



REPAIRING STANDARD ENFORCEMENT ORDER
Ordered by the Private Rented Housing Committee

RE: Property at 45D Culloden Road, Arbroath, DD11 1LH, as more particularly described in the Disposition in favour of the Julie Campbell registered 1 March 2007 in the Land Register under Title Number ANG19249 (“the House”)

The Parties:

Michael Richardson (“the Tenant”)

Mr Ronald Elliot, 1 Marina Village, Preston Brook, Runcorn, Cheshire, WA7 3BH
 (“the Landlord”)

PRHP REFERENCE PRHP/RP/14/0177

NOTICE TO

Mr Ronald Elliot, the Landlord

WHEREAS in terms of their decision dated 23 June 2015 the 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 House meets the repairing standard in that:

*“(a) the house is wind and water tight and in all other respects reasonably fit for human habitation;
(b) the structure and exterior of the house...are in a reasonable state of repair and in proper working order; and
(c) the installations in the house 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 Committee now requires the landlord to carry out such work as is necessary for the purposes of ensuring that the House 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 Committee requires the Landlord to:

1. Carry out such works as are necessary to repair and make good the holes in the roof and ceilings above the living room and kitchen of the House

- so that it is windtight and watertight and reasonably fit for human habitation.
2. Replace the carpets throughout the House with floor coverings which are in a reasonable state of repair.
 3. Repair or replace the upper and lower guttering to the property to ensure that it is in a reasonable state of repair and in proper working order.
 4. Repair and make good the hole in the fascia facing the street so that it is a reasonable state of repair and the House is windtight and watertight.
 5. Obtain an Electrical Installation Condition Report from a suitably competent person (NICEIC or SELECT registered) to include the shower and the lighting circuits at the property to ensure that they are in a reasonable state of repair and in proper working order.


The Committee order that the works specified in this Order must be carried out and completed within four calendar months from the date of service of this Notice and for written proof of having done so to be supplied to the Private Rented Housing Panel.

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 the decision.

Where such an appeal is made, the effect of the decision and 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.

Please note that in terms of section 28(1) of the Act, a landlord who, without reasonable excuse, fails to comply with a RSEO commits an offence liable on summary conviction to a fine not exceeding level 3 on the standard scale. A landlord (and that includes any landlord's successor in title) also commits an offence if he or she enters into a tenancy or occupancy arrangement in relation to a house at any time during which a RSEO has effect in relation to the house. This is in terms of Section 28(5) of the Act.

IN WITNESS WHEREOF these presents typewritten on this and the preceding page are signed by Maurice O'Carroll, Chairperson of the Private Rented Housing Committee at Edinburgh on the twenty fourth day of June, Two Thousand and Fifteen in the presence of the undernoted witness:

M. O'CARROLL 
Chairperson

S. ROBSON
Witness:

Name in full: Sheena Robson
Administrator, SLCC, Stamp Office, Waterloo Place, Edinburgh



DETERMINATION BY PRIVATE RENTED HOUSING COMMITTEE

**STATEMENT OF DECISION OF THE PRIVATE RENTED HOUSING COMMITTEE
UNDER SECTION 24(1) OF THE HOUSING (SCOTLAND) ACT 2006**

In connection with

Property at 45D Culloden Road, Arbroath, DD11 1LH (“the House”)

Michael Richardson (“the Tenant”)

Mr Ronald Elliot, 1 Marina Village, Preston Brook, Runcorn, WA7 3BH (“the
Landlord”)

PRHP REFERENCE PRHP/RP/14/0177

DECISION

The Committee having made such enquiries as are fit for the purposes of determining whether the Landlord has complied with the duty imposed by section 14(1)(b) of the Housing Scotland Act 2006 (“the Act”) in relation to the House, and having taken account of the evidence led at the hearing and of the written documentation attached to the application and submitted by the parties, has made the following decision:

It has determined that the Landlord has failed to comply with the duty imposed by section 14(1)(b) of the Act in terms of section 13(1)(a) and(b) of the Act.

The decision was unanimous.

Background

By application dated 17 July 2014 (“the Application”), Ian Berry of the Angus Council Homeless Support Service acting on behalf of the Tenant applied to the Private Rented Housing Panel (“PRHP”) for a determination of whether the Landlord had failed to comply with the duties imposed by section 14(1)(b) of the Act.

By letter dated 3 December 2014, the President of the PRHP intimated a decision to refer the Application under section 23(1) of the Act to a Private Rented Housing Committee (“the Committee”).

