



Repairing Standard Enforcement Order

Ordered by the Private Rented Housing Committee

PRHP/RP/15/0176

Search No: 2015- 02638489

Re:

The east most first floor flat being the subjects known as 8B Victoria Terrace, Haddington, East Lothian, EH41 3DN more particularly described in a disposition by Euan Malcolm McLeod Smith, formerly of 144 Rullion Road, Penicuik, Midlothian to Robert Ormiston Bathgate dated 25 September 1996.

("The Property")

The Parties:-

**Mr Smolarczyk and Ms Rudnicka
formerly resident in the Property
("the Tenants")**

and

**Mr Robert Bathgate
C/o Chalmers & Co
48 High Street
Haddington
East Lothian
EH41 3EF
("the Landlord")**

The PRHP Committee comprised:

**Mr Ron Handley – Chairperson
Mr Mike Links – Surveyor**

NOTICE TO THE LANDLORD

In terms of their decision dated 14 September 2015, the Private Rented Housing 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 Act") and in particular that the Landlord had failed to ensure that the installations in the Property for the supply of water, gas and electricity and for sanitation, space heating and heating water were in a reasonable state of the repair and in proper working order as set out in section 13(1)(c) of the Act;

The Private Rented Housing 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 Private Rented Housing Committee requires the Landlord to:-

- (a) Carry out such works as necessary to ensure that the radiator in the living room and the radiator in the bedroom are properly secured to the wall.
- (b) Carry out such works as are necessary to ensure that there are no exposed nails in the floorboards in the bedroom.
- (c) Make good any damage resulting from the remedial works carried out in accordance with this RSEO.

The Private Rented Housing Committee order that the works specified in this RSEO be carried out and completed within the period of 4 weeks from the date of service of this RSEO.

A Landlord(s) or a Tenant(s) 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 RSEO 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 RSEO 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 are subscribed by Ronald G Handley, Solicitor, Chairperson of the Private Rented Housing Committee at Dunbar on 14 September 2015 before this witness:

J HANDLEY

R HANDLEY

Witness

JANE HANDLEY

Name of Witness

Chairperson

23 LESLIE WAY

Address of Witness

DUNBAR, EAST LOUN

EH42 16P



Decision by the Private Rented Housing Committee

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

PRHP/RP/15/0176

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The PRHP Committee comprised:

Mr Ron Handley – Chairperson
Mr Mike Links – Surveyor

The Background

1. On 5 June 2015 the Tenants 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 Housing (Scotland) Act 2006 ("the Act"). The President of the PRHP

intimated that the application should be referred to a Private Rented Housing Committee ("the Committee") in accordance with Section 22(1) of the Act.

2. The Committee were subsequently advised that the Tenants had vacated the Property on 30 June 2015. Accordingly, under paragraph 7(1) of Schedule 2 of the Housing (Scotland) Act 2006 ("the Act") the Tenants was treated as having withdrawn their 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.
3. Within their application to the PRHP the Tenants alleged that there were issues within the Property which, if substantiated were likely to raise potential health issues for occupants. 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.

The Application

4. In their application the Tenants submitted 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 watertight and in all respects reasonably fit for human habitation;
 - the installations in the Property for the supply of water, gas and electricity and for sanitation, space heating and water heating were in a reasonable state of repair and in proper working order;
 - fixtures, fittings and appliances provided by the Landlord under the tenancy were in a reasonable state of repair and in proper working order.
5. In particular it was submitted that the Property was not insulated, all windows were single glazed and were not draught proofed or secure. It was suggested that the shower was leaking water into the flat below the Property and, although the shower had been removed, it had not been replaced. The floorboards were not properly secured and nails were sticking out causing health and safety issues. It was submitted that the washing machine had not been repaired properly and it was not in proper working order. Finally one of the heaters in the living room had fallen off the wall and another was unstable.

The Inspection

6. The Committee inspected the Property on 10 September 2015 at 10:00 hours. The Landlord was not present but was represented by Ms T Moores and Ms K Kurys.

The Hearing

7. A Hearing was arranged for 10:45 hours in the Maitlandfield House Hotel, Haddington. The Landlord was represented by Ms T Moores and Ms K Kurys.

The Findings

8. The Property is a first floor, one bedroomed flat located in a block of flats at 8 Victoria Terrace, Haddington, EH41 3DN.
9. On or around 14 November 2014 the Landlord and the Tenants entered a Tenancy Agreement which related to the Property.
10. On Thursday June 2015 the Tenants vacated the Property.
11. The Property does not have loft insulation.
12. The windows within the Property are single glazed with wooden frames. All windows are wind and watertight, are in a reasonable state of repair and are in proper working order.
13. The shower in the Property is in proper working order and the surrounding area is water tight.
14. There are exposed nails in the floorboards of the bedroom.
15. The washing machine is in reasonable state of repair and in proper working order.
16. One of the central heating radiators in the living room has been replaced but the other is not been properly secured to the wall. The radiator in the bedroom is not properly secured to the wall.

Reasons

17. In the course of the Inspection Ms T Moores and Ms K Kurys accepted that there was no loft insulation within the Property. Whilst accepting that the lack of insulation would inevitably lead to the loss of heat, the Committee did not accept that the lack of loft insulation resulted in a failure to comply with the Repairing Standard.
18. The Committee noted that all the windows within the Property were wooden framed and single glazed. It appeared that the exteriors of the window frames had been recently painted. On examination it was clear that the window frames were in a reasonable state of repair and in proper working order. Although single glazed, the Committee found that the windows were wind and water tight and that they met the Repairing Standard.

19. In the course of the Hearing Ms Moores accepted that there had previously been water ingress to the flat below the Property because the area surrounding the shower unit had not been properly sealed. However she also advised that works had been undertaken to remedy this problem and the Committee had no reason to doubt that this was so. The Committee concluded that the shower and the surrounding area are in a reasonable state of repair and are in proper working order.
20. In the course of the inspection the Committee found two exposed nails in the wooded floorboards in the bedroom. They present a health risk and require to be removed/countersunk to ensure that they are flush with the floorboards.
21. As already indicated the Tenants stated in their application that the washing machine was not in proper working area. At the Hearing Ms Moore advised the Committee that the washing machine had been repaired and that it was now in proper working order. She presented an invoice to the Committee confirming this. The Committee was satisfied that the washing machine had been repaired and was now in proper working order.
22. In the course of the inspection the Committee noted that although a new radiator had been installed in the living room, the other radiator in that room was not properly secured to the wall. Similarly the radiator in the bedroom was not secured to the wall. Both these radiators required to be properly secured.
23. In the course of the inspection the Committee noted that no provision had been made in the Property for the provision of smoke/fire detection devices. The Committee also noted that one of electrical sockets in the wall in the bedroom was cracked. These issues were not referred to in the application and consequently are not included in the RSEO. Nonetheless the Committee reminded the Landlord of his obligations in this regard.

Decision

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

The RSEO

26. The Committee proceeded to make a Repairing Standard Enforcement Order ("the RSEO") as required by section 24(1) of the Act.
27. The RSEO required the Landlord to:-

- (a) Carry out such works as necessary to ensure that the radiator in the living room and the radiator in the bedroom are properly secured to the wall.
- (b) Carry out such works as are necessary to ensure that there are no exposed nails in the floorboards in the bedroom.

Right of Appeal

28. 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

29. 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.

Signed R HANDLEY Date 14 September 2015
Chairperson