



Repairing Standard Enforcement Order

Ordered by the Private Rented Housing Committee

Re Top Flat, 5 Castle Street, Dumfries, DG1 1DJ ('The Property')

The Parties:-

Mrs Astra Penny residing at Top Flat, 5 Castle Street, Dumfries, DG1 1DJ ('The Tenant')

J G Armstrong Holdings Limited PO Box 5, Lockerbie, DG11 1JD ('The Landlords')
(representative Mrs Armstrong.)

NOTICE TO

The Landlords, the said J G Armstrong Holdings Limited

Whereas in terms of their decision dated 5th August 2014, the Private Rented Housing Committee 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 the Landlords have failed to ensure that the Property was wind and water tight and in all other respects reasonably fit for human habitation 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 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 Landlords to:-

- (1) Eradicate the cause of dampness in the partition wall between the bedroom and the kitchen and carry out necessary redecoration.**

The Private Rented Housing Committee order that these works must be carried out and completed By 30th SEPTEMBER 2014.

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.

Please note that in terms of section 28(1) of the Act, a landlord who, without reasonable excuse, fails to comply with a RSEO commits an offence liable on summary conviction to a fine not exceeding level 3 on the standard scale. A landlord (and that includes any landlord's successor in title) also commits an offence if he or she enters into a tenancy or occupancy arrangement in relation to a house at any time during which a RSEO has effect in relation to the house. This is in terms of Section 28(5) of the Act.

In witness whereof these presents typewritten on this and the preceding page are executed by Jacqueline Carol Taylor, Solicitor chairperson of the Private Rented Housing Committee at Irvine on 5th August 2014 before this witness:-

Jacqueline Taylor

Jacqueline Carol Taylor

...

...witness: KEIRSTEN BYRNE, 65, High Street, Irvine.



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

Re Top Flat, 5 Castle Street, Dumfries, DG1 1DJ ('The Property')

The Parties:-

Mrs Astra Penny residing at Top Flat, 5 Castle Street, Dumfries, DG1 1DJ ('The Tenant')

J G Armstrong Holdings Limited PO Box 5, Lockerbie, DG11 1JD ('The Landlords')
(Representative Mrs Armstrong.)

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 ('the Act') in relation to the Property, determined that the Landlords have failed to comply with the duty imposed by Section 14 (1)(b) of the Act.

Background

1. By application dated 24th March 2014 the Tenant applied to the Private Rented Housing Panel for a determination of whether the Landlords have failed to comply with the duties imposed by Section 14 (1)(b) of the Act.
2. The application by the Tenant stated that she considered that the Landlords have failed to comply with their duty to ensure that the Property meets the repairing standard. She advised that the Property was not wind and watertight and in all other respects reasonably fit for human habitation.

Further the application stated that:-

'Despite assurances given about the quality of repair work previously carried out there has been a repetition of water ingress and penetrating dampness to the rear of the Property where a previous complaint has resulted in a notice being served by the Panel under reference PRHP/DG1/10/10. The landlord has inspected the property and taken photographs but has not taken any steps to address the water penetration or resulting dampness.'

The Tenant also stated that she considered the required works to be ' Further roof and wall repairs, treatment of dampness and internal decoration as required.'

The Tenant provided a copy of her short assured tenancy agreement dated 23rd April 1997.

3. The President of the Private Rented Housing Panel, having considered the application, referred the application under Section 22 (1) of the Act to a Private Rented Housing Committee. The Committee members were Jacqui Taylor (Chairperson), Mike Links (Surveyor Member) and Ahsan Khan (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 both the Landlords and the Tenant, dated 5th June 2014.
5. Following service of the Notice of Referral:-
 1. The Tenant sent written representations dated 11th June 2014 which stated *inter alia* that the main problem is that the walls are damp. She also included a number of photographs.
 2. The Landlords sent written representations dated 15th June 2014 which stated that the Loft space was not let for living.
 3. Mrs Armstrong sent a letter dated 18th July 2014 which stated *inter alia*:
 - The parties had agreed at the time to wait to see if the damp patch in the bedroom would dry out.
 - The Tenant was advised that the loft space was only to be used as loft space.
6. The Committee attended at the Property on 29th July 2014. The Tenant, her son, Mrs Armstrong (the Landlords' representative), and Mr Mundell (the Landlords' builder) were present.

The Committee inspected the alleged defects and found as follows:-

Rear bedroom

There was some damp staining on the wall between the kitchen and the bedroom. The Surveyor member of the Committee tested the wall with a damp meter. There was evidence of dampness at both the top of the wall near the ceiling and also approximately 1.5 metres up the wall from the floor.

Mr Mundell explained that these areas of dampness correspond with the position of the brick wall ties. He explained that in his opinion the wall ties are drawing moisture from the gable wall. He explained that in 2010 the external wall of the bedroom was dry lined and insulated.

Kitchen

There was an area of dampness on the wall between the kitchen and the rear bedroom at a height of approximately 1.5 metres up the wall from the floor.

Rear Attic Room

This room was used for storage. The gable wall and the camp ceiling were very damp.

Front Attic Room

This room was used as a bedroom. There was evidence of dampness to the camp ceiling on the right hand side of the room.

The parties explained that the previous PRHP decision had stated that the attic rooms **were simply storage areas.**

Hall Cupboard and Bathroom.

The Tenant advised that she had sent the PRHP offices historic photographs which predated the renovations that the Landlords had carried out to the Property. The photographs showed dampness in the hall cupboard and bathroom.

