



**PRIVATE RENTED HOUSING COMMITTEE
STATEMENT OF DECISION**

PROPERTY:

Flat 3, 17 Mallpark Road, Montrose, Angus, DD10 8NS

INSPECTION & HEARING

29th September, 2009

STATEMENT OF DECISION

INTRODUCTION

1. This is an application dated 8th July, 2009 ('the application') made under section 22(1) of the Housing (Scotland) Act 2006 ('the Act') by Mr. Graeme Herron ('the tenant') regarding the property known as and forming Flat 3, 17 Mallpark Road, Montrose, Angus, DD10 8NS ('the property'). The landlord of the property is Mr. Gerrald McPherson ('the landlord') who is represented by his agent, Property Matters, 122 Murray Street, Montrose, DD10 8JG ('agent').
2. In the application the tenant contends that the landlord has failed to comply with the duty imposed on him by section 14(1)(b) of the Act as the property fails to meet the repairing standard as set out in section 13(1) of the Act.
3. The Committee comprised

Chairman	Mr. Steven Walker
Surveyor	Mr David Godfrey
Housing Member	Mr John Wolstencroft

The Committee was assisted by the Clerk to Committee, Mr. Robert Shea.

THE DOCUMENTATION

4. The Committee considered all the documents referred to it by the parties. In particular, the application and the written representations from both the tenant and landlord.

THE INSPECTION

5. The inspection took place on 29th September, 2009. The tenant and his family were present as well as the landlord's agent and joiner who also attended the inspection.
6. Mr Robert Shea, Clerk to Committee, introduced the Committee to the tenant and agent. The Committee proceeded to inspect the property.

DESCRIPTION OF THE PROPERTY

7. The property is a flat in a block of six flats. The building appears to have been constructed during the 19th century and comprises of a hall, living room, three bedrooms, kitchen and bathroom. The hall had a leaking radiator, a large crack in the ceiling near to the access hatch and the front door was ill fitting and not secure. The living room has three double sash and case windows all of which in a poor state of repair. A broken lintel could be seen just outside the middle window. The Committee were advised by the tenant that middle set of windows leaked when raining. There was also a socket which was hanging off the wall. The windows in bedrooms 1 and 3 were also in a state of disrepair. The tenant also advised Committee that these leaked when raining. One of the kitchen windows had no handle and could not be opened. In the bathroom the main light could not be turned off and the hot bath tap did not work. On the outside of the property, two broken lintels were obvious, one above the middle livingroom window and one above bedroom 3. On the wall just outside the kitchen, the Committee also noticed a patch on the wall where render had fallen off.

THE HEARING

8. The hearing took place at Damacre Education Centre, 26 Damacre Road, Brechin, DD9 6DU on 29th September, 2009. The tenant and his wife attended the hearing. The landlord's agent did not attend. The

tenant's complaint that the landlord had failed to meet the repairing standard is detailed in section 4 of the application where he states;-

"Livingroom, bedroom 1, bedroom 3 windows need replaced letting in water and wind. Front door needing repaired not secure and letting in wind. Hall radiator leaking and toilet light wont go out. Kitchen window wont open. Hall ceiling needing repaired. There is no repair work being done at the property and have even spoke to the owner but nothing happening. Been waiting for three years for some repairs to be done"

9. Further in section 5 of the application, the tenant also complains that;-

"Outside kitchen wall needs rendering as kitchen leaks in the rain.....Bedroom 3 window leaks and lets in wind lintel cracked....Bathtap no water coming from it."

10. The tenant and his wife repeated these complaints to the Committee during the hearing. The landlord's only submission to Committee was his written representation sent by his agent by letter dated: 22nd September, 2009 in which there is an admission and confirmation that repairs are required to the property and that such works have been instructed in relation to the windows (livingroom window, windows bedroom 1 and 3, kitchen window), front door, hall ceiling, rendering to wall around kitchen, hall radiator and lintel to bedroom 3 although going on to state that the window and lintel repairs are not possible because of subsidence to the building.

