



Repairing Standard Enforcement Order

Ordered by the Private Rented Housing Committee

prhp Ref: PRHP/RP/14/0255

Re: Property at 15 Wyvis Avenue, Broughty Ferry, Dundee, DD5 3ST ("the Property")

Title No: ANG16733

The Parties:-

THE EXECUTORS OF THE LATE JEFFREY IAN MYERS, late of 15 Wyvis Avenue, Broughty Ferry, Dundee and MS VICTORIA MYERS ("the Landlords")

MISS CAROLANN CURRAN residing at 15 Wyvis Avenue, Broughty Ferry, Dundee, DD5 3ST ("the Tenant")

NOTICE TO THE EXECUTOR'S OF THE LATE JEFFREY IAN MYERS and MS VICTORIA MYERS ("the Landlord")

Whereas in terms of their decision dated 16 June 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 is:-

- (a) 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;
- (b) Any fixtures, fittings and appliances provided by the Landlords under the tenancy are in a reasonable state of repair and in proper working order;
- (c) Any furnishings provided by the Landlords under the tenancy are capable of being used safely for the purpose for which they are designed;

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 of repair or replacement to the light fittings/shades within the lounge to ensure that they are properly compliant with the repairing standard.
- (b) To repair or replace the front door handle so that the door is capable of being opened and closed properly and that the locking mechanism is in proper working order.
- (c) To either repair the original fridge freezer within the Property or provide a replacement of equivalent size.
- (d) To exhibit to the Committee an electrical installation condition report confirming that the electrical installation report confirming that the electrical installation within the Property is in satisfactory condition and showing no items marked "C1" or "C2".
- (e) To provide a replacement washing machine to the Tenant for her use in the Property.
- (f) To carry out such works or redecoration to the kitchen ceiling as are necessary to render it compliant with the repairing standard.

The Private Rented Housing Committee order that the works specified in this Order must be carried out and completed within the period of one month 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.

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 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 16 June 2015 before this witness:-

L. JOHNSTON

E. MILLER

witness

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/RP/14/0255

Re: Property at 15 Wyvis Avenue, Broughty Ferry, Dundee, DD5 3ST ("the Property")

The Parties:-

MISS CAROLANN CURRAN residing at 15 Wyvis Avenue, Broughty Ferry, Dundee, DD5 3ST ("the Tenant")

THE EXECUTORS OF THE LATE JEFFREY IAN MYERS, late of 15 Wyvis Avenue, Broughty Ferry, Dundee and MS VICTORIA MYERS ("the Landlords")

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 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 24 October 2014 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 his duty to ensure that the house meets the repairing standard and in particular that the Landlord had failed to ensure that:-
 - (a) 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;
 - (b) Any fixtures, fittings and appliances provided by the Landlords under the tenancy are in a reasonable state of repair and in proper working order;
 - (c) Any furnishings provided by the Landlords under the tenancy are capable of being used safely for the purpose for which they are designed;
3. By letter dated 30 December 2014 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 made further representations by way of correspondence received 14 January 2015. The Landlord's agent, Grant Management, made written representations dated 16 February 2015 to the Committee.

6. The Private Rented Housing Committee comprising Mr E K Miller, Chairman and Legal Member and Mr D Godfrey, Surveyor Member inspected the Property on the morning of 17 April 2015. The Tenant and her daughter were present. The Landlord was not present nor represented.
7. Following the inspection of the Property the Private Rented Housing Committee held a hearing at Kirkton Community Centre, Derwent Avenue, Dundee, DD3 0AX. The Tenant was present along with her daughter. The Landlord was neither present nor represented.
8. The Tenant submitted that the Property did not meet the repairing standard. A number of her complaints centred around the kitchen. The Tenant complained there was a lack of workspace in which to prepare meals. There had been a large freestanding unit present when she viewed the Property but this was not present when she took occupation. The fridge freezer had not been working and the replacement unit provided was too small. The Tenant highlighted a number of other defects such as light fittings in the Lounge , the front door handle, the garden, which she alleged was in a poor condition when she took occupation, issues with the electrical system along with the washing machine and downstairs carpets.
9. The Landlords did not participate in the proceedings and accordingly the Committee only had before them the Landlord's agents written representations of 16 February 2015. The Landlord's agent was of the view that they had attended to the majority of items and did not perceive that the Property did not meet the repairing standard.

Summary of the issues

10. The issues to be determined were:-
 - (1) That there was adequate kitchen worktops within the Property, compliant with the repairing standard.
 - (2) Whether the radiators within the Property were in proper working order.
 - (3) Whether the light fittings within the lounge required to be repaired or replaced.
 - (4) Whether the front door handle was in proper working order.
 - (5) Whether the garden was in sufficiently good condition as to be compliant with the repairing standard.
 - (6) Whether the replacement fridge freezer provided by the Landlord met the repairing standard.
 - (7) Whether there was a problem with the electrical system within the Property.
 - (8) Whether the washing machine provided by the Landlord was in proper working order and met the repairing standard.
 - (9) Whether the downstairs carpets in the Property met the repairing standard.
 - (10) Whether the kitchen ceiling met the repairing standard.

