



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

PRHP Ref: PRHP/RP/15/0233

Property at: 3/2 59 Provost Road, Dundee DD3 8AG

Title No: ANG14862

The Parties

James McVicar, residing at 3/2 59 Provost Road, Dundee DD3 8AG
("the tenant")

and

Dale Hughes, residing at 59 Braid Road, Edinburgh
("the landlord")

Decision

The Committee, having made such enquiries as it sought 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 19/08/2015, 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 had failed to ensure that:
 - (a) The structure and exterior of the property (including drains, gutters and external pipes) are in a reasonable state of repair and in proper working order, in terms of Section 13(1)(b) 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;

(c) The house has satisfactory provision for detecting fires and for giving warning in the event of fire or suspected fire, in terms of Section 13(1)(f) of the 2006 Act.

3 The President of the Private Rented Housing Panel intimated a decision to refer the application under Section 23(1) of the 2006 Act to a Private Rented Housing Committee. The Committee members were:

| | |
|-----------------|-----------------|
| Paul Doyle | Chairperson |
| Richard Burnett | Surveyor Member |

4 The Private Rented Housing Panel served notice of referral under and in terms of Schedule 2 Paragraph 1 of the 2006 Act on the landlord and the tenant on 06 October 2015. Following service of referral, neither party made any further written representations to the Private Rented Housing Panel.

5 The Committee inspected the property at 1.30 pm on 16 November 2015. The Tenant was present, with his representative, Mr K Ditcham from the Terrance Higgins Trust. The landlord was not present but he was represented by Ms L McLaughlin of 1-2-Let, Glasgow.

6 Following inspection of the property, the Private Rented Housing Committee held a hearing at 2.15pm at Kirkton Community Centre, Dundee. The tenant was present and was represented by Mr Ditcham. The Landlord was neither present nor represented. The tenant answered a number of questions from committee members.

7 The tenant's position is that the house is damp, and that water seeps into the corner of the living-room because of broken rainwater goods outside the property; that there is black mould in the bathroom; that the windows are defective and need to be replaced; that there is damage to a kitchen worktop; that the showerhead in the bathroom is broken, and that the stair lighting is defective.

8 The landlord's position is that the tenant exaggerates his claim. The landlord concedes that the rainwater goods serving the larger building (of which this property forms part) requires a repair, however the landlord argues that the repair required is a common repair and he has not been able to obtain enough estimates for the work to secure agreement to carry out the works from neighbouring proprietors.

Summary of Issues

9 The issues to be determined are whether or not the house complies with the repairing standard set out at Sections 13 and 14 of the 2006 Act.

Findings in Fact

10 (a) The landlord is the heritable proprietor of the property which is the subject matter of this application. He let the property to the tenant on 29 September 2014. The tenancy agreement entered into between the parties places obligations on the landlord which are consisted with the repairing standard set out in the 2006 Act.

(b) The property is a top floor flatted dwelling-house entering from a common passage & stair. The front door opens onto a central hallway, providing access to each of the rooms. The property has two bedrooms, a living-room, an internal bathroom and a kitchen. There is a mains wired smoke detector on the ceiling in the hallway. The property has double glazed windows throughout.

(c) The gutters to the front of the larger building are choked with vegetation. The down pipe to the front of the larger building leaks water. There is significant water staining around the downpipe across the full height of the larger building, and running directly across the exterior wall of the living-room of this property.

(d) In the living-room there is damp staining on the corner of the interior wall. Damp meter readings within the normal range were obtained, but the walls, skirtings and floor in the interior corner (adjacent to the area where the rain water down pipe on the exterior of the same runs) have clearly been affected by water ingress for some time.

(e) The bathroom is entered from the hall. The bathroom has an expel air fan which has recently been replaced by the landlord. The expel air fan runs on a timer connected to the light switch. The expel air fan and the bathroom door are the only means of ventilation in the bathroom. The bathroom has a three piece sanitary suite, with a shower over the bath. The shower head is broken and is held together with duct tape. There are signs of condensation mould on the ceiling of the bathroom. The tenant regularly cleans condensation mould from the ceiling in the bathroom.

