



Repairing Standard Enforcement Order

Ordered by the Private Rented Housing Committee

RE: Property at Flat 3/L, 37 Provost Road, Dundee DD3 8AF, being the northmost house on the third floor of the tenement known as 37 Provost Road, aforesaid all as more particularly described in Land Certificate title number ANG 17710 (hereinafter referred to as "the house")

The Parties:

Mr. Richard De Goth, residing at the house ("the tenant")

Mr. Ian Grant Cumming and Mrs. Helen Narracott, residing at Alewater, Lilliesleaf, Melrose TD6 9EL, who were represented by an agent Mr. Ryan Monks, CGR Properties, DIA Business Properties, West Hendersons Wynd, Dundee DD1 5BY ("the landlord")

Reference PRHP/RP/14/0038

NOTICE TO Ian Grant Cumming and Mrs Helen Narracott ("the landlord")

Whereas in terms of their decision dated 18 August 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 house meets the repairing standard in that:-

- (1) the house is wind and water tight and in all other respects reasonably fit for human habitation;
- (2) 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 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;

(4) 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 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 repair and make good the plasterwork in the bedroom ceiling and at the junction of the front elevation and party wall in the bedroom to ensure the ceiling and walls are in a reasonable state of repair,*
- (b) to repair and make good the plasterwork in the ceiling of the lounge to ensure that it is in a reasonable state of repair,*
- (c) to replace the bath tap in the bathroom so that it is in proper working order,*
- (d) to repair or replace the kitchen windows including the window frames and sills to ensure that they are in a reasonable state of repair and in proper working order,*
- (e) to identify the source of water penetration which is causing damage to the ceilings in the lounge and bedroom and to carry out such works as required to the external fabric of the tenement to ensure that there is no water ingress into the house and the house is wind and watertight, and*
- (f) to repair the boiler to ensure that it is in a reasonable state of repair and in proper working order and to provide to the committee a satisfactory and up to date landlord gas safety certificate in respect of the gas installation and gas boiler.*

The Private Rented Housing Committee order that the works specified in this Order must be carried out and completed within the period of 3 months from the date of service of this Notice.

The Landlord is reminded that it is an offence to re-let the house whilst a RSEO applies to the house.

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 typewritten on this and the preceding two page are signed by Aileen Margaret Devanny, Chairperson of the Private Rented Housing Committee, at Glasgow on Twenty eighth day of August, Two Thousand and fourteen in the presence of the undernoted witness:-

J Kane

A Devanny

WITNESS.....

JANET KANE.....

EUROPA BUILDING, 450.....
ARGYLE ST, GLASGOW.....
PANEL CLERK.....



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 3/L 37 Provost Road, Dundee DD3 8AF
(hereinafter referred to as "the house")**

Mr. Richard De Goth, residing at the house ("the Tenant")

**Mr. Ian Grant Cumming and Mrs. Helen Narracott, residing at Alewater, Lilliesleaf,
Melrose TD6 9EL, who were represented by an agent Mr. Ryan Monks, CGR
Properties, DIA Business Properties, West Hendersons Wynd, Dundee DD1 5BY
("the Landlord")**

Reference PRHP/RP/14/0038

DECISION

The Committee, having made such enquiries as is 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 presented and the written representations, determined that the Landlord had failed to comply with the duty imposed by Section 14(1) (b) of the Housing (Scotland) Act 2006 (hereinafter referred to as "the Act")

Background

1. By application dated 5 February 2014 and received on 10 February 2014 the Tenant applied to the Private Rented Housing Panel (hereinafter referred to as "PRHP") for a determination of whether the Landlord had failed to comply with the duties imposed by Section 14(1) (b) of the Act.
2. The application by the Tenant 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 Section 13(1) (a), (c) and (d) of the Act which states that " the house is wind and watertight and in all other respects

reasonably fit for human habitation; 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; and 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 Tenant's complaints are that (a) the ceiling in the back bedroom requires repair; (b) plasterwork in the bedroom corner requires repair;(c) the tap in the bathroom does not work properly and a spanner has to be used to turn it on and off; (d) the louvre windows in the kitchen are not wind and watertight and needs replaced; and the window frames also require to be replaced; (e) there is no draught excluder on the front door; (f) the ceiling in the living room is sagging and has water damage; and (g) the boiler needs replaced. The Tenant's application submitted to PRHP included a copy letter dated 22 January 2014 from the Tenant's solicitor to the Landlord Mrs. Narracott which had been sent recorded delivery, notifying the Landlord of the required works.