Findings of fact

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

- The lack of workspace within the kitchen was not a breach of the repairing standard.
- The radiators within the Property met the repairing standard.
- The light fittings that had been present in the lounge in the Property did not meet the repairing standard.
- The front door handle did not meet the repairing standard.
- The garden met the repairing standard.
- The fridge freezer was not an adequate replacement.
- The Committee could not say with any certainty that the electrical system within the Property was properly compliant and met the repairing standard.
- The washing machine provided by the Landlord did not meet the repairing standard.
- The downstairs carpets within the Property did meet the repairing standard.
- The kitchen ceiling required to be redecorated to meet the repairing standard.

Reasons for the decision

12. The Committee based its decision primarily on the evidence obtained during the course of the inspection. The Committee first considered whether there was adequate workspace within the kitchen. The Committee noted that for a modern property there was comparatively little kitchen worktop space available to the Tenant. The Committee had some sympathy with the Tenant's complaint here. However, at the end of the day, the Committee could not find in favour of the Tenant on this point. The Committee investigated whether there were any building regulations regarding what constituted adequate worktop space. Whilst there are regulations into what amounts to adequate storage space, there is nothing within the regulations which dictates a minimum amount of worktop space. The Committee noted that there may have been a moveable unit present when the Tenant viewed the Property however the current Tenant was shown around the Property by the previous tenant and it may well have been the case that the unit belonged to the previous Tenant. The Committee noted that there was no mention of any such moveable unit within the inventory that accompanied the lease. The inventory was extensive and would, in all likelihood, have shown the unit had it been present after the previous tenant had exited the Property. Accordingly the Committee felt they had no option but to find that this aspect of the Property was adequate and met the repairing standard.

In relation to the radiators within the Property, the Tenant confirmed that the Landlord had had work carried out to these and they now worked properly. The Tenant stated that the radiator in the small bathroom downstairs was slow to heat but overall the Committee was satisfied that the radiators met the repairing standard.

The Committee inspected the light fittings within the lounge of the Property. These were large glass shades that were quite heavy. The Tenant alleged that these had become detached from the ceiling. The Committee could envisage such a situation arising. Given that there were light fittings/shades in the Property when the Tenant took over it was appropriate for the Landlord to either repair or replace the existing light fittings.

The Committee inspected the front door handle. The Tenant alleged that this often proved difficult to lock and would jam. The Committee noted on inspection that the handle was loose and did indeed appear to not be working correctly. The Landlords would require to

repair or replace the door handle to ensure it met the repairing standard and was in proper working order.

The Committee inspected the garden at the Property. The Tenant alleged that upon taking entry to the Property it was significant overgrown and she had had to cut both the grass and the shrubs surrounding it. However a Committee can only base a decision as to whether a property complies with the repairing standard or not as at the date of the inspection. The Tenant had clearly carried out maintenance to the garden subsequent to take entry and it was in a good condition on the inspection date. Accordingly, the Committee was satisfied that the garden met the repairing standard as at the date of the inspection.

The Committee inspected the fridge freezer at the Property. It was apparent that there was an original integral fridge freezer within the Property. This had ceased to work and the door covering on it was damaged. The Landlord had provided the Tenant with a replacement freestanding fridge freezer. The Tenant complained that this was significantly smaller. Having inspected both the original and the replacement fridge freezer, the Committee was in agreement with the Tenant. The Tenant was entitled to a like for like replacement and the replacement was materially smaller and provided inadequate storage for the Tenant. Accordingly the Landlord would require to either have appropriate repair works carried out to the original fridge freezer or provide a larger replacement.

The Tenant's complained that there were electrical issues within the Property. Items would frequently fuse and the issue seemed to be connected to the use of the oven/cooker within the Property. The Committee was unable to determine on the day whether there was an issue with the electrical safety within the Property. However, the Committee had no reason to disbelieve the Tenant and thought it appropriate that the Landlord provide an electrical installation condition report confirming whether or not the Property met the relevant electrical safety standard. In the event of the said report disclosing any items marked "C1" or "C2" then the Landlord would require to have the works necessary to remove these items from the EICR carried out.

The Committee noted that the Tenant had also complained regarding the washing machine which, they alleged, had damaged their clothes. The Tenant had, in the end, purchased her own washing machine. The Committee inspected the Landlord's washing machine which was stored in the garage of the premises. It was apparent from an inspection that part of the internal drum had come loose and was not in proper working order. It did appear that this had been damaging the Tenant's clothes. In the Committee's opinion this was not capable of being properly fixed. Accordingly the Landlord would require to provide the Tenant with a replacement washing machine and the Tenant would be entitled to remove the washing machine that she had purchased herself upon termination of the tenancy.

The Committee inspected the carpets at the Property. The Tenant complained of various marks. The Tenant advised that they had had to have the carpets cleaned when they moved in. As at the date of the inspection, the carpets were in good condition with only one or two very minor markings present. Accordingly the Committee was satisfied that the carpets met the repairing standard.

The Committee noted that the kitchen ceiling had been previously damaged and bare plaster was showing. The Tenant confirmed that there had been a leak from the bathroom above but that the Landlord had had the roof replastered. However redecoration works were still required to cover up the bare plasterboard and the Landlord would require to attend to these works.

The Committee considered how long the Landlord would require attend to the various works that were required. None of the works, in themselves, were particularly complex to deal with and accordingly the Committee was satisfied that a period of one month would be sufficient for the Landlord to carry out the works.

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). (Delete if not appropriate).
- 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

Signed
Chairperson

.... Date..... 17/6/15