(f) The Kitchen overlooks the back green. The work surfaces on the fitted units have a plastic trim and chipboard base. A section of plastic trim is missing at the sink area, leaving exposed chipboard.

(g) The windows in the kitchen and in the bedroom to the rear of the property are double glazed units. The seals in each of those double glazed units have failed. Water has gathered in the gaps between the two glazed panes. None of the Windows throughout the house open or closed properly any more. Each of the windows lets in draughts and water. On Saturday 14 November 2015 a contractor instructed by the landlord inspected the windows and told the tenant that the seals in each of the windows had failed.

(h) Entry to the common stair is gained through the main door at street level. There is an entry-phone system connecting the exterior stair door to this property. The lock on the stair door was removed before the tenant moved into the property.

(i) The common stair leading to this property benefits from electric lighting. The light on the landing immediately outside the front door to the property does not work.

(j) The living room of the property does not have a fitted carpet. It did not have a fitted carpet when the tenant moved in. After signing the tenancy agreement the tenant asked landlord if he was willing to carpet the living room, the landlord said that he was not.

(k) A schedule of photographs taken by the surveyor member of the committee during the inspection is annexed hereto.

Reasons for Decision

11 (a) Committee members inspected this property at 2.15pm on 16 November 2015. It was a clear, grey, slightly damp November afternoon. Committee members were able to walk straight into the close leading to the common passage and stair because although there is the paraphernalia of a door entry system on the stair door, there is no lock on the stair door. After knocking on the door of the property committee members were shown into the property by the appellant's mother. In the living room committee members were greeted by the appellant, the appellant's representative Mr Ditcham, & the landlord's representative, Ms McLaughlin.

(b) Committee members turned their attention to the internal walls of the gable and front exterior of the livingroom. Committee members could see water staining on the walls, the skirting, & the floor adjacent to that corner wall. As the surveyor member was reaching for his damp meter, Ms McLaughlin started to explain that the landlord concedes that there is water ingress caused by defective rainwater goods serving the larger building, but that the repair required was a "common repair". Ms McLaughlin told us that she was struggling to find contractors willing to estimate for the necessary repairs.

(c) Committee members inspected the internal bathroom. It was immediately clear that the shower head (fixed over the bath) was damaged. A temporary repair has been attempted by wrapping the shower head in duct tape. In August 2015 the tenant intimated his complaint to the landlord before applying to prhp. At inspection, 3 months later, the same broken shower head is held together by duct tape.

(d) Committee members inspected the kitchen. The kitchen has fitted units which feature a work surface. The work surface is made of chipboard with a vinyl cover. Part of the trim for the work surface is missing at the point where the work surface surrounds the kitchen sink. At the kitchen sink, bare chipboard is exposed.

(e) There are two rooms to the front of this property (a bedroom and the living room), and two to the rear (a second bedroom and the kitchen). Each of those four rooms has double glazed windows. The seal between the glazed units in the kitchen and bedroom to the rear of the property has clearly failed. Each of those windows has moisture between the panes of glass which form the double glazed unit. None of the widows in any of the four rooms fits properly. None of them open and close properly. They all let in drafts and rain water. They are all past their useful life. On 14 November 2015 the landlord's contractor visited the property and inspected the windows. He told the tenant that the seals on each of the windows had failed.

(f) The common stair benefits from electric lighting. The light on the landing immediately outside this property does not work, although the rest of the stair lighting does.

(g) Committee members left the common stair and crossed the street to look at the exterior of the larger building. From the street, committee members could see a large clump of vegetation emerging from the rhones above the living room of this property. The external face of the front elevation of the property had significant water staining from ground level to the roof. It is obvious that the rain water goods for the larger property (which surround the property which is the subject matter of this application) have been overflowing and leaking for many months. Committee members could see (from street level) a loose roof slate.

(h) Between the date of application and the date of inspection the landlord

- (i) installed a mains wired fire detector
- (ii) repaired the kitchen light, and
- (iii) Replaced the expel air fan in the bathroom

(i) After the inspection, a hearing took place at Kirkton Community centre, Dundee. The landlord was neither present nor represented. The tenant was present with his representative, Mr Ditcham. The tenant answered questions from committee members. He gave evidence in straightforward terms, answering questions without hesitation. What he said is consistent with the documentary evidence placed before the committee and is consistent with committee members own observations at inspection. His evidence went without challenge. Committee members found the tenant to be a credible and reliable witness.

