



Repairing Standard Enforcement Order

Ordered by the Private Rented Housing Committee

prhp Ref: PRHP/RP/15/0249

Re : 21D Balunie Avenue, Dundee DD4 8QW ("the Property")

Title No: ANG6366

The Parties:-

Lorraine Scrimgeour, 21D Balunie Avenue, Dundee DD4 8QW ("the Tenant")

David Sturrock, 21 Dunmore Gardens, Dundee DD2 1PP ("the Landlord")

NOTICE TO

David Sturrock ("the Landlord")

Whereas in terms of their decision dated 22 December 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 and in particular that the Landlord has failed to ensure that the Property meets the repairing standard in that :-

- (a) the bath was not sealed to the bathroom wall and there was no shower curtain at the bath rendering the bath and its fittings not in a reasonable state of repair;
- (b) the double electric socket on the lefthand wall in the kitchen was not in a reasonable state of repair;
- (c) the gas meter and connecting pipework in the kitchen was not in a reasonable state of repair and in proper working order;
- (d) there was unsatisfactory provision of smoke alarms in the Property;

the Private Rented Housing Committee now requires the Landlord 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 Landlord:-

- (a) to ensure (i) that the bath is properly sealed to the walls adjacent to it; and (ii) that an appropriate shower screen or shower curtain with curtain rail is installed sufficient to ensure that water does not escape from the bath during showering;
- (b) to properly secure the double electrical socket on the left hand side of the kitchen adjacent to the copper pipes;
- (c) to ensure that the gas meter and connecting pipework are put into a reasonable state of repair and in proper working order;
- (d) to produce a gas safety certificate for the Property including the boiler installation and the gas meter, from a Gas Safe registered gas engineer;
- (e) to install smoke alarms into the hallway and living room and a heat alarm in the kitchen which are all interlinked, mains electricity operated and permanently wired and compliant with the section 2.11 of the "Technical Handbook – Domestic" of the Scottish Building Standards 2013;
- (f) to lodge with the Private Rented Housing Panel written documentation evidencing the carrying out of such works labelled (a) to (e) in this 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.

In witness whereof these presents typewritten on this and the preceding two pages are executed by David Bartos, Advocate, Parliament House, Parliament Square, Edinburgh EH1 1RF, Chairperson of the Private Rented Housing Committee at Edinburgh on 22 December 2015 before this witness:-

David Bartos

chairperson

Jill Hudson

witness

name in full JILL PENELOPE HUDSON

address 100 ELIZABETH ROAD

SUTTON COLDFIELD

WEST MIDLANDS

B73 5AS

occupation RETIRED



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

Statement of Reasons for Decision of the Private Rented Housing Committee

(Hereinafter referred to as "the Committee")

Under Section 24(1) of the Housing (Scotland) Act 2006

Case Reference Number: PRHP/RP/15/0249

Re : 21D Balunie Avenue, Dundee DD4 8QW ("the Property")

Title No: ANG6366

The Parties:-

Lorraine Scrimgeour, 21D Balunie Avenue, Dundee DD4 8QW ("the Tenant")

David Sturrock, 21 Dunmore Gardens, Dundee DD2 1PP ("the Landlord")

The Committee comprised:-

Mr David Bartos	- Chairperson
Ms Carol Jones	- Surveyor member

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 Property and taking account of the evidence led by the Tenant at the hearing, determined that the Landlord had failed to comply with the duty imposed by Section 14 (1)(b) of the Housing (Scotland) Act 2006.

Background:-

1. By application received on 7 September 2015, the Tenant applied to the Private Rented Housing Panel ("PRHP") for a determination that the Landlord had failed to comply with the duty to ensure that the house met the repairing standard in section 13 of the Housing (Scotland) Act 2006.