3. By letter dated 2 April 2014, PRHP gave intimation that the President of the PRHP had made a decision to refer the application under Section 23(1) of the Act to a Private Rented Housing Committee.

The Committee comprised the following members:

Mrs. Aileen Devanny, Chairperson
Mr. David Godfrey, Surveyor Member
Mr. Mike Scott, Housing Member

4. The Private Rented Housing Committee served Notice of Referral under and in terms of Schedule 2 Paragraph 1 of the Act upon the Landlord and the Tenant. Following service of the Notice of Referral, the Tenant's agent and the Landlord submitted written representations. A first hearing and inspection was adjourned at the request of the Landlord as Mrs. Narracott was unable to attend due to the injury of an elderly relative. By e-mail the Landlord Mrs. Narracott indicated that she would not attend the adjourned inspection and hearing and that Mr. Ryan Monks would attend the adjourned hearing and inspection as her agent. The Tenant indicated that he wished to attend the inspection and hearing.

5. In the written representations the Tenant repeated the earlier complaints within the application and stated that the repairs have all been required since commencement of the tenancy with the exception of the boiler which broke down just before Christmas 2013. He indicated that the works remained outstanding and that the Landlord's agent had alleged that the deterioration of the condition of the house was due to the Tenant's dogs. The Landlord in written representations indicated that it was proving difficult if not impossible to get tradesmen to carry out works until the Tenant leaves the house and cleaning is carried out. As a precaution the gas supply had been isolated. The Landlord accepted that some works were required to the house but that the house was being repossessed by the lender. Accompanying the Landlord's written representations were copy letters from CGR Properties recording the unwillingness of workmen to attend due to the condition of the flat, and a copy letter from Gas Centre supporting this. The Landlord also provided a

copy of the Notice to Quit issued to the Tenant and correspondence from Dundee City Council relating to complaints received relating to the smell from the flat.

6. The Private Rented Housing Committee inspected the house on the morning of 18 August 2014. The Tenant provided access and Landlord's agent, Mr. Ryan Monks, was present throughout the inspection.

7. Following the said inspection the Private Rented Housing Committee held a hearing at Kirkton Community Centre, Derwent Ave, Dundee. The Tenant and Landlord's agent attended.

The Committee considered the written evidence submitted and heard representations from the Tenant and from the Landlord's agent, Mr. Monks. After hearing representations, the Committee adjourned to consider all the evidence and the representations, and to make their determination.

Submissions at the Hearing

It was pointed out by the Committee Chairperson at the start of the hearing that the Committee was there to determine whether the house met the repairing standard in terms of the Act.

The Tenant indicated that he had had dealings throughout the tenancy with the Landlord's agent Mr. Monks and all the repairs, with the exception of the repair to the boiler, had been pointed out to Mr. Monks during the first few weeks of the tenancy. Mr. Monks accepted that this was correct. The Tenant indicated that he had been led to believe by Mr. Monks that works to the windows in the kitchen were timetabled for the summer of 2012 but such works had not transpired. The boiler broke down one and a half weeks before Christmas 2013 and Mr. Monks was advised of this. Mr. Monks indicated that attempts had been made with two contractors to have the boiler repaired but both contractors refused to carry out works in the flat due to health and safety concerns for workmen because of the state of cleanliness of the flat. The Landlord's agent produced a gas safety certificate dated 10 February 2011 and he indicated that he thought from recollection a further safety check was carried out about the same time in 2012 but could produce no certification. Due to the period since the gas safety check was carried out and concerns that the Tenant may interfere with the supply, a firm called Acquamac had isolated the gas from the boiler at the instruction of the Landlord. There was an assertion by Mr. Monks that the local authority may have issued a notice for the block in relation to common repairs which may include the roof. However, further enquiry suggested to the Committee that the notice referred to was most likely a notice relating to the state of cleanliness of the close and back court but in the absence of any paperwork the position is not clear and the Committee made no finding in relation to this issue. Mr. Monks accepted that there had been water ingress into the flat but indicated that this was due to repairs required to the common roof which would involve the agreement of all owners and hence the Landlord could not be held responsible. The Tenant indicated that the front door had been forced by police as there were concerns for his safety at a time when he

was unwell.