THE ACT

11. Section 14(1)(b) of the Act provides;-

"14 Landlord's duty to repair and maintain

- (1) The landlord in a tenancy must ensure that the house meets the repairing standard—*
- (a) at the start of the tenancy, and*
 - (b) at all times during the tenancy.”*

12. Section 13 of the Act provides;

“13 The repairing standard

- (1) A house meets the repairing standard if—*
- (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,*
 - (e) any furnishings provided by the landlord under the tenancy are capable of being used safely for the purpose for which they are designed, and*
 - (f) the house has satisfactory provision for detecting fires and for giving warning in the event of fire or suspected fire.”*

FINDINGS OF FACT & REASONS

13. The complaint before the Committee as per the tenant’s application and our determinations in relation to this are as follows;-

- (a) Livingroom, bedroom 1, bedroom 3 windows need replaced letting in water and wind**

The windows are in a poor state of repair. The Committee noticed water penetration to the middle living room window. All of the sash and case windows did not work satisfactorily and most windows would not open and those that did could not stay open as most windows appeared to be missing the internal cords and weights. Therefore, the Committee determines that due to the state of disrepair of the windows, the property is not wind and water tight and reasonably fit for human habitation. The Committee further determines windows are not in a reasonable state of repair and in proper working order.

(b) Front door needing repaired not secure and letting in wind

The front door was ill fitting and there were significant gaps around the door housing. The door lock housing was also poorly fitted and letting in wind. Therefore, the Committee determines that the property is not wind and water tight and reasonably fit for human habitation and further determines that the door is not in a reasonable state of repair and in proper working order.

(c) Hall radiator leaking and toilet light wont go out

The Committee noted that the hall radiator was leaking and also that the toilet light would not turn off and therefore determines that the hall radiator and toilet light are not in a reasonable state of repair and in proper working order.

(d) Kitchen window wont open

The Committee noted that the kitchen window would not open and therefore determines that the window is not in a reasonable state of repair and in proper working order.

(e) Hall ceiling needing repaired

The Committee observed the cracks in the hall ceiling and therefore determines that the ceiling is not in a reasonable state of repair and in proper working order.

(f) Outside kitchen wall needs rendering as kitchen leaks in the rain

The Committee observed the cracks in the rendering directly outside the kitchen and evidence of water penetration inside the kitchen on the external wall. Therefore, the Committee determines that the property is not wind and water tight and reasonably fit for human habitation and further determines that the external structure of the property is not in a reasonable state of repair and in proper working order.

(g) .Bedroom 3 window leaks and lets in wind lintel cracked

The Committee observed evidence of water penetration to the window of bedroom 3 and also observed a cracked lintel. Therefore, the Committee determines that the property is not wind and water tight and reasonably fit for human habitation and further determines that the external structure of the property is not in a reasonable state of repair and in proper working order.

(h) Bathtap no water coming from it

The Committee observed that there was no water coming from the hot bath tap. Therefore, the Committee determines that the bath tap is not in a reasonable state of repair and in proper working order.

SUMMARY OF DECISION

14. The Committee accordingly determines that the landlord has failed to comply with the duty imposed by section 14(1)(b) of the Act.

15. The Committee accordingly makes a Repairing Standard Enforcement Order as required by section 24(1).

RIGHT OF APPEAL

16. A landlord or tenant has the right to appeal this decision to the Sheriff by summary application within 21 days of being notified of that decision.

EFFECT OF APPEAL

17. In terms of section 63 of the Act, where such an appeal is made, the effect of the decision and of any order is suspended until the appeal is abandoned or finally determined by confirming the decision, the decision and any order will be treated as having effect from the day on which the appeal is abandoned or so determined.