The Tenant explained that she had provided these photographs as background information and she accepted that there was no evidence of dampness at the inspection.

7. Following the inspection of the Property the Private Rented Housing Committee held a hearing at Georgetown Community Centre, Lochvale House, Georgetown Road, Dumfries, DG1 4DF.

The Tenant, her son, Mrs Armstrong (the Landlords' representative), and Mr Mundell (the Landlords' builder) attended the hearing.

Intimation

As a preliminary matter Mrs Taylor, the chairperson, explained that the Committee can only consider alleged defects that have been properly intimated to the Landlords. She acknowledged that The Tenant's solicitors wrote to the PRHP on 8th April 2014 and explained that the dampness difficulties were personally drawn to the Landlords' attention when they inspected the Property on 21st February 2014. They also provided a copy of their letter to the Landlords' agents dated 18th February 2014, which intimated that there were fresh signs of dampness and water penetration at the rear of the property.

Mrs Taylor asked the parties to explain which areas of dampness were pointed out at the inspection on 21st February.

They confirmed these areas were the dampness in the bedroom and the rear attic room. Mrs Armstrong confirmed that she was happy for the Committee to consider the dampness in the Front attic room and the kitchen even although they had not been intimated, subject to the fact that the previous committee had decided that the attic rooms were only storage.

Attic Rooms

The parties agreed that the gable wall of the rear room was very wet and there was some dampness at the right hand side of the camp ceiling of the front attic room. Both parties advised the Committee that the previous decision had determined that the attic rooms should not be taken into account.

Mrs Taylor explained that even although Mrs Penny's application referred to the previous PRHP decision the Committee had not been provided with a copy of the file pertaining to the previous application. However she explained that the previous decision was published on the PRHP website and the Committee had read that previous decision.

She advised that the previous decision had decided that the attic space of the Property had to be considered as only a storage area in terms of the tenancy and not as a living space. The previous committee also determined that it did not have to consider whether it was fit for human habitation as it was never intended to be used for that purpose in terms of the lease between the parties.

She asked the parties if there had been any amendment to the lease or other contractual agreement between them in relation to the attic rooms. They advised that there had been no change.

Mrs Armstrong and Mr Mundell explained that they were concerned that the attic rooms should not be used as living accommodation.

Bedroom and Kitchen

Mrs Penny explained that repair works had been carried out in 2010 after the last PRHP Committee decision. A false wall had been erected in her bedroom and she believed that the gable wall behind the false wall would still be very wet. She was firmly of the view that the dampness resulted from defective flashing at the chimney. She suspected that as the gable wall had been sealed externally the water was unable to evaporate out of the gable wall and consequently entered the wall in her bedroom. She was concerned that the flashing at the base of the chimney did not tuck under the roof tiles. She explained that she did not have a report from a contractor which supported her suspicions.

Mrs Armstrong and Mr Mundell explained that the Property was reroofed in 2010. The chimney was capped and flashing was renewed at that time. They advised that the roofing contractor was a highly regarded contractor. He had inspected the roof recently and as far as he was concerned there is nothing wrong with the chimney or the flashing.

Mr Mundell explained that in his view the dampness would be remedied by cutting away the brick wall ties and replacing them with metal wall ties. The area where the wall ties were inserted would then be boxed in.

Mrs Penny explained that she did not agree with Mr Mundell's suggestion. She was adamant that the dampness was the result of water penetration from the chimney and the defective flashing.

8. Summary of the issues

The issues to be determined are:-

The Property is not wind and watertight and in all other respects reasonably fit for human habitation (Section 13(1)(a) of The Housing (Scotland) Act 2006).

- (1) Whether the fact that there is dampness in the wall between the rear bedroom and the kitchen results in the Property not being wind and water tight and in all other respects reasonably fit for human habitation.
- (2) Whether the Committee should follow the previous committee's decision in relation to the attic rooms.

9. Findings of fact

The Committee found:-

The Property is not wind and watertight and in all other respects reasonably fit for human habitation (Section 13(1)(a) of The Housing (Scotland) Act 2006).

- (1) The Committee found that the levels of damp in the wall between the kitchen and the bedroom were particularly high. The Committee therefore determined that the Property was not wind and watertight. On the information presented by the parties they were unable to determine if the dampness was caused by the alleged defective flashing or the brick wall ties.
- (2) As there had been no amendment to the lease or any other contractual agreement in relation to the attic rooms the Committee agreed that they would follow the previous committee's decision in relation to the attic rooms. Consequently they found that the attic accommodation had been let as storage only and not as a living space and they did not have to consider whether the attic was fit for human habitation as it was never intended to be used for that purpose in terms of the lease between the parties.

Decision

10. The Committee accordingly determined that the Landlords had failed to comply with the duties imposed by Sections 13 (1)(a), and 14 of the Act, as stated.
11. The Committee proceeded to make a Repairing Standard Enforcement Order as required by section 24(1). The Repairing Standard Enforcement Order has a time limit of the 30th September 2014 for the Landlords to carry out works necessary to bring the Property up to the repairing standard.
12. The decision of the Committee was unanimous.
13. The Tenant forwarded to the Committee, after the hearing, a report from D M Hall, surveyors dated 29th October 2009. As this report had not been made available to the Committee at the hearing they were unable to consider its terms. However they noted that the report predated the decision of the previous committee.

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.

Jacqueline Taylor

Signed Date 5th August 2014
Chairperson