



Repairing Standard Enforcement Order

Ordered by the Private Rented Housing Committee

Case Reference Number: PRHP/RP/14/0291

Re: Flat 2/1, 16 Whitehill Street, Glasgow G31 2LN (“the property”)

Land Register Title No: GLA734

The Parties:-

Miss Kirsten Simpson, residing at the property (“the tenant”)

Mr Ian Gray, c/o the property (“the landlord”)

The committee: – Sarah O’Neill (Chairperson); Sara Hesp (Surveyor Member)

NOTICE TO: Mr Ian Gray (“the landlord”)

Whereas in terms of its decision dated 10th September 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 Act, and in particular that the landlord has failed to ensure that the house meets the repairing standard in that the fixtures, fittings and appliances provided by the landlord under the tenancy are not 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 purpose 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 before the date specified in this order.

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

1. Replace the oven with an oven which is in a reasonable state of repair and in proper working order.

450 ARSYLE STREET.

PANEL CLERK . Occupation



Determination by Private Rented Housing Committee

Statement of Decision of the Private Rented Housing Committee

(Hereinafter referred to as “the committee”)

Under Section 24(1) of the Housing (Scotland) Act 2006 (“the Act”)

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Mr Ian Gray, c/o the property (“the landlord”)

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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) of the Housing (Scotland) Act 2006 (“the Act”) in relation to the property, and taking account of all the available evidence, determines that the landlord has failed to comply with the duty imposed on him by Section 14 (1) (b) of the Act. The committee therefore issues a Repairing Standard Enforcement Order. The committee’s decision is unanimous.

Background

1. By application dated 15 December 2014, the tenant applied to the Private Rented Housing Panel ("the panel") for a determination that the landlord had failed to comply with his duties under Section 14(1) of the Act.
2. In her application, the tenant stated that she believed the landlord had failed to comply with his duty to ensure that the property met the repairing standard as set out in sections 13(1) (a) and (d) of the Act. Her application stated that the landlord had failed to ensure that:
 - the property is wind and watertight and in all other respects reasonably fit for human habitation
 - 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 tenant made the following complaints in her application:
 1. The oven has been broken for some time.
 2. The kitchen sink is poorly fitted; the grouting has gone and water is leaking down the side into the cupboard and possibly under the floor.
 3. The floorboards are uneven, mainly in the kitchen, but throughout the flat.
 4. The flat is very draughty- all the windows let the wind in.
 5. There is water damage to the bedroom, lounge and kitchen due to a leak in the roof.
 6. The upstairs landing has not been finished properly, resulting in regularly having to 'push back' the laminate and slipping down the stairs on it.
 7. The kitchen hob is not working well.
 8. The light bulbs in the kitchen have all blown and we have no physical way to get up to change them
4. The tenant stated in her application that the following work required to be carried out at the property:
 - Fixing or replacing the oven and the hob
 - Re-grouting/reorganising the sink in the kitchen and the cupboard
 - Checking all the windows upstairs
 - Painting/repairing the water damaged areas
 - General upkeep
5. The tenant stated in her application form that she had no address for the landlord, and it became apparent from later correspondence that the only way

she had of contacting him was by text/mobile phone. She had tried to call the Glasgow Letting Company, the landlord's letting agent, but had been unable to get through. She said she had searched online for the company, but that it no longer appeared to exist. She enclosed with her application form copies of text messages she had sent to the landlord regarding the repairs issues dated between August 2013 and November 2014, which she said had not been answered. The panel wrote to the tenant asking her to notify the landlord's agent about her complaints. She sent a notification to the landlord's agent by recorded delivery post on 9 February 2015, setting out her various complaints.

