



Repairing Standard Enforcement Order

Ordered by the Private Rented Housing Committee

PRHP Ref: PRHP/RP/15/0036

Property at: 15i Shepherd's Loan, Dundee, DD2 1AW

Title No. ANG14106

The Parties

Malcolm Robinson, residing at 15i Shepherd's Loan, Dundee, DD2 1AW ("the tenant")

and

Gary Fitzpatrick, residing at 350 Rathfriland Road, Dromara, Dromore, County Down, BT25 2HN ("the landlord")

NOTICE TO Gary Fitzpatrick, residing at 350 Rathfriland Road, Dromara, Dromore, County Down, BT25 2HN ("the landlord")

Whereas in terms of their decision dated 7 August 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 and in particular that the landlord has failed to ensure that:

- (a) the installations in the house for the supply for water, gas and electricity, and for sanitation, space heating and for heating water are in a reasonable state of repair and in proper working order, in terms of Section 13(1)(c) of the 2006 Act.
- (b) the fixtures, fittings and appliances provided by the landlord under the tenancy are in a reasonable state of repair and in proper working order, in terms of Section 13(1)(d) of the 2006 Act.

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:-

- (1) Repair or replace the WC cistern in the bathroom;
- (2) Repair or replace the waste disposal unit and connect the drains serving the sinks in the kitchen;

- (3) Repair or replace the shower and shower tray in the bathroom of the property; and
- (4) Produce to the Private Rented Housing Panel, Europa Building, 450 Argyle Street, Glasgow, G2 8LH, an up to date gas safety certificate and satisfactory evidence that the boiler and central heating system are in a reasonable state of repair and in proper working order,
- (5) Dry out the damp affected flooring,

The works specified in this Order must be carried out and completed not later than 30 September 2015

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 are executed by Paul Doyle, solicitor, 24 Haddington Place, Edinburgh, chairperson of the Private Rented Housing Committee at Edinburgh on 7 August 2015 before this witness:-

K BOETTCHER

witness

P DOYLE

chairman

Kirsten Boettcher
Secretary
24 Haddington Place
Edinburgh



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

PRHP Ref: PRHP/RP/15/0036

Property at: Flat i, 15 Shepherd's Loan, Dundee, DD2 1AW

Title No. ANG14106

The Parties

Malcolm Robinson, residing at Flat i, 15 Shepherd's Loan, Dundee, DD2 1AW ("the tenant")

and

Gary Fitzpatrick, residing at 350 Rathfriland Road, Dromara, Dromore, County Down, BT25 2HN ("the landlord")

Decision

The committee, having made such enquires 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 in relation to the property concerned and taking account of all of the evidence available to the committee, determined that the landlord has failed to comply with the duty imposed by Section 14(1)(b) of the 2006 Act.

Background

1 By application dated 19 January 2015, the tenant applied to the Private Rented Housing Panel to determine whether or not the landlord had failed to comply with the duties imposed by Section 14(1)(b) of the Housing (Scotland) Act 2006 ("the 2006 Act").

2 The application by the tenant stated that the tenant 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 has failed to ensure:

- (a) that the installations in the house for the supply for water, gas and electricity, and for sanitation, space heating and for heating water are in a reasonable state of repair and in proper working order, in terms of Section 13(1)(c) of the 2006 Act.
- (b) that the fixtures, fittings and appliances provided by the landlord under the tenancy are in a reasonable state of repair and in proper working order, in terms of Section 13(1)(d) of the 2006 Act.

3 By interlocutor dated 10 April 2015, the president of the Private Rented Housing Panel intimated a decision to refer the application under Section 22(1) of

the 2006 Act to a Private Rented Housing Committee. The committee was made up of two members:

Paul Doyle	Chairperson
Robert Buchan	Surveyor Member

4 The Private Rented Housing Committee served notice of referral under and in terms of Schedule 2 Paragraph 1 of the 2006 Act on the landlord and the tenant on 22 May 2015.

5 Following service of the notice of referral, neither party made any further representations to the committee.

6 The Committee inspected the property at 12.30pm on 29 July 2015. The landlord was present. The tenant was not present but he was represented by his friend, Sophie Church.

7 Following inspection of the property, the Committee held a hearing at the Kirkton Community Centre, Dundee. Both Ms Church (for the tenant) and the landlord were present at the hearing.

