



Repairing Standard Enforcement Order

Ordered by the Private Rented Housing Committee

prhp Ref: PRHP/RP/15/0196

Re: Property at 19 Craigneuk Street, Wishaw ML2 7DX ("the Property")

Title No: LAN52204

The Parties:-

MR KRZYSZTOF SIUTKOWSKI, residing at 19 Craigneuk Street, Wishaw ML2 7DX ("the Tenant")

JOHN ALEXANDER STRANGE and PAUL McHUGH, as partners of and trustees of the firm of S & M PROPERTIES, Strathclyde Business Centre, 120 Carstairs Street, Glasgow G40 4JD ("the Landlords")

NOTICE TO JOHN ALEXANDER STRANGE and PAUL McHUGH, AS PARTNERS OF AND TRUSTEES OF THE FIRM OF S & M PROPERTIES ("the Landlords")

Whereas in terms of their decision of even date, the Private Rented Housing Committee determined that the landlords have 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 landlords have failed to ensure that the property meets the Repairing Standard in respect of:-

Section 13(1)(a): the house is wind and watertight and in all other respects reasonably fit for human habitation.

Section 13(1)(b): the structure and exterior of the house (including drains, gutters and external pipes) are in a reasonable state of repair and in proper working order.

Section 13(1)(c): the installations in the house 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.

Section 13(1)(d): any fixtures, fittings and appliances provided by the Landlord under the tenancy are in a reasonable state of repair and in proper working order.

The Private Rented Housing Committee now requires the Landlords to carry out such work as is 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 Landlords:

1. To instruct a suitably qualified roofing contractor to inspect the whole roof above the property, both the front and rear elevations, and report on the necessary works required to eradicate any water ingress and to make the property wind and watertight. The works recommended for repair or

replacement must thereafter be implemented by the Landlords.

2. The cold storage water tank in the attic of the property requires to be covered. The tank and water system supplied by it requires to be flushed to eradicate any bacteria.
3. To instruct a suitably qualified contractor to inspect and report upon the condition of the rear windows of the property. The Landlords require to implement the terms of such report to include repair and/or replacement as necessary and to include re-pointing and re-painting.
4. A full report on the condition of the boiler requires to be produced by a suitably qualified Gas Engineer for the committee's inspection. Such report is to specifically address the water pressure of the gas central heating system and to ensure that all steps have been taken to ensure that the water pressure is maintained and that it does not require to be frequently topped up. Additionally, the report to be produced should also advise upon the remote room thermostat and, if necessary, steps must be taken to ensure that this is working adequately.
5. A suitably qualified engineer requires to inspect and report upon the condition of the extractor fan in the bathroom and connecting venting duct, and advise upon any steps which must be taken to ensure that it is working efficiently and that it is capable of removing excess moisture. The Landlords must implement any repairs and/or replacement recommended.
6. A current Gas Safety Certificate must be produced for the committee's inspection.
7. An Electrical Installation Condition Report (EICR) must be produced for the committee's inspection.

The Private Rented Housing Committee requires that the works specified in this Order must be carried out and completed within 8 weeks from the date of service of this Notice.

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.

Where such an appeal is made, the effect of the decision and 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 typewritten on this and the preceding page(s) are executed by Richard Mill, Solicitor, chairperson of the Private Rented Housing Committee at Edinburgh on the Third day of November Two Thousand and Fifteen before this witness:-

J McHugh

MJ Murray

witness

chairman

Margaret Johnstone Murray
21 Stafford Street
Edinburgh
EH3 7BJ

Legal Secretary

Ref PRHP/RP/15/0196



Private Rented Housing Committee

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

Re: 19 Craigneuk Street, Wishaw ML2 7DX (“the Property”)

Title Number: LAN52204

The Parties:-

**MR KRZYSZTOF SIUTKOWSKI, residing at 19 Craigneuk Street, Wishaw
ML2 7DX (“the Tenant”)**

**JOHN ALEXANDER STRANGE and PAUL McHUGH, as partners of and
trustees of the firm of S & M PROPERTIES, Strathclyde Business Centre,
120 Carstairs Street, Glasgow G40 4JD (“the Landlords”)**

Committee members:-

Richard Mill (Chairman) and Mike Links (Surveyor Member)

Decision

The committee, having made enquiries for the purposes of determining whether the Landlords have complied with the duty imposed by Section 14(1)(b) of the Housing (Scotland) Act 2006 (“the Act”) in relation to the Property, determined that the Landlords had failed to comply with the duty imposed by Section 14(1)(b) of the Act in respect that the Property does not meet the Repairing Standard.