The Application stated that the Tenant considered that the Landlord had failed to comply with the duty to ensure that the House meets the repairing standard and in particular that the Landlord had failed to ensure compliance with the following paragraphs of section 13(1) of the Act:

- “(a) the house is wind and water tight and in all other respects reasonably fit for human habitation;*
- (b) the structure and exterior of the house...are in a reasonable state of repair and in proper working order; and*
- (c) the installations in the house 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 Tenant obtained assistance from Angus Council’s Homeless Support Service, Bruce House, Arbroath. Having inspected the property, Mr Ian Berry from the Council first contacted the Landlord’s letting agent, Mr John Grimes of Ivy Leaf Homes, 4 High Street, Brechin on 14 May 2014 to complain about a leak in the living room and kitchen. Prior to the Application being lodged, Mr Berry had contacted the Landlord’s agents by email and telephone on a total of 17 occasions in order to enquire as to when the problems associated with water ingress would be rectified. He received no satisfactory answer to those queries. On 15 July 2014, Mr Berry was informed by email from the Landlord’s agents that the roof repairs would not be completed due the cost involved in doing so and because the Landlord had been unable to secure the agreement from the common owners of the block in which the House is located to finance the necessary works.

The Tenant was served with a notice to quit in January 2015 and vacated the House sometime in February 2015. The Committee decided to continue to determine the application notwithstanding the Tenant’s departure in terms of paragraph 7(3) of Schedule 2 to the Act. A Minute of Continuation in terms of that section was signed by the Chairman of the Committee on 20 March 2015 and served on the Landlord and his property agents.

The Committee comprised the following members:

Maurice O’Carroll, Chairperson
Sara Hesp, Surveyor Member

The Committee first attempted an inspection at 10.00am on 23 March 2015. Despite notice of the inspection having been given, and despite the Landlord’s agents having acknowledged that it was due to take place at that time on that date, the Committee was unable to gain entry as neither the Landlord nor his agent were present and the House was unoccupied.

Prior to the attempted entry on 23 March 2015, the Committee had also served a Notice of Required Entry which gave notice to the Landlord that a warrant would

be sought if entry were not provided. Accordingly, having failed to be provided with entry, a warrant was obtained from Forfar Sheriff Court on 1 May 2015.

A second inspection was arranged for 22 June 2015 and notice was again provided to the Landlord (at an address in Runcorn and St Nazaire, France) and his letting agent. Sheriff's officers and a locksmith had been notified to remain on standby. The Committee was on that occasion able to gain entry by reason of Mr Grimes of Ivy Leaf Homes finally acceding to attend at the House for that purpose. It was therefore unnecessary for entry to be forced to the House.

Following the inspection, the Committee held a hearing at Arbroath Community Centre, 40 Marketgate, Arbroath at 11.30am. Neither the Tenant nor the Landlord or his agent were present at the hearing. Mr Grimes had previously indicated to the office of PRHP that he no longer acted as agent for the Landlord, although he still held the keys to the House as at the date of the inspection and was assisting the Landlord in selling other properties owned by him in the area. He also indicated at the time of the inspection that he had recently been in contact with the Landlord by telephone.

The Committee therefore made its deliberations based upon the written evidence submitted by the parties and on the basis of the inspection which it conducted on 22 June 2015.

Summary of the Issues

The issues to be determined are: whether (1) the House meets the repairing standard as laid down in section 13(1)(a)(b) and (c) of the Act; and therefore (2) whether the Landlord has complied with the duty imposed by section 14 (1)(b).

Findings in Fact

The Committee made the following findings in fact:

The Landlord's letting agents on his behalf and the Tenant entered into a Tenancy agreement in respect of the House on or about 30 April 2014. The Committee has not had sight of the tenancy agreement as none was provided to Mr Berry when he requested a copy from the Landlord's agents. It is accordingly unable to ascertain the initial duration of the lease or the rental payment agreed under it. It is not disputed, however, that there was a rental agreement between the Tenant and the Landlord.

The registered owner of the House is Ms Julie Campbell, formerly Julie Elliot, by virtue of a disposition in her favour dated 1 March 2007 registered under Title Number ANG19249. The Landlord was married to Julie Elliot. In terms of Clause (Four) of a Minute of Agreement dated 12 and 28 February 2013 and registered in the Books of Council and Session on 6 March 2013, the House was given over to the Landlord by Julie Campbell or Elliot further to their financial arrangements upon separation.

By letter dated 5 December 2014, agents for the said Julie Campbell informed PRHP that although the Landlord still collects rent from the House, he has not yet formally effected a recorded transfer of the House into his own name as he does not wish to incur the expense in doing so. The Committee is satisfied that the Landlord is a landlord in terms of s 194(1) of the Housing (Scotland) Act 2006 in that he has let the House under a tenancy.

The provisions of Chapter 4 of Part I of the Act apply to the tenancy.

