



Repairing Standard Enforcement Order

Ordered by the Private Rented Housing Committee

prhp Ref: PRHP/DD10/68/12

Re : Property at 34 Wharf Street, Montrose, DD10 8PD ("the Property")

Title No: ALL and WHOLE that ground floor flatted dwellinghouse known as and forming 34 Wharf Street, Montrose, DD1 8PD and being the subjects registered in the Land Register under Title Number ANG45871.

The Parties:-

Mr Blair Pasqua residing at 34 Wharf Street, Montrose, DD10 8PD ("the Tenant")

Alexandra Grace Grimes, residing at 5 Westpark Grove, Inverbervie, Montrose, (represented by her husband, Mr John Grimes "the Landlord")

NOTICE TO ALEXANDRA GRACE GRIMES ("the Landlord")

Whereas in terms of their decision dated 29 June 2012, 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; and

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 of repair or replacement as are necessary to render the front door and surrounding frame properly wind and water tight, capable of opening and closing properly and otherwise meets the repairing standard;
- (b) to carry out such works as are necessary to render the windows at the Property properly wind and water tight, capable of opening and closing properly and otherwise meet the repairing standard;
- (c) to repair the wall between the bath and bathroom wall sufficient to meet the repairing standard and to carry out any redecoration required as a result of such works;
- (d) to repair or replace all damaged or rotten floor boards within the Property sufficient to meet the repairing standard;
- (e) to carry out such works as are required to eradicate all damp and rot within the Property. Without prejudice to the generality of the foregoing requirement, the Landlord will require to produce to the Committee a report from a reputable timber specialist guarantee company reporting on what works are required and to carry out such works as are required by said report to meet the repairing standard. The Landlord will also require to carry out such works as are necessary to the mutual guttering and stairs leading to the upstairs flat sufficient to prevent future water penetration to the Property from that source.

The Private Rented Housing Committee order that the works specified in this Order must be carried out and completed within the period of 4 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 these presents type written on this and the preceding page(s) are executed by Ewan K Miller, solicitor, Whitehall House, 33 Yeaman Shore, Dundee, DD1 4BJ, chairperson of the Private Rented Housing Committee at Dundee on 29 June 2012 before this witness:-

S Clark

_____ witness

E Miller

_____ chairman

Sheila Clack
Whitehall House
33 Yeaman Shore
Dundee
DD1 4BJ

Secretary



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 34 Wharf Street, Montrose, DD10 8PD ("the Property")

The Parties:-

Mr Blair Pasqua residing at 34 Wharf Street, Montrose, DD10 8PD ("the Tenant")

Alexandra Grace Grimes, residing at 5 Westpark Grove, Inverbervie, Montrose, (represented by her husband, Mr John Grimes) ("the Landlord")

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 Tenant 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 6 March 2012 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; and
 - (b) 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.
3. By letter dated 30 April 2012 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 by letter dated 15 May 2012, made written representations to the Committee. The Landlord's husband by letter dated 11 May 2012, made written representations to the Committee.
6. The Private Rented Housing Committee (comprising E K Miller, Chairman and Legal Member, Mr D Godfrey, Surveyor Member, and Mr J Wolstencroft accompanied by the Clerk to the Committee) inspected the Property on the morning of 22 June 2012. The Tenant and the Landlord's husband were present during the inspection.

7. Following the inspection of the Property the Private Rented Housing Committee held a hearing at The Links Hotel, Montrose and heard from both the Tenant and the Landlord's husband.
8. At the hearing itself the Tenant made no specific submission, having highlighted during the course of the inspection the various items he had complained of in his application to the Committee.
9. The Landlord accepted that the Property required work on it to comply with the repairing standard. The Landlord's primary issue was that he felt that he had not been given any notification that works were required prior to 16 April 2012. The Landlord was prepared to carry out whatever works were required by the Committee for the Property to comply with the repairing standard.