2. In her application the Tenant complained that the Landlord had failed to meet the repairing standard in that:
 - (1) the bath was not sealed to the wall and there was no shower curtain at the bath all of which was causing a leak to the flat below;
 - (2) there was an electric socket hanging off the wall in the kitchen exposing a cable;
 - (3) there was no gas safety certificate in respect of the boiler;
 - (4) there was inadequate provision of smoke detectors.
3. Her application related to the matters which had been raised by her in a letter to the Landlord dated 1 September 2015.
4. The President of the Private Rented Housing Panel decided under section 23 of the 2006 Act to refer the application to a Private Rented Housing Committee. That decision was intimated to the Tenant and to the Landlord by letter of the Panel's Clerk dated 3 November 2015 and entitled "Notice of Referral, Inspection and Hearing". The Committee comprised the persons stated above. The intimation of the Notice of Referral to the Landlord included a copy of the Tenant's application to the Panel. An inspection of the Property and hearing at the Kirkton Community Centre, Derwent Avenue, Dundee DD3 0AX was fixed for 14 December 2015 at 10.00 a.m. and 12 noon respectively.
5. Following intimation of the Notice of Referral, the Tenant intimated by means of a form dated 6 November and received by the Panel on 9 November 2015 that she wished to attend a hearing. The Landlord did not reply to the Notice of Referral. Given the complaints concerning the electrical socket and the boiler the Committee issued a direction dated 11 November 2015 requiring the Landlord to produce a domestic electrical installation condition report and a gas safety certificate by 30 November. He did not do so. On being telephoned by the Panel's Clerk, he claimed that the direction had been sent to an incorrect address, that it would take him "a few weeks" to arrange the electrical report and that a gas safety certificate was in place at the Property by the boiler. He advised that owing to a medical appointment he would be unable to attend at the inspection and hearing.

The Inspection

6. The Committee inspected the Property on the date and time fixed. The Tenant was present. She was accompanied by Ann Duncan, a neighbour. The Landlord did not attend the inspection. However shortly before the inspection began he met the Committee outside the front door to the tenement. He confirmed that he was unable to attend the hearing. He restated that it would take weeks to arrange the electrical report and that the gas safety certificate was in the Property. The weather was dry, bright and sunny. The inspection revealed that the Property is a three apartment flat on the first floor of a 1950s tenement in the Douglas area of Dundee. The

Committee carefully inspected the matters which were the subject of complaint.

The Evidence

7. The evidence before the Committee consisted of:-
 - The application form
 - Letter from the Tenant to the Landlord dated 1 September 2015 with tracked recorded delivery slip dated 4 September 2015
 - Copy tenancy agreement dated 12 February 2015
 - Registers Direct copy of Land Register title ANG6366
 - Written representations from the Tenant
 - The oral evidence of the Tenant
 - The oral evidence of Ann Duncan
 - Copy e-mail from the Panel's Clerk to the Committee dated 1 December 2015
 - Landlord/home owner Gas Safety Record dated 26 June 2014 No: P452313419
 - Gas Safe Register Building Regulations Compliance Certificate dated 29 June 2015
 - Minor Electrical Installation Works Certificate No: IMN3/1366049 dated 26 June 2006

The Hearing

8. At the conclusion of the inspection the Committee held a hearing at the place and time fixed. The Tenant appeared accompanied by Mrs Ann Duncan. There was no appearance by the Landlord. At the hearing the Tenant confirmed to the Committee that she wished Mrs Duncan to act as her representative at the hearing. The Tenant agreed to this and the Committee had no difficulty with it. During the course of the hearing Mrs Duncan put forward the evidence of the Tenant in relation to various factual matters that arose and also gave her own evidence.
9. With regard to the bathroom complaint, Mrs Duncan referred to the condition seen by the Committee. The resident below was beginning to lose patience with the Landlord's lack of work. The condition of the bathroom was causing difficulties for the Tenant's daughter who suffered from ADHD and learning difficulties. The presence of building debris in the bathroom and its incomplete state was a hazard. She put the lack of completion down to the Landlord's poor communication. He had given little advance warning of his visits. His workmen had not completed the work. They had left a mess.
10. The Tenant confirmed that when she had taken entry there was just one "wet wall panel" above the bath in the part of the wall to which the shower was attached. The other one had been put in in October.