The inspection on 22 June 2015 revealed:

- (i) The property is an upper second floor flat forming part of a block running from 43 to 47 Culloden Road. It is accessed by an external staircase from the common garden green at the front of the property.
- (ii) There is a flat opposite the House in the upper stairwell and other flats form the block below it.
- (iii) The House is a broadly rectangular configuration. Entry from the front door into the hallway gives onto a bathroom to the left, a lounge directly in front, a bedroom adjacent to it and a kitchen to the right.
- (iv) It is unfurnished apart from some electrical items in the kitchen, namely a fridge freezer and an electrical oven.
- (v) The internal state of decoration and general order of the House can only be described as squalid, filthy and untidy, all indicative of chronic neglect over a lengthy period of time.
- (vi) At the time of the inspection, a pigeon had taken roost in the bedroom to the rear of the property, having entered through a window which had been left open there.
- (vii) The House is clearly not watertight.
- (viii) There is a large hole in the living room ceiling (approximately 30cm square) through which daylight can be seen. Two buckets had been placed below the hole and were half-filled with water at the time of the inspection.
- (ix) There is also a large hole in the ceiling in the kitchen of similar size, again, with a half-filled bucket beneath it.
- (x) The hole in the kitchen ceiling is of particular concern from a health and safety point of view because it is adjacent to the light fitting.
- (xi) The House is not windtight either as a result of the holes in the living room and kitchen ceilings.
- (xii) Wet rot was evident in the timbers within the roof space where they could be seen from the hole in the living room ceiling, although a full roof inspection could not be carried out.
- (xiii) The carpet in the living room is filthy and has a large water stain on it of approximately 2m diameter.
- (xiv) The carpets elsewhere in the House are filthy and unfit to be used for human habitation.
- (xv) The House has a battery operated smoke alarm in the hallway.
- (xvi) On the exterior dormer window to the front of the House there is a large tarpaulin which has been loosely fixed and serves no purpose. It was also observed to be there in the same condition during the attempted inspection on 23 March 2015.

- (xvii) To the rear of the House facing the street, the upper guttering is completely absent.
- (xviii) There is a hole into the loft space in the upper gutter area and the fascia is damaged.
- (xix) The guttering below the window to bedroom at the rear of the House is completely choked with earth and vegetation.

Decision of the Committee and reasons

The Committee was of the view that all of the complaints in relation to paragraphs (a), (b) and (c) of section 13(1) of the Housing (Scotland) Act 2006 should be upheld, given the terms of the Application and the findings made on inspection.

At the time of hearing, the House had no electricity (it being supplied by means of a meter card or similar). This ought to have been made available by the Landlord or his agent. In order to ascertain that the installations in the House for the supply of water and electricity are in good order and particularly in view of the leak in the kitchen being so close to the light fitting, the RSEO to follow hereon will require the Landlord to obtain an Electrical Installation Condition Report.

Accordingly, the Committee, considering the terms of section 13(3) of the Act, determined that the Landlord had failed to comply with the duty imposed by section 14(1)(b) of the Act.

The Committee was therefore of the view that it was necessary for it to make a Repairing Standard Enforcement Order (RSEO) in terms of section 24(2) of the Act in relation to those defects.

It was appreciated by the Committee that the co-operation of the common owners of the block might be necessary to effect the repairs listed in the RSEO to follow hereon. For that reason, an extended period of compliance has been allowed. It was also understood that the Landlord had previously attempted to obtain such consent and financial contributions from the common owners without success. However, that does not exonerate the Landlord from the requirements to comply with the Repairing Standard as set out in the 2006 Act. Ultimately complying with that standard will be the Landlord's sole responsibility. Failure to do so may result in criminal sanctions being applied. The Landlord might wish to contact the local authority to enquire as to whether any assistance in relation to common repairs is available.

Although it will not form part of the Repairing Standard Enforcement Order to follow hereon, it is recommended that the smoke alarm in the hallway is replaced with an interlinked system according to Scottish Government standards and recommendations. Scottish Government standards and recommendations in relation to smoke alarms may be viewed on the PRHP website.

In any event, such a system should be fitted prior to any new tenancy being granted in respect of the House.

The decision of the Committee in relation to the above was unanimous.

Right of Appeal

Section 64 of the Act provides a right of appeal to a landlord or tenant aggrieved by a decision of a private rented housing committee. An appeal may be made to the Sheriff within 21 days of the Landlord or Tenant being informed of the decision.

Where such an appeal is made, the effect of the decision and 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.

M. O'CARROLL

Maurice O'Carroll
Chairperson

Date: 23 June 2015

45D Culloden Road, Arbroath DD11 1LH

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Photos taken 23 March 2015: Entrance elevation



Photos taken 22 June 2015: Entrance elevation – general



Entrance elevation continued:



Street Elevation – general:



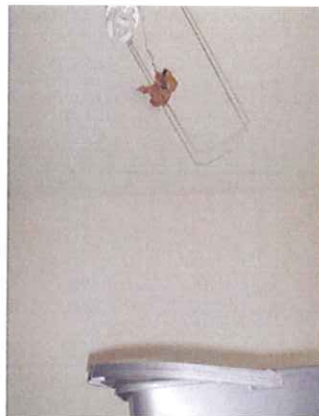
Lounge:



Lounge (continued):



Kitchen:



Street elevation: fascia and guttering

