



Repairing Standard Enforcement Order

Ordered by the Private Rented Housing Committee

prhp Ref: PRHP/RP/15/0123

Re: Property at 2 Pitfour Crescent, Fetterangus, Peterhead, AB24 4EL ("the Property")

Title No: ABN28902

The Parties:-

JAMES THOMSON GARDINER, 134 Parkgate, Erskine, PA8 7HQ ("the Landlord")

FRANCES MALLEY, 2 Pitfour Crescent, Fetterangus, Peterhead, AB24 4EL ("the Tenant")

NOTICE TO JAMES THOMSON GARDINER ("the Landlord")

Whereas in terms of their decision dated 23 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 the property is:-

- (a) 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;
- (b) Any fixtures, fittings and appliances provided by the Landlords under the tenancy 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 to carry out such works of repair and/or replacement to the shower enclosure and tiling as are necessary to ensure that no further water penetration occurs to the remainder of the Property and that the shower and enclosure are in proper working order.

The Private Rented Housing Committee order that the works specified in this Order must be carried out and completed within the period of 28 days 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.

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, Whitehall House, 33 Yeaman Shore, Dundee, DD1 4BJ, Chairperson of the Private Rented Housing Committee at Dundee on 23 September 2015 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 2 Pitfour Crescent, Fetterangus, Peterhead, AB24 4EL (“the Property”)

The Parties:-

FRANCES MALLEY, 2 Pitfour Crescent, Fetterangus, Peterhead, AB24 4EL (“the Tenant”)

JAMES THOMSON GARDINER, 134 Parkgate, Erskine, PA8 7HQ (“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 Tenant 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 2 April 2015 the Tenant 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 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 had failed to ensure that:-
 - (a) 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;
 - (b) Any fixtures, fittings and appliances provided by the Landlords under the tenancy are in a reasonable state of repair and in proper working order;
 - (c) 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 23 June 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 Tenant.
5. Following service of the Notice of Referral the Tenant made no material written representations to the Committee other than her original application. The Landlord's Agent submitted an email dated 08/07/2015 stating that all matters within the application had been attended to and included copy invoices in respect of electrical work, installation of vents to walls, redecoration of the ground floor apartments, replacement of the oven and repairs to the shower.
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 18 August 2015. Both the Tenant and the Landlord were present.
7. Following the inspection of the Property the Private Rented Housing Committee held a hearing at Fetterangus Village Hall, Chalmers Institute, Ferguson Street, Fetterangus, Aberdeenshire, AB42 4HD. Both the Landlord and the Tenant were present.
8. The Tenant submitted that there had been mould within the Property, in particular in the kitchen. This was caused, she submitted, by inadequate heating and ventilation within the Property. She was concerned about using the coal fire in the kitchen on account of the chimney needing cleaned. She also had alleged in her application that the cooker and a socket in the kitchen required to be fixed and that the shower was leaking into the living room of the Property.
9. The Landlord submitted that he had carried out works to address the mould in the kitchen and living room. He had fixed the cooker and the socket. He accepted that there may be a problem with the shower but was happy to do whatever works were deemed necessary by the Committee to address the issue.

Summary of the issues

10. The issues to be determined are:-
 - (1) Whether there was mould and damp in the kitchen/living room and whether they were adequately heated and ventilated.
 - (2) Whether the chimney in the property met the repairing standard.
 - (3) Whether the cooker in the Property met the repairing standard.
 - (4) Whether the socket met the repairing standard.
 - (5) Whether the shower was in proper working order.

Findings of fact

11. The Committee found the following facts to be established:-
 - There was no mould within the Property and that the kitchen and living room had provision to be adequately heated and ventilated.
 - The fireplace within the kitchen had been boarded over and sealed by the tenant, who was now using an electric heater in place of the open fire.
 - The cooker in the kitchen had been fixed and met the repairing standard.
 - The socket in the kitchen had been fixed and met the repairing standard.

- The shower within the Property was leaking and did not meet the repairing standard.

Reasons for the decision

12. The Committee based its decision primarily on the evidence obtained during the course of its inspection. The Property was a semi-detached two storey house with walls of blockwork and brick and a pitched and tiled roof. The Property was constructed around 1970 and comprised a lounge and kitchen/diner on the ground floor with 3 bedrooms and bathroom on the upper floor. Space heating is via an electric storage heater in the lounge and electric heaters elsewhere.

The Committee first inspected the kitchen at the Property. The Tenant had complained of mould within the Property. This was thought to be due to a lack of proper heating and ventilation. During the course of the inspection it became apparent that a proper extractor hood and vent to outside air had been fitted above the hob top in the Property. This would assist in reducing condensation building up. There were also now two heaters within the Property, one being a panel heater on the wall and one being a free standing electric heater, in front of the fireplace which was now sealed up.

