



Repairing Standard Enforcement Order

Ordered by the Private Rented Housing Committee

prhp ref: RP/15/0266

Re Flat 2L, 77 Hilltown, Dundee, DD3 7AD being the subjects registered in the Land Register of Scotland under title number ANG37809 ('the Property')

The Parties:-

Miss Coreen Morrison residing at the Property ("The Tenant")

Mr Rahim Faruk, 248 Fosse Road North, Leicester, LE3 5RR ("The Landlord")

NOTICE TO

Mr Rahim Faruk

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 2/R, 77 Hilltown, Dundee, DD3 7AD being the subjects registered in the Land Register of Scotland under **Title Number ANG37809** 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, that the structure and exterior of the house are in a reasonable state of repair and in proper working order, that 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, that any fixtures, fittings and appliances provided by the landlord under the tenancy are capable of being used safely and for the purposes for which they are designed and that the house has satisfactory provision for detecting fires and for giving warning in the event of fire or suspected fire; 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:

**(One) The Landlord requires to provide evidence from a competent gas engineer that the gas supply has been properly and safely terminated.
(Section 13(1) (a) and 13(1) (c) of the 2006 Act).**

**(Two) The Landlord requires to reinstate the kitchen by installing a sink, hot and cold water supply, suitable power points worktops and kitchen units/cupboards.
(Section 13 (1) (a) and 13 (1) (d) of the 2006 Act).**

**Three) The Landlord requires to repair or replace the W.C and Shower unit.
(Section 13(1) (c) of the 2006 Act).**

**(Four) The Landlord requires to repair the kitchen ceiling and window in the bedroom
(Section 13(1) (b) of the 2006 Act).**

**(Five) The Landlord requires to install appropriate heat and smoke alarms to comply with the requirements of the revised Domestic Technical Handbook issued by Scottish Government's Building Standards Division (Technical Handbooks 2013:- Domestic-Fire)
(Section 13 (1) (f) of the 2006 Act**

**(Six) The Landlord requires to produce an electrical installation condition report prepared by a suitably competent person all in accordance with the statutory guidance.
(Section 13 (1) (c) of the 2006 Act**

In view of the nature of the failure to meet the Repairing Standard as defined in the Act, the Committee determined that the repairing standard enforcement order requires to be complied with by 30th April 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.

M McAllister

Signed.....
Martin Joseph McAllister
Chairperson

..... Date 8th December 2015

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/15/0266

Re Flat 2L, 77 Hilltown, Dundee, DD3 7AD being the subjects registered in the Land Register of Scotland under title number ANG37809 ('the Property')

The Parties:-

Miss Coreen Morrison residing at the Property ("The Tenant")

Mr Rahim Faruk, 248 Fosse Road North, Leicester, LE3 5RR ("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 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 14th 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. It stated that the Landlord had carried out no work to the Property and that he left the Tenant to carry out work by herself. The application was accompanied by a note of an inspection carried out by the local authority on 14th September 2015 which stated that it is considered that the Property falls below the tolerable standard in terms of the Act. It cites inadequate cooking facilities, damp penetration, plaster damage, the existence of a non functioning battery operated smoke detector, non functioning power point and broken light pendant, inadequate fuse box and faulty sanitary fittings.

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 30th September 2015.

5. The Committee attended at the Property on 2nd December 2015 for an inspection. Although no longer the Tenant, Ms Morrison attended accompanied by a support worker and was able to provide entry for the Committee. The committee noted that the Property is a second floor flat in a tenement of eleven flats. The Property's accommodation comprises a living room, kitchen, bathroom and one bedroom. A schedule of external and internal photographs is attached to this Determination.

6. Findings on Inspection

6.1 There is no sink or other kitchen fitments or appliances in the kitchen.

6.2 There is plaster missing from an area of the kitchen ceiling and lath is visible.

6.3 There is plaster missing at the window ingo in the bedroom.

6.4 There is a battery operated smoke detector in the hallway.

6.5 The pendant light fitting in the living room is faulty.

6.7 There is evidence of scorch marks at a power point in the living room.

6.8 The fuse box is of the type which contains fuse wire.

6.9 Inspection of the bathroom was limited because of the lack of lighting but it appeared that there is a leak at the W.C., the toilet seat is broken and the shower hose is loose.

6.8 The Committee noted the existence of what appeared to be a terminated gas pipe in the bedroom. Ms Morrison said that there had been no gas appliances in the Property during her occupation.