8 The tenant's position is that a window in one of the bedrooms of the property does not fit; that the waste disposal unit from the kitchen has been removed so that there is open drainage from the half sink in the kitchen; that there is significant damage to the shower in the bathroom which causes water to leak to the property below the property which is the subject matter of this application and that there is a significant leak from the WC cistern in the bathroom. The tenant says that there are faults in the entire plumbing system serving the property.

9 The landlord's position is that he has been unable to inspect the property because the tenant has refused to allow tradesmen into the property and that, although he received notice of alleged defects in the property, the tenant refused to allow him to inspect or to send tradesmen, preferring to allow a committee of the Private Rented Housing Panel to determine this matter.

Summary of Issues

10 The issues to be determined are:

- (a) Are the installations in the house for the supply of water, gas and electricity and for sanitation, space heating and for heating water in a reasonable state of repair and in proper working order; and
- (b) Are the fixtures, fittings and appliances provided by the landlord under the tenancy in a reasonable state of repair and in proper working order.

Findings in Fact

11 (a) In February 2010, the landlord and tenant agreed that the landlord would rent the property to the tenant. A short assured tenancy was entered into. The

landlord's obligations contained within that short assured tenancy are consistent with the obligations imposed on the landlord by the repairing standard set out in Sections 13 and 14 of the Housing (Scotland) Act 2006.

(b) The property is a second floor flat on the top level of a purpose built block of flats built circa 1988. Entry is gained through a common passage and stair, leading to the front door of the property. The front door of the property opens into a central hallway providing access to each room. The property has two bedrooms, a living room/dining room, a kitchen, an internal bathroom and two large storage cupboards.

(c) The kitchen to the property has a one and a half bowl stainless steel sink unit, adjacent to the window. The half sink unit was fitted with an electrically operated food waste disposal unit when the tenant took entry to the property. The electrically operated food waste disposal unit did not work properly and became jammed with food, causing a smell within the property. The tenant contacted the landlord, asking the landlord to fix the waste disposal unit. The landlord did not fix the waste disposal unit and, in or about September 2014, the tenant disconnected the unit, leaving the drainage under the half sink incomplete. At the date of inspection, a drainage pipe led from the half sink straight into the open cupboard area below the kitchen sink. A saucepan has been placed there to collect waste water.

(d) The property has an internal bathroom fitted with a rose coloured three piece sanitary suite. To the side of the bathroom, there is a tiled walk-in shower unit. The shower unit leaks. The tenant has fitted plastic sheeting with duct tape to the lower section of tiles within the shower unit in an attempt to prevent leaking. The area below the shower tray is stained with water. Some water has pooled there. Containers have been placed there to try and catch the leakage of water.

(e) Within the bathroom, there is a toilet cistern which has been framed in by joinery work. The toilet cistern is leaking. The tenant has placed towels below the cistern to try and absorb leakage but the flooring is stained and wet within the framed unit that contains the cistern. Temporary repairs have been carried out to some of the cistern components.

(f) One of the bedrooms in the property is located to the same side of the hallway as the bathroom. It has one double glazed window unit which overlooks the car parking area outside the building. The window opens and closes properly. It does not permit draughts. The seals are intact. However, there are signs of condensation mould on the interior facings around the window. Damp meter readings were taken by the surveyor member of the committee which are well within the normal range of meter readings. The staining on the interior fascia of the window has been caused by condensation. Condensation dampness can be remedied by the tenant by providing adequate ventilation and heating in the property. The property is not affected by rising damp or penetrating damp.

(g) In a cupboard off that same bedroom, there is a Worcester Combination (combi) boiler. That combi boiler provides both hot water and central heating water. The tenant does not complain about the central heating in the property. When the mixer tap in the kitchen is turned on, hot water pours from that tap. The hot water

from that tap pours so vigorously that there can be some splashback from the stainless steel sink below. When the tap is only partially opened, a humming noise emanates from the tap. When the tap is opened further, the humming noise stops.

(h) During the inspection, the surveyor member of the committee took photographs. A schedule of those photographs is annexed hereto.

(i) The waste disposal unit, the shower and the WC form part of the installations in the house for the supply of water, for sanitation, for space heating and for heating water. The waste disposal unit is not connected and the drain attached to the waste disposal unit empties into the cupboard under the sink. The shower unit, which is not just an installation for sanitation, but is also a fixture and fitting provided by the landlord under the tenancy, leaks. The leaked water collects below the shower tray. A leaking shower and shower tray is not a fixture and fitting which is in a reasonable state of repair nor is it a fixture and fitting which is in proper working order. It is an installation which is not in a reasonable state of repair and is not in proper working order.