11. With regard to the electricity socket Mrs Duncan said that the Landlord had attended only that morning to screw it in. However even after this it was not securely attached to the wall. Until that time it had been hanging a couple of inches from the wall by the cable leading to it. The Tenant confirmed that it had been in that state when she moved in. The Landlord had said that he would come and she had required to cancel appointments only to find that he had not come.
12. Mrs Duncan said that upon the Tenant's entry in February the Landlord had said that the Property would be ready in a few weeks. This had misled the Tenant who would not have left her previous property without that assurance.
13. With regard to the boiler, Mrs Duncan presented the Committee with the gas safety record, building regulations record and the electrical minor works document. She stated that these had been brought by the Landlord to the Property on the morning of the inspection by the Committee. There had been no document next to the boiler as claimed by the Landlord. The Mrs Black identified on the buildings regulations certificate was a previous tenant.
14. The Tenant stated that her concern about the gas installation had originated from a visit from a "Hydro" man in April 2015 whom she had asked to install a pre-payment meter for the gas. This gas engineer had noticed that the gas meter in the kitchen was unsafe because it was resting on a shelf in a floor based kitchen unit. He had put the red label onto it stating that it was "At Risk". The meter had been there when she had moved in. No-one had been to the Property to service the boiler.
15. On the issue of the smoke detectors Mrs Duncan stated that she was not aware that the smoke alarm in the hallway was not working. However she thought that the detector in the living room was in the wrong place. It was too close to the hallway. It was also missing a cover and a battery. The Tenant stated that this had been the case since she had moved in.
16. The Committee raised with Mrs Duncan the condition of the wooden boxing in the kitchen that was meant to cover the copper water pipes on the side wall. Part of the boxing was missing and one wooden panel from it was jutting out from the wall at an angle with nails sticking out. This had been observed by the Committee.
17. The Tenant stated that this had always been the case since her entry to the Property in February.
18. The Committee found the evidence of the Tenant and Mrs Duncan credible and reliable and accepted it. They were both attempting to assist the Committee. Their approach contrasted with that of the Landlord who had not given any satisfactory explanation for not having produced a gas safety certificate and at the very least instructed an electrical installation condition as directed by the Committee.

Findings of Fact

19. Having considered all the evidence, including their inspection, the Committee found the following facts to be established:-
- (a) On or about 12 February 2015 the Tenant entered into a lease of the Property from the Landlord. The Tenant continues to occupy the Property under the Lease.
 - (b) The Property is first floor flat in 3 storey tenement built around the 1950s in the Douglas area of Dundee. It comprises a hallway, two bedrooms, bathroom, living room, and kitchen which obtains access from the living room. It has gas central heating with the boiler in the kitchen.
 - (c) As at 14 December 2015 being the date of the inspection, in the bathroom there were "wet wall panels" above the bath both at the end where the shower was attached to the wall and also at the side of the bath adjoining that end. Beyond these there was tiling above the bath which was broken at the edge of the bath. There was a gap between the panels and tiling and the bath. There was no shower curtain or curtain rail or shower screen. Below the bath there was bare chipboard which was very wet and covered with building debris. There was no bath panel. A shower or bath could result in water splashing onto the floor at the side of and below the bath and penetrating to the flat below. Four aspects of the bathroom are shown on the schedule of photographs attached to this Statement.
 - (d) Within the kitchen the double electric socket had been hanging off the wall by its cable until the morning of the inspection. Even after having been screwed in at that time it was not securely fitted. It is shown on the schedule of photographs attached to this Statement.
 - (e) Within the kitchen there was a Worcester gas combination boiler. It had been fitted in June 2014. A gas safety certificate in respect of the boiler had been issued on 26 June 2014. The certificate related only to the appliance. It did not cover the gas installation pipework, gas tightness and equipotential bonding or accessibility of emergency control. No subsequent gas safety certificate has been obtained.
 - (f) The gas pipework leads to a gas meter. The meter is located on a removable inner shelf of a lower kitchen unit. The meter has a red label attached to it which states that the gas installation has been classified as "AT RISK" and that it is unsafe to use. This is on account of the meter with its connecting pipes being located in an unsafe position. It is shown on the schedule of photographs attached to this Statement..

- (g) The kitchen also has copper water pipes on the side wall. One of these is a hot water pipe. Part of the boxing designed to cover these is missing and the upper wooden panel of the boxing was jutting out from the wall at an angle with nails sticking out downwards.
- (h) In the hallway there is a battery operated smoke alarm. Its mounting on the ceiling appears to have been dislodged in part. In the living room there is a battery operated smoke alarm. It is less than 300 mm from the side of the wall nearest the entry to the hallway and has a missing cover and battery. They are shown on the schedule of photographs attached to this Statement. There are no other smoke alarms.
- (i) That none of the above defects have been repaired or attended to.