6. On 13 May 2015, the President of the panel issued a minute of decision stating that she considered that in terms of section 23 (3) of the Act there was no longer a reasonable prospect of the dispute being resolved between the parties at a later date; that she had considered the application paperwork submitted by the tenant, comprising documents received in the period of 16 December 2014 to 12 February 2015; and intimating her decision to refer the application to a panel committee for determination.
7. The President of the panel wrote to the parties on 15 June 2015, notifying them under and in terms of the 2006 Act of her decision to refer the application under Section 22(1) of the Act to a private rented housing committee and that an inspection and a hearing would take place on 16 July 2015. Written representations were requested by 6 July 2015.
8. The notice of referral, inspection and hearing was sent to the landlord at two different addresses. The first of these was care of the Glasgow Letting Company, and the notice sent to that address was returned by Royal Mail, stating 'addressee gone away'. The notice was also sent to an address in Malaga, Spain, which was the address held for him by the landlord registration team at Glasgow City Council. The documents were also emailed to the landlord at an email address provided by the landlord registration team.
9. No written representations were received from either party by the 6 July deadline. An email was received on 13 July from Ms Linda Gray on behalf of the landlord, requesting a postponement of the inspection and hearing, on the grounds that the landlord had only just received the documents concerning the application and had therefore had less than 3 weeks' clear notice. The email stated that the landlord would be unable to attend the inspection and hearing, but would like the opportunity to inspect the property, to prepare oral/written representations and to attend on a future date. Ms Gray requested that any future correspondence be addressed to the landlord at the property.
10. The committee agreed to the landlord's postponement request, and notified the parties on 22 July that the inspection and hearing had been rearranged for

20 August. The tenant then contacted the panel, advising that she was unable to attend on that date. The committee therefore again agreed to postpone the inspection and hearing for a further week, to be held on 27 August 2015.

The inspection

11. The committee inspected the property on the morning of 27 August 2015. The weather conditions at the time of the committee's inspection were dry and overcast. The tenant, and her partner, Robert Duncan, who also lives at the property, were present at the property during the inspection. The landlord was not present at the inspection. Photographs were taken during the inspection and are attached as a schedule to this decision.

The property

12. The property is part of a duplex flat, within a three-storey tenement block estimated to be in the region of 100 years old. The tenancy agreement is unusual, in that the tenant has use of the kitchen only on the lower floor of the flat. The remaining rooms on that floor are locked, and the tenant does not have access to these. The tenant also occupies the upper floor of the flat, which consists of two bedrooms, a living room and a bathroom. Although the tenancy agreement referred to furniture listed in an inventory, no inventory was attached, and the landlord confirmed to the committee that it was let on an unfurnished basis.

The hearing

13. Following the inspection, the committee held a hearing at the offices of the Private Rented Housing Panel, Europa Building, 450 Argyle Street, Glasgow. Both the tenant and Mr Duncan were present at the hearing, and gave evidence to the committee. The landlord was also present at the hearing, and gave evidence to the committee.

Preliminary issues

14. The landlord indicated that he wished to refer in his evidence to two letters which he had sent to the tenant on 27 July and 20 August 2015, together with three photographs of the oven, all of which he said he had submitted to the panel. He indicated that he had further photographs of the property with him on his mobile phone, which he also wished to refer to. The committee had not had sight of the letters and photographs referred to, and decided to adjourn the hearing briefly to consider whether to accept these. The tenant confirmed to the committee that she had previously seen the letter and photographs. On checking with the panel clerk, it became apparent that the landlord had

submitted the two letters to the panel, together with a covering letter dated 21 August, all of which had been received on 25 August, two days prior to the hearing.

15. The committee noted that in terms of regulation 15 of the Private Rented Housing Panel (Applications and Determinations) (Scotland) Regulations 2007, where the committee has set time limits for the lodging and serving of written evidence, it must not consider any written evidence which is not lodged or served in accordance with those time limits, unless satisfied that there are good reasons to do so. In this case, written representations had been requested by 6 July 2015. The committee noted, however, that the email from Ms Gray on behalf of the landlord dated 13 July stated that the landlord requested a postponement because he had just received the documents, and wished the opportunity to prepare representations. The committee had agreed to this request, but had not specified a further time limit for written representations. The committee was of the view that had it done so, it would have set a deadline not less than 7 days prior to the hearing.
16. In the circumstances, however, the committee concluded that it would agree to consider the letters and photographs which the landlord had submitted as these may be useful to it in its deliberations. It would not, however, accept the further photographs on the landlord's mobile phone, as these had not been lodged prior to the hearing, and the committee did not consider that there was a good reason to accept these. The committee had taken its own photographs at the inspection, and the committee would make its determination on the basis of the condition of the property at the time of its inspection.
17. The committee noted that there had been some difficulty in contacting the landlord, and asked him to confirm which postal address should be used to contact him as regards the committee's decision and any future correspondence. He confirmed that mail should be sent to him care of the property. He said that he could also be contacted on the mobile number which was on the case file, and said that he did not have an email address, but could be contacted via Linda Gray's email address if necessary.