(j) The cistern serving the WC is an installation for the supply of water. It is also a fixture and fitting and an appliance provided by the landlord under the tenancy. Because it leaks, it is neither in a reasonable state of repair or in proper working order.

(k) Because of the provisions of Section 13(1)(c) and 13(1)(d) in the 2006 Act, the defect in the waste disposal unit, the defect in the shower and the defect in the WC flush mean that the property does not satisfy the repairing standard set out in Section 13 of the 2006 Act. A repairing standard enforcement order is therefore necessary.

Reasons for Decision

12 (a) Committee members inspected this property at 12.30pm on 29 July 2015. It was a clear bright summer morning. Committee members encountered the landlord outside the property. The landlord invited committee members into the common passage and stair and, on the second floor, committee members met Ms Church who introduced herself as the tenant's representative. Ms Church and the landlord accompanied committee members throughout the inspection.

(b) Committee members went straight to the kitchen of the property. Ms Church opened up the cupboards underneath the sink and it was obvious to committee members that the waste disposal unit had been removed and that the drainage from the half sink in the kitchen came to an abrupt end, allowing water to simply empty into the cupboard space below the kitchen. The landlord showed committee members where the electric controls for the waste disposal unit still existed and conceded that the drainage system below the kitchen sink was incomplete because the waste disposal system had been removed.

(c) Committee members then went to the internal bathroom in the property. Committee could see that the bathroom contained a three piece sanitary suite and a separate tiled walk-in shower unit. The panel below the shower tray had been

removed. It was obvious to committee members (and the landlord and the tenant's representative) that duct tape and plastic sheeting had been fitted between the lowest level of tiling and the shower tray. Below the shower tray, there was clear evidence of water ingress (which was still wet) and containers to catch water dripping. The landlord, on seeing the shower, described it as "an issue" and "a problem".

(d) Committee members, whilst still within that bathroom, could see that the cistern servicing the WC was contained within cabinet space. The top of the cabinet space had been removed. Looking into the cabinet space, committee members could see significant water leakage and wet towels placed below the cistern to try to mitigate the problem.

(e) Committee members went into the second bedroom of the property to inspect the window complained of by the tenant. There was evidence of black mould and water staining on the internal facia of the window. It was clear to committee members that the window was a double glazed unit. The surveyor member opened and closed the window a number of times. It was clear that the window opened and closed satisfactorily. Committee members examined the window carefully and could see that the sealant around the window was intact. Committee members could not see any sign of draught around the window. The tenant's complaint is that the window allows for water ingress which is causing damp. The surveyor member of the committee took damp meter readings to find that the damp meter readings were within the normal range.

(f) The nature of the mould staining around the window is consistent with condensation dampness. The damp meter readings indicate that the mould staining around the window is condensation dampness. Committee members draw the conclusion that the staining & mould within the window facia is condensation dampness. Condensation is caused by inadequate insulation, ventilation and heating. It is likely that there is higher than usual moisture within this property because of the leakages in the bathroom. Repair of the defective bathroom fittings and improved ventilation within the property will remedy the condensation within the property.

(g) Ms Church ran the mixer tap in the kitchen sink. Ms Church's initial point was that the water temperature varied. Ms Church held her hand underneath the flowing water saying that she expected the water temperature to vary. The chairman of the committee put his own hand under the water and held it there for minutes and found that throughout that period, consistently warm water poured.

(h) Whilst committee members were in the second bedroom (and the kitchen tap was still running) the plumbing started to "sing". The noise coming from the plumbing is the noise that the tenant complains about. Committee members, Ms Church and the landlord all gathered in the kitchen. The landlord manipulated the tap, increasing the flow of water and the noise from the plumbing stopped.

(i) Committee members returned to the second bedroom to inspect the central heating boiler to see whether or not there was a pressure gauge on the boiler.

Committee members could see that the boiler is a combi boiler but it does not have a pressure gauge.

(j) A hearing took place at Kirkton Community Centre, Dundee at 1.30pm on 29 July 2015. The landlord was present and the tenant was represented by Ms Church. Both the landlord and the tenant's representative answered questions from committee members. In the course of those questions, the landlord conceded that the obvious defect in the shower tray was "*a problem*". The landlord insisted that he did not know about the absence of the waste disposal unit in the kitchen, nor the obvious leak from the shower or the obvious leak from the WC cistern.

