



NOTICE TO LOCAL AUTHORITY
ISSUED BY
THE PRIVATE RENTED HOUSING COMMITTEE
UNDER SECTION 26(2) OF THE HOUSING (SCOTLAND) ACT 2006

prhp Ref: PRHP/AB10/92/10

RE: Property at 1B Diamond Place, Aberdeen, AB10 1NL ("the Property")

(hereinafter referred to as "the house")

THE PARTIES:

LLOYDS TSB BANK PLC c/o Alba House, 7 Logie Mill, Beaverbank Business Park, Logie Green Road, Edinburgh, EH7 4HG ("the Landlords")

AND

MISS LISA BAXTER residing at 1B Diamond Place, Aberdeen, AB10 1NL ("the Tenant")

ST VINCENT STREET (491) LIMITED, lower ground floor, 21 Blythwood Square, Glasgow, G2 4BL ("the Proprietors")

Notice is hereby given to Aberdeen City Council, being the local authority in which the house is situated, that there has been a failure by the Landlord to comply with a Repairing Standard Enforcement Order in relation to the house in terms of Section 26(1) of the Housing (Scotland) Act 2006. The Statement of Decision of the Private Rented Housing Committee under Section 26(1) of the said Act is attached hereto and referred to for its terms.

If an appeal against the decision of the Private Rented Housing Committee is made, then the effect of the decision is suspended until the appeal is abandoned or finally determined. In the event that the decision is confirmed, then the decision will be effective 28 days from the date on which the appeal is abandoned or so determined. If an appeal is received then the Private Rented Housing Panel will notify you of this and the eventual outcome of the appeal.

The date of service upon the parties of the decision under Section 26 of the Act is hereby certified to be **28 JANUARY 2011**.

In witness whereof these presents type written on this and the preceding page(s) 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 25 January 2011 before this witness:-

L Johnston

E Miller

_____ witness

_____ Chairman

Lindsay Johnston
Legal Secretary
Whitehall House
33 Yeaman Shore
Dundee
DD1 4BJ



Statement of decision of the Private Rented Housing Committee under Section 14 (1) of the Housing (Scotland) Act 2006

prhp Ref: PRHP/AB10/92/10

Re : Property at 1B Diamond Place, Aberdeen, AB10 1NL ("the Property")

The Parties:-

MISS LISA BAXTER residing at 1B Diamond Place, Aberdeen, AB10 1NL ("the Tenant")

LLOYDS TSB BANK PLC c/o Alba House, 7 Logie Mill, Beaverbank Business Park,
Logie Green Road, Edinburgh, EH7 4HG ("the Landlords")

ST VINCENT STREET (491) LIMITED, lower ground floor, 21 Blythswood Square,
Glasgow, G2 4BL ("the Proprietors")

Decision

The Committee determined that the Landlords had failed to carry out sufficient works to comply with Repairing Standard Enforcement Order ("RSEO") previously served on the property

Background

1. An application dated 15 June 2010 had been made by the Tenant 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 Committee had been appointed to inspect the Property and had done so in early September 2010. As a result of the original inspection and hearing the Committee had determined that the Property did not meet the repairing standard and had served an RSEO on the property. The RSEO required the Landlords to:-
 - (a) carry out such works as were necessary to render the Property wind and water tight and to ensure that there was no further water ingress to the Property with particular reference to the main bedroom, bathroom and kitchen within the Property; and
 - (b) to carry out such internal remedial works as were necessary to repair the damage caused by previous water ingress including renewal of plaster where required and to carry out redecoration works following completion of the repair works.
3. The RSEO specified that these works would require to be carried out within 3 months from the date of service of the RSEO.
4. Following upon the expiry of the period in the RSEO the Committee re-inspected the Property. The second inspection occurred on 13 January 2011 and the Committee again consisted of Mr E K Miller, (Chairman and legal member), Mr Colin Hepburn (surveyor member) and Mr Michael Scott (housing member). The Tenant had, since the date of the original inspection, left the Property and was therefore not present. The Landlords nor the Proprietors were present to give access to the Committee.