Reasons for Decision

20. In the bathroom the issue was whether the bath fitting and shower provision was in a reasonable state of repair and in proper working order. The bath had not been properly sealed in. In addition the shower lacked any provision for the containment of water during showering. The Committee's findings are as stated above. In these circumstances the Committee found that it was clear that the bath and its fittings were not in a reasonable state of repair or not in proper working order. There was therefore a failure to comply with the repairing standard in section 13(1)(d).
21. Was the electrical socket in the kitchen in a reasonable state of repair and in proper working order? The Committee's findings in fact are stated above. A loosely fitting electrical socket is not in a reasonable state of repair. In these circumstances the Committee found that it was not in a reasonable state of repair. It follows that in this respect the Committee concluded that the Property did not meet the repairing standard in section 13 (1) (c) of the 2006 Act.
22. Was the boiler and its gas connection in a reasonable state of repair and in proper working order? Given the certificates issued for the boiler in June 2014, the Committee have no reason to believe that that the boiler on its own is not in a reasonable state of repair or not in proper working order. This is so even though the Landlord has not produced an updated gas safety certificate as he is obliged to do annually.
23. However the gas connection to the boiler leads through the gas meter. Given the findings in fact set out above, the Committee is driven to find that the gas meter and connecting pipework while operational is not in a reasonable state of repair or is not in proper working order. It is quite unacceptable that the Landlord should allow the Tenant to suffer a meter connection that has been labelled "AT RISK". Accordingly the gas meter and connecting pipework fell below the repairing standard in section 13 (1) (c) of the 2006 Act.

24. The Committee considered the smoke detectors in the Property. In terms of section 13(1)(f) of the 2006 Act the Property must have satisfactory provision for detecting fires and for giving warning in the event of fire or suspected fire. Section 13(5) of the Act provides that in assessing whether provision is satisfactory, regard must be had to any building regulations and any guidance issued by the Scottish Government on provision for detecting fires and for giving such warning.
25. The building regulations are those which are currently in force (section 194(1) of the 2006 Act), namely the Building (Scotland) Regulations 2004 (as amended). These provide that "Every building must be designed and constructed in such a way that in the event of an outbreak of fire within the building, the occupants are alerted to the outbreak of fire." (schedule 5, para.2.11 of the 2004 Regulations).
26. The guidance is contained in the "Technical Handbook – Domestic" of the Scottish Building Standards 2013 at section 2.11. This is available on the Scottish Government's website at www.gov.scot. It provides that there should be a smoke alarm in the hallway and living room and at least 300 mm away from any wall or light fittings and a heat alarm in the kitchen. In addition the alarms should be interlinked, mains operated and permanently wired to a circuit which satisfies the requirements of section 2.11.9 of the guidance.
27. On the basis of the findings in fact at (h) above, the smoke detectors in the Property are not satisfactory. Accordingly the repairing standard in section 13(1)(f) has not been met.
28. The Landlord has been aware of the defects from the outset of the tenancy and in particular from the Tenant's letter of 1 September 2015. No work to remedy any of the said breaches of the repairing standard has been carried out within a reasonable time of the Landlord being aware that work was necessary.
29. Before leaving the case the Committee observe that there may be a further breach of the repairing standard in the condition of the boxing for the copper pipes in the kitchen as noted in the above findings in fact at (g). The hanging panel with the exposed nails appeared to the Committee to be a clear hazard. However as it is not part of this application the Committee have not been able to decide that matter.
30. Finally the Landlord should be aware of the extension of the repairing standard to require the installation of carbon monoxide warning detectors as from 1 December 2015 if not already installed. Details are available at the PRHP website under "News and Events".

Decision

31. The Committee determined that the Landlord had failed to comply with the duty imposed by section 14 (1) (b), of the Act in relation to the failure of the

Property to meet the repairing standard as stated above. The Committee proceeded to make a Repairing Standard Enforcement Order as required by section 24 (2).

