



Repairing Standard Enforcement Order

Ordered by the Private Rented Housing Committee

prhp Ref: PRHP/RP/15/0020

Re : Property at 21 North Street, Fraserburgh, AB43 9DJ ("the Property")

Title No: ABN58719:

The Parties:-

Mrs Elzbieta Kwiatkowska formerly residing at North Street, Fraserburgh, AB43 9DJ ("the Tenant(s)")

Mr Kolawole Ajayi-Majebi and Mrs Charlotte Taiwo Ajayi-Majebi residing at 6 Durban Gardens, Dagenham, Essex, RM10 9XU (represented by their agent Mr Louis Forbes of Forbes Property Management, 68 Broad Street, Fraserburgh, Aberdeenshire, AB43 9AS) ("the Landlord(s)")

NOTICE TO Mr Kolawole Ajayi-Majebi and Mrs Charlotte Taiwo Ajayi-Majebi ("the Landlords")

Whereas in terms of their decision dated 28 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 Housing (Scotland) Act 2006 ("The Act") and in particular that the landlord has failed to ensure that:-

- (a) The Property is wind and watertight and in all other respects reasonably fit for human habitation;
- (b) The structure of and exterior of the Property (including drains, gutters and external pipes) are in a reasonable state of repair and in proper working order;
- (c) 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 carry out such works as are required to render the Property properly wind and water tight and free from water penetration and to make good any damage caused to the interior of the property caused by such damp penetration.
- (b) To install a proper means of mechanical ventilation from the bathroom at the Property to the exterior.
- (c) To carry out such works of repair or replacement as are necessary to the windows and glazing within the Property to ensure they are all in proper working order, capable of opening and closing property and otherwise meet the repairing standard.
- (d) To provide a current gas safety certificate confirming that the gas system, boiler and radiators within the Property are all in proper working order and meet 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.

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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, 33 Yeaman Shore, Dundee, chairperson of the Private Rented Housing Committee at Dundee on 28 September 2015 before this witness:-

L JOHNSTON

E MILLER

_____ witness

_____ chairman

KINDSAY JOHNSTON name in full

WHITEHALL HOUSE Address

33 YEAMAN SHORE

DUNDEE

DD14BT Occupation



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

prhp Ref: PRHP/RP/15/0020

Re : Property at 21 North Street, Fraserburgh, AB43 9DJ ("the Property")

The Parties:-

Mrs Elzbieta Kwiatkowska formerly residing at North Street, Fraserburgh, AB43 9DJ ("the Tenant")

Mr Kolawole Ajayi-Majebi and Mrs Charlotte Taiwo Ajayi-Majebi residing at 6 Durban Gardens, Dagenham, Essex, RM10 9XU (represented by their agent Mr Louis Forbes of Forbes Property Management, 68 Broad Street, Fraserburgh, Aberdeenshire, AB43 9AS) ("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 both the Landlords and their agent at the hearing, determined that the Landlords had failed to comply with the duty imposed by Section 14 (1)(b) of the Act.

Background

1. By application dated 19 January 2015 the Tenant applied to the Private Rented Housing Panel for a determination of whether the Landlords 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 Tenant stated that she considered that the Landlords had failed to comply with his duty to ensure that the house meets the repairing standard and in particular that the Landlords had failed to ensure that:
 - (a) The Property is wind and watertight and in all other respects reasonably fit for human habitation;
 - (b) 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 3 March 2015 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. Prior to the date of the inspection and hearing, the Tenant vacated the property and therefore no further representations were received from the Tenant other than her original application. In advance of the hearing the Landlords agent provided various pieces of documentary evidence in relation to works carried out. These largely comprised invoices in relation to works done and photographic evidence of the condition of the property both before and after these works.

6. The Private Rented Housing Committee (comprising Mr E K Miller, Chairman and Legal Member, Mr A Anderson, Surveyor Member and Mrs L Robertson, Housing Member) inspected the Property on the morning of 14 August 2015. The Tenant was not present. The Landlords' agent was present and represented the Landlords during the inspection.
7. Following the inspection of the Property the Private Rented Housing Committee held a hearing at Fraserburgh Community & Sports Centre, Fraserburgh. The Landlords were represented by their agent, Mr Louis Forbes. The Tenant was neither present nor represented.
8. The Committee noted the terms of the Tenant's application form. The Tenant was complaining of a hole in the roof which was allowing water to come in from the ceiling. She complained that the whole house was damp and smelled. The tenant complained about the flooring within the Property. The Tenant also complained that some of the windows in the Property were broken and old. The Tenant also complained that the heating at the Property was not in proper working order.
9. Initially, the Landlords agent vociferously objected to the inspection and hearing process, stating that there was nothing wrong with the property. He went on to submit that the Tenant had been knowingly trying to cause trouble in order that she would be evicted and be given a council house. The Landlords agent confirmed that there had been a leak through the roof of the rear extension of the Property. The flat roof had been repaired and various works done to render the area properly wind and water tight. Upon vacation by the Tenant the Landlords agent confirmed that some redecorating works had occurred and that some carpets had been replaced. Various other works were being done with a view to re-letting the Property (and indeed it was intended to be relet on the afternoon of the inspection. The Landlords agent was satisfied that the Property met the repairing standard, but accepted that the Committee would determine whether or not some additional works were required.