Summary of the issues

8. 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 had complied with the duty imposed by Section 14(1) (b).

Findings in Fact

9. The Committee made the following findings in fact:-

9.1. The Tenant occupies the house under a short assured tenancy.

9.2. The Tenant notified the Landlord of the complaints in the application and the Landlord is aware of the alleged repairs.

9.3. The house is a top flat in a 4 storey sandstone tenement with slate roof comprising small hallway, lounge, kitchen, bedroom, and internal bathroom. The block of flats is situated in a residential area. The flat has UPVC double glazed windows in the bedroom and lounge. The Committee confined their inspection to the items of complaint in the application. Although not part of the application the Committee did notice that the glazing within the second floor window of the common close which serves as access to the flat is broken and there are safety issues as the broken glass remains within the frame and could easily become dislodged causing injury. As part of the premises which the Tenant is entitled to use, the Landlord may wish to consider the Landlord's duties obligations in terms of the repairing standard in relation to this issue.

The weather at the time of inspection on 18 August 2014 was dry.

The inspection of the flat revealed: - (1) that the timber front door has been damaged following it being forced open and the draught excluder on the door surround no longer goes all the way round the surround. The Tenant mentioned that the door had been forced by police following concerns for his safety and health. To try to reduce draughts the Tenant has made an excluder from tape and a strip of carpet; (2) the ceiling in the bedroom shows signs of water ingress. The ceiling has a crack and there is water mark staining on the wallpaper on the ceiling; (3) there is crumbling plasterwork in the corner of the bedroom wall and the Tenant has attempted to fill it with sealant; (4) the Tenant demonstrated that the bathroom tap could only be operated by the use of a spanner; (5) the lounge ceiling has evidence of water staining and there are cracks on the ceiling and it sags at parts; (6) the timber surrounds in the two kitchen windows are rotten and the louvre windows are not wind and watertight; and (7) the combi-boiler is not functioning. The Committee was told that the gas supply to the boiler has been disconnected.

Although not part of the application it was noted that the Tenant had dismantled the fire detection device due it was claimed to the bleeping noise from the device. Such an action

is not to be recommended and leaves the flat and occupants vulnerable in the event of fire or suspected fire. The Tenant should reconnect the device.

Reasons for the Decision

10. In considering the repairing standard issue the Committee carried out an internal and external inspection of the house and in particular closely examined the specific defects highlighted by the Tenant in the application. In addition the Committee carefully considered the written documentation submitted and the oral representations at the hearing.

Visual inspection of the house indicates that there is evidence of damage to the ceilings in the lounge and bedroom from water ingress which comes from external defects in the roof. In order to ascertain if these external repairs to the tenement fall within the Landlord's duty of repair, it is necessary to examine the responsibility of the Landlord for these repairs as laid down in Section 15 of the Act which provides

" (1)Where a house forms part only of any premises, the reference in section 13(1)(b) to the house includes reference to any part of those premises which the owner of the house is responsible for maintaining (solely or in common with others) by virtue of ownership, any real burden or otherwise."

The qualification in Section 15(2) of the Act does not apply as the Tenant's flat which he is entitled to use is adversely affected by disrepair to the common parts of the tenement.

From examination of Land Certificate ANG 17710 which is the document evidencing the Landlord's ownership of the house, it is clear that the roof, outside walls, chimney heads, rhones, rainwater conductors, common passage and stairs are part of the common ownership rights of the Landlord and Burden (One) in the Disposition by Castle Properties (Dundee) Limited in favour of S & D Properties(Dundee) Limited recorded on 17 January 1974, which forms one of the Burdens Writs or documents giving the ownership conditions of the house narrates the maintenance liability of the Landlord for portions of the tenement held in common ownership.

