



REPAIRING STANDARD ENFORCEMENT ORDER
Ordered by the Private Rented Housing Committee

Re: Property at 12 Rowantree Crescent, Dundee, DD4 8EX as more particularly described in Land Certificate Title Number ANG25995 (“the House”)

The Parties:

Ms Laura Joan Anderson, residing at the House (“the Tenant”)

Mr Raymond James Wilson, per Mr Malcolm Dalziel, 91 Westbrook Crescent, Old Hall, Warrington, Cheshire, WA5 8TE (“the Landlord”)

PRHP REFERENCE PRHP/RP/16/0039

NOTICE TO

Mr Raymond James Wilson, the Landlord

WHEREAS in terms of their decision dated 21 April 2016 the 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:

- “(a) the house is wind and water tight and in all other respects reasonably fit for human habitation;*
- (b) 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;*
- (c) 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;*
- (d) any fixtures, fittings and appliances provided by the landlord under the tenancy are in a reasonable state of repair and in proper working order, and*
- (f) the house has satisfactory provision for detecting fires and for giving warning in the event of fire or suspected fire”*

The Committee now requires the landlord to carry out such work as is necessary for the purposes of ensuring that the House 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 Committee requires the Landlord to:

1. Repair the main front door to the House and ensure that it is properly operational and secure.
2. Repair or replace the non-operational window lights at top left of window units in living room and front bedroom and ensure that they have operational handles, are draught proof and secure.
3. Reinstate the boundary fences at the front of the House.
4. Replace and properly fix the loose floorboard on the upstairs landing in front of the bedrooms to the House to ensure that it is no longer a trip hazard.
5. Repair the leaks to the downstairs WC and sink.
6. Inspect and repair the pipework and leaks to the upstairs bathroom.
7. Install an internal, lockable door to the upstairs shower room.
8. Repair the ceiling in the upstairs shower room.
9. Ensure that all faults listed in the EICR require are addressed and repaired, with the Category 2 items being completed as a matter of priority. Thereafter present a clear EICR to the PRHP showing no electrical works remaining outstanding.
10. Replace all internal doors with appropriate door furniture to ensure that they close properly.
11. Replace the banister on the staircase.
12. Repair or replace all kitchen cupboards so that the doors operate correctly.
13. Replace all missing skirting boards and architraves throughout the House.
14. Finish all walls in the kitchen to an acceptable standard as appropriate, whether by means of tiling or other water resistant finish.
15. Install satisfactory provision for the detecting of fires in accordance with the latest fire safety regulations and guidance as set out on the PRHP website at www.prhpscotland.gov.uk.

The Committee order that the works specified in this Order must be carried out and completed within six weeks from the date of service of this Notice and for written proof of having done so to be supplied to the Private Rented Housing Panel.

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 the decision.

Where such an appeal is made, the effect of the decision and 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 signed by Maurice O'Carroll, Chairperson of the Private Rented Housing Committee at Edinburgh on the twenty-second day of April, Two Thousand and Sixteen in the presence of the undernoted witness:

Chairperson **M O'Carroll**

Witness: **T Whitelaw**

Name in full: Tracy Whitelaw

Occupation: Advocates Clerk

Witness Address: Advocates Library, Parliament House, Edinburgh, EH1 1RF



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 12 Rowantree Crescent, Dundee, DD4 8EX (“the House”)

Ms Laura Joan Anderson, residing at the House (“the Tenant”)

Mr Raymond James Wilson, per Mr Malcolm Dalziel, 91 Westbrook Crescent, Old Hall, Warrington, Cheshire, WA5 8TE (“the Landlord”)

PRHP REFERENCE PRHP/RP/16/0039

DECISION

The Committee having made such enquiries as are fit for the purposes of determining whether the Landlord has complied with the duty imposed by section 14(1)(b) of the Housing Scotland Act 2006 (“the Act”) in relation to the House, and having taken account of the evidence led at the hearing and of the written documentation attached to the application and submitted by the parties, has made the following decision:

It has determined that the Landlord has failed to comply with the duty imposed by section 14(1)(b) of the Act.