(k) The landlord's claim not to know about the obvious defects in the property was challenged by Ms Church, we did not find the landlord to be a credible witness. What is abundantly clear to Committee members, and which is effectively beyond dispute, is that the drainage below the half sink in the kitchen is incomplete because a waste disposal system which was there when the tenant moved into the property is no longer there. The weight of evidence indicates that the waste disposal unit was removed (perhaps as an expression of the tenant's frustration) because it did not work. The waste disposal unit is both an installation for sanitation and a fixture, fitting and appliance provided by the landlord. It is not disputed that it was there when the tenant took entry. It is not there now, so that the system for waste disposal is incomplete. It is therefore not in a reasonable state nor is it in proper working order. The absence of the waste disposal unit is a contravention of both Section 13(1)(c) and 13(1)(d) of the 2006 Act.

(l) It is now not disputed that the shower is defective and leaking. The shower is an installation for sanitation. It is also a fixture and fitting. It is neither in a reasonable state of repair nor is it in proper working order. The leakage in the shower is a contravention of both Section 13(1)(c) and 13(1)(d) of the 2006 Act.

(m) The WC cistern is an installation for both the supply of water and for sanitation. It is not in a reasonable state of repair or in proper working order. It does not comply with Section 13(1)(c) of the 2006 Act.

(n) At the inspection, attempts were made to ensure that the pressure level in the Worcester combi boiler was adequate. The landlord's comments at inspection indicates that he has a degree of knowledge of the working of combi boilers. At the hearing, the landlord emphasised to Committee members that he is a responsible landlord who maintains contracts with British Gas for the regular servicing of the boiler but a gas safety certificate was not available for committee members to inspect.

(o) Committee members therefore make a repairing standard enforcement order, requiring the landlord to:

- (1) Repair or replace the WC cistern in the bathroom;
- (2) Repair or replace the waste disposal unit and connect the drains serving the sinks in the kitchen;

- (3) Repair or replace the shower and shower tray in the bathroom of the property; and
- (4) Produce to the Private Rented Housing Panel, Europa Building, 450 Argyle Street, Glasgow, G2 8LH, an up to date gas safety certificate and satisfactory evidence that the boiler and central heating system are in a reasonable state of repair and in proper working order,
- (5) Dry out the damp affected flooring,

all at the landlord's expense and all not later than 30 September 2015.

Decision

12 The Committee accordingly determined that the Landlord has failed to comply with the duty imposed by Section 14 (1)(b) of the Act.

13 The Committee proceeded to make a Repairing Standard Enforcement Order as required by section 24(1).

14 The decision of the Committee was unanimous.

Right of Appeal

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

15 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.

P DOYLE

Signed..

... Date... 7/8/2015

Chairperson

Private rented Housing Committee

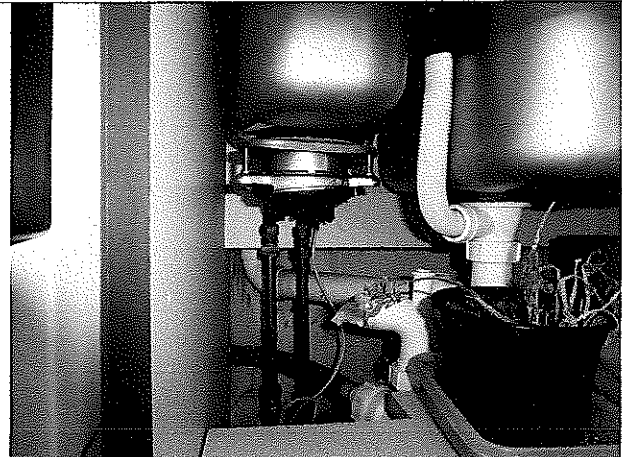
Schedule of photographs taken at 15i Shepherds Loan, Dundee
on the 29th July 2015.



Front. Top floor flat



Kitchen sink



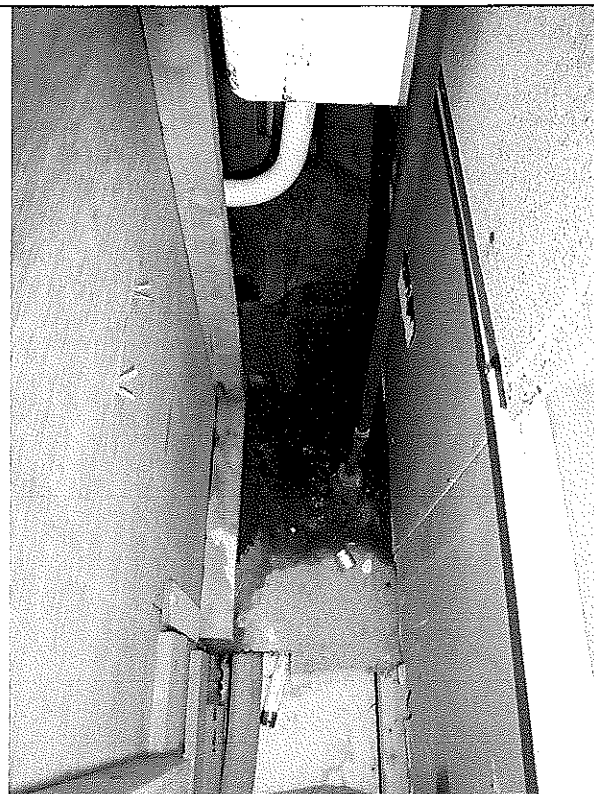
Waste disposal removed leaving open drain pipes

