



Repairing Standard Enforcement Order

Ordered by the Private Rented Housing Committee

prhp Ref: PRHP/RP/15/0351

Re : Property at 38H Court Street, Dundee, DD3 7QQ ("the Property")

Land Register Number: ANG412

The Parties:-

Mr Lee McCartney, 38H Court Street, Dundee, DD3 7QQ ("the Tenant")

Mr Akram Din and Mr Jawed Din, represented by their agent, Direct Lettings, 110 Commercial Street, Dundee, DD1 2AJ ("the Landlord")

NOTICE TO Mr Akram Din and Mr Jawed Din, represented by their agent, Direct Lettings, 110 Commercial Street, Dundee, DD1 2AJ ("the Landlord")

Whereas in terms of their decision dated 23 February 2016, 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 ("The Act") and in particular that the landlord has failed to ensure that:- the house is wind and water tight and in all other respects reasonably fit for human habitation, that 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 and that any fixtures and fittings and appliances provided by the Landlord under the tenancy 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) Repair/replace the shower door to ensure that the shower cubicle is in a reasonable state of repair and in proper working order.
- (b) Clear the gutters at the rear of the property of vegetation so that they are in proper working order.
- (c) Repair the leak in the roof at the vent stack to ensure it is wind and water tight.
- (d) Instruct a reputable timber/damp proofing specialist to investigate the source of the dampness apparent within the property and thereafter carry out any necessary works to ensure that the house is wind and water tight and in all other respects reasonably fit for human habitation.

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

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 type written on this and the preceding page are executed by Judith V Lea, solicitor, Unit 3.5 The Granary Business Centre, Coal Road, Cupar, Fife, KY15 5YQ, chairperson of the Private Rented Housing Committee at Cupar on 23 February 2016 before this witness:-

Rachel Graham
Witness

J Lea
Chairman

Rachel Graham
Unit 3.5, The Granary Business Centre
Coal Road
Cupar
Fife



Statement of decision of the Private Rented Housing Committee under Section 24 (1) of the Housing (Scotland) Act 2006

prhp Ref: PRHP/RP/15/0351

Re : Property at 38H Court Street, Dundee, DD3 7QQ (“the Property”)

Land Register Number: ANG412

The Parties:-

Mr Lee McArtney, 38H Court Street, Dundee, DD3 7QQ (“the Tenant”)

Mr Akram Din and Mr Jawed Din, represented by their agent, Direct Lettings, 110 Commercial Street, Dundee, DD1 2AJ (“the Landlord”)

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 18 December 2015 the Tenant applied 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 application by the Tenant stated that the Tenant considered that the Landlord had failed to comply with the duty to ensure that the house meets the repairing standard and in particular that the Landlord had failed to ensure that:- the house was wind and water tight and in all other respects reasonably fit for human habitation, that 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, that any fixtures and fittings and appliances provided by the Landlord under the tenancy are in a reasonable state of repair and in proper working order and that the house has satisfactory provision for detecting fires or giving warning in the event of fire or suspect fire.
3. The President of the Private Rented Housing Panel intimated a decision to refer the application under Section 23 (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 Landlord and the Tenant.
5. The Private Rented Housing Committee (comprising Mrs Judith Lea, Chairman and Legal Member and David Godfrey, Surveyor Member) inspected the Property on 17 February 2016. The Tenant was present with his father, Paddy McArtney. The Landlord was represented by Graeme Sharp of Direct Lettings.
6. Following the inspection of the Property the Private Rented Housing Committee held a hearing at Kirkton Community Centre, Derwent Avenue, Dundee. The Landlord’s wife was present and the Landlord was also represented by Graeme Sharp of Direct Lettings. The Tenant and his father were both present.

7. It was clear from the inspection and accepted by both parties that the cooker hob had been replaced and was now in working order and that hard wired smoke and heat detectors has been fitted. The Landlord has also produced an Electrical Condition Installation Report but this highlighted some items which were Code C1 and C2. Parties however advised that all the C1 and C2 items had been rectified. The Tenant raised an issue in connection with the oven not heating up properly. This was not included on the original application and accordingly could not be considered by the Committee. The Landlord had provided an email from an Ian White confirming that the elements and fan were functioning properly in the oven. The Landlord however agreed to get a second opinion with regard to the oven given the Tenant's contention that it did not cook food properly.

Items raised in the application which are still outstanding as at date of inspection and hearing

(1) Shower Door

It was clear from inspection that although the shower door had been repaired, this was an unsatisfactory repair because the shower door did not close properly. The Tenant advised that when being used the shower leaked and the door would easily open. The Landlord's agent accepted that the shower door was ill-fitting and not water tight. It was clear to the Committee from inspection that the shower cubicle is faulty and the door is not closing properly and the seal around the door and the tray are defective. The Committee considered this to be a breach of Section 13(1)(c) of the Repairing Standard and proceeded to make an Order in respect of the matter.

(2) Damp, Mould and Condensation Problem

The main issue with the property related to the mould on the walls in the living room, kitchen and the bedroom. It was clear from inspection that there was extensive mould in each of these rooms. The Tenant advised that when he moved in in September 2015 there was no problem with mould in the property. It was a couple of weeks after he moved in that he started to notice the mould appearing. Mr Sharp from Direct Lettings had come to see the property and had wiped the mould off the window in the bedroom and the surrounding area with a towel. The Tenant had been told that it was because of his breathing that there was excessive condensation in the property. The Tenant agreed to open trickle vents and provide more heating in the property. The Tenant advised however that the windows could not be opened because of all the rain. The mould problem had got worse and worse and it was making him unwell and was a health hazard.