The decision was unanimous.

Background

By application dated 29 January 2016 (the “Application”) the Tenant applied to the Private Rented Housing Panel (“PRHP”) for a determination of whether the Landlord had failed to comply with the duties imposed by section 14(1)(b) of the Act.

The Application stated that the Tenant 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 compliance with the following paragraphs of section 13(1) of the Act:

- “(a) the house is wind and water tight and in all other respects reasonably fit for human habitation;*
- (b) 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;*
- (c) 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;*
- (d) any fixtures, fittings and appliances provided by the landlord under the tenancy are in a reasonable state of repair and in proper working order, and*
- (f) the house has satisfactory provision for detecting fires and for giving warning in the event of fire or suspected fire.”*

By letter dated 4 March 2016, the President of the PRHP intimated to the parties and their representatives a decision to refer the application under section 23(1) of the Act to a Private Rented Housing Committee (hereinafter referred to as “the Committee”).

The Committee comprised the following members:

Maurice O'Carroll, Chairperson
Geraldine Wooley, Surveyor Member

The Committee inspected the House at 10am on 15 April 2016. The Tenant was present at the inspection, together with her partner, Mr Scott Lee Grubb. The Landlord was present at the inspection, together with his representative, Mr Malcolm Dalziel.

Following the inspection, the Committee held a hearing at Caledonian House, Greenmarket, Dundee at 11.30am. The Tenant and her partner were again present at the hearing, both of whom gave evidence. The Landlord was again present with his representative, Mr Dalziel, both of whom also gave evidence. Subsequent to the hearing, Mr Dalziel provided a copy of the Electrical Installation Condition Report obtained on 2 September 2015 to the PRHP office on 18 April 2016, together with an explanatory letter regarding the purchase and use of the House produced by the Landlord, all as requested at the hearing.

Summary of evidence at the Hearing

At the hearing, Mr Dalziel provided a Gas Safety Certificate in respect of the House dated 28 September 2015. He explained that the EICR revealed that the electrical installations in the House failed on no fewer than 31 counts. None of the failures were Category 1 issues indicating a present danger. However, there were 14 Category 2 failures indicating a potentially dangerous situation in respect of which urgent remedial action was required and 13 Category 3 failures where

improvements had been recommended. This was subsequently confirmed by the EICR supplied by Mr Dalziel to the PRHP office.

The parties had entered into a lease of sorts dated 9 October 2014. The purported Tenancy Agreement was signed by the Tenant and by Mr Wilson. Mr Wilson is the registered owner of the House under Title Number ANG25995, together with his wife, Mrs Christine Mary Wilson by virtue of a disposition in their favour dated 21 April 2004. The Landlord as designed in the Tenancy Agreement is however stated to be St Helens Lifetime Association. There is no evidence that St Helens Lifetime Association has legal personality and is not in any event the registered owner of the House. There is no duration stated in the Tenancy Agreement. The validity of the Tenancy Agreement in the terms drafted appears questionable. However, occupation was taken by the Tenant in terms of the purported Tenancy Agreement two days after signature. The rent which is paid every four weeks is £276.92, although stated to be £250 in the Tenancy Agreement. Since June 2015 £162.84 has been paid direct to the Landlord by Dundee Council with the Tenant being liable for the shortfall of £109.08. Although Mr Dalziel is a registered landlord in Scotland, Mr Wilson, the *de facto* landlord is not.

Mr Dalziel explained that there were presently eviction proceedings ongoing in Dundee Sheriff Court. An eviction notice had been served in January 2016. A first hearing was held on 30 March 2016 following which further documentation and clarification was ordered by the court. A further hearing has been set down for 27 April 2016. He explained that the Tenant had not been paying her portion of the rent for a period of approximately four years. He also explained that he had been trying to obtain access to the property and had made a number of arrangements with the Tenant to do so but these arrangements had been broken by the Tenant at short notice. He had been unable to make contact with her representative at Dundee North Law Centre in order to make alternative arrangements.

