



Repairing Standard Enforcement Order

Ordered by the Private Rented Housing Committee

prhp Ref: PRHP/EH30/129/11

Re: Property at 23 William Black Place, South Queensferry, Edinburgh ("the Property")

Title No: WLN5251

The Parties:-

JANIE MCWILLIAM residing at 18 Ravelston House Road, Edinburgh ("the Landlord")

MR AND MRS ADRIAN CARBERRY residing at 23 William Black Place, South Queensferry, Edinburgh ("the Tenants")

NOTICE TO JANIE MCWILLIAM ("the Landlord")

Whereas in terms of their decision dated 7 December 2011, 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:-

- (a) The Property is wind and watertight and in all other respects reasonably fit for human habitation;
- (b) The installations in the Property for the supply of water, gas and electricity and for sanitation, 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 work in terms of this Order is made good.

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

- (a) To carry out such works as are necessary to repair or replace the beading on the right hand vertical frame of the exterior of the patio doors sufficient to render it properly wind and watertight.
- (b) To provide a periodic inspection certificate from a suitably qualified electrician confirming that all electrical systems have either been rendered redundant or safe and that otherwise the Property complies with the relevant electrical safety regulations.
- (c) To properly affix the oven within the kitchen of the Property in to its surrounding housing.
- (d) To repair or replace the shower within the Property to ensure that it is in proper working order.
- (e) To carry out such works as are necessary to render the front door properly wind and watertight and capable of opening and closing properly.

The Private Rented Housing Committee order that the works specified in this Order must be carried out and completed within the period of 6 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 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 7 December 2011 before this witness:-

L Johnston

witness

E Miller

Chairman

Lindsay Johnston
Secretary
Thorntons Law LLP
Whitehall House
33 Yeaman Shore
Dundee
DD1 4BJ



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

prhp Ref: PRHP/EH30/129/11

Re : Property at 23 William Black Place, South Queensferry, Edinburgh ("the Property")

The Parties:-

MR AND MRS ADRIAN CARBERRY residing at 23 William Black Place, South Queensferry, Edinburgh ("the Tenants")

MS JANIE MCWILLIAM residing at 18 Ravelston House Road, Edinburgh ("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 Tenants 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 28 June 2011 the Tenants 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 Tenants stated that the Tenants considered that the Landlord had failed to comply with her duty to ensure that the house meets the repairing standard and in particular that the Landlord had failed to ensure that:-
 - (a) The Property is wind and watertight and in all other respects reasonably fit for human habitation;
 - (b) The installations in the Property for the supply of water, gas and electricity and for sanitation, space heating and heating water are in a reasonable state of repair and in proper working order;
 - (c) The Property has satisfactory provision for detecting fires and for giving warning in the event of fire or suspected fire.
3. By letter dated 29 August 2011 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 Schedule 2, Paragraph 1 of the Act upon both the Landlord and the Tenants.
5. Following service of the Notice of Referral the Tenants, by letter dated 15 September 2011, made further written representations to the Committee along with their original

application. The Landlord, by letter dated 14 September 2011, also made written representations to the Committee.

6. The Private Rented Housing Committee inspected the Property on the morning of 2 November 2011. The Tenants were present and were accompanied by Ms Alison Porter of NEDAC for support. The Landlord was also present during the inspection. The inspection was carried out by Mr E K Miller, Chairman and Legal Member; Mrs S Hesp, Surveyor Member; and Mr J Blackwood, Housing Member. The Committee were accompanied by the Clerk, Mr Robert Shea.
7. Following the inspection of the Property the Private Rented Housing Committee held a hearing at Roseberry Hall, South Queensferry and heard from both the Tenants and the Landlord. The Landlord was unrepresented. The Tenants represented themselves but were again accompanied by Ms Alison Porter of NEDAC.
8. The Tenants had submitted, during the course of the inspection, their view on the various items of disrepair highlighted within their application. The Tenant's primary concerns were in relation to damp and condensation within the Property, poor electrics within the Property and difficulties with the toilet becoming blocked.
9. The Landlord submitted that she had no difficulty in carrying out any works that were required by the Committee. She accepted that some works were required e.g. the shower which was clearly broken. The Landlord submitted that she felt frustrated, however, that a previous Committee had looked at a number of these issues that were being complained of and had determined that there was nothing untoward. The Landlord also submitted that she had had severe difficulties in getting tradesmen to attend at the Property due to the behaviour of the Tenants.