The internal wall finishes were tested for dampness in appropriate locations, with a damp meter. Whilst slightly higher than average readings were observed, the readings were consistent across most surfaces of the external walls with no particularly high readings being noted. The absence of damp staining or localised areas of high readings coupled with widespread moderate dampness was consistent with condensation. The Committee noted that now that the Property had better provision for heating and ventilation this should reduce condensation and a likely build up of mould. There was no mould visible on the day, the Property having been redecorated. The Landlord's Agent's written representations included a copy invoice detailing the redecoration works, which included "mould killer" applications. Overall the Committee was satisfied that the Property was not suffering from mould and that it met the repairing standard. The Committee did not question the fact that at the point of application the Property may have been suffering from some mould but was satisfied that at the date of the inspection there was no ongoing issue. The Tenant agreed that the air outlet duct of the tumble dryer should be routed through the kitchen window to outside air during use, to prevent condensation issues arising.

The Tenant confirmed that the cooker had been repaired/replaced and that the kitchen socket had also been repaired. Accordingly these were no longer live issues.

The Tenant highlighted an area above the main entrance door in the living room. This was directly beneath the first floor shower enclosure. Whilst there was no obvious staining, the wallpaper was found to be slightly loose and soft to touch. When tested for damp, high readings were observed. The shower enclosure at first floor level was inspected. The walls were finished with ceramic tiles. The grouting appeared perished in places with other areas having been patched and repaired with grout and clear silicone. The seal between the tile walls and shower tray was formed in white silicone and the Tenant stated that it had been renewed in recent months (confirmed by the Landlord's Agent's copy invoice dated 03/07/2015). The tiles were found to be uneven and some sounded hollow when tapped. The Committee considered that despite the recent repairs, there was water leaking from the shower enclosure/tiles and penetrating down the wall and into the lounge.

The Landlord noted during the inspection the high moisture readings and accepted that further works were required.

The Committee was satisfied that the shower enclosure was not in proper working order and that there had been a breach of the repairing standard. The Committee considered how long a period would be required for the Landlord to carry out works to the shower

enclosure to address this issue. The Committee was satisfied that a period of 28 days would be adequate.

It was for the Landlord to determine whether he simply repaired or replaced the tiling/enclosure.

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.

Signed ..
Chairperson

E Miller

..... Date..... 23/9/15



Schedule of Photographs
2 Pitfour Crescent, Fetterangus, Peterhead AB42 4EL
Case Reference Number PRHP/RP/15/0123
Date: 18/08/2015



Figure 1 Front Elevation



Figure 2 Kitchen overview



Figure 3 Moderate dampness Kitchen wall (front)

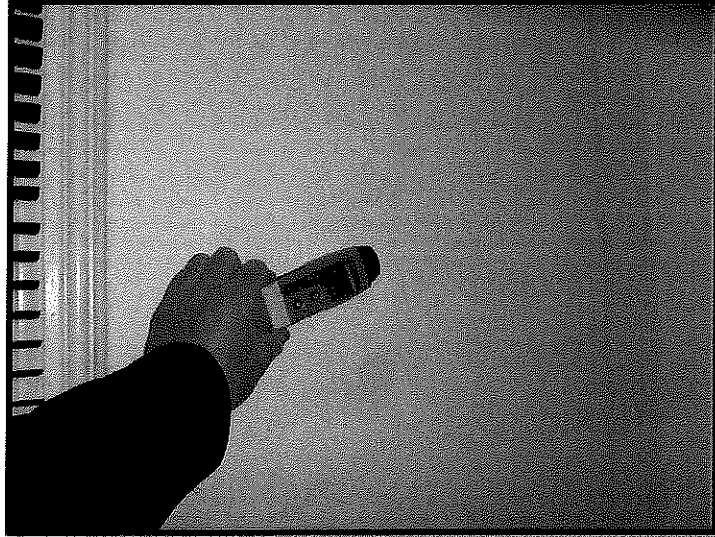


Figure 4 Moderate dampness Kitchen wall (rear)



Figure 5 High dampness Lounge wall beneath shower location



Figure 6 Shower overview



Figure 7 Shower enclosure



Figure 8 High dampness shower enclosure

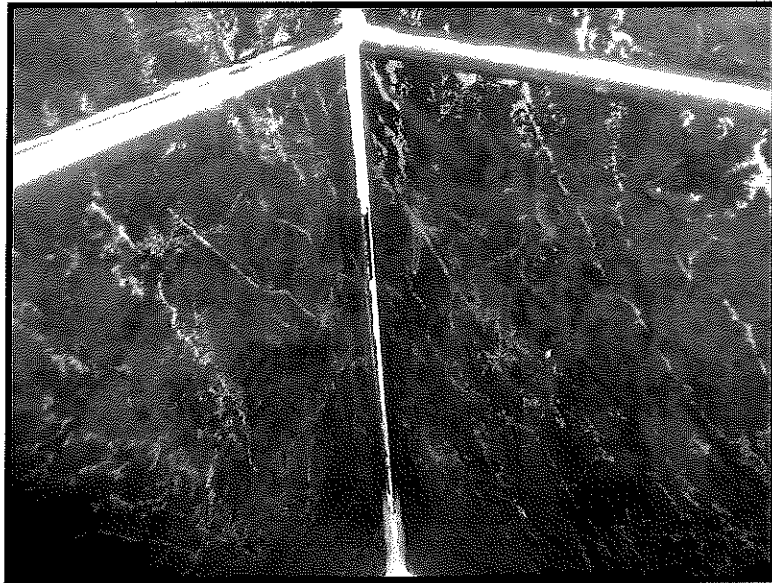


Figure 9 Defective grout, shower enclosure