Summary of the issues

10. The issues to be determined are: -
 - a) Whether the Property was properly wind and water tight and met the repairing standard.
 - b) Whether the interior of the Property was damp and breached the repairing standard.
 - c) Whether the carpets and floorcoverings within the Property met the repairing standard.
 - d) Whether the windows and glazing within the Property was in proper working order and met the repairing standard.
 - e) Whether the boiler and gas system within the Property was in proper working order and met the repairing standard.

Findings of fact

11. The Committee finds the following facts to be established:-
 - a) The rear extension roof was now properly wind and water tight and met the repairing standard.
 - b) There was water penetration to the two main upstairs bedrooms from the front exterior of the Property.
 - c) Whilst generally there was no damp or other mould in the Property a fan would require to be installed in the bathroom, vented to the exterior.

- d) The floorcoverings at the property met the repairing standard.
- e) The windows and glazing within the Property did not meet the repairing standard.
- f) It could not be proven that the boiler and gas system within the Property met the repairing standard on the date of the inspection

Reasons for the decision

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

The Property is a mid-terrace house, one storey and attic in height. The walls are stone and the roof is pitched and slatted, with flat roof to the front. There is a single storey rear extension constructed of block work with a flat roof.

The main house was constructed of upwards of 100 years ago, with the rear extension appearing to be around 40 years old.

The ground floor accommodation comprises an entrance hall, lounge, dining room with kitchen, rear hall and utility room. The first floor comprises a landing, main bedroom 1, box room and bedroom 2.

There is a gas fired combination central heating boiler which services radiators throughout the main building and provides hot water on demand.

It was raining during the course of the inspection, which was preceded by a period of generally wet weather. The house was vacant and the heating turned off. Parts of the interior had been redecorated after the Tenant vacated.

The Committee first inspected the rear extension. The Landlords agent confirmed that there had been a leak to the rear extension via the roof. The Landlords had acted promptly and had attempted to address these issues. The Landlords agents produced evidence of the condition of the roof prior to the works and also the completed works. The Committee accepted that works had been carried out. Whilst there may have been a problem historically the Committee was satisfied that at the date of inspection the rear extension roof was properly wind and water tight. There was one small area of damp above the rear entrance door but the Committee was of the view that this was simply a case of the plasterwork drying out following the repair.

The Committee inspected the front of the Property from the exterior. The Committee noted that there were several missing slates to the front roof pitch and dormers. These would require to be repaired. The Committee, during the inspection, tested the internal finishes for damp at appropriate locations with a damp meter. At first floor level, staining to decorations was observed in the main bedroom, adjacent to the dormer and further staining was observed in bedroom 2 again at the dormer side. When tested these areas were found to be damp. The Committee was satisfied that water was penetrating from the exterior and was causing these areas of damp. The Landlords would require to identify the source of the water ingress and to rectify this. The Landlords would require carry out any other internal and decorative works required as a result of the damp penetration.

The Committee noted that the bathroom that was in the property had no mechanical ventilation. There was a window in the bathroom but this simply opened on to the rear extension. The Landlords agents submitted that this was sufficient as a further window could then be opened in the rear extension to allow damp air to escape. The Committee was not of the view that this was satisfactory. As the bathroom was, as a result of the reasons of the extension, now an internal only bathroom it would require to have some mechanical form of ventilation installed i.e. an extraction fan.

In relation to the Tenant's complaint regarding general dampness, mould and smell, it was apparent that following the vacation of the tenant, parts of the property had been redecorated and some furnishings and floorcoverings replaced. It was not possible to determine if the conditions had existed previously, but the Committee was satisfied that the conditions described in the application were not present at the date of the inspection.

The Committee inspected the windows of the Property. There were a number of defects throughout. Without being an exhaustive list, in the utility room the two windows designed to be open could not be opened and had broken or missing handles. Another window had cracked glazing and a small hole in the glass. There was a broken handle to the dining room window and a cracked pane to one window of the lounge. Upstairs, one of the parts of the window in bedroom two had no handles. The Landlords would require to carry out such works as necessary to ensure that the windows and glazing were in proper working order and capable of being opened and shut correctly.