Summary of the issues

10. The issues to be determined are:-
 - (1) Whether the patio doors within the lounge were properly wind and watertight and otherwise in proper working order.
 - (2) Whether the small raised platform within the lounge was a trip hazard and was a breach of the repairing standard.
 - (3) That the electrical systems within the Property were in proper working order and met the repairing standard.
 - (4) Whether the oven within the kitchen was properly fitted and otherwise met the repairing standard.
 - (5) Whether the holes at the backs of the kitchen cupboards were a breach of the repairing standard.
 - (6) Whether the freezer was in proper working order and met the repairing standard.
 - (7) Whether the lack of a kitchen door was a breach of the repairing standard.
 - (8) Whether the shower in the bathroom required to be repaired or replaced.
 - (9) Whether the boxing around the bathroom and sink was a breach of the repairing standard.
 - (10) Whether the toilet in the bathroom was in proper working order and met the repairing standard.

(11) Whether the front door at the Property was in proper working order and properly wind and watertight.

(12) Whether the polystyrene cladding on the walls throughout the Property was a breach of the repairing standard.

(13) Whether the smoke alarm at the Property was in proper working order.

(14) Generally, whether there was a damp and condensation issue within the Property sufficient to be a breach of the repairing standard.

(15) Whether the layout of the Property meant there was sufficient means of egress for fire escape purposes.

Reasons for the decision

11. The Committee based its decision primarily on the evidence it obtained during the course of the inspection of the Property, together with information and documentation provided by the parties at the Hearing.

The Committee first inspected the patio doors leading from the lounge. On the external right hand side of the patio doors some vertical beading was becoming detached due to it being inadequately affixed to the frame. This would require to be repaired as it may lead to water ingress in the longer term if left. Otherwise the patio door appeared to be in proper working order and otherwise met the repairing standard.

The Committee considered the raised platform within the lounge. This was only an inch or two high. The Committee noted that this had been in existence since 2006 when the Tenants moved in. It had never been complained of before. The Committee were satisfied that this was not a breach of the repairing standard and could not be said to present any material risk as a trip hazard.

The Committee noted the position in relation to the electrical systems within the Property. The previous owner of the Property had installed a number of additional lighting circuits, sockets and sound systems. It appeared that a number of these had been disconnected over the last year or two. The Tenants were still concerned about electrical safety within the Property and alleged that they had received several electric shocks. They were concerned at the standard of the work previously carried out and produced reports from British Gas in this regard. They highlighted the cooker which, they alleged, when it had been installed had simply been plugged in to a normal socket. They also highlighted the fuse box, which they alleged had been unsafe. There was some visual evidence to the effect that a safety warning sticker had been placed on the fuse box cover by an electrician. The Committee considered, at length, the issue of general electrical safety within the Property. On balance the Committee accepted the Tenants evidence in relation to the quality of the work. The Committee noted that there was evidence of a hole having been drilled through the kitchen worktop, leading from the cooker to an ordinary domestic socket. This corroborated the Tenants submission. The Committee noted that one or two sockets also appeared to have been fitted poorly and plugs did not fully push into the sockets. The Committee were satisfied that in order to ensure that there was compliance with the repairing standard it would be appropriate to for the Landlord to obtain and exhibit to the Committee a periodic inspection certificate from a suitably qualified electrician confirming that all redundant systems electrical circuits were properly isolated and that otherwise all electrical systems within the Property were properly installed and in working order.

The Committee inspected the oven. Whilst it did now appear to be correctly wired, it was not properly secured within the unit in which it sat. The Tenant was able to remove it from the unit with the minimum of exertion. The Committee were of the view that this could be pulled out by a small child and that this represented a safety hazard and was a breach of the repairing standard.

The Committee considered the backs of the kitchen units. A number of these had been damaged by workmen of the Landlord when accessing pipework for a previous repair. The Committee noted that whilst this was somewhat unsightly it did not prevent the proper use of the cupboards. The Committee noted that there had been some external damage to the kitchen units by the Tenants and on that basis did not view the damage to the kitchen backs as a material issue or a breach of the repairing standard.

The Committee inspected the freezer door. The Tenants had complained that this had been damaged by workmen of the Landlord. The Committee noted that there was a small dent in the freezer door but this had no impact on the freezer being in proper working order and was immaterial.

The Committee noted there was no kitchen door leading to the hallway. The Committee noted that a decorative arch had been formed some time ago. This issue had not been raised before and the Committee did not view this as a breach of the repairing standard.