The Landlord's position was that when Mr Sharp visited the property in early November he could see his breath in the air and the windows were streaming with condensation and it was his opinion that the property was not being heated or ventilated properly. He confirmed that he had given the Tenant advice with regard to condensation. The Landlord accepted that when the Council inspected the property the damp readings were at a high level. There was vegetation in the rear gutters and this was raised with Home Scotland who were the factors of the block. They had got the information mixed up and cleared the gutters at the front of the property. There had however been a meeting with a Mr McGee who acted on behalf of the factor last Friday and work was going to be carried out to clear out the back gutters. Mr Sharp advised that they had gone up into the attic last Friday and there was also a slight problem above the bedroom when there was excessive rain, because there was a leak in the roof where the vent stack exits the roof. This was also to be seen to. He had received an email today from Home Scotland saying that they were to be working on this. Mr Smart however stated that he did not believe that the damp and mould in the property was being caused by this. It was being caused by the Tenant's use of the property.

The Surveyor Member of the Committee enquired of the Tenant as to what he felt was causing the damp. The Tenant indicated that he did not know but it was just an assumption that was being made about it being caused by his usage of the property.

It was clear from inspection that there was a serious mould problem in the property. What was not clear was exactly what the cause of this was. There was no particular evidence of water ingress. It was however clear from inspection that the rear gutters had vegetation in them and they will require to be cleared to ensure they are in proper working order. The Committee found that this was a breach of Section 13(1)(b) of the Repairing Standard and proceeded to make an Order. The Landlord's representative confirmed that there was a leak in the roof at the vent stack and this is also a breach of the Repairing Standard, Section 13(1)(a) and accordingly an Order was made in respect of this.

8. The Committee doubts that these two issues are the only cause of the mould problem in the property. The Committee accordingly considered it appropriate to instruct the Landlord to obtain a report from a reputable timber/damp proofing specialist to investigate the source of the damp within the property. If this report highlights that there is any further work which requires to be done by the Landlord then this can be done at that time.
9. Given that Home Scotland is involved, the Committee considered it reasonable to allow the Landlord a period of six weeks to comply with the Order.
10. The decision of the Committee was unanimous.
11. Photographs of the property are attached at Appendix A.

Right of Appeal

12. **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

13. 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.

J Lea

Signed Date 23 February 2016
Chairperson

APPENDIX A

Front elevation



Recently repaired front gutter/downpipe



Choked rear gutter



Typical dampness/mould in Lounge



Typical dampness/mould in Lounge



Typical dampness/mould in Lounge



Dampness at Lounge window



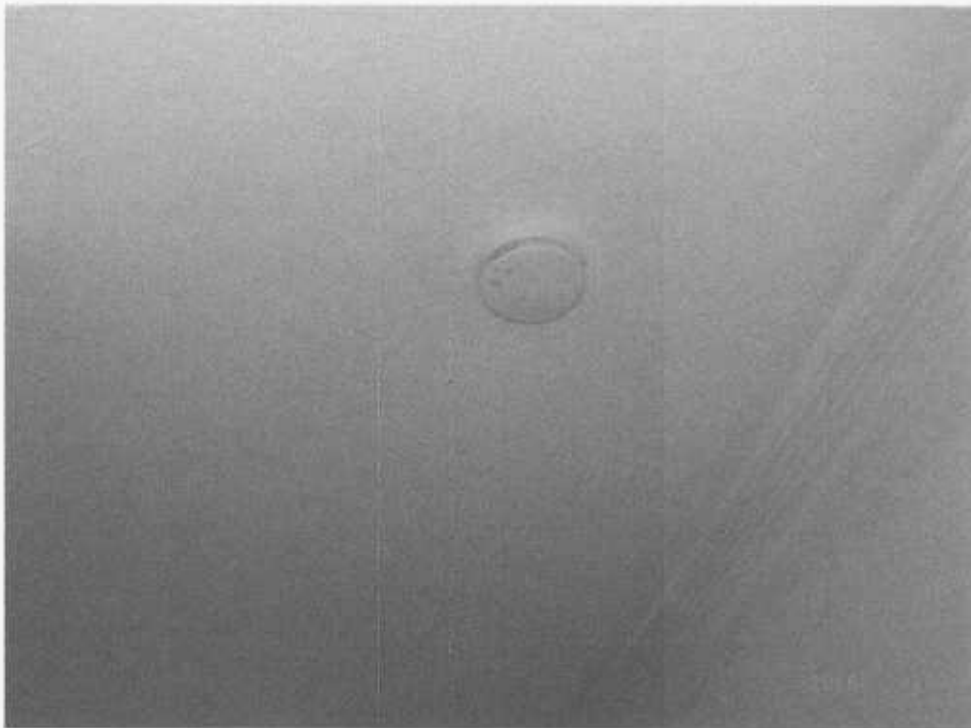
Typical dampness/mould in Bedroom



New smoke detector in Hall



New smoke detector in Lounge



New heat detector in Kitchen



Ventilator in Bathroom



Shower Tray



Shower door seal



Shower enclosure alignment



Typical dampness/mould in Kitchen

