



Repairing Standard Enforcement Order

Ordered by the Private Rented Housing Committee

prhp Ref: PRHP/DD3/149/12

Re: Property at 108 St Fillans Road, St Marys, Dundee, DD3 9JX ("the Property")

Title No: ANG51248

The Parties:-

CALUM MACLEAN WATT, CPW Property Investment, 128 Henderland Road, Bearsden, Glasgow, G61 1JA ("the Landlord")

MR and MRS KENNETH BEATTIE residing at 108 St Fillans Road, St Marys, Dundee, DD3 9JX ("the Tenants")

NOTICE TO CALUM MACLEAN WATT ("the Landlord")

Whereas in terms of their decision dated 4 January 2013, 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 the property is:-

- (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 repair or replace the loose/broken floorboards within the Property to a standard sufficient to meet the repairing standard;
- (b) To replace the bathroom floor in order to meet the repairing standard.
- (c) To provide an electrical installation condition report from a suitably qualified electrician confirming that the electrical installation and fuse box/consumer unit within the Property is in safe working order and otherwise meets the repairing standard.
- (d) to carry out such works of repair or replacement to the upper hall window and the patio doors to ensure that they are able of being opened and closed smoothly and are properly wind and watertight and otherwise meet the repairing standard. In relation to all the windows at the Property to carry out appropriate redecoration works to bring them up to 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 2 months 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 4 January 2013 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

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Re: Property at 108 St Fillans Road, St Marys, Dundee, DD3 9JX ("the Property")

The Parties:-

MR and MRS KENNETH BEATTIE residing at 108 St Fillans Road, St Marys, Dundee, DD3 9JX ("the Tenants")

CALUM MACLEAN WATT, CPW Property Investment, 128 Henderland Road, Bearsden, Glasgow, G61 1JA ("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 14 August 2012 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 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) Any fixtures, fittings and appliances provided by the Landlords under the tenancy are in a reasonable state of repair and in proper working order;
3. By letter dated 12 September 2012 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 no further written representation to the Committee other than their original application. The Landlord made no written representations to the Committee.

6. The Private Rented Housing Committee (comprising Mr E K Miller, Chairman and Legal Member; Mr D Godfrey, Surveyor Member; Mr J Wolstencroft, Housing Member; accompanied by the Clerk to the Committee, Mr S Young) inspected the Property on the morning of 4 December 2012. The Tenants were present but not represented during the inspection. The Landlord was neither present nor represented at the inspection.
7. Following the inspection of the Property the Private Rented Housing Committee held a hearing at Douglas Community Centre, Balmoral Avenue, Dundee. The Tenants were not present nor represented. The Landlord was not present nor represented.
8. The Tenants had advised, during the course of the inspection, of the issues and difficulties they were suffering in relation to the Property. The primary issue was in relation to damp that the Tenant alleged was in the premises and the failure of the Landlord to provide a proper heating system.
9. There were no submissions to be considered from the Landlord.

Summary of the issues

10. The issues to be determined were:-
 - a. Whether the Property was suffering from damp and, if so, what works were required to redress this.
 - b. Whether the toilet needed to be overhauled and repaired in order to meet the repairing standard.
 - c. Whether the floors in the Property met the repairing standard.
 - d. Whether the electrical system within the Property was in safe working order and otherwise met the repairing standard.
 - e. Whether the windows and patio doors in the Property were properly wind and watertight and otherwise met the repairing standard.

Findings of fact

11. The Committee found the following facts to be established:-
 - (i) Although there was damp within the Property this was not caused by any defect to the Property or anything that could reasonably be said to be the Landlord's responsibility.
 - (ii) The Tenants had confirmed in advance of the inspection that the toilet had been repaired.
 - (iii) There were areas of the flooring in the living room, hall and bathroom which were unsafe and required to be repaired/replaced to meet the repairing standard.
 - (iv) There was at least one socket in the Property that did not work and accordingly it could not be said that the electrical system and fuse box/consumer unit within the Property was in proper working order and met the repairing standard.
 - (v) The windows throughout the Property required redecoration to meet the repairing standard and, in addition, the upper hall landing window and patio doors, were not properly wind and watertight and capable of being opened and closed properly.

Reasons for the decision

12. The Committee based its decision primarily on the evidence it obtained during the course of the inspection.

Within the Property there was evidence of damp staining and mould growth on a number of surfaces. The Committee were, however, not of the view that this was caused by any structural defect within the Property itself. The Property itself appeared to be in good structural order. It appeared to the Committee that the damp staining was arising as a result of excessive condensation in the Property. The Tenants had advised, during the course of the inspection, that their primary source of heat was by using the hob rings on the gas cooker in the kitchen. The Tenants would light some of the rings and use this to heat the Property. Using a gas cooker in this fashion would create a great deal of condensation in the Property. There were a number of adults living within the Property and a large number of possessions within the Property. This would also encourage the formation of condensation, particularly when combined with the use of the gas cooker. The Tenants had advised during the course of the inspection that they did not often open the windows because of the loss of heat caused. This would, however, also contribute significantly to condensation building up in the Property and contribute to the damp staining.

The Committee did note that there were limited sources of heating in the Property. The Tenants had obtained information regarding grants for the installation of a proper central heating system within the Property. The Committee was of the view that this would make a significant difference to the Property and significantly reduce condensation. The Tenants advised they had not heard from the Landlord in relation to his giving consent to have these works carried out. The Committee would encourage the Landlord to consent to this as soon as possible as it would benefit both parties and indeed the Property.

The Committee inspected the floors within the Property. There were a couple of areas within the lounge and hall where floorboards were broken and needed to be repaired/replaced. In the bathroom the floor was in very poor condition and the Committee was of the view that this required to be replaced, being beyond practical repair.

The Committee noted that there was an electrical socket in the kitchen that was inoperative and generally the system was dated. The Committee was of the view that it would be appropriate for an electrical installation condition report to be produced by the Landlord confirming that all the electrical systems and the fuse box/consumer unit within the Property were in proper working order and otherwise met the repairing standard.

The Committee inspected the windows at the Property. These were in a dated condition and redecoration of these was required throughout the Property to bring them up to the repairing standard. In addition, the window on the upper hall landing was extremely difficult to open and close and required adjustment to ensure that it was able to be opened and closed smoothly and otherwise met the repairing standard. The patio doors to the rear of the lounge were also in poor condition and did not open and close properly. This also required to be addressed by the Landlord in order to meet the repairing standard.

The Committee considered the length of time that the Landlord would require to carry out the works. In the circumstances the Committee was satisfied that 2 months to comply with the works required by the RSEO would be appropriate.

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).
15. The decision of the Committee was unanimous.

Right of Appeal

16. 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

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.

Signed **E Miller** Date *4/1/2013*
Chairperson