



Repairing Standard Enforcement Order

Ordered by the Private Rented Housing Committee

prhp Ref: PRHP/RP/15/0264

Re : Property at Ground Floor Left, 434 Auchmill Road, Aberdeen, AB21 9NN ("the Property")

Title No: ABN92179

The Parties:-

Mr Barry Black, residing at Ground Floor Left, 434 Auchmill Road, Aberdeen, AB21 9NN ("the Tenant")

Michael Burnett & Mrs Ann Burnett, Spouses, residing together at 41 Allan Road, Killearn, Glasgow, G63 9QF ("the Landlords")

NOTICE TO MICHAEL BURNETT and MRS ANN BURNETT ("the Landlords")

Whereas in terms of their decision dated 8 December 2015, 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 and in particular that the landlord has failed to ensure that the property is:-

- (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.

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 repair or replacement as are necessary to the windows the property to render them properly wind and water tight, capable of opening and closing properly and generally meet the repairing standard; and

The Private Rented Housing Committee order that the works specified in this Order must be carried out and completed within the period of 3 months 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.

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 23 December 2015 before this witness:-

Claire Robertson

witness

Ewan K 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 Section 24 (1) of the Housing (Scotland) Act 2006

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Michael Burnett & Mrs Ann Burnett, Spouses, residing together at 41 Allan Road, Killearn, Glasgow, G63 9QF ("the Landlords")

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 25 September 2015 the Tenant applied to the Private Rented Housing Panel for a determination of whether the Landlords 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 Landlords had failed to comply with his duty to ensure that the house meets the repairing standard and in particular that the Landlords had failed to ensure that:-
 - (a) The house is wind and water tight and in all other respects reasonably fit for human habitation
3. By letter dated 2 November 2015 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 Landlords and the Tenant.
5. Following service of the Notice of Referral the Tenant made no further material written representation to the Committee other than their original application. The Landlord, by submission of 10 November 2015, provided a copy of the Property Inventory/Schedule of Condition put in place at the commencement of the tenancy.
6. The Private Rented Housing Committee (comprising Mr E K Miller, Chairman and Legal Member, Mr A Anderson, Surveyor Member, Mrs L Robertson, Housing Member) inspected the Property on the morning of 7 December 2015. The Tenant and Mr Burnett of the Landlords were present during the inspection.
7. At the inspection, it was established that the subject property comprises the ground floor left flat within a three storey tenement. The building was constructed upwards of 120

years ago and has solid stone outer walls and a pitched and slated roof. There is a two storey rear extension, constructed of blockwork walls under a felt covered flat roof; the extension is around 40 years old. The building fronts directly onto the pavement of Auchmill Road. Accommodation comprises Entrance Hall, Lounge to front, Bathroom, Bedroom to rear, Kitchen within rear extension. Space heating is provided by gas fired central heating. The windows are pvc framed and are double glazed throughout; the windows are around 20 years old. The inspection focussed on the issues within the application, specifically the condition of the windows.

8. Following the inspection of the Property the Private Rented Housing Committee held a hearing at The Credo Centre, John Street, Aberdeen and heard from both parties. Mr Burnett of the Landlords was present and was accompanied by his letting agent, Ms Judith Macdonald of Contempo Property. The Tenant was present and represented himself.
9. The Tenant's submission was that the windows at the Property did not meet the repairing standard. They had gaps between the seal and the window itself. This was letting in draughts and was also a security risk.
10. The Landlords accepted that the windows at the Property were not up to the appropriate standard. Mr Burnett accepted that they required work to be done to them. He had obtained quotes for the replacement of the windows but did not have the financial wherewithal to carry out the works at the present time.

Summary of the issues

11. The issue to be determined was whether the windows at the Property were properly wind and water tight, capable of opening and closing properly and generally met the repairing standard.

Findings of fact

12. The Committee found the following facts to be established:-
 - The windows were not in proper working order, wind and water tight, capable of normal operation and generally did not meet the repairing standard.

Reasons for the decision

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

The Committee first inspected the lounge window. The right hand upper panel opened and closed in the correct fashion. However the left hand upper panel was not in proper working order. There was a significant gap between the window and the frame. When the Committee opened the window it was apparent that one of the hinges was broken. The window could only be closed with some difficulty.