The evidence

18. The evidence before the committee consisted of:
 - The application form completed by the tenant.
 - Registers Direct copy of Land Register title GLA734
 - Short assured tenancy agreement between the landlord and the tenant, together with form AT5 signed by Glasgow Letting Company on behalf of the landlord, both dated 15 November 2010

- Copies of text messages between the parties dated 27 September 2012, 8 July and 5 August 2013 and 26 and 27 November 2014.
- Email to the panel from the tenant dated 30 December, advising that she was unable to find accurate contact details for Glasgow Letting Company, and was unable to find an address for the landlord.
- Letter of notification dated 9 February 2015, together with covering letter of the same date, from the tenant to Glasgow Letting Company, received by the panel on 12 February 2015, setting out the repairs alleged to be required, together with certificate of posting dated 10 February 2015.
- Letters from the landlord to the tenant dated 27 July and 20 August 2015, together with three photographs of the oven, submitted by the landlord, and accepted by the committee at the hearing.
- The committee's inspection of the property.
- The oral representations of the parties.

Summary of the issues

19. The issue to be determined was whether the property meets the repairing standard as set out in Section 13 of the Act, and whether the landlord had complied with the duty imposed on him by section 14 (1) (b).

Findings of fact

20. The committee made the following findings in fact:

- The tenant entered into a short assured tenancy agreement with the landlord to rent the property on 15 November 2010.
- The committee in its inspection carefully checked the items which were the subject of the complaint. The committee observed the following:
 - i. The oven, which appeared to be of some age, was not functioning properly. It did not heat up when switched on, although the grill appeared to be working.
 - ii. One of the four rings on the hob, which also appeared to be of some age, was not functioning correctly.
 - iii. The seal between the kitchen sink and the worktop on the right hand side appeared to be in poor condition. There was evidence of mould on top of the cupboard door immediately underneath the sink, suggesting a water leakage.
 - iv. There was evidence of water damage on the ceilings in the kitchen, living room and main bedroom, as well as under the window in that bedroom.

The damage appeared to be historic. Readings were taken with a calibrated damp meter in these rooms, and these indicated no signs of damp (aside from slightly raised levels in the bathroom, which were not significant).

- v. The floors were uneven in places in the kitchen and also in the main bedroom and living room.
- vi. The edges of the laminate floor on the landing at the top of the staircase were unfinished, and there was one loose piece of flooring there, which appeared to move out when stepped on.
- vii. All windows were checked, but no draughts were observed.
- viii. The kitchen window was a traditional single glazed wooden sash and case window. The windows in all of the other rooms were double glazed UPVC units. All of the windows appeared to be in proper working order, although some of them could not be opened, as the tenant did not have the keys for them.
- ix. The two lights bulbs in the kitchen ceiling were functioning properly.

Reasons for decision

21. The complaints before the committee as set out in the tenant's application and the committee's determinations in relation to each of these are set out below.

1. Broken oven

22. The tenant and Mr Duncan told the committee that the oven had been broken on several previous occasions. It had first broken down in February 2011, shortly after she had moved in. The landlord had fixed it, but it broke again in May 2012 and then in August 2012, and had again been fixed. It had last broken in July 2013, and had not been fixed since that time. They said that the grill still works, but there had been a popping noise and the oven had ceased to function. The tenant said that when the oven was turned on, it failed to heat up. The committee tested the oven at its inspection, leaving it switched on for some time, and noted that it failed to heat up. It did not therefore appear to be functioning.

23. The landlord told the committee that the tenant had kept the kitchen generally, and the oven in particular, in a disgusting condition. He claimed that the tenant had caused the damage to the oven, saying that he suspected that the grill pan had been full of fat, and set the oven on fire. He said that when he had carried out an inspection of the property on 27 July, he found the oven to be fire damaged, and to contain tinfoil with hardened fat, and roasting pans full of fat. He directed the committee's attention to the photographs which he had submitted, which were taken on that date. He pointed to condition 3.10 of the tenancy agreement, which obliged the tenant to keep the interior of the property

and its contents in good and clean condition and complete repair, reasonable wear and tear excepted. He told the committee that the oven had been new when the tenant moved into the property.

