



A Repairing Standard Enforcement Order

Ordered by the Private Rented Housing Committee

prhp Ref: prhp/DD3/124/12

Re : Property at 2/2, 31 St Nicholas Place, St Marys, Dundee, DD3 9NF being All and Whole the northmost house on the second floor of St Nicholas Place, Dundee referred to in the title to Iris May Mclean Skelly recorded in the General Register of Sasines on 12 May 1993 ("the Property")

The Parties:-

Linda Mitchell, formerly of 2/2, 31 St Nicholas Place, Dundee ("the Tenant")

Ms I Skelly, 148 Kingsway, Dundee, DD3 8JR ("the Landlord")

NOTICE TO Ms I Skelly, 148 Kingsway, Dundee

Whereas in terms of their decision dated 13 March 2013, The Private Rented Housing Committee having 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 comply with the duty to ensure:- that the installations in the house for the supply of water, gas and electricity and for sanitation and space heating and heating water 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 of the work in terms of this Order is made good.

In particular, the Private Rented Housing Committee requires the Landlord to:-

1. Obtain an up to date report by a suitably qualified electrician or heating engineer to show that the electric heaters and hot water system in the property are in a reasonable state of repair and in proper working order.

The Private Rented Housing Committee orders that the work should be carried out within a period of 6 months from the date of service of this notice.

A landlord or a tenant aggrieved by this 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 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 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 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 13 March 2013 before this witness:-

R 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

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Re : Property at 2/2, 31 St Nicholas Place, St Marys, Dundee, DD3 9NF ("the Property")

The Parties:-

Linda Mitchell, formerly of 2/2, 31 St Nicholas Place, Dundee ("the Tenant")

Ms I Skelly, 148 Kingsway, Dundee, DD3 8JR ("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 property concerned, and taking account of the written evidence from the Landlord and the Tenant, 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 2 September 2012 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 her duty to ensure that the property meets the repairing standard and in particular that the Landlord had failed to ensure that the installations in the house for the supply of water, gas and electricity and for sanitation and space heating and heating water are in a reasonable state of repair and in proper working order.
3. Having received confirmation from the Tenant that the tenancy of the property had been lawfully terminated, under Schedule 2 paragraph 7(1) of the Act, the Tenant is to be treated as having withdrawn the application under Section 22 (1) of the Act. The Private Rented Housing Committee then considered the application and whether the application should be determined or whether it should be abandoned in terms of Schedule 2 paragraph 7 (3) of the Act. Given the nature of the Tenant's allegations which involved issues relating to the adequacy of the heating and the lack of a working hot water system in the property, the Committee decided that the application should be determined on public interest grounds due to the nature of the alleged repairs and potential effects on any future Tenant.
4. The Private Rented Housing Committee issued a Direction that the Landlord provide an up to date gas safety certificate for the property from a gas safe registered engineer addressing the working order, condition and safety of the gas installation, hot water system and the central system and boiler in the property.
5. It then became apparent that there was no gas in the property. A further Direction accordingly was issued requiring the Landlord to - provide an up to date report by a suitably qualified electrician or heating engineer to address the state of repair and working order of the central heating system and hot water supply in the property. This was to be lodged with the Private Rented Housing Panel by 18 December 2012.

6. The Landlord did not comply with this Direction. The Landlord sent a letter dated 18 December 2012 explaining her reasons for not doing so.
7. The Private Rented Housing Committee (comprising of Mrs Judith Lea, Chairman and Legal Member, John Blackwood, Housing Member and Robert Buchan, Surveyor Member) inspected the Property on 4 March 2013. The Tenant was not present or represented. The Landlord was not present but was represented by Mike Payne.
8. Following the inspection of the Property, the Private Rented Housing Committee held a hearing at Douglas Community Centre, Balmoral Avenue, Dundee. Neither the Landlord nor the Tenant were present or represented.

Decision

9. The Committee noted from the inspection that there were electric panel heaters in the two bedrooms, a heated towel rail in the bathroom, a night storage heater in the hall and a night storage heater in the living room. There was an electric immersion heater switch in the kitchen. The hot water tank in the hall cupboard was small, of an age likely to be nearing the end of its useful life and was leaking. The property has an electric meter but the electricity was not connected on the day of the inspection. Mr Payne advised that the Landlord was not to attend the hearing but indicated that the central heating system and hot water system were both working. There was a £20 deficit on the meter and Mr Pain explained that this debt was owed by the Tenant and this matter still had to be resolved. Mr Payne stated that the previous Tenant had left after being evicted in August 2012 and there were no immediate plans at present to have another Tenant in the property.
10. The Committee noted that the Tenant claimed that the central heating system and the hot water system were not working at all. The Landlord's letter states that the hot water system and central heating system are working, although how the Landlord knows this, given that the electricity is disconnected, is not stated. The Landlord failed to comply with the Direction given by the Private Rented Housing Panel to provide a report from a suitably qualified electrician or heating engineer in connection with the state of repair and working order of the hot water system and central heating system. As there was no power at the property on the date of inspection, the Committee could not be satisfied that the hot water system and central heating system in the property are in a reasonable state of repair and in proper working order. The heaters appeared not to be damaged apart from the one in the back bedroom which appears to have been bashed causing the two halves of the heaters to have come adrift of each other and are loose but the hot water tank was leaking at the time of inspection. It is for the Landlord to satisfy the Committee that the property meets the Repairing Standard.
11. The Committee cannot be satisfied that the property meets Section 13 (1)(c) of the Repairing Standard as the leak in the hot water tank, its obvious age and the split panel heater give reasonable cause to assess that the system is not in a reasonable state of repair or in proper working order.
12. The Committee had some sympathy for the Landlord who had been unable to comply with the Direction because the electricity supply is not presently connected at the property. However the Landlord has had from August until the date of the inspection to have the electricity supply reconnected so as to be in a position to show the Committee at the inspection that the hot water system and central heating system were working and it is to be regretted that the Landlord did not take the opportunity to attend the hearing. The Committee note the terms of the Landlord's letter indicating that she cannot currently afford to obtain a report. In the circumstances, the Committee considered it reasonable to allow the Landlord a period of six months to enable her to have the electricity reconnected and to provide a report from a suitably qualified electrician or heating engineer to address the state of repair and working order of the hot water system and central heating system.
13. The Committee would emphasise to the Landlord that it is an offence re-let before the Order has been complied with.

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 Committee considered it reasonable to allow a period of six months to comply with the Order given that the property is not current let.
17. The decision of the Committee was unanimous.

Right of Appeal

18. **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

19. 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 13 March 2013
Chairperson