



Repairing Standard Enforcement Order

Repairing Standard Enforcement Order

Order by the Private Rented Housing Committee

Case Reference Number: PRHP/RP/16/0273

Re : Subjects at 44 Fittick Place, Cove, Aberdeen, AB12 3PJ registered under Title Number KNC11790

("the property")

The Parties:-

Gordon McGregor, formerly residing at 44 Fittick Place, Cove, Aberdeen, AB12 3PJ ("the former Tenant")

and

Ms Elizabeth Yonetsugi, residing at 490-30 Matsudo Shinden, Matsudo City, Chiba Prefecture, Japan, 270-2241 ("the Landlord(s)")

The Committee:- Mrs Ruth O'Hare (Chairperson); Mr Colin Hepburn (Surveyor member)

NOTICE TO: Elizabeth Yonetsugi (the Landlord)

Whereas in terms of its decision dated 23rd November 2016, the Private Rented Housing Committee determined that the landlord had failed to comply with the duty imposed on it by Section 14(1)(b) of the Act, and in particular that the landlord has failed to ensure that the house meets the repairing standard in that:

- the structure and exterior of the house (including drains, gutters and external pipes) are not in a reasonable state of repair and in proper working order.

The Private Rented Housing Committee now requires the landlords to carry out such work as is necessary for the purpose of ensuring that the house concerned meets the repairing standard and that any damage caused by the carrying out of the works in terms of the order is made good.

In particular the Private Rented Housing Committee requires the landlords to carry out the following work:

- carry out such works as are necessary to repair the harling and ensure it is in a reasonable state of repair.

The Private Rented Housing Committee further requires that the works be carried out within a period of six months from the date of this order.

A Landlord or a Tenant aggrieved by the decision of the Private Rented Housing Committee may appeal to the Sheriff by summary application within twenty one 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 printed on this and the preceding page are subscribed by Ruth O'Hare, Chairperson at Aberdeen on 23rd November 2016 before this witness Robert Johnston, c/o Wood Group, Caledonia House, Union Street, Aberdeen.

Ruth O'Hare

Signed

.....

Ruth O'Hare
Chairperson

Robert Johnston

Signed

.....

Witness

THIS IS THE SCHEDULE OF PHOTOGRAPHS REFERRED TO
IN THE DECISION OF THE PRIVATE RENTED HOUSING
COMMITTEE DATED 23 NOVEMBER 2016 IN RESPECT OF
THE PROPERTY AT 44 FLTICKS PLACE, COVE, ABERDEEN



REF- PRHP/RP/16/0273











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

prhp Ref: PRHP/RP/16/0273

Re : Property at 44 Fittick Place, Cove, Aberdeen, AB12 3PJ ("the Property")

The Parties:-

Gordon McGregor, formerly residing at 44 Fittick Place, Cove, Aberdeen, AB12 3PJ
("the former Tenant")

and

Ms Elizabeth Yonetsugi, residing at 490-30 Matsudo Shinden, Matsudo City, Chiba
Prefecture, Japan, 270-2241 ("the Landlord(s)")

The Committee comprised:-

Mrs Ruth O'Hare - Chairperson
Mr Colin Hepburn - Surveyor member

Decision

The Committee unanimously determined that the Landlord had failed to comply with the duties imposed by Section 14 (1)(b) of the Housing (Scotland) Act 2006 ("the Act")
The Committee accordingly made a Repairing Standard Enforcement Order ("RSEO")
as required by Section 24(2) of the 2006 Act.

Background

1. By application dated 8th August 2016 the former 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 stated that the former Tenant considered that the Landlord had failed to comply with his duty to ensure that the house meets the repairing standard and in particular that the Landlord had failed to ensure that:-
 - (a) 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
 - (b) the house has satisfactory provision for detecting fires and for giving warning in the event of fire or suspected fire.
3. In particular the former Tenant alleged that there was damp throughout the property, the roof was covered in moss, the harling required repair and the smoke detectors had been incorrectly fitted.

4. By letter dated 3 October 2016 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.
5. 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 Applicants.
6. By email dated 14 October 2016 the former Tenant advised that the tenancy had been terminated and he had left the property. By Minute of Continuation dated 1st November 2016 the Committee determined to continue with its consideration of the application in light of the nature of the allegations of disrepair at the property.
7. By email dated 20 October 2016 the Landlord made written representations to the Committee. She confirmed that she would not be attending the inspection or hearing due to her residence in Japan. She advised that the Tenant had caused significant damage to the property prior to his departure and confirmed that it was in the process of being refurbished. Finally she provided a copy of a report from Wise Property Care dated 30 June 2016 in respect of the bathroom and rear bedroom of the property which confirmed that no evidence of penetrating or lateral damp had been found albeit evidence of black spot mould was visible due to condensation which could be addressed through proper heating and ventilation.
8. The Private Rented Housing Committee attended the Property on 8 November 2016. A representative for the Landlord was present and allowed access to the Property. The weather was windy and wet. The Private Rented Housing Committee proceeded to inspect the Property.