Access was kindly provided with the courtesy of Mr Lewis Stuart of the Bain Property Agency who had been instructed to give access by the Landlords.

As no parties were to be present, no hearing was held as had originally been intended.

Summary of issues

5. The issues to be determined were whether water ingress was continuing in to the Property and whether it was now wind and water tight. In particular the places where this had been happening, as highlighted in the Tenant's original application were:-
 - to the main bedroom to the front of the Property;
 - to the bathroom at the rear of the Property; and
 - to the kitchen at the front of the Property.

Reasons for the decision

6. The Committee based its decision on the inspection carried out of the Property on 13 January 2011. In each of the three locations where damp had previously been found, there was clear evidence of continuing damp penetration. It was apparent that the Property had recently been repainted throughout but despite this the damp was still occurring. In the kitchen, in particular above the cupboards, the paint was already coming away from the wall and damp meter readings taken were off the scale of the damp meter used. In the bathroom, whilst the Committee noted that some further works appeared to have been carried out to the window, there were again numerous areas where damp was reappearing and in each area the damp meter measurement was off the scale with the damp meter used. In the main bedroom of the property, again there were already a number of damp patches showing through. Indeed the Committee were of the view that there were more areas of dampness showing than when they had originally inspected the property. Again the damp meter readings were off the scale.

The Committee considered whether the damp within the property was simply due to the walls drying out following Landlords repair works being carried out. However, there had been no meaningful contact with the Landlord or engagement by them in the process and the Committee were therefore unable to take into account any works that they might have done that would suggest the walls were simply drying out rather than there being continuing issues of water ingress. The Committee considered matters and were of the view that due to the high levels of damp meter readings and the fact that additional areas of damp appeared to be occurring in the main bedroom that, on the balance of probabilities, there was still water ingress into the Property.

The Committee considered what steps, if any, they could take in light of the failure to comply with the RSEO. The Committee noted that in terms of Section 27 of the Act they would be entitled to serve a Rent Relief Order on the Property to a maximum sum of 90%. The Committee noted, however, that the Tenant had vacated the Property in the intervening period. In terms of Section 27(5) of the Act the Landlords would commit a criminal offence were they to enter into a new tenancy whilst the RSEO was in place. On the basis that the existing RSEO effectively acted as a Rent Relief Order by not allowing the Landlords to rent the Property, the Committee decided to not serve an RRO on the Property at this stage, although they reserved the right to do so at a later date should they wish to. The Committee were concerned to note that Mr Stuart, who had let the Committee into the Property, worked for a local letting agency and had been asked by the Landlord's agents to look at the Property with a view to taking it on as a rental for managing the lease of it. The Committee were concerned that the Landlord's agents and the Landlords seemed to unaware that it would be a criminal offence to do so.

The Committee also considered whether to report the failure to comply with the RSEO to the local authority. The Committee noted that in terms of Section 26(2) when a Landlord has failed to comply with the standard enforcement order, the Committee must serve notice of the failure on the local authority. On that basis the Committee resolved to notify the local authority of the breach.

The Committee were also aware that the failure to comply with the RSEO was, in terms of Section 28(1), of the Act an offence. The Committee considered whether to report this offence to the Police at this stage for consideration for forwarding to the Procurator Fiscal for prosecution. Whilst the Committee reserved their right to do so should the Landlord continue to fail to deal with the outstanding issues and to engage properly with the Committee, the Committee decided to not report the Landlords to the Police at the present time.

Decision

7. The Committee accordingly determined that the Landlords were continuing to fail to comply with the duty imposed by Section 14(1)(b) of the Act.
8. The Committee resolved to serve of the failure on the local authority in terms of Section 26(2).
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.

E Miller

Signed Date.....
Chairperson