



Repairing Standard Enforcement Order

Ordered by the Private Rented Housing Committee

prhp ref: RP/15/0257

Re Flat 3/3, 20 Isla Street, Dundee, DD3 7HT being the subjects registered in the Land Register of Scotland under title number ANG44113 ('the Property')

The Parties:-

Ms Sylwia Brzezinska residing at the Property ("The Tenant")

Mr Stewart Clark and Ms Elaine Clark 4 Somerville Place, Dundee ("The Landlord")

NOTICE TO

Mrs Stewart Clark and Ms Elaine Clark

Whereas in terms of their decision dated 8th 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 (the Act) in respect of the property known as Flat 3/3, 20 Isla Street, Dundee, DD3 7HT being the subjects registered in the Land Register of Scotland under **Title Number ANG44113** and, in particular, that the Landlord has failed, in terms of Section 13 of the said Act to ensure that the house is wind and watertight and in all other respects reasonably fit for human habitation and that the structure and exterior of the house are in a reasonable state of repair and in proper working order; Now Therefore the Private Rented Housing Committee requires the Landlord to carry out such work as is necessary for the purposes of ensuring that the Property meets the repairing standard in terms of the Act 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 following:

The Landlord is to carry out repairs to the chimneyhead and or skewes and any other repair or repairs required to eliminate damp penetration in the living room and bedroom and to replaster and redecorate where necessary the walls in the living room and bedroom.

(Section 13 (1) (a) and (b) of the Act).

In view of the nature of the failure to meet the Repairing Standard as defined in the 2006 Act, the committee determined that the repairing standard enforcement order requires to be complied with by 31st March 2016

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.

Signed... **M McAllister** Date 8th December 2015
Martin Joseph McAllister
Chairperson

K McDonald

.....witness: Kirsty McDonald, solicitor, 51 Hamilton
Street, Saltcoats



Determination by Private Rented Housing Committee

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

prhp ref: RP/15/0257

Re Flat 3/3, 20 Isla Street, Dundee, DD3 7HT being the subjects registered in the Land Register of Scotland under title number ANG44113 ('the Property')

The Parties:-

Ms Sylwia Brzezinska residing at the Property ("The Tenant")

Mr Stewart Clark and Ms Elaine Clark 4 Somerville Place, Dundee ("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) of The Housing (Scotland) Act 2006 ("the 2006 Act") in relation to the Property, determined that the Landlord has failed to comply with the duty imposed by Section 14 (1)(b) of the 2006 Act and made a repairing standard enforcement order in terms of Section 24(2) of the said Act.

Background

1. By application dated 17th September 2015 the Tenant applied to the Private Rented Housing Panel for a determination of whether the Landlord has failed to comply with the duties imposed by Section 14 (1) (b) of the 2006 Act.
2. The application by the Tenant stated that she considered that the Landlord has failed to comply with his duty to ensure that the Property meets the repairing standard. The application was accompanied by a note of an inspection by the local authority carried out on 4th September 2015 which cites the following issues: damp penetration in the bedroom and the living room, nonfunctioning battery operated smoke detector, absence of carbon monoxide detector, an extractor fan in the bathroom which was not working, no gas safety certificate, cracked cement skewers to the chimneyhead and vegetation and loose slates in the rhones to the front elevation of the block.

3. The President of the Private Rented Housing Panel, having considered the application, referred the application under Section 22 (1) of the Act to a Private Rented Housing Committee. The Committee comprises of Martin McAllister (Chairperson) and George Campbell (Surveyor Member)

4. The Private Rented Housing Panel served a Notice of Referral under and in terms of Schedule 2, Paragraph 1 of the Act upon both the Landlord and the Tenant on 19th October 2015.

5. The Committee attended at the Property on 2nd December 2015 for an inspection. The tenant and the landlord were present. At both the inspection and the Hearing the Committee was assisted by the participation of Ms Monika Connelly, interpreter. The committee noted that the Property is a third floor flat in a tenement of flats. The Property's accommodation comprises a living room, kitchen, bathroom and bedroom. A schedule of external and internal photographs is attached to this Determination. The committee found the following:-

6. Findings on Inspection

6.1 There are interconnected mains powered smoke detectors in the hall and living room and there is a heat detector in the kitchen.

6.2 There is a carbon monoxide detector in the rear bedroom where the gas central heating boiler is situated.

6.3 The Tenant has a Gas Safety Certificate dated 8th October 2015 which is in satisfactory terms.

6.4 There are signs of a plaster repair in the cupboard of the bedroom.

6.5 There is evidence of damp penetration on the wall of the living room above the fireplace.

6.6 The extractor fan in the bathroom is working.

6.7 Vegetation was apparent in the gutters at the front elevation of the tenement.

6.8 Cracking was noted to the chimney skewers at the front elevation.

7. The Hearing

Following the Inspection, a Hearing took place at Kirkton Community Centre. The Tenant and the Landlord were present and gave evidence. The Committee had before it the application, report of the local authority following inspection on 4th September 2015 and copies of emails between the Landlord and the local authority enforcement officer.