24. The committee did not accept the landlord's evidence that the oven was broken as a result of the tenant's misuse. There was no evidence at its inspection that the oven was filthy or full of fat, and the photographs submitted by the landlord did not appear to support this contention either. The committee accepted the tenant's evidence that the oven had broken down on several previous occasions, including shortly after she moved in, which the landlord did not dispute. The committee considered that the oven appeared to be more than five years old. The committee determines that the oven is a fixture or fitting provided by the landlord under the tenancy, and is not in a reasonable state of repair and in proper working order. It does not therefore meet the repairing standard.
25. The committee also notes that condition 3.10 of the tenancy agreement appears to place responsibility for repairs onto the tenant. The committee observes that, in terms of sections 17 and 18 of the 2006 Act, the terms of a tenancy agreement may not require the tenant to carry out, pay for or contribute towards the cost of any work which the landlord requires to ensure be carried out for the purposes of complying with the repairing duty, unless the tenant consent, and an order to that effect is obtained from the sheriff.

2. Kitchen hob

26. The tenant told the committee that, while three of the rings on the hob were functioning correctly, the fourth was not working properly. They said that when switched on, the heat could not be controlled and it went onto the highest setting only. The committee tested the hob at its inspection, and found that the ring in question was not functioning correctly. The landlord did not dispute that the hob was not functioning correctly, and told the committee that he could not recall the age of the hob. The committee observed that the hob appeared to be of some age. The committee determines that the hob is a fixture or fitting provided by the landlord under the tenancy, and is not in a reasonable state of repair and in proper working order. It does not therefore meet the repairing standard.

3. Leakage under kitchen sink

27. The tenant told the committee that the grouting around the sink had worn away, and that when the sink was used, water would run down between the sink and the worktop, into the cupboard below and onto the floor. She said that this had resulted in warping of the cupboard door, and that she had therefore engaged a

tradesperson to replace the door. The landlord told the committee that when he had inspected the property on 27 July, the sink was fine, and he had found no evidence of water damage. He said that he had inspected the cupboard under the sink, and had found no moisture, or any evidence of a leak. He suggested that any water leakage which did occur was a result of the tenant overfilling the sink, causing the water to overflow onto the worktop.

28. In his letter to the tenant of 27 July, the landlord stated that the cupboard door has been damaged by impact and/or misuse, and required to be replaced. He told the committee that the tenant had not raised this issue with him prior to lodging her application. The tenant pointed out, however, that she had in fact raised this in her text message of 5 August 2014 which was before the committee.
29. The committee noted at its inspection that the kitchen sink and the worktop appeared to be in poor condition, and that there was evidence of a recent water leakage. There was mould on top of the cupboard door underneath the sink, which had recently been fitted. The committee did not accept the landlord's evidence that the leak was due to the tenant overfilling the sink. The committee determines that the sink and worktop are fixtures or fittings provided by the landlord under the tenancy, and are not in a reasonable state of repair and in proper working order. They do not therefore meet the repairing standard.

4. Uneven floorboards

30. The committee observed at its inspection that there were areas throughout the flat where the laminate flooring was uneven, which was caused by uneven floorboards underneath. The committee did not consider this to raise significant safety issues. The committee accepted the landlord's evidence that, given the age of the property, uneven floorboards were to be expected, and were part of the building's character. The committee noted that, in terms of section 13 (3) (a) of the 2006 Act, in determining whether a property meets the repairing standard, regard is to be had to the age, character and prospective life of the house. The committee therefore determined that, with the exception of the loose piece of laminate flooring at the top of the stairs, as discussed below, the floorboards and laminate flooring met the repairing standard.

5. Laminate on upstairs landing

31. The committee observed a loose piece of laminate flooring on the landing at the top of the stairs. Given its location, the committee considers that this is potentially dangerous, and should be secured immediately. The landlord accepted that this repair required to be carried out. The committee also noted that the edges of the laminate floor on the landing at the top of the staircase

were not finished properly, and that this also constitutes a potential trip hazard. The committee determines that the laminate flooring at the top of the stairs is a fixture or fitting provided by the landlord under the tenancy, and is not in a reasonable state of repair and in proper working order. It does not therefore meet the repairing standard.