For his part, Mr Wilson, the Landlord, clarified that he had not seen the House since shortly prior to the Tenancy Agreement being entered into in 2004 and had not made any arrangements for periodic inspections to be carried out into the condition of the House during all of that time. His memory of the House was that none of the issues found during the inspection were there at the time of the initial let and he considered that the Tenant was responsible for these. This latter assertion was strongly refuted by the Tenant and her partner.

Summary of the Issue

The issue to be determined is whether (1) the House meets the repairing standard as laid down in section 13(1)(a)(b)(c)(d) and (f) of the Act and therefore (2) whether the Landlord has complied with the duty imposed by section 14 (1)(b).

Findings in Fact

The Committee made the following findings in fact:

The ownership of the House and the Tenancy Agreement between the parties has been narrated above.

The provisions of Chapter 4 of Part I of the Act apply to the tenancy.

The Tenant notified the Landlord of the defects in the house which are now the subject of the Application via the offices of Dundee North Law Centre on 23 October 2015. Mr Kinghorn submitted to Mr Dalziel, a schedule of required repairs under cover of a letter of that date. The Schedule was used by the Committee in the course of its inspection and confirmed by the Tenant to comprise the totality of complaints she had in respect of the House.

Prior to the above notification, an enforcement officer from the Private Sector Services Unit wrote to the Landlord by email on 28 January 2015 setting out the defects which required to be addressed. The list of defects in that communication covered all of the issues contained within the notification letter of 23 October 2015.

Standing the information before the Committee and as a result of its inspection, no issues of credibility and reliability of the witnesses arose.

The inspection on 15 April 2016 revealed:

The House is a contemporary timber framed, timber clad semi-detached dwelling house on two floors, located within a residential crescent. There are small gardens to the front and rear of the House. There are pieces of timber lying in the front garden which appear to have previously formed part of a boundary fence. There is some evidence of missing roof tiles as shown in the attached photographic schedule. Internally, the House is generally in very poor decorative order and in need of substantial upgrading.

On the ground floor, the House may be accessed from the rear door which gives onto a small hallway with downstairs WC to the right and kitchen to the left. The kitchen gives directly onto the sitting room. The sitting room has a large window with views onto the street. There is the main front door (not operational at the time of inspection) and staircase to the right with no banister. On the second floor, there is a short landing giving onto a small shower area to the right, a front bedroom to the right of the landing and two rear bedrooms accessed from in front of and to the left of the landing respectively. The shower area does not have a door and is accessed through a curtain. None of the bedroom doors fit properly. The fire brigade had visited shortly prior to the inspection and had fitted a carbon monoxide alarm in the kitchen and two battery operated smoke alarms in the downstairs hallway at the foot of the stairs and at the top of the stairs.

Nearly all of the items on the schedule provided by the Tenant were verified as requiring attention in the course of the inspection. In the order in which the inspection was carried out, these were as follows:

Kitchen: There were no splash-back tiles on the walls and no skirting boards and the walls were damaged. The architrave over the door to the living room was missing. The door to the kitchen leading into the lounge did not fit its

frame and therefore did not operate properly. There were exposed wires in the kitchen ceiling. The spot lights above the cooker were not functional. The doors to the kitchen units were ill-fitting and did not function properly. One in particular was not properly fixed and came loose when opened. There was a large hole in the wall behind the washing machine/dryer.

Lower bathroom: There is a leak to the waste pipe in the WC unit. The sink has leaked at some time, with evidence of an ineffectual repair having been attempted. The tap also leaks.

Living room: The top left opening light in the window unit did not close properly and allowed a draught to enter.

Front door: The door cannot be used as the lock jammed during the Christmas period in 2012 and has been jammed shut ever since.

