



Repairing Standard Enforcement Order

Ordered by the Private Rented Housing Committee

PRHP/RP/15/0273

Search Sheet Number: 26963

Re: The residential dwelling house being the north most house on the top floor at Flat 3F2, 11 Murdoch Terrace, Edinburgh, EH11 1BE as more particularly described in the Disposition of 1 September 1986 by John Bourne, formerly 8 Hill Street, Edinburgh to Jennifer Elizabeth Leprince, PO Box 305, Cessnock, New South Wales, Australia recorded on 15 September 1986 in the General Register of Sasines for the County of Edinburgh.

("the Property")

The Parties:-

**Mr Kyle Andrews and Mr Rafal Sitko
formerly resident at the Property**

("the Tenants")

and

**Ms Jennifer Elizabeth Leprince
C/o The Flat Company
61A Queen Street
Edinburgh
EH2 4NA**

("the Landlord")

The Committee comprised:

**Mr Ron Handley – Chairperson
Mr Ian Murning – Surveyor**

NOTICE TO THE LANDLORD

In terms of their decision dated 22 January 2016, the Private Rented Housing Committee ("the Committee") determined that the Landlord had failed to comply with the duty imposed by Section 14(1)(b) of the Housing (Scotland) Act 2006.

The Committee now requires the Landlord to carry out such works as are 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 Committee requires the Landlord to repair the roof of the Property to ensure that it is wind and water tight.

The Committee orders that the works specified in this Order must be carried out and completed on or before 18 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.

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 agreement 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 this and the preceding page is subscribed by Ronald G Handley, Solicitor, Chairperson of the Committee at Dunbar on 22 January 2016 before this witness:-

Jane Handley

Witness

Ronald G Handley

Chairperson

JANE Handley

Name in full

23 LESLIE WAY, DUNBAR

Address of witness

EAST LOTHIAN EH42 1GF



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

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The Committee comprised:

**Mr Ron Handley – Chairperson
Mr Ian Murning – Surveyor**

The Committee's Decision

The Committee, having made such enquiries as it saw fit for the purposes of determining whether the Landlord had complied with the duty imposed by Section 14(1)(b) of the Housing (Scotland) Act 2006 ("the Act") in relation to the Property, and taking account of the evidence before it, unanimously

determined that the Landlord had failed to comply with the duty imposed by Section 14(1)(b).

Background

1. On 9 October 2015 the Tenants applied to the Private Rented Housing Panel ("the PRHP") for a determination as to whether or not the Landlord had failed to comply with the duties imposed by Section 14(1)(b) of the Act.
2. On 12 November 2015 the President of the PRHP referred the application to the Committee.
3. In December 2015 the Tenants advised the Committee that they had vacated the Property. Accordingly, under paragraph 7(1) of Schedule 2 of the Act the Tenants were treated as having withdrawn their application under section 22(1) of the Act. The Committee then considered the application and whether it should be determined or be abandoned all in terms of paragraph 7(3) of Schedule 2 of the Act.
4. Given that the Tenants alleged that there were significant dampness issues within the Property, the Committee concluded that the application should be determined due to the nature of the alleged defects and the potential effect on any future tenants or occupiers if the allegations were substantiated. Consequently the Committee decided to determine the application in accordance with a Minute of Continuation dated 28 December 2015.

The Application

5. In their application the Tenants alleged that the Landlord had failed to comply with the duty to ensure that the Property met the Repairing Standard (as defined in the Act).
6. It was submitted that the Landlord had failed to ensure that the Property was wind and water tight and in all other respects reasonably fit for human habitation. It was also submitted that the structure and exterior of the house was not in a reasonable state of repair and not in proper working order.
7. In the application form the Tenants stated that they had moved into the Property on the assumption that the roof was in good shape. However there had been several leaks and many contractors had stated that the roof required to be replaced. There was mould in the bedroom and bathroom and the Property was constantly damp.

The Evidence

8. The Committee had before it a bundle of documents which included "Register Direct" documents, a copy of the Application Form, copy

photographs and copies of various e-mails and letters. The Committee took account of these documents.

