



Repairing Standard Enforcement Order

Ordered by the Private Rented Housing Committee

prhp Ref: PRHP/RP/16/0001

Re: Property at 2 Laing Street, Dundee, DD3 7BW ("the Property")

Title No: ANG31071

The Parties:-

MR RASHID REFAH c/o 224 Broughty Ferry Road, Dundee, DD4 6LD ("the Landlord")

MR AFTAB HUSSAIN residing at 2 Laing Street, Dundee, DD3 7BW ("the Tenant")

NOTICE TO MR RASHID REFAH ("the Landlord")

Whereas in terms of their decision dated 15 April 2016, 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 ("The Act") and in particular that the landlord has failed to ensure that the property is:-

- (a) The Property has satisfactory provision for detecting fires and for giving warning in the event of fire or suspected fire.
- (b) The Property is wind and watertight and in all other respects reasonably fit for human habitation;
- (c) 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;
- (d) 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;
- (e) Any fixtures, fittings and appliances provided by the Landlords 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 carry out such works of adjustment, repair or replacement to the glass door between the lounge and kitchen in order that it opens and shuts in the proper manner.
- (b) to install a heat detector in the kitchen and a smoke detector in the lounge. The Landlord is also required to replace the smoke detector in the lower hallway, all of the foregoing to be hardwired and interlinked.
- (c) To install carbon monoxide detectors compliant with the repairing standard.
- (d) To replace the toilet seat in the downstairs cloakroom.
- (e) Should the Tenant be unable to reinstall the shower curtain, then the Landlord to install a new shower curtain over the bath in the main bathroom.
- (f) To repair or replace the loose tile at the bathroom threshold.
- (g) To provide a clear electrical installation condition report and to carry out any works required to ensure there are not items marked "C1" or "C2"

- (h) To ensure that the extractor fan in the bathroom runs only for a reasonable period (c.10 minutes) after the lights are switched off.

The Private Rented Housing Committee order that the works specified in this Order must be carried out and completed within the period of 28 days 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.

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 type written on this and the preceding page are executed by Ewan Kenneth Miller, Solicitor, Whitehall House, 33 Yeaman Shore, Dundee, DD1 4BJ, Chairperson of the Private Rented Housing Committee at Dundee on 15 April 2016 before this witness:-

L Johnston

_____ witness

E Miller

_____ Chairman

Lindsay Johnston
Secretary
Thorntons Law LLP
Whitehall House
33 Yeaman Shore
Dundee
DD1 4BJ



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

prhp Ref: PRHP/RP/16/0001

Re: Property at 2 Laing Street, Dundee, DD3 7BW ("the Property")

The Parties:-

MR AFTAB HUSSAIN residing at 2 Laing Street, Dundee, DD3 7BW ("the Tenant")

MR RASHID REFAH c/o 224 Broughty Ferry Road, Dundee, DD4 6LD ("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 5 January 2016 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 has satisfactory provision for detecting fires and for giving warning in the event of fire or suspected fire.
 - (b) The Property is wind and watertight and in all other respects reasonably fit for human habitation;
 - (c) 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;
 - (d) 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;
 - (e) Any fixtures, fittings and appliances provided by the Landlords under the tenancy are in a reasonable state of repair and in proper working order;
3. By letter dated 19 February 2016 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 made no further written representation other than via email of 23 March 2016. The Landlord made no material representations to the Committee in advance of the inspection and Hearing.
6. The Private Rented Housing Committee (comprising Mr E K Miller, Chairman and Legal Member and Mr H Maclean, Surveyor Member) inspected the Property in the morning of 4 April 2016. The Tenant and his wife and children were present during the inspection. The Landlord was present during the inspection, along with his brother.
7. Following the inspection of the Property the Private Rented Housing Committee held a hearing at Kirkton Community Centre, Dundee and heard from both the Tenant and the Landlord. The Landlord was present with his brother. The Tenant was present with his brother, wife and son.
8. The Tenant submitted that there were a number of issues with the Property. In particular he highlighted a door that was sticking in the lounge. He alleged there were missing bulbs in the kitchen, the smoke detection system was inadequate, various problems in the downstairs cloakroom and bathroom including a broken toilet seat, a damaged sink stand, the lack of a shower curtain and mouldy and broken tiles. The Tenant also complained in his application that there had been damp in the Property and that further insulation had been required. The Tenant also highlighted a complaint in relation to the footpath leading up to the front door of the Property.
9. The Landlord's general submission was that the Property did meet the repairing standard, although they accepted the Committee would determine this. They alleged that a number of the defects were of the Tenant's making. In particular the Landlord alleged that the door had been damaged by the children within the Property, that damp and condensation had been caused by the Tenant's cooking and showering activities. The Landlord indicated that he had always been prepared to do works and evidenced his willingness to carry out works by reference to the installation of insulation and repainting works he had done in the Property.

