



Rent Relief Order

Ordered by the Private Rented Housing Committee

prhp Ref: PRHP/RP/14/235

Re : Property at 42 Gladstone Place, Woodside, Aberdeen, AB24 2RU (hereinafter referred to as "the house")

The Parties:

MR GRANT WEBSTER residing at 42 Gladstone Place, Woodside, Aberdeen ("the Tenant")

MARK JONATHAN BERRY and MRS FIONA KEDDIE or BERRY, Spouses residing together at 10 Herd Crescent, Johnshaven, Montrose, Angus ("the Landlords")

NOTICE TO ("the Landlord")

Whereas in terms of their decision dated 7 January 2016, the Private Rented Housing Committee ("the Committee") determined in terms of Section 26(1) of the Housing (Scotland) Act 2006 (the "said Act") that the Landlord has failed to comply with the Repairing Standard Enforcement Order in relation to the house made by the Committee.

The Committee determined to make a Rent Relief Order in terms of Section 27 of the said Act reducing the rent payable under the tenancy for the house by an amount of 30% of the rent which would, but for the order, be payable. The rent reduction will take effect 28 days after the last date on which the decision to make the Rent Relief Order may be appealed under section 64 of the said Act.

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. Where the appeal is abandoned or finally determined by confirming the decision, the Rent Relief Order will take effect 28 days after the date on which the appeal is abandoned or the decision is confirmed.

In witness whereof these presents type written on this and the preceding page(s) are executed by Ewan K Miller, Solicitor, Whitehall House, 33 Yeaman Shore, Dundee, DD1 4BJ, chairperson of the Private Rented Housing Committee at Dundee on 7 January 2016 before this witness:-

C Robertson

_____ witness

E Miller

_____ chairman

Claire Robertson
Secretary
Thorntons Law LLP
Whitehall House
33 Yeaman Shore
Dundee
DD1 4BJ



Statement of decision of the Private Rented Housing Committee under Sections 26 and 27 of the Housing (Scotland) Act 2006

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RE: Property at 42 Gladstone Place, Woodside, Aberdeen, AB24 2RU ("the Property")

The Parties:-

MR GRANT WEBSTER residing at 42 Gladstone Place, Woodside, Aberdeen ("the Tenant")

MARK JONATHAN BERRY and MRS FIONA KEDDIE or BERRY, Spouses residing together at 10 Herd Crescent, Johnshaven, Montrose, Angus ("the Landlords")

Background

1. On 9 April 2015 the Private Rented Housing Committee ("the Committee") issued a determination that the Landlord had failed to comply with the duty imposed by Section 14(1) of the Housing (Scotland) Act 2006 ("the Act"). On the same date, the Committee issued a Repairing Standard Enforcement Order ("RSEO") in respect of the Property. The RSEO made by the Committee required the Landlords:-

- (a) to carry out such works as are necessary to render the Property and, in particular, the rear elevation properly wind and watertight and free from damp penetration and water ingress. The Landlords will require to carry out any redecoration works that are required after such repair/remedial works have been done.
- (b) To replace any areas of damaged plasterboard within the lounge and bedroom of the Property and to carry out any appropriate redecoration required.
- (c) Such works of repair or renewal to the kitchen sink/draining board to ensure that the draining board connects into the plumbing system and that excess water is properly disposed of.

The original RSEO required the Landlords to carry out the works within a period of three months from the date of service of the RSEO.

Subsequently a re-inspection of the work was carried out. Whilst the Landlord had carried out some works they had not completed matters properly. There seemed to be some debate between the Landlords and the Tenant about whether the Landlords were trying to do the works properly or whether the Tenant was being difficult in providing access. The Committee reached a further decision on 28 September 2015 that the RSEO would be extended for a further period of 6 weeks. This gave the Landlords a further chance to complete the necessary works.

2. In due course the Committee carried out a further re-inspection of the Property. This took place on 7 December 2015. The Committee were in Aberdeen in relation to a separate matter and accordingly all three members of the original Committee attended at the Property. Present were Mr Ewan K Miller, Chairman and Legal Member, Mrs Linda Robertson, Housing Member and Mr Angus Anderson, Surveyor Member. The Tenant was present and gave access. The Landlords were neither present nor represented.

Since the previous inspection on 30 July 2015 the cement work at the rear skew above the lounge area had been renewed. Mastic sealant had been applied around the doorposts of the main door of the flat directly above the Property.