The central heating system was not operative during the inspection. Despite the best efforts of the Surveyor Member, the Landlords agent and a gas engineer, the heating could not be turned on during the course of the inspection. Accordingly the Committee could not be satisfied that the gas system was in proper working order and met the repairing standard. In order to rectify this, the Landlords agent would require to produce a new gas safety certificate confirming that the system was in proper working order.

The Committee inspected the floor coverings within the property. A number of these had been replaced since the tenancy ended and these were all acceptable. The Committee noted some tears to the vinyl in the kitchen and bathroom. However, there was no hazard caused by this and so the Committee was satisfied it met the repairing standard. The committee noted staining to some of the remaining carpets most notably within the bedrooms. Whilst some of the floor coverings were not in the freshest of conditions nonetheless they were adequate and met the repairing standard.

The Committee noted that the Property did not fully comply with the relevant legislation in relation to smoke alarms. There should be a hardwired smoke alarm in both the downstairs hallway and the upper floor hallway as well as in the lounge. There should also be a heat detector in the kitchen. All of the above require to be mains wired and interlinked. Whilst not a formal part of this decision (as it was not complained of by the Tenant) the Committee would fully expect the Landlords and their agent to address this.

The Committee noted during the course of the inspection and hearing, the Landlords' agents willingness to address works immediately. The Landlords agent viewed the imposition of an RSEO as excessive. However, the fact of the matter was that the Property did not comply with the repairing standard at the time of an inspection. Accordingly, the Committee had no option but to impose an RSEO

Lastly, the Committee considered the timescale for the works to be carried out. The Committee was of the view that two months would be sufficient.

Attached to this decision is a schedule of photographs taken during the inspection.

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 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 Date 28/9/15
Chairperson



Schedule of Photographs
21 North Street, Fraserburgh AB43 9DJ
Case Reference Number PRHP/RP/15/0020
Date: 14/08/2015



Figure 1 Front Elevation



Figure 2 Rear Extension

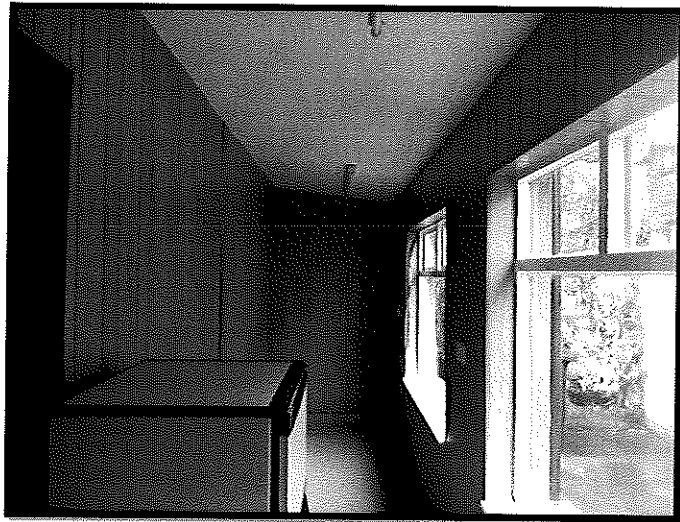


Figure 3 Rear Extension Internal

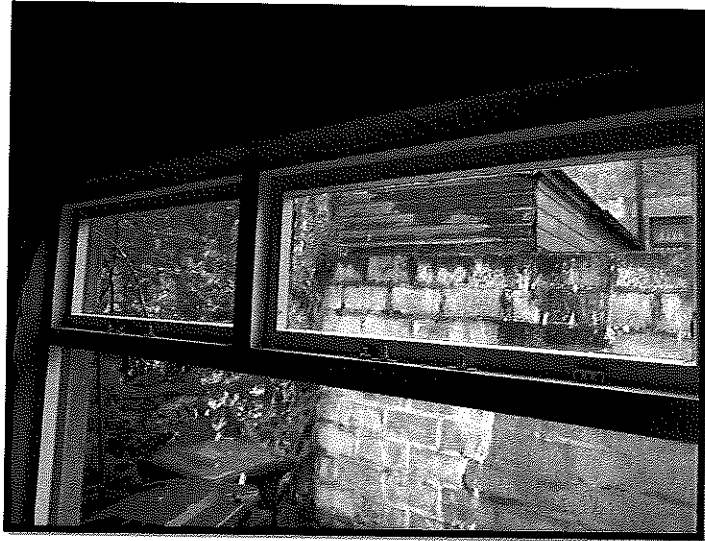


Figure 4 Rear Extension windows - missing or broken handles



Figure 5 Rear Extension holes in glazing



Figure 6 Rear Extension residual damp



Figure 7 Example of missing or broken handles



Figure 8 Main Bedroom damp stain



Figure 9 Main Bedroom Damp Reading



Figure 10 Bedroom 2 damp stain



Figure 11 Missing slates at dormer