The Committee then inspected the bedroom window. This appeared to have been sealed shut with sealant. However it was again readily apparent that there was a gap between the window and the frame on the opening panel.

Lastly, the Committee then inspected the kitchen window. Again, a similar problem appeared to be in evidence where the opening mechanism/hinge was snapped on the right hand side and a gap was present.

At the hearing the Landlord was asked what his view of the windows was. The Landlord accepted that it was clear they were not working properly and required some attention. The Landlord and his agent provided evidence of some quotes they had obtained for replacement of the windows. It was apparent from the Landlord's submission that he had

some financial difficulties in meeting the cost of replacing the windows at the present time. When asked as to what he thought a timescale the works could be achieved in, the Landlord indicated 12 months.

Whilst the Committee was of the view that it was not for them to specify the manner of the Landlord achieving compliance with the repairing standards, it was not necessarily the case that the windows required to be replaced. A cheaper option may be to repair the windows. It was for the Landlord to investigate whether or not this was possible.

The Tenant expressed no concern about whether the windows were repaired or replaced. His concern was simply to have the windows in proper working order and for there to be no security risk caused by the gaps that were present.

The Committee considered matters. It was readily apparent the windows were not opening and closing properly. The gaps were significant and were not wind tight. The lounge window at the front faced onto a busy road and it was apparent that the traffic noise was more significant due to the window being ill fitting against the frame. The Committee concluded that the property did not meet the repairing standard as it was not wind and watertight and the windows, as part of the exterior of the house were not in a reasonable state of repair and in proper working order. The Landlord would require to carry out works of repair or replacement to all three windows.

The Committee considered the proposed timescale of 12 months that the Landlord sought. The Landlord's rationale for seeking such a period was due to financial difficulties facing him. Unfortunately the Committee could not accept financial pressures on the Landlord as a material factor in selecting a timescale for repair works. The Act provided that the Property must meet the repairing standard at the commencement of the tenancy and at all times throughout. This was clearly not the case. The Tenant was entitled to have the works addressed now. The Committee was of the view that the timescales for repair works should generally be determined by taking into account any investigatory works required to resolve repairs, the complexity of the repairs and the amount of works required. In this case there were only three windows that required attention. Assuming parts could be sourced then a repair should be able to be carried out fairly readily, alternatively replacement would also take a relatively short period of time. The Committee was of the view that in the normal course of events 6 weeks would be sufficient. In this particular case, however, the Committee was prepared to grant a period of 3 months. This was partly to take into account the Christmas period which would mean a delay in obtaining and quotes from tradesman and also to give the Landlord a little further time to address his financial situation. At the end of the day, however, the obligation to the Landlord was to carry out the works as soon as practicable possible. The Landlords receive rent for the Property and any prudent landlord will keep a reserve of funds available to meet ongoing repairs at a property. The fact that the Landlords may have failed to do so was not a valid reason for setting a significantly longer timescale than was normal for the type of works required.

The Committee highlighted to the Landlords that they expected them to carry out the works timeously and for their tradesmen to give the Tenant reasonable notice and to attend at a reasonable time. The Committee also highlighted to the Tenant that they expected him to ensure that he was available to give access to the Landlord's tradesmen to have the works carried out.

Lastly, the Committee noted that there was only a battery powered smoke alarm in the Property. This did not comply with the current requirements and this would require to be attended to along with the installation of a carbon monoxide detection system in line with the regulations enforced from 1 December 2015. The Committee noted that the Landlord and his agent were already aware of the requirements and had the matter in hand. Although not forming a part of this order the Committee would expect these issues to be attended to and the smoke detection and carbon monoxide detection systems within the Property to be installed in line with the relevant regulations.

The Committee determined that a period of 3 months would be given to the Landlords to carry out the works in terms of the RSEO.

A copy of the photos taken during the inspection are annexed to this decision for information purposes.

Decision

- 14. The Committee accordingly determined that the Landlord had failed to comply with the duty imposed by Section 14 (1)(b) of the Act.
- 15. The Committee proceeded to make a Repairing Standard Enforcement Order as required by section 24(1).
- 16. The decision of the Committee was unanimous.

Right of Appeal

- 17. 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

- 18. 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 **Ewan K Miller** Date..... 23/12/15.....
Chairperson