8. Preliminary issues

The Tenant advised that the following issues raised in the application had been dealt with to her satisfaction:

- Smoke detectors had been installed along with heat and carbon monoxide detectors.
- The extractor fan in the bathroom is working.
- She had been given a Gas Safety Certificate.

The Tenant agreed that the outstanding issue is in relation to damp penetration in the living room and bedroom.

9. The Issues and evidence

The repairing standard is set out in Section 13 of the 2006 Act as amended:
A house meets the repairing standard if—

- (a) the house is wind and water tight and in all other respects reasonably fit for human habitation,*
- (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,*
- (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,*
- (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,*
- (e) any furnishings provided by the landlord under the tenancy are capable of being used safely for the purpose for which they are designed, and*
- (f) the house has satisfactory provision for detecting fires and for giving warning in the event of fire or suspected fire.*

The Landlord said that he had tried to deal with the dampness issues. He said that repairs to the external structure would amount to a common repair and that he had asked the environmental health department of the local authority to examine the issue to ascertain whether or not it would make an Order in respect of the repair which would assist the Landlord in getting payment from the co proprietors. The Council had said that it did not consider the matter bad enough to merit it going through the procedure of making such an Order. The Landlord said that he had a roofer carry out a repair in respect of the dampness penetration in the bedroom and had also carried out the consequent plaster repair. The Tenant said that when it rains there is still evidence of dampness penetration through the new plasterwork. The Landlord said he was unaware of this and the Tenant agreed that she had not told him. The Landlord said that he would contact the contractor who had carried out the repair and ask him to look at it again. The Landlord said that it was likely that the problem of dampness penetration was caused to repairs being needed to a chimneyhead and/ or the skews. He had obtained an estimate and had written to the other proprietors regarding their obligation to share in the repairs. He confirmed that he intended to get the repairs done.

Mr Clarke said that he did not have an electrical installation condition report or a portable appliance test certificate.

The Committee found that in the matters raised in the application the only outstanding matter which it required to consider was in relation to the dampness issues in the living room and bedroom. In connection with the dampness issues, the Committee considered that the problem had not been resolved and that the Property did not meet the repairing standard because of the problems with these two areas. The Committee noted that there is vegetation in the gutters at the front elevation. The Committee made its findings after consideration of the application, what it had

noted at the Inspection and the evidence of the Landlord and the Tenant which the Committee found to be reliable. It was clear to the Committee that the Landlord had done most of the work required and was anxious to do the other repairs.

The Committee noted the new statutory guidance in relation to electrical condition and portable appliance testing. It noted that the guidance was effective from 1st December 2015 but that, because the Property is subject to a Tenancy which existed prior to 1st December 2015, the Landlord does not require to obtain the necessary report and certificate until 1st December 2016 unless a new tenancy is entered into in respect of the Property.

10. Findings

The Committee determined that there is dampness penetration in the living room and bedroom, cracking to the chimney skews and that there is vegetation in the gutters to the front elevation.

11. The Committee considered whether or not any defects it found established brought the Property below the repairing standard in terms of the 2006 Act. In respect of the Findings it had made, the Committee considered that a repairing standard enforcement order should be made and proceeded to do so.

12. Decision

The Committee accordingly determined that the Landlord has failed to comply with the duties imposed by Section 14(1)(b), of the Act, as stated.

The Committee proceeded to make a Repairing Standard Enforcement Order as required by section 24(1) and 24(2) of the 2006 Act in the following terms:

The Landlord is to carry out repairs to the chimneyhead and or skews and any other repair or repairs required to eliminate damp penetration in the living room and bedroom and to replaster and redecorate where necessary the walls in the living room and bedroom.

(Section 13 (1) (a) and (b) of the Act).

In view of the nature of the failure to meet the Repairing Standard as defined in the 2006 Act, the committee determined that the repairing standard enforcement order requires to be complied with by 31st March 2016

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

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
Martin J. McAllister
Chairperson

M McAllister

Date 8th December 2015

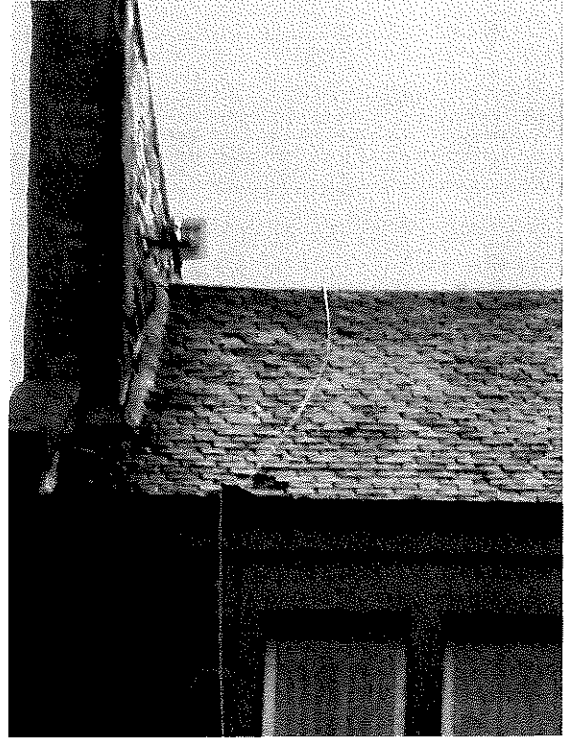
M McAllister

8/12/15

Photographs taken at Flat 3/3 20 Isla Street, Dundee DD3 7HT on 2 December 2015 (PRHP/RP/15/0257)



