



Repairing Standard Enforcement Order

Ordered by the Private Rented Housing Committee

prhp Ref: PRHP/RP/14/0238

Re: Property at The Lodgehouse, 2A Vernonholme, Riverside Drive, Dundee DD2 1QH ("the Property")

Title No: ANG4869

The Parties:-

L P RIDDOCH LTD (In Administration) ("the Landlord")

SAMANTHA COOK, residing at The Lodgehouse, 2A Vernonholme, Riverside Drive, Dundee DD2 1QH ("the Tenant")

NOTICE TO L P RIDDOCH LTD (In Administration) ("the Landlord")

Whereas in terms of their decision dated March 2015, 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 ("the Act") and in particular that the landlord has failed to ensure that the property meets the Repairing Standard in respect of:-

Section 13(1)(a): whether the house is wind and watertight and in all other respects reasonably fit for human habitation.

Section 13(1)(b): whether 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.

Section 13(1)(c): whether 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.

Section 13(1)(d): whether any fixtures, fittings and appliances provided by the Landlord under the tenancy 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 Property 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:

1. To instruct a reputable roofing contractor to inspect and survey and thereafter complete renovation and overhaul of the gutters and rhones of the property so as to ensure that they are in a reasonable state of repair and in proper working order.

2. To instruct a reputable contractor to inspect, survey and thereafter repair and overhaul the timber framed sash and case windows within the property so as to ensure that they are in good working order and wind and watertight.
3. To instruct a reputable contractor to inspect, survey and repair and/or replace the back door of the property leading to the garden so as to ensure that it is wind and watertight.
4. To instruct a reputable contractor to re-decorate the living room ceiling, re-plastering where required.
5. To instruct a reputable gas installation contractor to repair or replace the gas fire in the lounge of the property.
6. To arrange for and produce a Gas Safety Certificate in respect of the property.

The Private Rented Housing Committee requires that the works specified in this Order must be carried out and completed within 6 weeks from the date of service of this Notice.

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.

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(s) are executed by Richard Mill, Solicitor, chairperson of the Private Rented Housing Committee at Edinburgh on the Fifth day of March Two Thousand and Fifteen before this witness:-

witness

Richard Mill

chairman

Margaret Johnstone Murray
21 Stafford Street
Edinburgh
EH3 7BJ

Legal Secretary

Ref PRHP/RP/14/0238

Private Rented Housing Committee

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

Re: The Lodgehouse, 2A Vernonholme, Riverside Drive, Dundee DD2 1QH (“the Property”)

Title Number: ANG4869

The Parties:-

SAMANTHA COOK, residing at The Lodgehouse, 2A Vernonholme, Riverside Drive, Dundee DD2 1QH (“the Tenant”)

L P RIDDOCH LTD (In Administration) (“the Landlord”)

Committee members:-

Richard Mill (Chairman), David Godfrey (Surveyor Member) and Michael Scott (Housing Member)

Decision

The committee, having made enquiries 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 Property, determines that the Landlord has failed to comply with the duty imposed by Section 14(1)(b) of the Act in respect that the Property does not meet the Repairing Standard in respect of Sections 13(1)(a), (b), (c) and (d) for the reasons set out below.

Background

1. By application dated 8 October 2014 and received on 13 October 2014 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 Act in respect of the Property.

2. In the application the Tenant stated that the Landlord had failed to comply with the duty to ensure that the house meets the Repairing Standard in a number of respects. The relevant aspects of the Repairing Standard put at issue were those contained within Sections 13(1)(a), (b), (c) and (d) which are in the following terms:-
 - whether the house is wind and watertight and in all other respects reasonably fit for human habitation.
 - whether 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.
 - whether 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.
 - whether any fixtures, fittings and appliances provided by the Landlord under the tenancy are in a reasonable state of repair and in proper working order.
3. The Landlord is in administration. The Joint Administrators are Paul Dounis and Kenneth Pattullo. Their appointment by the Court was with effect from 8 November 2011. The Joint Administrators have instructed Messrs Aberdeen Considine as Managing Agents in respect of the property.
4. The president referred the application to a Private Rented Housing Committee for determination. Notices of Referral were issued to parties on 5 January 2015.
5. By way of correspondence dated 15 January 2015 the Joint Administrators set out their position in respect of the application by the Tenant. They sought an adjournment on the basis of ongoing legal proceedings in the Court of Session which *inter alia* challenge the Tenant's lease. The committee refused to adjourn the process having regard to the fact that a *prima facie* lease is in place and that the application raises issues of safety. The Joint Administrators indicated that they would not be present at the inspection or the Hearing.

