



A Repairing Standard Enforcement Order
Ordered by the Private Rented Housing Committee

prhp Ref: RP/13/0077

Re : Property at 203L North High Street, Musselburgh, EH21 6AP ("the Property")

Title Number: MID37258

The Parties:-

Mr and Mrs Anthony Gorsek, 203L North High Street, Musselburgh, EH21 6AP ("the Tenants")

Mr and Mrs Nick Milne, care of The Property Letting Centre, 64 Newington Road, Edinburgh, EH9 1QM ("the Landlords")

NOTICE TO

Mr and Mrs Nick Milne, care of The Property Letting Centre, 64 Newington Road, Edinburgh

Whereas in terms of their decision dated 25 November 2013, The Private Rented Housing Committee having determined that the Landlords have failed to comply with the duty imposed by Section 14 (1)(b) of the Housing (Scotland) Act 2006 and in particular that the Landlords have 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 Landlords to carry out such work as is necessary for the purposes of ensuring that the property 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 require the Landlords to:-

1. Repair/replace the gutter on the easterly elevation of the property above the affected window to ensure that it is in a reasonable state of repair and in proper working order.
2. Investigate the cause of water penetration into the property and rectify any defect in the pointing around the stone work surrounding the living room window on the easterly elevation to ensure that the property is wind and water tight.

The Private Rented Housing Committee orders that the work specified in this Order should be carried out within a period of two months 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 25 November 2013 before this witness:-

R Graham

.....

..... Witness

J Lea

..... Chairman

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



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

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Mr and Mrs Anthony Gorsek, 203L North High Street, Musselburgh, EH21 6AP ("the Tenants")

Mr and Mrs Nick Milne, care of The Property Letting Centre, 64 Newington Road, Edinburgh, EH9 1QM ("the Landlords")

Decision

The Committee, having made such enquiries as it saw fit for the purposes of determining whether the Landlords have complied with the duty imposed by Section 14 (1)(b) of the Housing (Scotland) Act 2006 in relation to the house concerned, and taking account of the evidence led by both the Landlords and the Tenants at the hearing, determined that the Landlords have failed to comply with the duty imposed by Section 14 (1)(b) of the said Act.

Background

1. By application dated 19 August 2013 the Tenants applied to the Private Rented Housing Panel for a determination of whether the Landlords 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 the Tenants considered that the Landlords had failed to comply with the duty to ensure that the house meets the repairing standard and in particular that the Landlords had failed to ensure that the house was wind and water tight and 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.
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 on both the Landlords and the Tenants.
5. The Private Rented Housing Committee (comprising Mrs Judith Lea, Chairman and Legal Member, Sara Hesp, Surveyor Member and Christine Anderson, housing member) inspected the Property on 19 November 2013. Pino Di Emidio was also present as part of the Private Rented Housing Panel's ongoing training programme. Mr Anthony Gorsek, one of the Tenants was present. The Agent for the Landlords, Suzanne Smith was waiting outside the property for the Committee at the time of the inspection. The

Chairman accordingly re-inspected the property with the Landlord's Agent and pointed out what the Tenants had shown the Committee.

6. Following the inspection of the Property, the Private Rented Housing Committee convened a hearing at the Fisherrow Centre, South Street, Musselburgh. The Landlord's Agent, Suzanne Smith and the Tenant, Mr Gorsek were both in attendance.
7. At the start of the hearing the Chairman asked the surveyor member to report on the damp meter readings taken in the areas around the window. The surveyor member advised that there was no damp evident in the vicinity of the window. The Chairman asked the Landlord's Agent whether she wished a re-inspection of the property to be done so that she could observe the meter readings being taken but she indicated that she did not require this.
8. Mr Gorsek indicated that in September/October 2012 there was a water leak around the casement area of the window in the living room. He notified the Landlord's maintenance person who agreed to come and have a look at it. Nothing happened over the summer. Mr Gorsek explained that he had to put up plastic around the window to prevent the water splashing into the room. He used a bucket to try and contain it. He indicated that it made it difficult to use the area around the window. He confirmed that the problem occurred when it rained or when there was snow. The area did dry out quickly but it could be a substantial leak.
9. The Landlord's Agent stated that when they were first advised they thought it was the window. They however looked at the gutter above the window which was clearly buckled. The Landlord's Agent explained that the Landlords had tried to contact the owners of the other properties in the block who had joint responsibility for the gutters and roof. The Landlord's Agent indicated that to fix the gutters scaffolding would be required and it was quite probable that when this work was being done further problems might come to light. She indicated that the Landlords wanted to have the matter fixed as it was affecting their property. The Landlords however were reluctant to have to pay for all the work as he had had to do this in connection with previous roof issues in the recent past. The Landlord's Agent explained that only one of the owners of the other properties had made any contact in response to the letters which they had sent them. The Landlord's Agent confirmed that the Landlords understood that the matter required to be sorted out. She indicated that they had made investigations with contractors and been told that the scaffolding would have to be up for a month but they had not obtained any costs. She confirmed that there were no access difficulties.
10. Mr Gorsek confirmed that the window in the upper bedroom was fine. The Landlord's Agent confirmed that no investigations had been carried out in relation to the stone work above the living room window. In response to a question from the Chairman with regard to timescales should the Committee impose an Order, the Landlord's Agent stated that they had already obtained quotes. Mr Gorsek stated that he did not have any submissions on this.

Decision

11. It was clear from the inspection and from the submissions from both parties that there is currently a problem with water ingress through the casing of the window in the living room. There was no sign of any mould or residual damp in the walls around the window. However, this is clearly a breach of Section 13(1)(a) of the Repairing Standard as the house is not currently wind and water tight. It was also clear from an external inspection and from the submissions made by both parties that the gutter on the easterly elevation of the property above the living room window is buckled and there is a large mossy area on the stone work just above the living room window which suggests a problem with water ingress. The state of the gutters is a breach of Section 13(1)(b) of the Repairing Standard.

12. The Landlord's Agent did not dispute that there was presently a problem with the property. The Committee accept that the Landlords via the Landlord's Agent have been making attempts to contact the owners of the other properties in the tenement with regard to obtaining their cooperation and consent in connection with repairs to the gutter and possible repairs to the roof which may be required. However if a Landlord rents out a property he must ensure that the property meets the Repairing Standard. The Landlord's Agent confirmed that there was no difficulty with the Landlords having access to carry out the necessary repairs and accordingly the Committee proceeded to make a Repairing Standard Enforcement Order. The Landlord's Agent suggested that scaffolding would be required to be up for one month and that there might also be problems with the roof which may be discovered once the scaffold is up. The Committee however are only concerned with the existing problem of water ingress and the defect in the gutter in respect of this application. It may be that this work does not affect other owners in the tenement. Given the time of year and the possible requirement for the Landlords to erect scaffolding, the Committee considered that the Landlords should be allowed a period of two months to complete the work.
13. The decision of the Committee was unanimous.

Right of Appeal

14. **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

15. 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 25 November 2013
Chairperson