



Repairing Standard Enforcement Order

Ordered by the Private Rented Housing Committee

PRHP/RP/15/0083

TITLE NUMBER: ROX4589

Re: The residential dwelling house at

**1 Campknowe,
Gattonside,
Melrose
TD6 9NP**

("the Property")

The Parties:-

**Ms Lynn Johnston
formerly resident at the Property**

("the Tenant")

and

**Mr Christopher Cusiter
111 Kings Gate
Aberdeen
AB15 4ES**

("the Landlord")

The Committee comprised:

**Mr Ron Handley – Chairperson
Mr Charles Reid – Surveyor**

NOTICE TO THE LANDLORD

In terms of their decision dated 3 August 2015, the Private Rented Housing Committee ("the Committee") determined that the Landlord had failed to comply with the duty imposed by Section 14(1)(b) of the Housing (Scotland) Act 2006.

The Committee now requires the Landlord to carry out such works as are necessary for the purposes 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.

In particular the Committee requires the Landlord to repair the window in the main bedroom to ensure that it is wind and water tight.

The Private Rented Housing Committee orders that the works specified in this Order must be carried out and completed within the period of 4 weeks 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 this and the preceding page is subscribed by Ronald G Handley, Solicitor, Chairperson of the Committee at Dunbar on 3 August 2015 before this witness:-

(J HANDLEY
Witness _____ R HANDLEY
Chairperson

JANE HANLEY _____ Name in full

23 LESLIE WAY, Dunbar _____ Address of witness

BART LOTHIAN _____



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

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The Committee's Decision

The Committee, having made such enquiries as it saw fit for the purposes of determining whether the Landlord had 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 the evidence before it, unanimously determined that the Landlord had not complied with the duty imposed by Section 14(1)(b).

Background

1. On 20 February 2015 the Tenant applied to the Private Rented Housing Panel ("the PRHP") for a determination as to whether or not the Landlord had failed to comply with the duties imposed by Section 14(1)(b) of the Act.
2. On 15 April 2015 the President of the PRHP referred the application to the Committee.
3. On 19 June 2015 the Tenant advised that she had vacated the Property. Accordingly, under paragraph 7(1) of Schedule 2 of the Act the Tenant was treated as having withdrawn her application under section 22(1) of the Act. The Committee then considered the application and whether it should be determined or be abandoned all in terms of paragraph 7(3) of Schedule 2 of the Act.
4. Given that the Tenant alleged that there were significant dampness issues within the Property, the Committee concluded that the application should be determined on health grounds due to the nature of the alleged defects and the potential effect for any future tenants or occupiers if the allegations were substantiated. Accordingly the Committee decided to determine the application in accordance with a Minute of Continuation dated 24 July 2015.

The Application

5. In her application the Tenant alleged that the Landlord had failed to comply with the duty to ensure that the Property met the Repairing Standard (as defined in the Act). It was submitted that:
 - the Landlord had failed to ensure that the Property was wind and water tight and in all other respects reasonably fit for human habitation;
 - some of the furnishings provided by the Landlord under the tenancy were not capable of being used safely for the purpose for which they were designed.
6. In particular it was submitted that:
 - there was water ingress at the front door and the wooden frame was split;
 - there was penetrating damp on both recess walls in bedroom one;
 - the walls in bedroom two were damp;
 - the mattress in bedroom two was unusable due to dampness;
 - the sofa was unusable due to dampness;

- the windows could not be opened properly;
- the window in the living room did not open and was sealed with sellotape.

The Evidence

7. The Committee had before it a bundle of documents which included Land Register documents, a copy of the Application Form, copy photographs and copies of various e-mails and letters. The Committee took account of these documents.

The Inspection

8. The Committee inspected the Property at 10.00 hrs on 29 July 2015. The Landlord was not present but was represented by Ms Karen Crawford from BLMS Limited.

The Hearing

9. A Hearing was arranged to take place after the inspection at 11.00 hrs in the Ormiston Institute, Market Square, Melrose. In the course of the inspection Ms Crawford intimated that the Landlord would not be attending the Hearing and neither would she. Consequently the Hearing did not proceed.

Summary of the issues

10. The issue to be determined by the Committee was whether the Landlord had complied with the requirements of the Act to ensure that the Property met the Repairing Standard.

Findings

11. The Committee found the following facts to be established:
 - The Property is a two bedroomed flat located on the ground floor of a two storey block of flats at 1 Campknowe, Gattonside, Melrose, TD6 9NP.
 - The Tenant and the Landlord had previously entered into a Tenancy Agreement that related to the Property.
 - The Tenant had vacated the Property prior to the inspection taking place.
 - The main door to the Property is in a reasonable state of repair and is in proper working order.

- The window in the main bedroom opens and closes but is loose fitting. There is water ingress in the window recess. This window requires to be repaired.
- All the other windows in the Property are in a reasonable state of repair and in proper working order.
- There is no dampness within the Property.
- At the time of the inspection the Property was unfurnished.

Reasons for the Decision

12. The Committee noted that there was water/dampness on the window frame and window recess in the main bedroom. It seemed likely that this was because the window frame was loose fitting. The window requires to be made wind and water tight.
13. There was no evidence of water ingress in any of the other windows. The other windows within the Property are in a reasonable state of the repair and in proper working order.
14. On inspection the Committee found that the front door in the Property is in a reasonable state of the repair and in proper working order. There was no evidence of dampness within the door or the door surrounds. The Committee had no reason to doubt that it was wind and watertight.
15. As indicated, it was claimed by the Tenant that there was extensive dampness issues within the Property. The Tenant provided a number of photographs in support of this claim. However, other than the previously referred to dampness, the Committee found no evidence of dampness within the Property. This was confirmed by tests using a Promiter. The Committee considered it likely that any dampness within the Property had been caused by condensation due to a lack of ventilation.
16. The Committee understands that the Property had been let to the Tenant as a furnished flat. The Tenant suggested that due to dampness she had been unable to use a mattress and a sofa (which had been supplied by the Landlord in accordance with the Tenancy Agreement). However at the time of the inspection there was no furniture in the Property and the Committee were unable to make any findings in regard to this issue.
17. It appeared to the Committee that the Property was a well maintained flat which was in good decorative order. As indicated, other than the main bedroom window recess, the Committee found no evidence of any dampness within the Property. Although the Repairing Standard has not been met it was clear to the Committee that the defect was of a minor nature which could be easily remedied.

Decision

- 18. The Committee determined that the Landlord had failed to comply with the duty imposed by section 14(1) (b) of the Act.
- 19. The decision of the Committee was unanimous.

Right of Appeal

- 20. A Landlord(s) or Tenant(s) aggrieved by the decision of a PRHP Committee may appeal to the Sheriff by summary application within 21 days of being notified of that decision.

Effect of section 63 of the Act

- 21. 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. 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.

R HANDLEY

Signed Date 3 August 2015
Chairperson