(j) By letter dated 04/11/2015 the tenant's representative tells us that three of the matters originally complained of have been attended to (The light in the kitchen has been fixed; the bathroom fan has been replaced and new smoke detectors have been fitted) Committee members could see that new smoke detectors have been fitted, that the bathroom fan works efficiently and that the kitchen light works.

(k) When he completed the application form, the appellant (at first sight) does not seem to complain that the house fails to meet s.13(1)(a) of the 2006 Act, but when consideration is given to his letter of 19/08/2015 intimating his allegations of defects to the landlord (sent with the application form) it is clear that a significant part of his complaint is that the double glazed window units need to be replaced. On Inspection, it was obvious to committee members that the seals in each of the window units had failed. It was equally obvious that the windows are now ill fitting and let in draughts and water. The windows are old and tired, and past their useful life. The defects in the windows mean that the landlord fails to meet the repairing standard as set out in s.13(1)(b) of the 2006 Act.

(l) The shower unit fits over the bath. Committee members could see that the shower head is held together by duct tape. The surveyor member manipulated the shower head, it is obviously broken and needs to be replaced. The shower head is part of an installation for the supply of water; it is also a fixture/fitting or appliance provided by the landlord. It is not in a reasonable state of repair. The damage to the shower head

means that the landlord fails to meet the repairing standard as set out in s.13(1)(d) of the 2006 Act.

(m) The damaged work surface in the kitchen is of more than cosmetic concern. Immediately adjacent to the kitchen sink there is an area of exposed chipboard. It is inevitable that water has been soaked up by the chipboard. The work surface is deteriorating and is unhygienic. The work-surface is a damaged fitting and fixture for which the landlord is responsible. The landlord fails to meet the repairing standard as set out in s.13(1)(d) of the 2006 Act

(n) The Door to the common passage and stair does not have a lock. It did not have a lock when the tenancy agreement was entered into. For that reason no order is made in relation to the stair door. However, the stair lighting system is defective. The light above the landing outside this property does not work. The light is another defective fixture, fitting or appliance. Once again the landlord fails to meet the repairing standard as set out in s.13(1)(d) of the 2006 Act

(o) The rhones, Gutters and downpipes are all defective. Water overflowing from the rain water goods has stained the front elevation of the larger building and is entering the property in the corner of the living-room. Although the landlord complains that the necessary repair should be a common scheme of repair involving neighbouring proprietors, and although he complains that he has had difficulty getting estimates for the necessary works, committee members observations indicate that the fault has persisted for many months. This is not a new problem which occurred in the days leading to the application. The rainwater goods have been neglected for many months. The growth in the rhones and gutters and the leaks from the downpipe are causing damage to the property and allowing water to enter the property. The landlord fails to meet the repairing standard as set out in s.13(1)(b) of the 2006 Act.

(p) The staining on the bathroom ceiling is no more than condensation staining. It is not something for which the landlord is responsible, but is something that the tenant can control and eradicate by careful use of heating and ventilation.

(q) We therefore make a repairing standard enforcement order requiring the landlord to

(i) Replace the shower head in the bathroom

(ii) Repair or replace the light on the landing outside the front door of the property

(iii) Repair or replace the work-surface in the kitchen

(iv) Replace the windows throughout the property

(v) Overhaul , repair and where necessary replace the gutters, rhones and downpipes serving the larger building of which this property forms part

All within 3 months of the date of service of the order

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.

