 October 2013, the President of the PRHP intimated a decision to refer the application under section 23(1) of the Act to a Private Rented Housing Committee (hereinafter referred to as “the Committee”).

The Committee comprised the following members:

John McHugh, Chairperson

Michael Scott, Housing Member

David Godfrey, Surveyor Member

The Committee served Notice of Referral in terms of Paragraph 1 of Schedule 2 to the Act upon the Landlord and the Tenant.

The Committee inspected the House on 19 May 2014. The Tenant was present and was assisted by her friend, Mairi Handy. The Landlord was neither present nor represented.

Following the inspection, the Committee held a hearing at Kirkton Community Centre, Derwent Avenue, Dundee. In attendance were the Tenant and Ms Handy. No one attended on behalf of the Landlord.

Submissions at the Hearing

The Committee considered the submissions made by the Tenant. The Committee also considered the written evidence submitted by the parties including an invoice for works carried out to repair the kitchen floor.

The Tenant complained that the Landlord had shown little interest in addressing complaints. She was entirely responsible for securing grant funding for the

installation of gas central heating. She had also replaced the existing torn living room vinyl with a carpet at her own cost.

The Tenant had asked the Landlord to carry out plastering in the kitchen but, given the Landlord's lack of response, had done the work herself.

The Landlord had replaced the kitchen window.

The kitchen floor was bowed. The Tenant advised that the Landlord had attempted repairs but that these had only involved cutting out and replacing some sections in the centre of the kitchen floor. In particular, she advised that the remedial works had not included lifting the whole floor and removing the kitchen units as listed in the invoice of "Sb Maintenance ltd" dated 12 October 2013 and produced by the Landlord. As part of those works, new vinyl had been provided. Kitchen units which had dropped with the floor had been adjusted. Kitchen units which had dropped with the floor had been adjusted. Since the repairs, the problem had repeated with the effect that the vinyl no longer stretches to meet the base units and the units have again moved.

Summary of the Issues

The issue to be determined is whether the House meets the repairing standard as laid down in section 13 of the Act and whether the Landlord has complied with the duty imposed by section 14(1)(b).

Findings in Fact

The Committee confined their inspection to the items of complaint detailed within the Tenant's Application.

The Committee made the following findings in fact:

The House is a ground floor flat.

The block of which the House forms part is in need of repair.

The Tenant entered into a tenancy agreement in respect of the House with Caledonian Investments on 26 July 2010.

Robert Thomas Irwin and Hilary Carolyn Irwin are the registered owners of the House.

The Irwins became the proprietor on 8 March 2011 and have acquired the interest of Caledonian Investments in the tenancy agreement.

The Tenant took possession of the House from 2 August 2010 and has remained in occupation since.

The provisions of Chapter 4 of Part I of the Act apply to the tenancy.

The Tenant notified the Landlord of the defects in the house which are now the subject of the Application by letter addressed to the Landlord dated 11 December 2012.

The inspection on 19 May 2014 revealed:

The kitchen floor is bowed in the middle.

Kitchen units have moved, apparently as a result of the floor problem.

The cooker is propped up using boards to create a level platform.

The kitchen vinyl flooring no longer meets the kitchen base units.

Gas central heating has been installed.

The living room is carpeted.

The plasterwork is uneven in the kitchen particularly near the light switch at the door.

A mains powered smoke detector is installed in the hall.

Reasons for the Decision

Kitchen Floor

The kitchen floor is obviously bowed. The same problem can be observed in the bathroom and the hall. It seems likely that there is a problem with the joists which may need replacement. The problem with the floor has caused movement of kitchen units and appears to have caused the kitchen vinyl flooring no longer to meet the kitchen base units. It appears that earlier attempts to address the problem have been unsuccessful. There has been an unconfirmed suggestion, from a tradesman who attended at the instance of the Landlord, that the problem may be one of dry rot.

Other matters

The uneven plaster is not aesthetically pleasing but is insufficiently serious to constitute a breach of the repairing standard. Central heating has been installed and a living room carpet provided (although in neither case through the efforts of the Landlord). Accordingly, the Tenant can no longer insist upon these elements of her application.

We found the Tenant's evidence to be entirely credible.

Observations

The Tenant reports that she has not been provided with a Landlord's Gas Safety Certificate. The Landlord is reminded of its obligations in this regard and immediate steps should be taken for a Certificate to be issued to the Tenant.

There are other items in The House which could reasonably form the basis of a further application to the PRHP. The Landlord would be well advised to carry out an assessment of the House with a view to ensuring that it complies with the repairing standard.

The building in which the House is located is in obvious disrepair.

Wooden boxing around pipes on the exterior walls are loose. Some have already fallen to the ground. The roof is in need of urgent attention. Harling on the wall at the entrance to the side of the building is coming away from the wall. These items present a risk of injury to those living in or attending the building.

The Repairing Standard

The Committee consider that the defects in the kitchen floor and those related to it constitute breaches of the repairing standard.

Repairing Standard Enforcement Order

Having decided to make a Repairing Standard Enforcement Order, the Committee considered the length of time which should be provided for compliance.

The Committee elected to impose a period of 60 days having regard to the nature of the defects identified.

Decision

The Committee, considering the terms of section 13(3) of the Act, determined that the Landlord had 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(2) of the Act.

The decision of the Committee was unanimous.

Right of Appeal

Section 64 of the Act provides a right of appeal to a landlord or tenant aggrieved by a decision of a private rented housing committee. An appeal may be made to the Sheriff within 21 days of the Landlord or Tenant being informed of the decision.

Where such an appeal is made, the effect of the decision and 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 McHugh

John M McHugh
Chairperson

Date: 2 June 2014