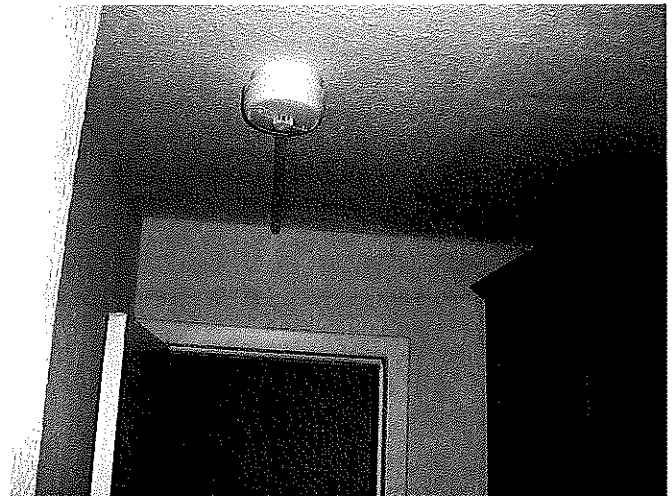
01 – Front elevation



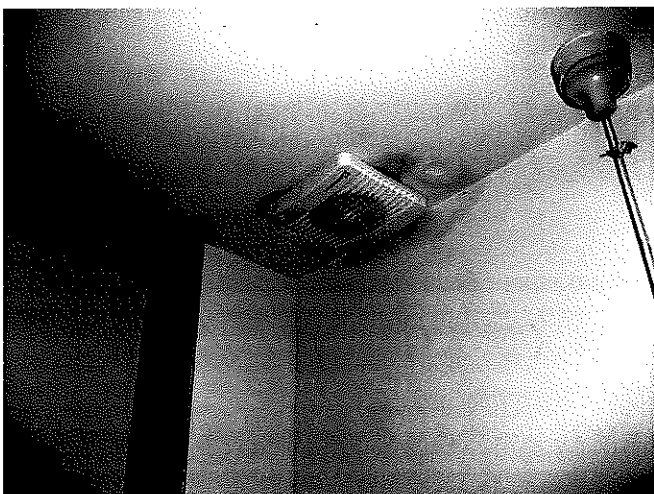
02 – Front chimney head and skew



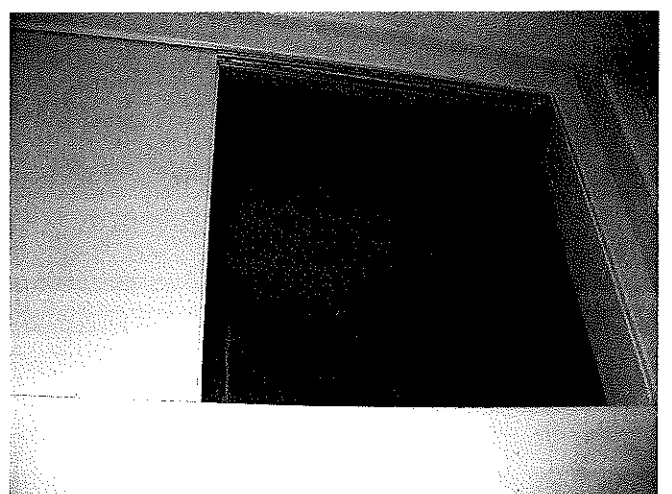
03 – Smoke detector



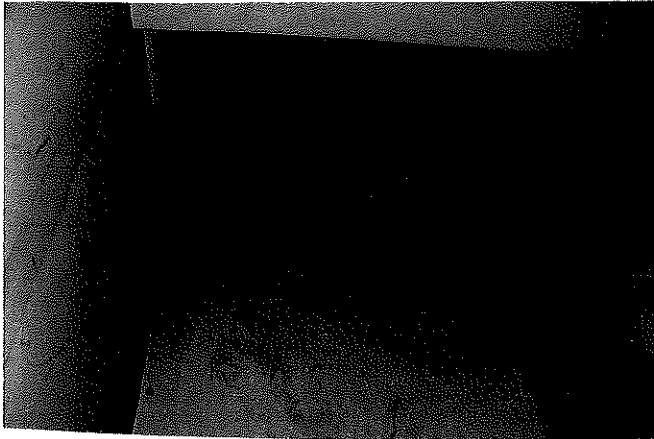
04 – Smoke detector



05 – Bathroom extractor fan (working)



06 – Rear bedroom (chimney wall) left upper cupboard



07 – Rear bedroom - right upper cupboard
(over boiler)



08 – Dampness - living room (chimney) wall



09 – Rear bedroom - Carbon Monoxide detector
Boiler in lower cupboard, left of light