In the lounge the Tenant advised that some areas of plaster to the left of the main window had been replaced. However when tested with the damp meter high readings were detected to an area of the new linings at the right hand side of the window. There was evidence of some staining. Further dampness was detected to an area of original plaster at a high level to the left of the window. Again staining was visible.

In the bedroom most areas of damp appeared to have been eradicated, although a small area in the left ingo was again found to be damp.

Within the kitchen the worktop had been replaced and the undersink connection was now watertight. The Tenant confirmed that this had been attended to and was satisfactory.

3. The Committee considered the position. It was clear that the Landlord had carried out some further works. However it was clear that either these works had not been properly carried out or that the repairs had failed. Because of the nature of the works, it was difficult for the Committee to determine the quality of the workmanship and whether underlying issues had been addressed or whether the Landlords had simply, quite literally, plastered over the problem areas. The re-inspection report was circulated to both parties and the Landlords were specifically invited to respond and to provide information and copies of any reports that they had in relation to the works done. No response was forthcoming from the Landlords.
4. The Committee considered what action to take. In terms of section 26(1) of the Act it was for the Committee to decide whether the Landlord had complied with an RSEO made by the Committee. In terms of sub section (2), where the Committee decides that a Landlord has failed to comply with an RSEO, the Committee must (a) serve notice of the failure on the Local Authority; and (b) decide whether to make a Rent Relief Order ("RRO").
5. The Committee, after discussion, accepted it was clear that the Property did not yet comply with the terms of the RSEO. There was evidence of damp penetration ongoing. Whilst the Landlord had carried out some works and endeavoured to address the issue they had not engaged fully with the Committee, had not provided the requested information about the works that had been required and, ultimately, the works had failed to address the issues. Accordingly the Committee was satisfied that the Landlord had failed to comply with the RSEO. Accordingly the Committee was obliged to serve notice of the failure on the Local Authority and resolved to do so.
6. The Committee then decided whether or not to make an RRO. The Committee accepted that the Landlord had made some efforts to carry out the works. The works in the kitchen had been carried out. However, the works to eradicate the damp in the Property had not been carried out effectively. The Landlords had had a period of 9 months to address this. Whilst it was clear that some works had been done they appeared to have been done on a piecemeal basis. The Committee would have hoped to see some reports from a suitably qualified tradesman/damp specialist. However, despite being asked to provide these the Landlords had not done so. Ingress of damp into a property is, in the longer term, a health and safety hazard for tenants. Whilst the level of damp ingress was at the lower end of the scale it nonetheless remained unacceptable. The Landlords had not given any indication that they intended to do any further works. In the circumstances the Committee was of the view that it was appropriate to serve a Rent Relief Order. The Committee noted the representations from the Tenant that a 75% Rent Relief Order should be applied. The Committee was of the view that this was too high in this particular case. Whilst there was still some damp ingress into the bedroom it was a very small patch and would not prevent the Tenant using the bedroom. There was more damp penetration into the lounge but again it was still at the lower end of the scale. In the circumstances the Committee was satisfied that a 30% Rent Relief Order was the appropriate measure to take.

7. The Committee also considered the terms of Section 28 of the Act. Sub section 1 specifies that a Landlord who, without reasonable excuse, fails to comply with an RSEO commits an offence. The Committee was not satisfied that the Landlord had put the appropriate amount of effort and resource into resolving the damp issue. The Tenant had always engaged with the Committee and had clearly allowed access for works to be done in the past. The Landlord had not provided the requested information in relation to the works that had been carried out. The Landlord had been given an extension previously to allow them more time to try and address the issue. Accordingly, in the circumstances, the Committee was of the view that Section 28(1) had been breached and therefore resolved to report the matter to the Police for consideration for prosecution.

Decision

8. **The Committee determined that in terms of the Act the Landlord had failed to comply with the RSEO. The Committee determined to serve a Notice of Failure to Comply with RSEO on the relevant Local Authority within which the Property was situated and to report the matter to the Police for consideration for prosecution. The Committee was also satisfied that it was appropriate to grant an RRO at 30% in terms of the Act.**
9. The decision of the Committee was unanimous.

Right of Appeal

10. **A Landlords 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

11. 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** Date..... *7/1/16*

Chairperson