Background

1. By way of application dated 3 July 2015, and received on 6 July 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 Act in respect of the Property.
2. In the application the Tenant stated that the Landlords had failed to comply with their duty to ensure that the house meets the Repairing Standard in a number of respects. The relevant aspects of the Repairing Standard put at issue are those contained within Sections 13(1)(a), (b), (c) and (d) which are in the following terms:-
 - whether the house is wind and watertight and in all other respects reasonably fit for human habitation.
 - whether the structure and exterior of the house (including drains, gutters and external pipes) are in a reasonable state of repair and in proper working order.
 - whether the installations in the house 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.
 - whether any fixtures, fittings and appliances provided by the Landlord under the tenancy are in a reasonable state of repair and in proper working order.
3. Notices of Referral were issued to parties on 17 September 2015.

Inspection

4. The committee inspected the Property on 29 October 2015 at 9.30 am. The Tenant invited the committee members into the Property and directed them around. The Landlords had been invited but did not attend.

Hearing

5. Following the inspection of the Property the committee convened a Hearing at Janfoley Community Centre, Shieldmuir Street, Wishaw. The Tenant appeared personally and gave evidence to support his Application. Paul McHugh, one of the partners of S & M Properties attended and gave evidence. The other partner of S & M Properties, John Strange, was not present but was represented by Michael Serls.

Summary of the issues

6. The issues to be determined by the committee are whether or not the Property meets the Repairing Standard to the extent put at issue within the application, as at the date of the Hearing.
7. The matters complained of by the Tenant were:-

- leaking roof
- leaking window
- contaminated water storage tank
- unsafe electrical switches
- faulty gas boiler
- leaking wash hand basin
- defective fan in bathroom
- no cold water main shut off valve
- dampness throughout the property
- no electrical compliance nor Gas Safety certificate

Findings in Fact

8. The committee makes the following findings in fact:

8.1 The title to the subjects known as 19 Craigneuk Street, Wishaw ML2 7DX is held by the Landlords. Their interest is registered in the Land Register of Scotland under title number LAN52204 on 10 August 2005.

8.2 The Property which is the subject of this application is a two bed roomed flat. It is a first floor flat which is situated above two shops.

8.3 The parties entered into a Short Assured Tenancy Agreement which commenced on 8 December 2009.

8.4 In relation to the matters complained of in the Application the committee's inspection revealed:-

i. The rear elevation of the roof above the Property had a tarpaulin covering the majority of the area of that portion of the roof. The tarpaulin is held in place with the use of wooden battens.

ii. Within the Property there was clear evidence of former water penetration as a result of roof leaks. These were noticeable within the two rooms to the rear of the Property, namely the living room and rear bedroom. There were signs of former water ingress to both the ceilings and walls. Damp meter readings

were taken which disclosed that the areas in question are currently dry.

- iii. The cold water storage tank which is situated in the attic of the Property which is the water supply to the bathroom is uncovered. Clear evidence of water penetration from the roof into the attic timbers were seen. Damp meter readings disclosed high levels of water retention.
- iv. The gas central heating system is fuelled by a combi boiler situated in a cupboard within the rear bedroom of the Property. At the time of inspection the boiler was working. There is a remote room thermostat situated within the hall of the Property. At the time of the committee's inspection this was not working.
- v. At the time of the committee's inspection there was no Gas Safety Certificate available for review.
- vi. The rear windows of the Property are in a poor state of disrepair. There is clear evidence of water penetration from outside at the bottom of the living room window. Externally the pointing around the windows is defective. There are areas of bare exposed timber. Some of the external rails are loose.
- vii. The bathroom in the Property is internal. It is serviced with an extractor fan. It presents as an aged installation. There appeared, on the day of inspection, being a dry day, evidence of water draining from the vent onto the bathroom floor.
- viii. Reference is made to the attached schedule of photographs which were taken during the inspection.