Burden (One) of the said Disposition states that

"The burden of payment of a one eighth share of the expense of repairing and when necessary renewing the roof, foundations, outside walls, gables, chimney heads, rhones, rainwater conductors, common passages and stairs.....all of the tenement 37 Provost Road, Dundee... "

From the title conditions relating to the Landlord's ownership of the house, the Committee concluded that the external repairs to the roof fell within the Landlord's duty to ensure the house meets the repairing standard in Section 13(1) (b) which requires "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 Committee, having established that the external common repairs fall within the repairing standard for the house for which the Landlord has responsibility, went on to consider whether the Landlord had the necessary rights of access or otherwise to carry out the repair of common parts as the absence of these rights may provide an exception to the Landlord's repairing duty. Section 16(4) details this exception

“ A landlord is not to be treated as having failed to comply with the duty imposed by section 14(1) where the purported failure occurred only because the landlord lacked necessary rights (of access or otherwise) despite having taken reasonable steps for the purposes of acquiring those rights”.

Examination of the Landlord's Land Certificate revealed that the Landlord does have such access rights as The Property Section of the Land Certificate gives right of free ish and entry to the roof.

The Landlord's agent suggested that because the roof was common and all owners are obliged to contribute to maintenance costs that this discharges the Landlord's repairing standard obligation. However, the Tenant's contract of let is with the Landlord and not the other owners. The Landlord has a duty to ensure that external defects in the tenement, for which the Landlord is responsible in common with others, are rectified in so far as they adversely affect the parts of the flat used by the Tenant, and that the defects within the flat are repaired within a reasonable time of the Landlord becoming aware that the work is required. The Landlord's title gives him access rights to carry out the repairs to roof and chimney heads for any necessary purposes. The date of the start of the tenancy was April 2012 and the Landlord was aware within weeks of that date of the requirement for external roof repairs and the complaint of water ingress, the Committee considers that the Landlord has had a reasonable time to carry out repairs to ensure that the flat is wind and watertight and has failed in the duty under Section 14(1) (b) of the Act and had not complied with the repairing standard detailed in Section 13(1) (a) and (b) of the Act which states that the house meets the repairing standard if " the house is wind and watertight and in all other respects reasonably fit of human habitation; and 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 Committee considers that to comply with Section 13(1) (a) and (b) of the Act the water ingress in the house requires to be eradicated.

The Committee considered the submissions of the Landlord that workmen were prevented from carrying out repairs due to the state of cleanliness of the house. The Committee has carried out an inspection having given notice of the appointed time for the inspection and the requirements that the Tenant's dogs are removed from the flat for the duration of the visit and the flat cleaned in preparation for the inspection. Similar arrangements could have been made for the attendance of Landlord's contractors. The Tenant indicated his willingness to tidy up the flat before workmen attend.

The Committee was not persuaded that the repair to the front door falls within the repairing standard as, by the Tenant's own admission, the works were required as a consequence of the police forcing the door to ensure the Tenant's wellbeing and that is not a matter which is the responsibility of the Landlord to rectify. It is a deliberate act carried out on behalf of the Tenant and falls as an exception under Section 16(1) (b) of the Act.

The bath tap is not in reasonable repair and in proper working order and falls as a breach of Section 13(1) (d) of the Act and requires to be rectified by the Landlord.

The repairs to the kitchen windows are required as the windows are not wind and watertight and are not in reasonable state of repair and in proper working order and do not comply with Section 13(1) (a) and (b) of the Act.

The boiler is not functioning. It does not meet the requirement in Section 13(1) (c) of the Act as it is not in proper working order.

The Committee considered that a period of three months would be a reasonable period of time for these repairs to be carried out since other owners may require to be consulted in relation to coordinating roof repairs. The works to the boiler and the gas certification should be carried out as a priority.

Decision

11. 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.

12. The Committee proceeded to make a Repairing Standard Enforcement Order ("RSEO") as required by Section 24(2), which Order is referred to for its terms. The Landlord is reminded that it is an offence to re-let the house whilst a RSEO applies to the house.

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.

A Devanny

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Chairperson,
18 August 2014