



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

prhp Ref: PRHP/RP/16/0003

Re : Property at G/R, 29 Park Avenue, Dundee, DD4 6NE

The Parties:-

Lee Eppy, residing at G/R, 29 Park Avenue, Dundee, DD4 6NE ("the Tenant")

and

Caledonian Investments No 1 LLP, 3 Windmill Road, St Andrews, KY16 9JJ ("the Landlord"), whose agent is Pavilion Properties ("the Landlord's Agent").

The Committee comprised:-

Mrs Ruth O'Hare - Chairperson
Mr Ian Mowatt - Surveyor member

Background

1. Reference is made to the determination of the Committee dated 23rd June 2016 which determined that the Landlord had failed to comply with the duty imposed by section 14(1)(b) of the Act in that he had failed to ensure that the Property met the Repairing Standard. The works required by the Repairing Standard Enforcement Order ("RSEO") were:-
 - (a) Repair the front door to the communal hallway pertaining to the property by fitting appropriate door shutters and a proper lock;
 - (b) Repair and reinstate the floorboards in the kitchen;
 - (c) Instruct a joinery contractor to carry out a full investigation of the sub-floor area prior to the repair and reinstatement of the floorboards and carry out such works as are necessary to address any identified defects;
 - (d) Install new floor coverings to the kitchen; and
 - (e) Carry out all works required to make good decoration in the property following the above works.The RSEO gave the Landlord eight weeks to carry out the works.
2. On 23rd August 2016 the Surveyor Member of the Committee, Mr Ian Mowatt, re-inspected the property on behalf of the Committee. The Tenant was present and gave access to the property. Mr Paul Letley was present on behalf of the Landlord's Agent. The Surveyor Member noted:-

- (a) Hampton Timber Specialists (Dundee) Limited had carried out an investigation of the kitchen sub-floor area on 15th August 2016 and their report dated 16th August 2016 was made available to the Surveyor Member. Wet rot was noted to be present, affecting timber joists, wallplate and flooring, and treatment was proposed in the report. The work had not commenced at the time of the re-inspection.

The Surveyor Member noted the following outstanding items:-

- (a) That the required work to the communal front door had not been carried out, at the time of the re-inspection.
- (b) That the floorboards in the kitchen had not been repaired or reinstated.
- (c) That the new floor coverings had not been installed as the necessary sub floor repairs had not been carried out.
- (d) That the decoration required after the aforementioned works had not yet been undertaken.
3. By email dated 21st October 2016 the Landlord's Agent contacted the Committee to advise he would be unable to attend the hearing but wished to provide an update on progress with the works required in the RSEO. The Landlord's Agent advised that a new communal door had been fitted and photographs were produced to evidence same. The Tenant had been served notice to vacate the property on 31st October 2016 and it was expected that he would leave on that date, after which the house would be refurbished. The Landlord's Agent concluded by stating that contractors had been unable to carry out the works recommended in the report from the timber specialist due to the unhygienic conditions in the house, particularly dog faeces in the kitchen.
4. On 31st October 2016 the Committee held a hearing at Caledonian House, Dundee. The Tenant attended the hearing and was accompanied by his stepmother Lindsay Eppy. The Landlord was not present nor represented. The Tenant submitted as follows:-
- (a) A new communal door had been fitted with automatic door shutters however there were still problems with the door banging against the wall and slamming shut. This continued to cause disturbance to the Tenant. There was no lock on the door and it had been poorly fitted. Anyone could gain access to the communal close by pushing the door.
- (b) With regard to the works in the timber specialist report, it had been agreed that the contractor would attend the house on 29th August 2016 to complete these. The contractors had turned up at the house but had left shortly thereafter, stating that they were going to get more materials. They had not returned and the Tenant had heard nothing further from the Landlord or the Landlord's Agent. He had phoned and texted the Landlord's Agent but had received no response. The Tenant was not aware of any issues with health and safety due to the condition of the property. There had been no dog faeces in the kitchen as alleged by the Landlord's Agent. The Landlord's Agent had said they were going to carry out the works once the Tenant was out of the property. The Tenant had no intention of vacating on the 31st October as he had been advised that the repossession notices served upon him were invalid.
- (c) There had been issues with contact between the Tenant and the Landlord's Agent due in part to the Agent having the wrong number for the Tenant. That had now been resolved. The Tenant was willing to give access for repairs provided reasonable notice was given. There was no excuse for the Landlord to not give at least 24 hours notice of access being required as he had contact details for the Tenant. The Landlord was making excuses to avoid carrying out the works.

Reasons for Decision

5. The Committee considered how to progress in light of the findings of the re-inspection and the Tenant's submissions.

With regard to the communal door, the Committee noted that a new door had been installed however without any lock as specified in the terms of the order.

The Members further noted that despite the decision of the Committee having been issued in June, the Landlord had not instructed the timber specialist report until 15th August 2016, shortly prior to the re-inspection. There appeared to be no explanation as to why there had been delay in progressing matters. The Committee was aware that there had been agreement that the works recommended in the report were to be carried out on the 29th August 2016 but that this had not gone ahead due to alleged issues at the property with hygiene and in particular dog faeces in the kitchen. However the Committee preferred the statement of the Tenant that the condition of the house was not such that it would have prevented the works going ahead. The Surveyor Member had been present in the house on the 23rd August 2016 and had not had any health and safety concerns regarding its condition.

The Committee further accepted the statement by the Tenant that the Landlord's Agent had not made any further attempts to carry out the works since the 29th August and had not made any contact with the Tenant in this regard. The majority of the works in the RSEO therefore remained outstanding and it was the view of the Committee that the Landlord had failed to take reasonable steps to comply with the terms of the order.

The Committee therefore took the view that the Landlord's failure to implement all of the works amounted to a breach of the RSEO. In accordance with the relevant provisions of Section 26 of the 2006 Act the Committee required to determine whether a Rent Relief Order ("RRO") should be made.

The Committee was aware that the works required by the RSEO had been outstanding for well over four months. The Committee took the view that the works could have been completed in that period of time. The Committee did not accept that the Landlord had been prevented from carrying out the works by any obstructive conduct on the part of the Tenant. The Committee noted that since the aborted works on the 29th August the Landlord had done nothing further to comply with the RSEO. The Committee took the view that the state of repair of the kitchen floor and the presence of wet rot was having an impact on the Tenant's ability to fully enjoy the property and properly make use of the cooking facilities in the kitchen. In all the circumstances the Committee therefore determined they would make a Rent Relief Order. The Committee took the view that the appropriate proportion of rent which should be subject to the RRO was 60% of the monthly rent. The Committee accordingly determined to make an RRO in those terms.

Decision

6. The Committee having made such enquiries as are fit for the purposes of determining whether the Landlord has complied with the Repairing Standard Enforcement Order determined that the Landlord had failed to comply with the terms of the RSEO and in terms of section 26(2) of the Housing (Scotland) Act 2006 determined that a notice of the failure be served on the Local Authority in which the property is situated. The Committee further determined to make a Rent Relief Order for 60% of the monthly rent.

Right of Appeal

7. 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. The appropriate respondent in such appeal proceedings is the other party to the proceedings and not the panel or the committee which made the decision.

Effect of section 63

8. 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.

R O'Hare

Signed

Date 14 November 2016

Ruth O'Hare
Chairperson



Rent Relief Order

Ordered by the Private Rented Housing Committee

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NOTICE TO Caledonian Investments No. 1 LLP

Whereas in terms of their decision dated 14 November 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 **60%** 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.

R O'Hare

Signed

Date 14 November 2016

Ruth O'Hare, Chairperson