The Committee inspected the shower in the bathroom. Despite a thorough examination, the Committee could not get the shower to work and it was clear that it would require to be repaired or replaced.

The Committee considered the boxing around the toilet and sink. Whilst this did indeed cover the pipes it was essentially a decorative feature and found in many properties. It could be removed in the event of a repair or an emergency and therefore could not be said to be a breach of the repairing standard.

The Committee inspected the toilet. The Tenants had submitted that this blocked on a regular basis. The Tenants considered that the cistern supplying water to flush the toilet was too small for a family of their size (there were four of them). The Committee flushed the toilet twice and it was noted to be in working order. The Committee considered old invoices that were produced at the Hearing from Dyna-rod showing that the toilet had blocked previously. These were from several years ago and, on the basis that the toilet had flushed properly whilst the Committee were there, the Committee felt that they had no option but to view the toilet as being in proper working order and that there was no breach of the repairing standard. The Committee did note that the cistern was held away from the wall by a block of wood which the Landlord had inserted down the back. The Committee were of the view that this would be a breach of the repairing standard. The Tenants had not complained about this in their application, notwithstanding it had been highlighted at the Hearing and inspection. The Committee noted that the Landlord would be best to attend to this in conjunction with the other works given that the Tenants could otherwise lodge a new application with the Panel to have this dealt with.

The Committee inspected the front door to the Property. It was apparent that the main handle on the door was not working properly, with the result that the door was not shutting in an appropriate fashion. It was only being held closed by the snib. The Committee also inspected the Tenants complaint that there was a large gap under the door. The Committee noted that the Landlord had placed a draught excluder along the bottom however this was felt to be inadequate by the Committee. Part of the issue was because the level of the carpet inside the Property meant the door needed to be shorter to allow it to access over the carpet. However, when the door was shut this left a large gap. The Committee were of the view that the matter might be improved by fitting a much better quality draught excluder or alternatively a better and more permanent solution would be to see if the floor level on the inside could be lowered by removing any excess underlay or old carpets so that a better fitting door could be installed. At the end of the day it was for the Landlord to resolve the matter to meet the repairing standard.

The Committee then considered the polystyrene sheets that had been placed on a number of walls within the Property. Although these were not particularly attractive or efficient, nonetheless it had been a common method of trying to improve insulation in properties. Similar polystyrene sheets were still available on the marketplace and there

was no prohibition against them that the Committee were aware of. Accordingly the Committee did not view these as a breach of the repairing standard.

The Committee then inspected the smoke alarm at the Property. The Tenants had switched this off as they complained that it was perpetually beeping. The Committee noted that when the Tenants switched the alarm back on it did beep intermittently. The Committee pointed out that this was not a fault of the smoke alarm. This was a mains wired smoke alarm that was otherwise satisfactory. However these systems also had a back up battery that would, after a while, require to be replaced and which beeped to alert owners and tenants to this fact. The Committee did not consider this to be a breach of the repairing standard.

The Committee considered whether there was an issue in relation to a lack of fire escape routes. The Tenants concern was that if a fire started beside the main door then this also blocked access to the lounge where there were patio doors. The Committee noted that this was a ground floor flat and there were two means of egress. The Committee were of the view that the layout of the flat did not breach any requirements for fire escape and were satisfied there was no breach of the repairing standard.

The Committee also considered the general question of condensation and damp within the Property. There was evidence of condensation on a number of the windows and there was some signs of mould formation on the lounge wall behind the sofa and in the girl's bedroom behind the large wardrobe. The Committee considered the matter at length and were of the view that there was no breach of the repairing standard here. The windows at the Property were fairly dated and were not particularly efficient. Nonetheless they were in proper working order. The Committee considered that condensation would often be present in houses of this type. The Committee were conscious of their obligation under Section 13(3)(a) of the Housing (Scotland) Act to take into account in reaching their decision the age, character and prospective life of the house. In a property of this age and type, owners and tenants would require to try and ensure a free flow of air within the property as much as possible and to minimise carrying out activities such as drying clothes within the Property. This would help ensure condensation problems were minimised. Although there were a couple of areas of mould build up, these were in areas where bulky items of furniture were in front of the walls and this was, in the view of the Committee, contributing to a large extent, to the build up. On balance, the Committee were satisfied that there was no breach of the repairing standard when taking into account the age, character and prospective life of the Property.

Decision

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

Right of Appeal

15. **A landlord or Tenants 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

16. 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.

Signed **E Miller**
Chairperson

..... Date..... 7/12/12