Signed..... **Paul Doyle** Date..... 21/11/2015

Chairperson

PRHP/RP/15/0233

3/2 59 Provost Road, Dundee, DD3 8AG

Inspection – 13:30

Hearing – 14:15

The hearing will take place in the Kirkton Community Centre, Derwent Avenue,
Dundee, DD3 0AX

Schedule of Photographs

Photo 1 – showing the front of the property and the defective downpipe

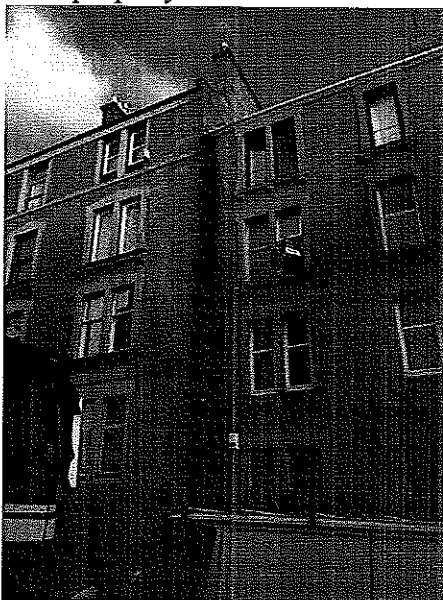


Photo 2 showing the high damp meter readings inside, adjacent to the downpipe



Photo 3 showing a failed double glazing unit, trying to show condensation inside it

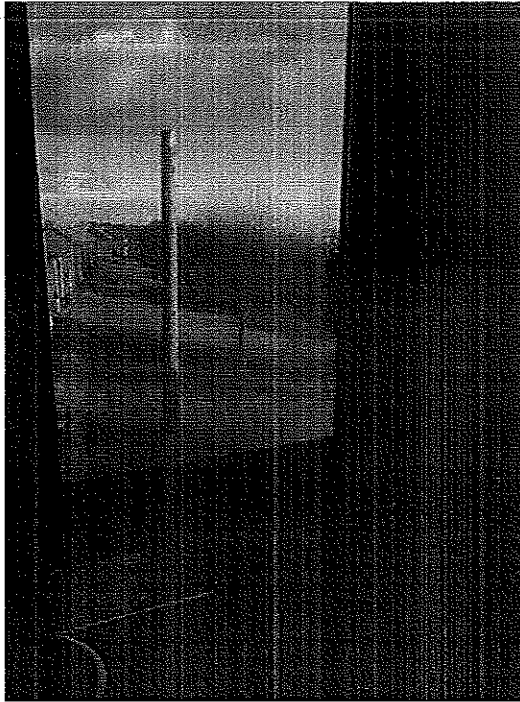


Photo 4 showing another failed double glazing unit, trying to show condensation inside it

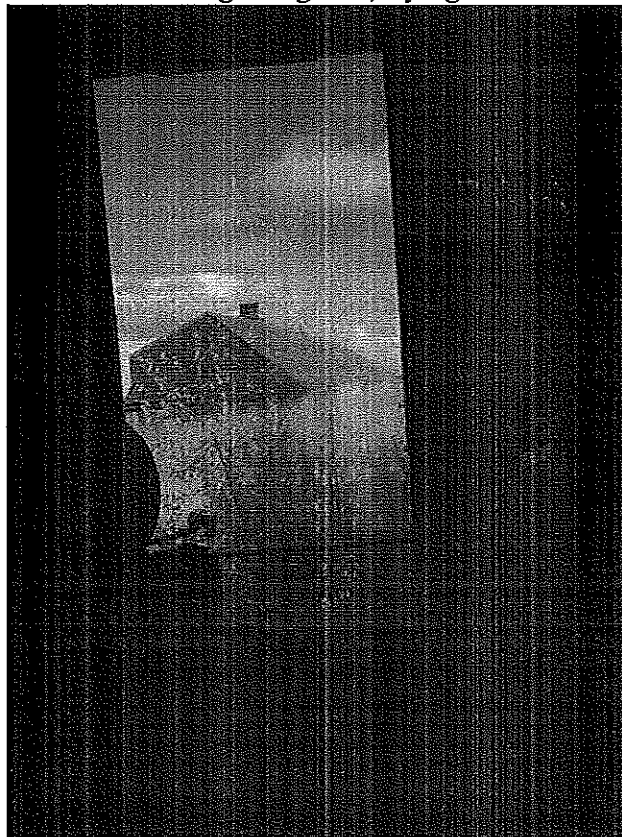


Photo 5 showing the defective shower