Staircase and landing: There is no banister on the staircase and there is a dangerously loose floor board on the landing beneath the carpet which tips when stepped upon, causing a serious tripping hazard.

Bedrooms: None of the doors to the bedrooms fit properly. The upper left opening light window in the front bedroom does not close properly, is draughty and does not have a working handle.

Bathroom: This room has no door to it and is accessed through a curtain. The waste pipe to the sink is leaking. The main light does not operate and pulls the ceiling cladding down with it when attempt is made to operate it. A makeshift light is currently in use.

In terms of the specific parts of the Repairing Standard, the Committee considered breaches of the following parts of section 13 of the Act to have occurred in relation to the above findings:

- (a) Non-operational main front door; non-operational window lights at top left of window units in living room and front bedroom;
- (b) There are slipped tiles on the roof, although these at present are not a cause of water ingress; the fence at the front of the House on either side of the property boundary has fallen down and requires to be reinstated. This may require discussion with the neighbouring proprietor, but that is a matter for the Landlord; the floorboard at the top of the landing upstairs is a trip hazard which requires to be replaced and properly fixed.
- (c) The downstairs WC and sink require to be repaired; the upstairs bathroom requires to be inspected and the leak repaired; All items listed in the EICR require to be addressed and repaired, the Category 2 items as a matter of priority;
- (d) All of the internal doors require to be replaced and fitted with appropriate door furniture to ensure that they close properly; the bathroom upstairs requires to be fitted with a lockable door and the ceiling cladding repaired; the banister requires to be replaced; the kitchen cupboards require to be repaired or replaced so that the doors operate correctly;

missing skirting boards and architraves throughout the House require to be replaced where missing; the walls in the kitchen require to be finished to an acceptable standard as appropriate, whether by means of tiling or other water resistant finish;

- (f) The House does not have satisfactory provision for the detecting of fires and an upgrade is required. Current standards require as a minimum for there to be a heat sensor in the kitchen, a smoke alarm in the living room and a smoke alarm in the downstairs and upstairs hallway, all mains operated and inter-linked. Full details of what is necessary to comply require to be verified by the Landlord by reference to the PRHP website and implemented.

A schedule of photographs was produced by the surveyor member and this is appended to the present decision.

Decision of the Committee and reasons

The Committee was of the view that the House had failed to comply with the Repairing Standard in terms of section 13(1)(a) (b) (c) (d) and (f) of the Housing (Scotland) Act 2006 based upon its own observations at inspection and for the reasons stated above. Although there are some loose tiles, these will not form part of the Repairing Standard Enforcement Order to follow as they do not allow water ingress. Repair is, however, recommended.

There was dispute as to the cause of the above defects. However, the fact remains that in the absence of regular inspections and reports following such inspections, it is impossible to state when the issues now complained of arose and who was responsible for them occurring.

Legally speaking, the landlord is obliged in terms of the Act to maintain the House in a tenable condition which meets the Repairing Standard and responsibility for doing so remains solely with him.

Accordingly, the Committee, considering the terms of section 13(3) of the Act, determined that the Landlords had failed to comply with the duty imposed by section 14(1)(b) of the Act.

The Committee was therefore of the view that it required to make a Repairing Standard Enforcement Order in terms of section 24(2) of the Act. The Committee considered that a time limit of 6 weeks was appropriate in view of the urgency regarding the electrical installations in the House. In the event that further time for compliance is sought at a later date, this will not be considered in relation to the works required to the electrical installations, given the urgency of the work required and the potential hazards which they represent.

The decision of the Committee was unanimous.

Right of Appeal

Section 64 of the Act provides a right of appeal to a landlord or tenant aggrieved by a decision of a private rented housing committee. An appeal may be made to the Sheriff within 21 days of the Landlord or Tenant being informed of the decision.

Where such an appeal is made, the effect of the decision and 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.

M O'Carroll

Maurice O'Carroll
Chairperson

Date: 21 April 2016