6.9 The Committee observed no heating appliances in the Property.

6.10 There is no heat detector in the kitchen.

6.11 There are no kitchen appliances in the Property.

Ms Morrison said that she was not able to attend the Hearing and confirmed that she was no longer the Tenant and had moved out. She said that she got an electric shock from a power point in the living room. The Tenant also said that there had been a sink in the kitchen at the start of the Tenancy but that it had to be removed to ascertain the source of a leak.

7. The Hearing

Following the Inspection, a Hearing took place at Kirkton Community Centre. The Landlord and his brother Reeyaz Faruk were present and gave evidence.

8. Preliminary Matters

The landlord confirmed that Ms Morrison was no longer his tenant and that she had been given notice to quit on 11th September and that the tenancy had come to an end on 11th November 2015. The Committee considered the terms of Section 7 Schedule 2 of the Act and considered that, in view of the alleged failure of the Landlord to maintain the Property to the Repairing Standard in terms of Section 14 of the Act, it would continue to determine the application.

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 Committee had before it the application and copies of a report by the local authority together with a number of emails between the Landlord and an enforcement officer of Dundee City Council regarding what the enforcement officer considered to be defects with the Property. The Committee also had written representations of the Landlord dated 19th November 2015 which included copies of emails between the Landlord and the Tenant.

The Landlord said that he had never seen the Property and Mr Faruk, his brother said that he had seen the Property on a number of occasions and that he assisted his brother in dealing with the property. Both said that, at the commencement of the lease, there had been a kitchen as well as a cooker, fridge and washing machine. They said that the flat had been fit for habitation and was in good condition. They said that there also had been electric heaters. The landlord said that there had been significant arrears of rent and that he had entered into an agreement with the Tenant whereby certain improvements would be carried out to the Property in lieu of rent. He said that he asked for receipts in respect of the work done. He said that he had been given copies of handwritten receipts and quotations and that they were for excessive amounts. He gave the example of the Tenant having supplied receipts for four electric radiators at a cost of £1300. Mr Rayeez Faruk said that the Property had

been in good condition at the start of the tenancy and his brother confirmed this. The Landlord said that the Tenant must have taken the cooker, fridge, washing machine and heaters. The surveyor member of the Committee showed the Landlord photographs of the inside of the Property. The Landlord and his brother said that they were shocked at the deterioration. The Landlord said that he had not had access to the Property since the tenancy had been terminated because he did not have keys.

The Landlord said that he did not have an electrical installation condition report. The Landlord said that he thinks that the Tenant took advantage of him because he received no rent and the Tenant has clearly not carried out any repairs. He said that the Tenant must have removed the appliances from the kitchen. The Landlord said that he intends to repair the property and sell it.

10. Committee's Findings

- 10.1 There are not a sink, worktop or kitchen cabinets in the kitchen
- 10.2 There is plaster missing from the kitchen ceiling.
- 10.3 There is plaster missing from the window into the bedroom.
- 10.4 There is a battery smoke detector in the hall and no heat detector in the kitchen.
- 10.5 There are no heating appliances.
- 10.6 There is a pipe in the bedroom which appears to be a gas pipe and the Committee was unable to establish if the gas supply had been properly terminated.
- 10.7 There is a faulty light pendant in the living room.
- 10.8 There is a faulty power point in the living room.
- 10.9 The fuse box is of the type which requires fuse wire.
- 10.10 There is no heat detector in the kitchen.
- 10.11 There is no electrical compliance certificate for the property.
- 10.12 The W.C. and shower are faulty.
- 10.13 There are no kitchen appliances in the Property.

11. Reasons

The Committee made its findings on the basis of what it found on inspection and the evidence from the Landlord and Mr Rayeez Faruk.

The Committee considered the evidence it had heard from the landlord and his brother and the written representations. Their evidence was not challenged since Ms Morrison did not attend the Hearing. The Committee found The Landlord and his brother, Mr Faruk, to be credible but, other than in respect of one aspect, could make no determination with regard to whether or not the Property met the repairing standard at the commencement of the Tenancy. The Property has a battery operated smoke detector in the hall and no smoke detector in the living room. There was also no heat detector in the kitchen. The Property therefore could not have met the repairing standard. In any event the Committee considered that the condition of the property at the start of the Tenancy was not relevant in respect of the application to be determined. The Committee considered whether or not any defects it found established brought the Property below the repairing standard in terms of the Act. The Committee had no difficulty in determining that the Property did not meet the repairing standard. The kitchen requires to be reinstated, plaster repairs carried out to the kitchen and the bedroom and the W.C and shower need to be repaired. The

Landlord also requires to meet current regulations with regard to smoke and heat detection and also in relation to electrical installations and inspection. The Committee noted the statutory guidance on electrical installations and appliances. Since the Tenancy is at an end the Committee determined that the Landlord requires to comply with the new statutory guidance before the Property can be let and accordingly the Property does not meet the repairing standard in this regard. The Committee also considered that evidence would have to be provided that the gas supply had been properly terminated. In respect of the Findings it had made, the Committee considered that a repairing standard enforcement order should be made.

