



Repairing Standard Enforcement Order

Ordered by the Private Rented Housing Committee

prhp Ref: PRHP/AB25/12/10

Re : Property at 1G Lamond Place, Aberdeen. AB24 3UT ("the Property")

Title No: ABN35240

The Parties:-

A&J Investments (Scotland) Limited a company incorporated under the Companies Acts (Company Number SC260180) and having its Registered Office at Ruach, Inverugie, Peterhead, AB42 3DE ("the Landlord")

William Dunn, residing at 1G Lamond Place, Aberdeen , AB23 3UT ("the Tenant")

NOTICE TO A&J Investments (Scotland) Limited ("the Landlord")

Whereas in terms of their decision dated 25 March 2010, 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 Property is wind and water tight in all other respects reasonably fit for human habitation;
- (b) The structure and exterior of the Property (including drains, gutters and external pipes) are in a reasonable state of repair and in proper working order;
- (c) Any furnishings provided by the Landlord under the tenancy are capable of being used safely for the purpose for which they are designed.

In particular the Private Rented Housing Committee requires the landlord:-

- (a) to carry out such works as are necessary for to the roof and gable end of the larger tenement building of which the Property forms part sufficient to render the Property wind and watertight and to prevent further water ingress;
- (b) to redecorate the ceiling within the sitting room of the Property to an appropriate standard;
- (c) to dehumidify and dry the Property to an appropriate level in order that all damage to the walls in the sitting room, bedroom and kitchen can be made good and the walls redecorated;
- (d) to replace all furnishings, carpets, etc., damaged by water ingress to the Property.

The Private Rented Housing Committee order that the works specified in this Order must be carried out and completed within the period of 8 (eight) 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.

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 March 2010 before this witness:-

S Clack

E Miller

witness

chairman

Sheila Clack
Whitehall House
33 Yeaman Shore
Dundee
DD1 4BJ

Legal Secretary



Determination by the Private Rented Housing Committee

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

PRHP Ref:- PRHP/AB25/12/10

Re: Property at 1G Lamond Place, Aberdeen, AB25 3UT ("the Property")

The Parties:-

William Dunn, residing at 1G Lamond Place, Aberdeen, AB25 3UT ("the Tenant")

and

A & J Investments (Scotland) Limited, a company incorporated under the Companies Acts (SC260180) and having its Registered Office at Ruach, Inverugie, Peterhead, AB42 3DE ("the Landlord"), represented by Ms Monika Miara of Messrs Martin & Co, Letting Agents, 123 Rosemount Place, Aberdeen

Decision

The Committee, having made such enquiries as it saw fit for the purposes of determining whether the Landlord had 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 17 January 2010, 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 his duty to ensure that the Property met the repairing standard at all times during the tenancy and in particular that the Landlord had failed to ensure that:-

- (a) the Property is wind and water tight and in all other respects reasonably fit for human habitation.

Dundee 25/3/2010

Confirmed a true and complete copy

Signer

E Miller

Notary Public

- (b) the structure and exterior of the Property and the larger building of which the Property forms part (including drains, gutters and external pipes) are in a reasonable state of repair and in proper working order.
 - (c) any furnishings provided by the Landlord under the tenancy are capable of being used safely for part of the purpose for which they are designed.
- 3. By letter dated 21 January 2010, 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 the Schedule 2, Paragraph 1 of the Act upon both the Landlord and the Tenants.
- 5. Following service of the Notice of Referral the Tenants made no further written representations to the Committee other than their original application. The Landlord's agents (by way of a letter dated 29 January 2010) made written representations to the Committee
- 6. The Private Rented Housing Committee, comprising Mr E Miller (Chairman and Legal Member), Mr M Andrew (Surveyor Member) and Mr M Scott (Housing Member) accompanied by Mr Iain MacLean (Clerk to the Committee) inspected the Property on the morning of 8 March 2010. The Tenant and the Landlord's agents were present during the inspection.
- 7. Following the inspection of the Property, the Private Rented Housing Committee held a hearing at The Inspire Conference Centre, Beach Boulevard, Aberdeen and heard from both the Tenant and the Landlord. The Tenant represented themselves. The Landlord was represented by Ms Monika Miara of Martin & Company (Aberdeen), 123 Rosebank Place, Aberdeen.
- 8. The Tenant submitted that he had begun to have problems with the Property shortly after his taking occupation in September 2009. Prior to his moving in the Tenant had noted that there was a bulge in the sitting room ceiling. The Tenant submitted that the letting agents had advised that this was just a case of wallpaper needing to be stuck back but that in any event it would be dealt with before he moved in. This did not prove to be the case and, after the tenancy had commenced, the problem became worse and it was apparent that the bulge in the ceiling was caused by water ingress from the roof and gable end. The problem became progressively worse and by the middle of October the plasterboard ceiling was beginning to fall down. A contractor for the Landlord had removed the rest of the ceiling subsequently. The situation worsened through the winter months to the point where the sitting room was uninhabitable. It had been possible for the Tenant to view the rafters of the roof, and indeed see daylight, from the sitting room. The floor had become soaked and the sofas were ruined by water ingress. The Tenant advised that he had returned on the evening prior to the

inspection by the Committee and had discovered that a plasterboard ceiling had been reinstated. The Landlord's contractor must have come in over the weekend while he was absent and in advance of the Committee's inspection. The Tenant advised that he was unaware whether or not repairs had been made to the roof itself to prevent further water ingress. The Tenant also highlighted that areas of damp were spreading from the sitting room. The wall in the bedroom adjacent to the sitting room was now wet to the touch. There was also damp and water ingress at the kitchen wall. The Tenant also commented on the position relating to alternative accommodation being provided. His understanding was that the initial alternative accommodation being offered by the Landlord's agents was to be on a temporary basis to allow him to relocate whilst repair works were carried out. Other properties had since been offered by the Landlord but these had either been smaller than the Property or lacked such a convenient location for his university studies. He accepted that the Landlords Agents had confirmed that he would be released from the tenancy but he had, as yet, found nothing more suitable. The Tenant felt aggrieved that he required to spend time looking for new accommodation when the Property should be in proper order and he should be able to concentrate on his studies. The condition of the Property was so bad that he had only been using the Property for sleeping and had spent the bulk of his time at the University or staying at a friend's flat.