Summary of the issues

10. The issues to be determined are:-
 - (1) Whether the glass door leading from the lounge to the kitchen was in proper working order and met the repairing standard.
 - (2) Whether the bulbs/electrics in the kitchen were in proper working order and met the repairing standard.
 - (3) Whether the smoke detection system within the Property met the repairing standard.
 - (4) Whether the toilet seat and sink stand in the downstairs cloakroom met the repairing standard.
 - (5) Whether the bathroom tiles met the repairing standard.
 - (6) Whether the extractor fan at the bathroom was in proper working order and met the repairing standard.
 - (7) Whether a shower curtain was required.
 - (8) Whether the Property was suffering from damp or water penetration and had sufficient insulation.
 - (9) Whether the footpath leading to the front door met the repairing standard or not.

Findings of fact

11. The Committee found the following facts to be established:-

- 1) The glass door between the lounge and kitchen did not meet the repairing standard.
- 2) There was no evidence that issues with the bulbs/electrics in relation to the kitchen had been intimated to the Landlord and therefore this fell outwith the Committee's jurisdiction.
- 3) There was not a proper fully compliant smoke detection system within the Property nor were there any carbon monoxide detectors.
- 4) The toilet seat in the downstairs cloakroom did not meet the repairing standard.
- 5) The sink stand in the downstairs cloakroom did meet the repairing standard.
- 6) A shower curtain or other enclosure needed to be installed in the bathroom.
- 7) The tiles around the bath needed to be cleaned as a result of water egress from the bath but this was a tenant responsibility.
- 8) The broken tile next to the sink within the bathroom was a minor matter and did not breach the repairing standard.
- 9) The loose/broken tile at the threshold of the door did not meet the repairing standard.
- 10) There was no evidence of any damp within the Property and there appeared to be sufficient insulation.
- 11) It appeared that the bathroom extractor fan did not meet the repairing standard.
- 12) The footpath had not been complained of in the application and therefore fell outwith the Committee's jurisdiction.

Reasons for the decision

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

The Committee first inspected the door leading from the lounge to the kitchen. It was apparent that this was off kilter and did not fully open before it met resistance from the floor. This would require to be readjusted. The Landlord alleged that this damage had been caused by the Tenant's children. The Committee was unable to determine whether this was accurate or not but was satisfied that works of adjustment were required and that these would normally fall to the Landlord.

The Committee noted that the Tenant had not notified the Landlord via his application in relation to any matters in relation to the kitchen such as the electrics/missing bulbs and therefore the Committee did not have jurisdiction to attend to this.

During the Hearing there was a discussion regarding the type of cooking carried out by the Tenant and his family. The Committee was satisfied that the Tenant was doing nothing untoward in relation to cooking, other than for providing in the usual fashion for his family. Subject to the Tenant ensuring there was adequate ventilation whilst cooking, the Committee was satisfied there was no issue in this regard.

The Committee noted that the Property was not compliant with the current smoke/carbon monoxide requirements. There was one working smoke alarm in the upper landing (although the Tenant required to change the battery in this). The downstairs hallway smoke alarm was missing and this would require to be replaced by the Landlord. There

was no hardwired interlinked heat detector in the kitchen nor was there a hardwired interlinked smoke detector in the lounge. These would require to be added. The Committee also noted that there was no carbon monoxide detectors at the gas fire and the boiler.

The Committee inspected the downstairs cloakroom. The toilet seat was damaged and not working properly as one of the connections had broken. The Landlord alleged this was the Tenant's responsibility. The Committee was satisfied that this was a genuine breakage and therefore fell to the Landlord rather than the Tenant. The Tenant had complained about the stand on which the sink was based. Whilst there was some warping of the surround, this was cosmetic and the Committee was satisfied that the sink stand met the repairing standard.

The Committee then inspected the bathroom at the Property. There was evidence of blackening of the grout between the floor tiles around the bath. The Committee noted that there was no shower curtain in place. The Committee was satisfied that the blackening of the grout was not a significant issue and could be attended to by the Tenant with regular cleaning.

The Committee was of the view that a shower curtain was required. The Tenant's son had indicated that one had been present at the start of the tenancy but they had not been able to affix it properly. The Tenant confirmed that they still had the shower curtain in the Property. The Committee determined that the Tenant should seek to reinstate this. If this was not possible due to a fault with the shower curtain or it being broken, then the Landlord would require to provide and install a new shower curtain.

There was some mould around the sealant of the bath but the Committee was satisfied that this was simply cosmetic and whilst it was a little unsightly it did not constitute a breach of the repairing standard.

There were two cracked/broken tiles in the bathroom. In relation to the tile that was cracked underneath the sink in the corner, this was barely noticeable and was not of any consequence. Accordingly the Committee was satisfied that this was not a breach of the repairing standard. There was a broken/loose tile at the bathroom threshold. The Committee was satisfied that this was becoming loose and a trip hazard and it would therefore be appropriate for the Landlord to repair or replace this.