Reasons for the Decision

9. The committee determined the Application having regard to the bundle of papers (which had been made available in advance to parties), their inspection, together with the evidence of those in attendance at the Hearing.
10. The committee was only able to formally consider the Tenant's complaints which formed part of the intimated application. The committee was also under an obligation to consider the Tenant's complaints as at the time of the Hearing on 29 October 2015.
11. The committee was satisfied having regard to all of the available evidence that there was sufficient information and material upon which to reach a fair determination of the reference.

12. It was accepted on behalf of the Landlords that the roof requires immediate and urgent attention. There was no dispute that the Landlords had applied the tarpaulin to the rear elevation of the roof of the Property some 18 months ago in the knowledge that there was ongoing water ingress affecting the fabric of the building and the Tenant's enjoyment of the tenancy. It was stated on behalf of the Landlords that they had made enquiries with the owners of the two commercial properties which, in their understanding, attract along with themselves a one-third liability for common repairs, including repairs to the roof. It was not disclosed that any formal action had been taken to resolve the liability issue despite the long and enduring nature of the difficulties. No formal initiation of any legal steps have apparently been considered or commenced. It was confirmed on behalf of the Landlords that there is, as a matter-of-fact, no difficulty in accessing the roof to carry out any repairs. The Tenant cannot be made to suffer due to the difficulty which the Landlords have in agreeing with the other relevant proprietors to fund their relevant shares of the common roof repairs. Their duties are to ensure that the Property is wind and watertight. They must instruct necessary work to ensure that the Property meets the repairing standard. Thereafter they can seek to recover the other proprietors' share of the costs.
13. It was accepted on behalf of the Landlords that the cold water storage tank in the attic is uncovered. The Tenant made reference to the attic having been accessed by birds previously. There are obvious health and safety concerns arising which again was accepted by the Landlords. They advised that they had only recently become aware of the problem and accepted that the water tank would require to be covered and that the system would require to be appropriately flushed to eradicate any bacteria.
14. It was accepted on behalf of the Landlords that they had been advised on numerous occasions of apparent difficulties with the boiler. The Tenant's specific difficulties are that the system is leaking water to the extent whereby he is requiring to re-fill the system up to three times weekly. Reference was made to previous investigations instructed by the Landlords by a suitably qualified engineer which disclosed no difficulties.
15. The remote room thermostat situated in the hall of the Property was not apparently working at the time of the committee's inspection. The Tenant states that it does not work. It was stated on behalf of the Landlords that to their knowledge the unit works but the Tenant does not know how to use it despite having been instructed.
16. Following discussion at the Hearing about the state of the windows seen at the inspection, the Landlords accepted that their condition would require to be investigated and work undertaken as necessary.

17. Following discussion at the Hearing regarding the presentation of the vent in the bathroom, it was accepted on behalf of the Landlords that this was a matter which justified further investigation and remedial work being undertaken if necessary.
18. It was stated on behalf of the Landlords at the Hearing that a current Gas Safety Certificate did exist. It was not capable of being produced at the Hearing.
19. Discussions took place at the Hearing regarding potential concerns regarding the electrical installations and wiring within the Property as a result of water ingress. There is electrical wiring in the attic. There is clear evidence of water having penetrated the ceiling and walls where there is likely to be electrical wiring and the Tenant complains that water has come through the pendant light in the living room of the Property and short circuited the electrical supply. It was accepted on behalf of the Landlords that it would be appropriate to investigate the electrics within the Property.

Decision

20. The Property does not meet the Repairing Standard. The Landlords have not complied with their duty imposed by Section 14(1)(b) of the Housing (Scotland) Act 2006. A Repairing Standard Enforcement Order is necessary. A Repairing Standard Enforcement Order is issued contemporaneously herewith.

Right of Appeal

21. 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 of the Act

22. Where such an appeal is made, the effect of the decision and of any order made, 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 date on which the appeal is abandoned or so determined.

J McHugh

Signed
Chairman

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Date 3 November 2015

19 CRAIGNEUK STREET, WISHAW ML2 7XD

PRHP/RP/15/0196 29th OCTOBER 2015

SCHEDULE OF PHOTOGRAPHS



Front elevation



Rear elevation



Central heating boiler



Attic-rear roof slope



Damp reading-sarking



Attic – cold water tank



LR cpd—stain on ceiling



LR-damp stain on window sill



LR window-defective pointing



Bathrm vent