



Repairing Standard Enforcement Order

Ordered by the Private Rented Housing Committee

PRHP/EH5/47/13

Title Number: MID112735

Re: The residential dwellinghouse at

Flat 3/11 Heron Place,
Edinburgh
EH5 1GG
("the Property")

The Parties:-

Ms Kristin Mark
("the Tenant")

and

Mr Michael John Carlin and Ms Bernadette Whyte
C/O Merchant Lettings
23c Dundas Street
Edinburgh
EH3 6QQ
("the Landlords")

NOTICE TO THE LANDLORDS

In terms of their decision dated 20 November 2013, the Private Rented Housing Committee determined that the Landlords had failed to comply with the duty imposed by Section 14 (1)(b) of the Housing (Scotland) Act 2006 ("the Act") and in particular that the Landlords had failed to ensure that:

- (a) the Property was wind and watertight and met the standard set out in section 13(1)(a) of the Act;

The Private Rented Housing Committee now requires the Landlords to carry out such works as are necessary for the purposes of ensuring that the Property 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 to:-

- (a) carry out such works as are necessary to eradicate the dampness within the Property to ensure that it is reasonably fit for human habitation.

(b) make good any damage resulting from the remedial works carried out in accordance with this RSEO.

The Private Rented Housing Committee order that the works specified in this RSEO be carried out and completed within the period of 6 weeks from the date of service of this Notice.

A Landlord(s) or a Tenant(s) 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 RSEO 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 RSEO will be treated as having effect from the day on which the appeal is abandoned or so determined.

In witness whereof this and the preceding pages are subscribed by Ronald G Handley, Solicitor, Chairperson of the Private Rented Housing Committee at Dunbar on the 20th day of November 2013 before this witness:

R Handley

witness

RYAN HANDLEY

name of witness

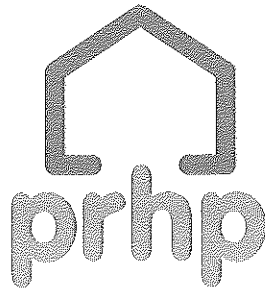
23 LESLIE WAY

address of witness

DUNBAR

EH42 1GP

R Handley
chairperson



PRIVATE RENTED HOUSING COMMITTEE

STATEMENT OF REASONS

PROPERTY:

3/11 Heron Place, Edinburgh EH5 1GG



Decision by the Private Rented Housing Committee

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

PRHP/EH5/47/13

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The Committee comprised:

Mr Ron Handley – Chairperson
Mr Ian Mowatt – Surveyor Member
Ms Helen Barclay – Housing Member

The Committee's Decision

The Committee, having made such enquiries as it saw fit for the purposes of determining whether the Landlords had complied with the duty imposed by Section 14(1)(b) of the Housing (Scotland) Act 2006 ("the Act") in relation to the Property, and taking account of the evidence before it, unanimously determined that the Landlords had failed to comply with the duty imposed by Section 14(1)(b). The Committee therefore requires that the Landlords carry out such works as are necessary to ensure that the Property meets the Repairing Standard and that any damage caused by the carrying out of any works is made good. The Committee issued a Repairing Standard Enforcement Order ("the RSEO").

The Background

1. On 7 March 2013 the Tenant applied to the Private Rented Housing Panel ("the PRHP") for a determination as to whether or not the Landlords had failed to comply with the duties imposed by Section 14(1)(b) of the Act.
2. Following receipt of the application, the President of the PRHP intimated that the application should be referred to a Private Rented Housing Committee in accordance with Section 22(1) of the Act.

The Application

3. In her application the Tenant submitted that the Landlords had failed to comply with their duty to ensure that the Property met the Repairing Standard (as defined in the Act). It was suggested that the Landlords had failed to ensure that:-
 - the Property was wind and water tight and in all respects reasonably fit for human habitation;
 - the structure and exterior of the Property (including the drains, gutters and external pipes) were in a reasonable state of repair and in proper working order;
 - the installations in the Property for the supply of water, gas and electricity and for sanitation, space heating and heating water were in a reasonable state of repair and in proper working order;
 - any furniture provided by the Landlords under the tenancy were capable of being used safely for the purpose for which they were designed.
4. In particular the Tenant submitted in her application form that:
 - the Property was not watertight – water leaked through the ceiling when it rained and there was a pipe which constantly leaked in her daughter's wardrobe;
 - there were bulging patches of plaster on the ceilings where there had been water ingress. There were damp patches in the walls and in the wardrobes;
 - the living room lights were not working and there were loose electrical cables in a bedroom.

Summary of the issues

5. The issue to be determined by the Committee was whether the Landlords had complied with the requirements of the Act in ensuring that the Property met the Repairing Standard.