Summary of the issues

10. The issues to be determined were:-
 - (a) whether the front exterior door at the Property was properly wind and water tight and met the repairing standard.
 - (b) whether the windows at the Property were properly wind and water tight and otherwise met the repairing standard.
 - (c) whether the plumbing within the bathroom of the Property was adequate and in proper working order and whether there were any gaps in the walls in the bathroom.
 - (d) whether the central heating worked.
 - (e) whether any works of repair or replacement were required to the floorboards within the Property.
 - (f) whether the Property was suffering from damp and rot

Findings of fact

11. The Committee found the following facts to be established:-
 - (a) the door at the Property did not meet the repairing standard;
 - (b) the windows at the Property did not meet the repairing standard;
 - (c) whilst the plumbing within the bathroom did appear to be in proper working order, there were gaps between the bath and the wall and this aspect did not meet the repairing standard;
 - (d) the central heating had been repaired and was now in proper working order;
 - (e) there were floorboards within the Property that did not meet the repairing standard and required to be repaired or replaced;
 - (f) the Property was suffering from excessive damp, mould and condensation. Though the committee were unable to inspect under floor timbers, given the condition of flooring and evidence of long standing dampness it was a reasonable assumption that there was a high risk of wet rot.

Reasons for the decision

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

The Committee first inspected the front door at the Property. The door did not fit smoothly into the surrounding frame and was also difficult to open properly. The threshold of the door did not form an effective barrier to water penetration. There was also daylight showing between the door and the frame particularly at the bottom right hand corner. It was apparent to the Committee that the door would require to be repaired or replaced sufficient to render it properly wind and water tight and capable of opening and closing properly.

The Committee then inspected the two front windows at the Property. Both were in poor condition and were suffering from rot. Neither were capable of being opened and closed. Both windows would require to be repaired or replaced sufficient to render them properly wind and water tight and in good working order.

The Landlord had accepted during the course of the Hearing that both the front door and the windows required work to them.

The Committee then inspected the bathroom at the Property. The Tenant confirmed that the plumbing was now in proper working order. There was, however, a large gap developing between the side of the bath and the wall. The Landlord was of the view that this was the Tenant's responsibility as he was responsible for internal decorations. The Committee were of the view that this was being caused by the significant damp and rot in the Property and it therefore fell to the Landlord to repair this and properly seal the bath upon completion of the repair works

The Committee noted that the Tenant confirmed that the central heating was working and this was no longer an issue.

The Committee inspected the floorboards immediately inside the front door. These were very soft, loose and unsafe. These would require to be repaired or replaced. The Committee noted that there were other floorboards that were in poor condition in the Property and these would require to be attended to. In the rear corner of the main room within the Property, behind the Tenant's bed, the floor board was ill-fitting and a gap was present, where the Tenant complained insects were able to enter the Property. This would require to be repaired or replaced by the Landlord.

The Committee inspected the Property to ascertain whether it was damp. The bathroom at the Property was exceptionally damp and had a high level of mould within it. Damp meter readings were taken and were shown to be very high. Significant levels of damp were also found towards the rear end of the main room, at the front of the kitchen and at various other points through the house.

It was readily apparent that the Property was suffering from a high level of damp. There were two obvious causes for this. The Committee noted that the ground level at the rear was higher than the Property itself. The Committee also noted that above the kitchen the guttering and stairs to the upper flat were in poor condition and in all probability water penetration was occurring to the Property from that. The Committee were also of the view that there was a high probability that there was rising/penetrating damp and rot within the Property and that this would require to be addressed.

The Committee were concerned to note that the Landlord had failed to deal with any of these works previously. It was obvious from a visual inspection alone that the Property suffered from a high degree of damp. The Landlord had been in the Property on a few occasions and it must have been apparent to him that works were required.

The Committee had considered the length of time required for the Landlord to carry out the works that would be required, some of which were significant. A timber specialist report from a reputable company would be required to be obtained by the Landlord to ascertain what works were required. The Landlord would then need time to carry these works out. It was highly likely that the rear wall of the Property would require to be tanked to avoid continuing damp penetration as a result of the high rear ground level. The Landlord may also require some additional time due to the fact that the Property was listed and the windows may take longer than normal to be remedied as a result.

The Landlord's husband indicated that he thought 4 months was a reasonable period for him to carry out the works.

In the circumstances, the Committee were happy to give the Landlord 4 months to carry out the works.

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.

Signed **E Miller** Date..... *29/6/12*
Chairperson