The effect of the administration

6. The Administrators were appointed in terms of the provisions of paragraph 14 of Schedule B1 to the Insolvency Act 1986. The Joint Administrators engagement in the process to date, including the letter from them dated 15 January 2015 is deemed to indicate the consent of the Administrators to the proceedings before the Private Rented Housing Panel continuing for the purposes of subparagraph 43(6) of Schedule B1 of the Insolvency Act 1986.

Inspection

7. The committee inspected the Property on 3 March 2015 at 10.00 am. The committee were invited into the Property by the Tenant who directed the committee members around the Property.

Hearing

8. Following the inspection of the Property the committee convened a hearing at Room 7, Kirkton Community Centre, Derwent Avenue, Dundee later the same morning on 3 March 2015 at 11.00 am. The Tenant appeared personally.

Summary of the issues

9. The issues to be determined by the committee are whether or not the Property meets the Repairing Standard to the extent put at issue in the application, namely in terms of Sections 13(1)(a), (b), (c) and (d) of the Act, as at the date of the Hearing.

Findings in Fact

10. The committee makes the following findings in fact:
 - 10.1 The title to the subjects known as The Lodgehouse, 2A Vernonholme, Riverside Drive, Dundee DD2 1QH is held by the Landlord. Their interest is registered in the Land Register of Scotland under title number ANG4869 on 11 February 2003.
 - 10.2 The Property, which is the subject of this application, is a detached lodge house. It is a stone built ground floor property. It comprises an entrance vestibule, hallway, lounge, two bedrooms, a kitchen with porch off and bathroom.
 - 10.3 There is a *prime facie* Assured Tenancy Agreement between the parties dated 26 January 2007. The Joint Administrators of the Landlord challenge the existence of the tenancy. Ongoing litigation in the Court of Session has not yet concluded.
 - 10.4 From in or about March 2014, the Tenant has complained regarding a number of issues in respect of the repairing standard of the property which she has been unhappy about.
 - 10.5 The Joint Administrators arranged for a Home Report Survey to be undertaken. This was with a view to a potential sale of the property following an expression of interest by the Tenant's father. The survey was undertaken on 4 March 2014 by Messrs J & E Shepherd. No category 3 urgent repairs or replacement works were identified. This Report is dated 6 March 2014.
 - 10.6 From June 2014 the Tenant intimated a number of further complaints about the standard of the property. Lengthy email communications

ensued between the Tenant, the Joint Administrators and, at times, their appointed Managing Agents, Aberdeen Considine.