The Inspection

9. During the inspection the Committee members examined the areas of complaint raised by the former Tenant. His complaint was that the property suffered from damp and there was moss on the roof which was a contributing factor. Further the smoke alarms had been incorrectly fitted and externally the harling required redone.
10. The Committee members noted from damp readings taken throughout the property that there was no evidence of damp with the exception of an internal partition wall between a cupboard and the cellar downstairs. It appeared that there had been a leak from the bathroom upstairs to the cellar which had now been repaired. In the bathroom upstairs there was some evidence of condensation staining.
11. The Committee members noted smoke detectors in the kitchen and the upper landing of the property. These were hard wired and interlinked.
12. The Committee then proceeded outside and viewed the roof which had a covering of moss to the rear. The Committee also noted cracks in the harling and sections where parts of it had fallen off entirely.
13. Photographs were taken by the surveyor member and a schedule of photographs is attached to this decision.
14. The inspection was concluded and the Committee members travelled to the venue for the hearing.

The Hearing

15. The hearing took place in the Credo Centre, John Street, Aberdeen. Neither the Landlord nor the former Tenant were present or represented.

Findings of fact

16. Having considered all the evidence the Committee found the following facts to be established:-

- The tenancy is a short assured tenancy between the Landlord and the former Tenant which commenced on 1st June 2015. The tenancy was lawfully terminated on 3rd October 2016.
- The Property consists of a two storey terraced house. The accommodation comprises an entrance hall, lounge, kitchen, cellar, two bedrooms and a bathroom.
- The Property was inspected on the morning of 8 November 2016 on a rainy day.
- There is no evidence of penetrating or lateral damp within the property. The property is wind and watertight.
- There are smoke detectors within the property which are correctly fitted and compliant with the relevant legislation. The property has satisfactory provision for detecting fires and for giving warning in the event of fire or suspected fire.
- There is moss on the roof to the rear of the property.
- The exterior of the house is not in a reasonable state of repair due to the harling requiring extensive repair.

Reasons for the decision

17. The Committee determined the application having regard to the terms of the application, the written representations including the report from Wise Property Care and their inspection.
18. The Committee was satisfied having regard to all of the available evidence that there was sufficient information and material upon which to reach a fair determination of the application.
19. The Committee found no evidence of damp within the property with the exception of the interior partition wall between the cupboard and the cellar which could reasonably be assumed to be a result of the leak from the bathroom upstairs. Members were also satisfied from their inspection that the smoke detectors were correctly fitted.
20. The Committee noted that there was a significant amount of moss on the roof to the rear of the property. Whilst this did not in the view of the Committee amount to a breach of the Repairing Standard it would recommend that the Landlord take such steps to clean the moss from the roof and explore measures to prevent it occurring again in future to such an extent.
21. The Committee did however have serious concerns regarding the exterior of the property and the condition of the harling. It was clear that it was not in a reasonable state of repair. The Committee considered the state of the harling posed a health and safety risk and noted that significant sections had been lost already. There was an increasing risk of hollow render due to the holes and cracks in the harling which would exacerbate the problem. The Committee therefore considered the state of the harling amounted to a breach of the Repairing Standard.
22. The Act states that where a Committee decide that a landlord has failed to comply with their duty to ensure a property meets the Repairing Standard, the Committee "must by order require the landlord to carry out such work".
23. The Committee was conscious that the Landlord had indicated an intention to carry out the repairs to the harling however in light of its findings the Committee considered it had no option but to make a repairing standard enforcement order. The Committee was aware of the preferred weather conditions for such works and therefore considered that six months would be appropriate to enable the repairs to take place in the warmer months.

24. The Committee accordingly determined to make a Repairing Standard Enforcement Order as required in terms of section 24(2) of the Act and the decision of the Committee was unanimous.
25. For the avoidance of doubt the Committee was aware that a number of allegations had been made regarding the conduct of the Tenant however the Committee was clear that its sole remit was to determine whether the property met the Repairing Standard.

Decision

26. In respect of section 13(1)(b) of the Act the Committee determined that the Landlord had failed to comply with the duty imposed by Section 14 (1)(b) of the Act as the exterior of the house was not in a reasonable state of repair.
27. The decision of the Committee was unanimous.

Right of Appeal

28. 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

29. 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.

Ruth O'Hare

Signed ..

..... Date 23 November 2016

Ruth O'Hare
Chairperson