32. In so doing the Committee gave careful consideration to whether it should require the production of an electrical installation condition report as required by their direction of 11 November 2015. Given that the Committee were unable to identify any matters, other than the loose socket, in the Property which suggested that the electrical system as a whole was not in proper working order or not in a reasonable state of repair, the Committee decided not to order the production of such a report. However the Landlord should be aware that provided that the property is let on 1 December 2016 he will require to have obtained such a report in satisfactory terms by that date.
33. The decision of the Committee was unanimous.

Re-letting prohibition

34. The Landlord is reminded that he commits a criminal offence if:
 - (a) he fails to comply with the Order without a reasonable excuse; or
 - (b) he re-lets the Property (or enters into any occupancy arrangement for it) at any time during which the Order has effect.
35. It is possible that he may be disentitled to any rent from any re-letting or occupancy agreement that is a criminal offence.

Rights of Appeal

36. A landlord or tenant aggrieved by this decision of the Committee may appeal to the Sheriff by summary application within 21 days of being notified of that decision.
37. Unless the lease or tenancy between the parties has been brought to an end, the appropriate respondent in such appeal proceedings is the other party to the proceedings and not the Committee which made the decision.

Effects of Section 63 of the 2006 Act

38. Where such an appeal is made, the effect of this decision and of any Order made in consequence of it is suspended until the appeal is abandoned or finally determined.

- 39. Where the appeal is abandoned or finally determined by confirming the decision, the decision and the Order made in consequence of it are to be treated as having effect from the day on which the appeal is abandoned or so determined.

David Bartos

SignedDate: 22 December
 2015.....

David Bartos, Chairperson

Signature of Witness... **Jill Hudson**Date 22/12/2015

Name of witness: JILL PENNELOPE HUDSON

Address: 100 ELIZABETH ROAD,
SUTTON COLDFIELD
WEST MIDLANDS
B73 5AS

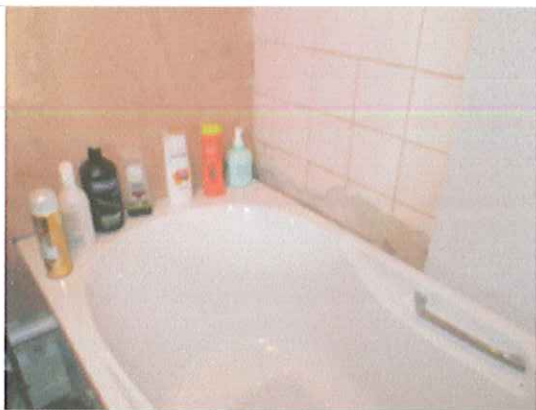
Occupation of witness: RETIRED



Schedule of photographs taken during the inspection of 21D Balunie Avenue, Dundee,
DD4 8QW
by the Private Rented Housing Committee on the 14 December 2015.



External view of property - Front Elevation



Bathroom

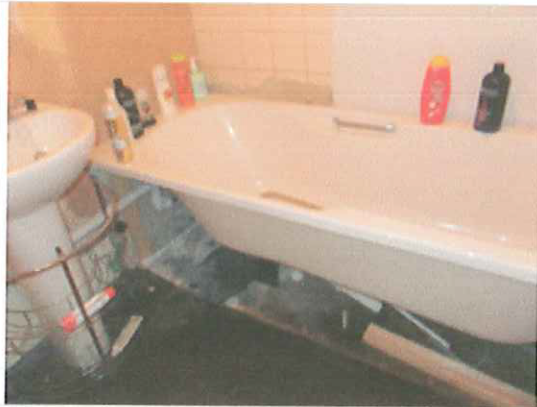


Bathroom

¹ This is the Schedule of photographs referred to in the Statement of Reasons for the decision of the above committee dated 22 December 2015

David Banks

J.P. Hudson



Bathroom



Bathroom - under bath



Kitchen - Loose double socket



Kitchen - Gas Meter - warning label



Hall - smoke alarm



Living Room - smoke alarm

This is the Schedule of photographs referred to in the Statement of Reasons for the decision of the Private Rental Housing Committee for 21 D Bolnie Avenue, Dublin DD4 8QW dated 22 December 2015.

David Bartos

Jill Hudson