The Inspection

9. The Committee inspected the Property on 12 January 2016 at 1000hrs. The Landlord was represented by Mr Dietrich Zank, Maintenance Director, The Flat Company.

The Hearing

10. A Hearing was arranged to take place after the inspection at 1100 hrs in George House, 126 George Street, Edinburgh, EH2 4HH. Mr Zank attended the Hearing on behalf of the Landlord.

Summary of the issue

11. The issue to be determined by the Committee was whether the Landlord had complied with the requirements of the Act to ensure that the Property met the Repairing Standard.

Findings

12. The Property comprises a third floor flat in a three storey block of flats at 11 Murdoch Terrace, Edinburgh, EH11 1BE. An additional bedroom ("the attic room") has been created within the attic space of the Property.
13. On 18 June 2014 the Landlord and the Tenants entered into a Short Assured Tenancy which related to the Property.
14. Around December 2015 the Tenants vacated the Property (with the agreement of the Landlord).
15. The roof of the Property is not wind and watertight and is not in a reasonable state of repair.
16. As a consequence of the poor state of repair of the roof, there has been water ingress within the Property.
17. Part of the ceiling in the Property has been damaged by water ingress and is not safe and requires to be repaired.
18. The Property does not meet the Repairing Standard (as defined in the Act).

Reasons for the Decision

19. In the course of the inspection the Committee noted that there was evidence of water ingress in the attic room and in the ceiling within the Property. It appeared that the water ingress was a consequence of the poor state of repair of the roof.

20. In the course of the Hearing Mr Zank advised the Committee that Dunedin Canmore were responsible for repairs to the common parts of the building which the Property was located within. He accepted that the roof was not in a reasonable state of repair and that remedial works were required to make it wind and water tight. He helpfully produced two letters from Dunedin Canmore. The author of the first of these letters (dated 4 December 2015) confirms that Dunedin Canmore had arranged for a specialist contractor to attend to the matter. It was also stated in this letter that a report had been received from the contractor in which it was stated that in order to remedy the defects in the roof the following works were required:
- Erect a tower scaffold to gain safe access to the defective skew/slates.
 - Cut out the cement skew, repair loose, missing and badly broken slates in area of water ingress.
 - Reform skew with 2 coats of mortar and point the copestone joints.
 - Remove scaffold and debris.
21. In a further letter of 14 December 2015 from Dunedin Canmore it is stated that in spite of the contractor attending and repairing an existing leak, further instances of water ingress had persisted. The author of this letter confirms that the contractor had been instructed to carry out the previously referred to works. The author also states that there would be a slight delay in starting the works because permission to erect scaffolding had to be obtained from the City of Edinburgh Council. It was hoped that works could begin "as soon as possible".
22. It was clear to the Committee that there had been significant water ingress to the Property as a consequence of the poor state of repair of the roof. Mr Zank presented a number of documents to show that The Flat Company had been attempting to resolve matters with only limited success. These documents included copies of correspondence from The Flat Company to Dunedin Canmore.
23. Having taken account of the available evidence the Committee had no hesitation in finding that the roof of the Property was not in a reasonable state of repair and that the Repairing Standard had not been met.
24. It appeared to the Committee that the Property was generally well maintained. It also appeared to the Committee that the Landlord's representative had been making strenuous efforts to resolve matters without success. As a consequence of the poor state of repair of the roof the Tenants had decided to vacate the Property. The Committee understands that the Tenants received a full refund of their deposit.
25. Given the terms of the specialist contractor's report referred to in the letters from Dunedin Canmore, the Committee concluded that after the erection of scaffolding, the necessary remedial works could be executed within a relatively short period of time.

Decision

26. The Committee determined that the Landlord had failed to comply with the duty imposed by section 14(1) (b) of the Act.
27. The decision of the Committee was unanimous.
28. The Committee proceeded to make a Repairing Standard Enforcement Order.

Right of Appeal

29. A Landlord(s) or Tenant(s) aggrieved by the decision of a PRHP 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

30. 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. 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 **Ronald G Handley** Date 22 January 2016
Chairperson