12. Decision

The Committee accordingly determined that the Landlord has failed to comply with the duties imposed by Section 14(1)(b), of the 2006 Act, as stated.

13 .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:

**(One) The Landlord requires to provide evidence from a competent gas engineer that the gas supply has been properly and safely terminated.
(Section 13(1) (a) and 13(1) (c) of the 2006 Act).**

**(Two) The Landlord requires to reinstate the kitchen by installing a sink, hot and cold water supply, suitable power points worktops and kitchen units/cupboards.
(Section 13 (1) (a) and 13 (1) (d) of the 2006 Act).**

**Three) The landlord requires to repair or replace the W.C and Shower unit.
(Section 13(1) (c) of the 2006 Act).**

**(Four) The Landlord requires to repair the kitchen ceiling and window in the bedroom
(Section 13(1) (b) of the 2006 Act).**

**(Five) The Landlord requires to install appropriate heat and smoke alarms to comply with the requirements of the revised Domestic Technical Handbook issued by Scottish Government's Building Standards Division (Technical Handbooks 2013:- Domestic-Fire)
(Section 13 (1) (f) of the 2006 Act**

**(Six) The Landlord requires to produce an electrical installation condition report prepared by a suitably competent person all in accordance with the statutory guidance.
(Section 13 (1) (c) of the 2006 Act**

In view of the nature of the failure to meet the Repairing Standard as defined in the Act, the Committee determined that the repairing standard enforcement order requires to be complied with by 30th April 2016.

NOTE

The Committee had regard to the Land Certificate for the Property. The flat is registered under Title Number ANG37809. It is described as being *"the subjects 2/R 77 Hilltown, Dundee within the land edged red on the Title Plan being the southmost flat on the second floor of the tenement 77 Hilltown."* The Title Plan shows the

tenement 77 Hilltown and the Committee had no doubt that the flat it had inspected was the flat owned by the Landlord and described in the Land Certificate. It appeared to the Committee that the Title Plan is wrong because it has the wrong tenement shown delineated in red. It has delineated the tenement 71, 73 and 75 Hilltown rather than 77 Hilltown and the Committee considered that the Landlord may consider it appropriate to ask his solicitor to draw the error to the attention of the Keeper of the Land Register

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 of the Act

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.

M McAllister

Signed Date 8th December 2015
Martin J. McAllister
Chairperson

*Mrs G. McAlister
8/12/15*

Photographs taken at Flat 2L, 77 Hilltown, Dundee DD3 7AD on 2 December 2015 (PRHP/RP/15/0266)



01 – Front elevation



02 – Kitchen (as at Inspection)



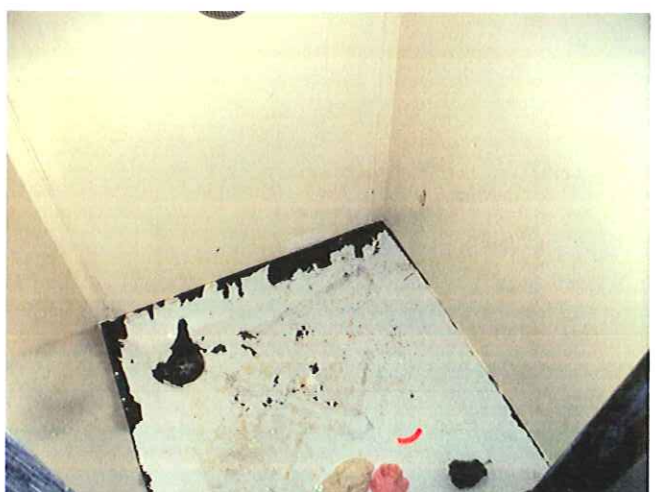
03 – Faulty socket in living room



04 – Light fitting in living room



05 – WC



06 – Shower



07 – Pull switch in bathroom



08 – Gas supply pipe in rear bedroom



09 – Shower unit



10 – Missing plaster at rear bedroom window



11 – Electric main board



12 – Faulty light