- 10.7 Delays regarding inspection of the property and the undertaking of repair work ensued. This was as a result of a number of factors including the unreliability of contractors attending as instructed and as a result of the Tenant being unable or unwilling to allow access on occasions.
- 10.8 Despite the aforementioned difficulties further sundry work was instructed by the Joint Administrators and completed. This included PAT testing, EICR, smoke alarm and heat sensor installation, installation of a combination boiler and replacement fuse board and kitchen re-wiring.
- 10.9 An updated Home Report was completed following upon a further survey on 27 October 2014 by Messrs J & E Shepherd. The Report is dated 28 October 2014. Essential repairs were identified at that time pertaining to the roof of the property.
- 10.10 Roof repairs have now been instructed and completed on the instructions of the Joint Administrators. There are no ongoing roof leaks.
- 10.11 Additional problems identified by the Tenant following receipt of her application have been remedied. This involved the fixing of the toilet cistern and the fixing of a leak from the kitchen sink.
- 10.12 There is damage to the plaster ceiling and cornice in the living room of the property as a result of the former roof leak.
- 10.13 The gutters around the property require to be cleared. They are choked, in part, with vegetation. They are in a poor state of decoration.
- 10.14 The rhones are choked, in part, with vegetation. There are leaks at some of the joints. They are in a poor state of decoration.
- 10.15 The wooden sash and case windows in the property are in a poor state of repair. Some of the sills are rotten. There are loose and ill-fitting casements. They are draughty.
- 10.16 The back door of the property exiting from the porch off the kitchen to the garden of the property is not wind and watertight. There is a significant gap underneath the door.
- 10.17 The gas fire within the lounge of the property no longer works. It was previously linked to the back boiler which is no longer in operation since the installation of a new combination boiler in the attic of the property in or about September 2014.

- 10.18 The washing machine in the property had stopped working. There was a dispute as to whether or not the washing machine formed part of the tenancy. An inventory for the property could not be found nor relied upon. The tenant has purchased a replacement washing machine.
- 10.19 The property has satisfactory provision for detecting fires and for giving warning in the event of a fire or suspected fire. There are hard wired smoke detectors and a heat alarm in the kitchen.

Reasons for the Decision

- 11.1 On the basis of the inspection the property does not meet the Repairing Standard. Reference is specifically made to the committee's findings in fact numbered 10.12-10.17. These findings have specifically been made on the committee's inspection.
- 11.2 The property is not wind and watertight. The windows, due to their condition as described in the committee's findings are loose and draughty. The back door of the property to the garden does not exclude wind or rain. These are breaches of Section 13(1)(a) of the Act.
- 11.3 The gutters and rhones are not in a reasonable state of repair and in proper working order. This is a breach of Section 13(1)(b) of the Act.
- 11.4 The roof leaks have been fixed. The former leaks in the living room of the property have caused damage to the decoration. This requires to be remedied.
- 11.5 The property previously benefited from the gas fire in the lounge previously connected to the back boiler which is now redundant. No alternative appliance for the purposes of providing space heating has been provided. This is a breach of Section 13(1)(c) and (d) of the Act.
- 11.6 An up-to-date Gas Safety Certificate should be produced following on from the installation of the combination boiler and the anticipated repair or replacement of the gas fire in the lounge of the property.

Decision

12. The committee makes a Repairing Standard Enforcement Order as they are obliged to do so in terms of Section 24(1). The decision of the committee was unanimous. The terms of the Repairing Standard Enforcement Order require the landlord to rectify the current failures to comply. The terms of this are self-explanatory.
13. 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 in summary conviction to a fine not exceeding level 3 of the standard scale. A landlord (and that includes any landlord 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.

Observations

14. Although the Joint Administrators have instructed Managing Agents it would appear that there have continued to be numerous exchanges of emails between them and the Tenant directly. Relations, rightly or wrongly, have broken down. There was some suggestion identified that the Joint Administrators had specifically instructed their Managing Agents not to correspond with the Tenant. This would appear to be inappropriate. It would appear that the Tenant's communications should be with the professional Managing Agents instructed by the Joint Administrators. The Tenant has to have a point of contact with whom she can communicate about the property.

15. Although disputed, it had been suggested that the Tenant had been obstructive in the attempts made previously to survey and carry out certain repairs at the property. The Tenant undertook to fully co-operate with any contractors regarding the implementation of any Repairing Standard Enforcement Order. If necessary, due to the Tenant's unpredictable working hours, she is agreeable to a set of keys for the property being held by the Managing Agents to be used for access, so long as advance notice is given in order to protect her privacy. This seems quite reasonable.

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 of the Act

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 date on which the appeal is abandoned or so determined.

Richard Mill

Signed
Chairman

Date: 5 March 2015