6. Draughts/ windows

32. The tenant told the committee that the kitchen window was draughty. She also said that the UPVC double glazed windows on the upstairs floor were draughty, and that there were gaps between the window edging and the sill. The landlord said that the UPVC windows had been installed prior to the tenant moving in, and that he considered that these should be draught-free. He also told the committee that the kitchen window had been repaired (but not draught proofed) before the tenant had moved in.
33. The tenant had also told the committee at the inspection that draughts came from under the doors of the locked rooms on the lower floor of the property. The landlord stated that gaps under the doors were unavoidable, but that if these were causing draughts, the tenant was welcome to put draught excluders under the doors.
34. The committee did not observe any draughts at the time of its inspection, although conditions were not windy on the day in question. The committee again considered that any draughts which might be experienced were likely to be due to the age and character of the property. The kitchen window was a typical single glazed sash and case window, common in a property of this age and type. While the upstairs windows were double glazed, the rooms on the floor of the property were exposed and at some considerable height. The committee therefore determined, having regard to section 13 (3) (a) of the 2006 Act, that the property was wind and watertight, and met the repairing standard.

7. Water damage/ingress

35. The tenant told the committee that there had been a number of leaks from the roof into the property during the period of her tenancy. She said that the last leak had been in January 2013. She therefore thought that the roof had been fixed, but said that the cosmetic damage had not been addressed.
36. The landlord told the committee that the block was self-factored, and that when he had been made aware of the leaks approximately two years ago, he had spoken to the person responsible for factoring the block, and asked them to arrange repairs, which would be paid for from the self-factoring fund for the block. He had heard nothing further either from that person or from the tenant

about the matter since then, and therefore assumed that the necessary repairs had been carried out. He had advised the tenant in his letter of 27 July that, assuming the leaks had now been repaired, he would make good the cosmetic damage.

37. The committee observed staining caused by historic water ingress at its inspection, but saw no evidence of recent water ingress, and found no evidence of increased damp levels. The committee determined that the staining was a cosmetic issue, and was not therefore a matter for the repairing standard. The committee therefore determined that, at the time of its inspection, the property was wind and watertight, and met the repairing standard.

8. Light bulbs in the kitchen

38. The tenant advised that the light bulbs had been changed, and that this issue had now been resolved. The committee observed that the ceiling lights appeared to be functioning properly at its inspection. The tenant confirmed to the committee, however, that the landlord had not provided a ladder, which was required to change the bulbs, due to the high ceiling. While noting that the property was let on an unfurnished basis, the committee observes that it might be expected that the landlord would make a ladder available in a property such as this, given the height of the ceilings.

Summary of decision

39. The committee determines that the landlord has failed to comply with the duty imposed by Section 14 (1) (b) of the Act, and in particular that the landlord has failed to ensure that the house meets the repairing standard in that the fixtures, fittings and appliances provided by the landlord under the tenancy are not in a reasonable state of repair and in proper working order
40. The committee therefore makes a Repairing Standard Enforcement Order as required by section 24 (2) of the Act.

Rights of Appeal

41. A landlord or tenant aggrieved by the decision of the committee may appeal to the sheriff by summary application within 21 days of being notified of that decision.
42. The appropriate respondent in such appeal proceedings is the other party to the proceedings and not the panel or the committee which made the decision.

Effects of Section 63 of the 2006 Act

43. Where such an appeal is made, the effect of the decision and of any Order made in consequence of it is suspended until the appeal is abandoned or finally determined. Where the appeal is abandoned or finally determined by confirming the decision, the decision and the Order made in consequence of it are to be treated as having effect from the day on which the appeal is abandoned or so determined.

S O'NEILL

Signed.....S..... Date. 10/9/15.....

Sarah O'Neill, Chairperson



Schedule of photographs taken during the inspection of 2/1, 16 Whitehill Street, Glasgow G31 2LN by the Private Rented Housing Committee on 27 August 2015



Front elevation



Rear elevation



Kitchen ceiling



Schedule of photographs taken during the inspection of 2/1, 16 Whitehill Street, Glasgow G31 2LN by the Private Rented Housing Committee on 27 August 2015



Cooker and hob



Kitchen sink



Laminate floor to landing



Schedule of photographs taken during the inspection of 2/1, 16 Whitehill Street, Glasgow G31 2LN by the Private Rented Housing Committee on 27 August 2015



Dampstaining to living room



Living room window



Bedroom window