There was much debate at the Hearing in relation to damp and condensation within the Property. The Committee did note that none of the extractor fan switches within the Property (of which there were four) were on during the time of the inspection. The Landlord alleged that the Tenant failed to properly ventilate the Property and that was why condensation and mould had formed previously. The Tenant was adamant that they did switch on the extractor fan when having a shower. There was a discussion about the timers on these and it was accepted that three of the extractor fans were in proper working order. There was, however, a debate about the main bathroom extractor fan which the Tenant alleged continued to run indefinitely if left on, even after the lights were switched off. There was no timer that meant it stopped a little time after the lights had been switched off. The Committee accepted that this appeared to be the case. The Landlord would require to carry out such works of repair or replacement to the extractor fan in the bathroom to ensure that it ran for approximately 10 minutes after the lights had been turned off. The Tenant had previously complained that there was a smell of burning from the extractor fan. The Tenant had also provided, by way of email of 23 March 2016, an extract from a report from an electrician which suggested it had not been wired correctly. In the circumstances, and to ensure there were no safety issues, the Committee was satisfied that it would be appropriate for the Landlord to provide an electrical installation condition report over the electrical system within the Property confirming whether or not the system was compliant. Any works that were marked "C1" or "C2" within the electrical installation condition report would require to be attended to.

It was accepted by both parties that additional insulation had been laid in the loft and that some damp and mould marks had been eradicated by painting. There were some minor areas of mould around the main bedroom window but the Committee was satisfied that these were cosmetic and not a cause for concern. The Committee highlighted to the Tenant that it was important to ensure that the Property was properly heated and ventilated to ensure issues arising from condensation were minimised.

In relation to the footpath outside the Property, the Committee was satisfied that this had not been notified to the Landlord in writing and therefore fell outwith the jurisdiction of the Committee.

The Committee considered how long the Landlord would require to carry out the works. The bulk of the works were minor and could be attended to swiftly. Accordingly the Committee was satisfied that 28 days would be a sufficient period.

Copies of the photographs taken at the Property are annexed for information.

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**
Chairperson

..... Date..... 15/9/16

Kitchen ceiling/missing and damaged light socket



Cracked cloakroom sink



Minor warping of sink stand/ledge



Damaged toilet seat



Lounge door sticking on floor



Downstairs hall – damaged smoke alarm



Upstairs smoke alarm



Mould around bath sealant



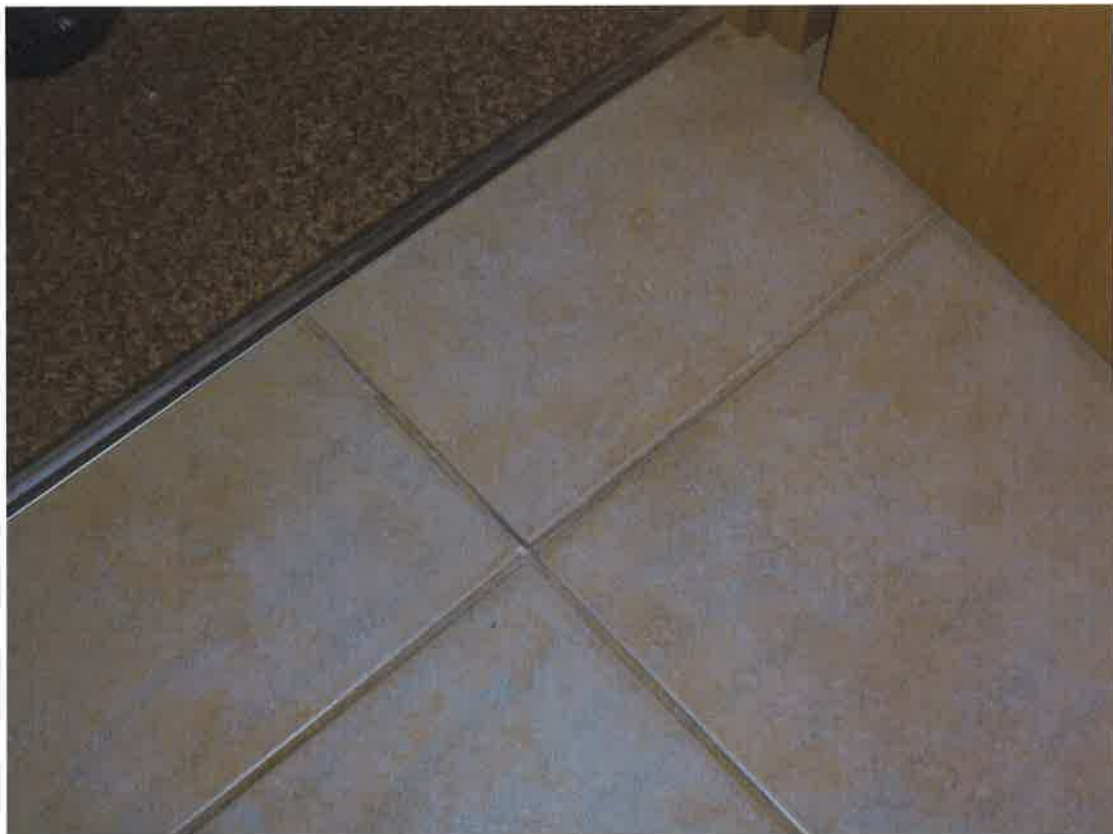
Mould on bathroom tiles



Cracked corner floor tile



Damaged tile at bathroom threshold



Mould around bedroom window 1



Mould around bedroom window 2



Footpath to front of house



Front exterior elevation