The Documentary Evidence

6. The Committee had before it documents which included Land Register documents, the Short Assured Tenancy Agreement, a copy of the

Application Form (with attachments) and copies of various letters sent by the PRHP to the Tenant and the Landlords.

The Inspection

7. The Committee inspected the Property on 4 November 2013 at 11.00am. The Tenant was present with her representative Ms L Murray and Mr G Wright attended on behalf of the Landlords.

The Hearing

8. A Hearing was arranged for 12.00pm in Royston Wardieburn Community Centre, 11 Pilton Drive North, Edinburgh. The Tenant attended with Ms Murray. The Landlords were not present and not represented.
9. The evidence at the Hearing can be briefly summarised as follows.
10. The Chairperson welcomed the Tenant and Ms Murray to the Hearing and reminded them that the issue before the Committee was whether or not the Repairing Standard had been met.
11. The Tenant advised that although the fridge had not been working it had now been repaired. However she advised that the washing machine was now not working – it had been like this for a few weeks.
12. The Tenant then advised the Committee that there had been dampness issues in the Property since 2010. She reminded the Committee that there was a leaking pipe within the wardrobe in her daughter's bedroom. She thought that this problem was one which could have been easily fixed and she was frustrated because no remedial action had been taken by the Landlords. She thought this was creating a health hazard for her daughter.
13. The Tenant accepted that the dampness in the hallway (identified during the course of the inspection) was a relatively new problem and consequently she had not been included it in the original application. However the dampness detailed in the application form was still a problem.
14. The Tenant then confirmed that the lights in the living room had now been repaired and the loose electrical cables (which had been in the bedroom) were no longer a problem.
15. The Chairperson advised that it appeared to the Committee that the Repairing Standard had not been met and that it was likely that an RSEO would be issued. This would require the Landlords to complete remedial works within a given timescale.

Findings

16. The Committee found the following facts to be established:

- The Property is a two bedroomed flat in a block of flats built around 2005.
- There is dampness in the wardrobe of the front facing bedroom. This dampness appears to be caused by a leaking pipe within the wardrobe.
- There is water ingress in various places throughout the Property as evidenced by damp patches in the ceiling and in the walls.
- The lights in the living room are in proper working order.
- There are no loose electrical cables in the bedroom or anywhere else within the Property.
- The Property is not wind and watertight and does not meet the standard set out in section 13(1)(a) of the Act.

Reasons for the Decision

17. It was clear during the course of the inspection that there was evidence of dampness in various locations within the Property. The tenant showed the Committee these areas of dampness and it was clear from the inspection that there was indeed water ingress within the Property. This was confirmed by testing the area with a Protimeter.
18. The Committee noted that scaffolding had been erected in various locations outside the Property. Mr Wright advised that dampness issues were affecting the Property and a number of adjoining flats and works were presently being undertaken to remedy these problems.
19. In the course of the inspection the Tenant showed the Committee the fitted wardrobe within the front facing bedroom (the bedroom used by her daughter). It was clear from the inspection that this wardrobe was damp and that it was likely that the source of this dampness was a leaking water pipe within the wardrobe.
20. During the inspection the Tenant advised the Committee that there was now dampness in the internal hallway in the Property. The Committee had little reason to doubt her claim. However, the appellant accepted that this was a new problem and consequently this had not been formally notified to the Landlords and she had not made reference to it in her application form. However the Committee remind the Landlords of their duty to ensure that the Property is wind and watertight and recommend that this issue should be addressed.
21. As indicated, the Tenant advised the Committee that the fridge had not been working and that the washing machine was now not working. These issues were not included in the application form and consequently could not be considered by the Committee. We noted that the fridge had been repaired.

22. We accept that adjoining flats are also likely to be suffering from water ingress problems and that responsibility for repairs and maintenance to common areas will lie with the owners of all the flats within the block. Nonetheless the Tenant has been suffering from the effects of water ingress for a considerable period of time. We agreed with the sentiments expressed by Steve Paterson (Charles White Ltd – the Factor) in his e-mail of 8 February 2013 when he suggests that this matter should have been resolved and that any insurance issues could be addressed after the leak was fixed. Furthermore we saw no reason why temporary remedial works could not have been carried out as interim measure if this had been necessary.

Decision

23. The Committee determined that the Landlord had failed to comply with the duty imposed by section 14(1)(b) of the Act.
24. The Committee proceeded to make an RSEO as required by section 24(1) of the Act.
25. The decision of the Committee was unanimous.

Right of Appeal

26. A Landlord(s) or Tenant(s) aggrieved by the decision of a PRHP Committee may appeal to the Sheriff by summary application within 21 days of being notified of that decision.

Effect of section 63

27. 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. 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 **R Handley** Date 20 November 2013
Chairperson