Private rented Housing Committee

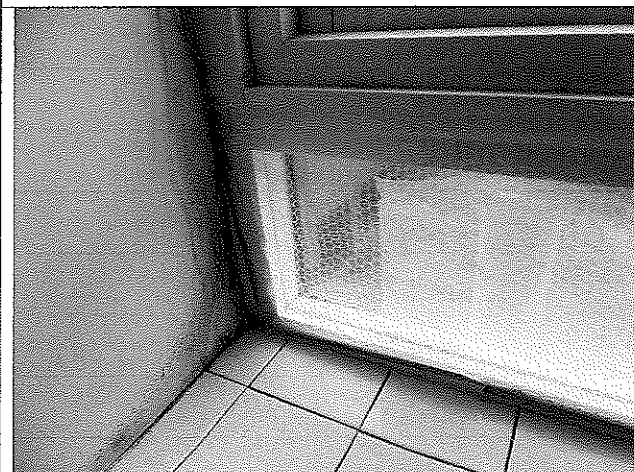
Schedule of photographs taken at 15i Shepherds Loan, Dundee
on the 29th July 2015.



Bedroom window 1



Leak behind toilet



Bedroom window 2



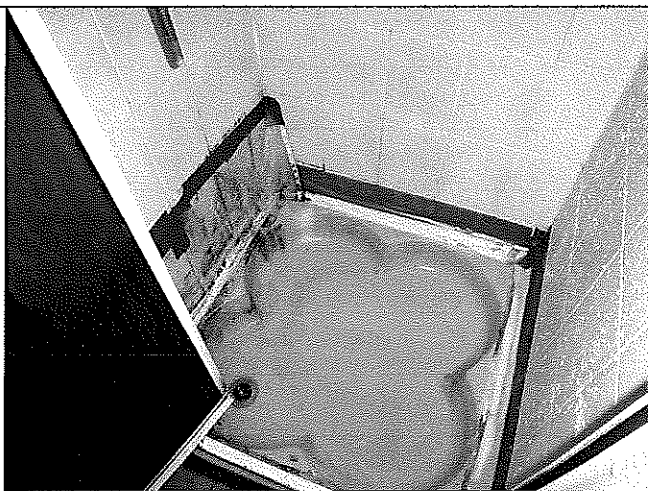
Wet floor behind toilet

Private rented Housing Committee

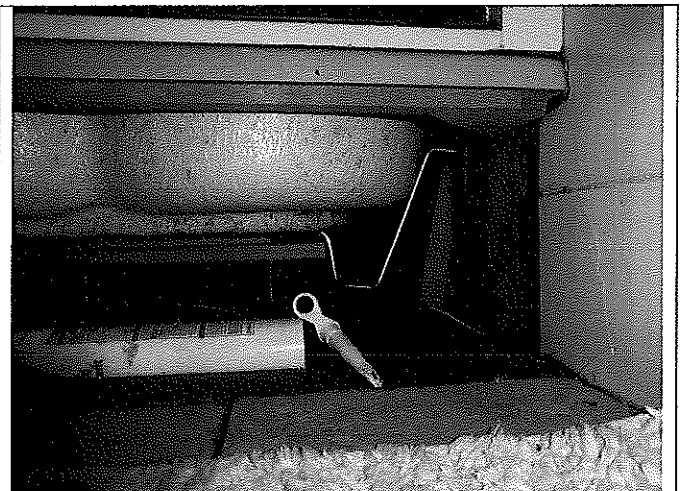
Schedule of photographs taken at 15i Shepherds Loan, Dundee
on the 29^h July 2015.



Temporary repair to cistern and blocked overflow pipe on the left



Shower tray



Wet floor below shower tray