Signed

S Walker

**Steven P Walker
Advocate & Barrister**

**Chairman
Private Rented Housing Committee**

10th October, 2009



REPAIRING STANDARD ENFORCEMENT ORDER

BY THE

PRIVATE RENTED HOUSING COMMITTEE

PRHP Ref: dd10/64/09

PROPERTY

Flat 3, 17 Mallpark Road, Montrose, Angus, DD10 8NS TITLE NUMBER: ANG42198

PARTIES

MR. GRAEME HERRON, residing at Flat 3, 17 Mallpark Road, Montrose, Angus, DD10 8NS.

Tenant

and

MR. GERRALD MCPHERSON, c/o Property Matters, 122 Murray Street, Montrose, DD10 8JG.

Landlord

- 1. REPAIRING STANDARD ENFORCEMENT ORDER ('RSO') AGAINST MR. GERRALD MCPHERSON, c/o Property Matters, 122 Murray Street, Montrose, DD10 8JG landlord of the subjects known as and forming Flat 3, 17 Mallpark Road, Montrose, Angus, DD10 8NS TITLE NUMBER: ANG42198.**

2. **WHEREAS** in terms of their decision dated [INSERT] October, 2009, the Private Rented Housing Committee ('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 ('the Act') and in particular the property fails to meet the repairing standard as set out in section 13(1) of the Act.
3. Committee now requires the landlord carry out such work as is required to ensure the property meets the repairing standard and that any damage caused as a consequence of carrying out of any works in terms of this Order are also made good before the expiry of the Completion Date.

THE ORDER

4. In particular, and without prejudice to the foregoing generality, the Committee **HEREBY ORDERS** the landlord to carry out the following repairs ('the Works');-
 - (a) The windows in the livingroom, bedroom 1 and bedroom 3 which do not function properly require repair to ensure that the property is wind and water tight and reasonably fit for human habitation and further to ensure that the windows are in a reasonable state of repair and in proper working order.
 - (b) The ill fitting front door, the excessive gap in the door housing and lock housing requires repair to ensure that the property is wind and water tight and reasonably fit for human habitation and in a reasonable state of repair and in proper working order.
 - (c) The hall radiator is leaking and requires repair to ensure that the property is in a reasonable state of repair and in proper working order.

- (d) The toilet light that does not function properly requires repair to ensure that the property is in a reasonable state of repair and in proper working order.
- (e) The kitchen window that does not open requires repair to ensure it is in a reasonable state of repair and in proper working order.
- (f) The cracked hall ceiling requires repair to ensure that the property is in a reasonable state of repair and in proper working order.
- (g) The outside kitchen wall with missing rendering requires repair to ensure that the property is wind and water tight and reasonably fit for human habitation and to ensure the property is in a reasonable state of repair and in proper working order.
- (h) The cracked lintel above bedroom 3 requires repair to ensure that the property is wind and water tight and reasonably fit for human habitation and also that the property is in a reasonable state of repair and in proper working order.
- (i) The hot bath tap which does not function properly requires repair to ensure that it is in a reasonable state of repair and in proper working order.

5. The Committee **HEREBY FURTHER ORDERS** that the Works specified in this Order must be carried out and completed before the expiry of the Completion Date of **EIGHT WEEKS** from the date of service of this Order.

RIGHT OF APPEAL

6. A landlord or tenant has the right to appeal this decision to the Sheriff by summary application within 21 days of being notified of that decision.

EFFECT OF APPEAL

7. In terms of section 63 of the Act, where such an appeal is made, the effect of the decision and of any order is suspended until the appeal is abandoned or finally determined by confirming the decision, the decision and any 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 consisting of this and the preceding three pages are executed by me, Steven Peter Walker, Advocate and Barrister, Chairman of the Private Rented Housing Panel at Edinburgh on the Twenty First day of October Two Thousand and Nine in the presence of Stephen Robb-Russell O'Rourke, Advocate, Advocates' Library Parliament House, Edinburgh.

S Walker

Chairman

S O'Rourke

Witness