9. The Landlord's Agents advised that the Landlord accepted that there were repairing issues relation to this Property and, in fact, they now viewed the Property as uninhabitable. They advised that a Notice of Serious Disrepair had been served on the Property by Aberdeen City Council. The Council were to be carrying out works to the larger block within the next couple of years and it was therefore not possible for the Landlord to carry out works to the roof of the tenement in the interim. The Landlord's position remained that they were willing to let the Tenant withdraw from the Lease without penalty or to provide him with alternative accommodation if something became available that was suitable. The Landlord's Agents had been unable to provide a copy of the Notice of Serious Disrepair as the Landlord was away abroad at the date of the hearing. The Landlord's agents felt that the Tenant could have made more of an effort to find alternative accommodation in the interim. The Landlord's agents were unable to confirm whether or not repair works to the roof had been carried out beyond the reinstatement of the ceiling to the sitting room as this had been arranged by the Landlord direct rather than through them.

Summary of the issues

10. The issues remaining to be determined by the Committee were:-
 - (a) whether the roof at the Property was wind and water tight;
 - (b) whether the ceiling in the sitting room needed to be repaired or replaced;

- (c) whether re-decoration works were required as a result of damage caused by water ingress to the Property; and
- (d) whether furnishings and carpets within the Property had been damaged and needed to be replaced or repaired.

Findings of fact

11. The Committee found the following facts to be established:-

- (a) The roof and gable end of the Property did not appear to be properly wind and watertight and water ingress had occurred and would be likely to recur in the future also.
- (b) The ceiling within the sitting room had been replaced by the Landlord although still required to be redecorated.
- (c) The walls within the bedroom, sitting room and kitchen had all suffered from water ingress and varied between damp and wet to the touch. They all needed to be dried out and the Property de-humidified. Redecoration would then require to be carried out.
- (d) Water ingress had damaged various furnishings and carpets within the Property and these would be required to be repaired or replaced as appropriate.

Reasons for the decision

12. The Committee reached its decision based on the evidence obtained by the Committee at the inspection on 8 March 2010. The Committee inspected the ceiling within the sitting room of the Property. The Tenant had advised during the course of the inspection that he had returned home before the inspection to discover that the ceiling had only been replaced over the weekend. The ceiling had not been installed when he had left for the weekend. The Surveyor Member inspected the roof space. Although the ceiling had been reinstated the Surveyor Member could see no evidence that any repairs had been carried out to the tenement roof and gable end itself. It appeared to the Committee that the Landlord had simply reinstated the ceiling in an attempt to placate the Committee, without seeking to resolve the underlying cause of the water ingress by carrying out repairs to the roof and gable end. Although the ceiling had been reinstated, it had not been redecorated and this would require to be made good. There was still significant damage to the walls in the sitting room and these would require to be dried out and then redecorated. There had clearly been a significant amount of water penetration and the carpet and finishings within the sitting room were sodden and would require to be replaced. The Committee noted during the course of their inspection that the problem of water ingress now went beyond the sitting room and that the wall between the bedroom and sitting room was now wet to the touch on the Tenant's side and all the wall paper on the bedroom side had peeled off. Similarly, there was

evidence of water penetration and damp in the kitchen adjacent to the sitting room from the gable end.

The Committee were extremely disappointed and concerned at the circumstances surrounding this tenancy. The impression given to the Committee by the Landlord's Agents was that the Notice of Serious Disrepair from Aberdeen City Council was a recent event and had only just come to light. The Committee were advised by the Landlords' Agents that the Landlord was unable to carry out any works in the meantime to the larger property as Aberdeen City Council were now going to carry out the works themselves within the next couple of years. Investigations by the Committee subsequent to the hearing revealed that, in fact, the Notice of Serious Disrepair had been served on all the owners of the larger tenement building at the end of November 2005. The Council had confirmed to the Chairman that when the Landlord had acquired the Property they had reissued notices to him as the new proprietor. It was clear to the Committee that the Landlord had been fully aware of the Notice of Serious Disrepair at the time that the Lease had been granted. Given the terms of the Notice of Serious Disrepair a reasonably competent Landlord ought properly to have known at that stage that the Property would not meet the repairing standard. It was also not the case that Aberdeen City Council were to carry out the works. There was grant funding available to the various proprietors within the building but the Council advised the Chairman that they were not intending on carrying out the works themselves.

The Committee were aware that organising communal repairs to a tenement where there are a large number of separate owners can be a difficulty for landlords but were of the view that this was not a sufficient excuse for works not to have been carried out where a property is tenanted.

The Committee also noted that there were discrepancies within the Landlord's Agents version of events in relation to the offer of alternative accommodation to the Tenant, e.g the printout provided by the Landlord's Agents at the Hearing disclosed on 23 October 2009 that the Tenant was advised he could be let out from his lease of the Property but a subsequent e-mail from the Landlord on 27 October 2009 states that he does not wish the Tenant to move out and that he may offer some small compensation as a "sweetener".

Overall, the Committee were left with a highly unfavourable impression of how this tenancy had been handled both by Landlord and Agent.

Decision

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

15. The decision of the Committee was unanimous.

Right of Appeal

16. 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

17. 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

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Signed
Chairperson

Date... 25/3/2010