



Repairing Standard Enforcement Order

Ordered by the Private Rented Housing Committee

prhp Ref: PRHP/RP/15/0289

Re : Property at 2F1 8 Brandon Terrace, Edinburgh EH3 5EA ("the Property")

Title Number: MID67220

The Parties:-

Javier Garcia-Maurino Espino, residing at 2F1 8 Brandon Terrace, Edinburgh EH3 5EA ("the Tenant")

Yousaf Hussain, residing at 29A London Street, Edinburgh, EH3 6LY ("the Landlords")

NOTICE TO Yousaf Hussain, residing at 29A London Street, Edinburgh, EH3 6LY ("the landlord")

Whereas in terms of their decision dated 11 January 2016, 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:

(a) The house is wind and watertight and in all other respects fit for human habitation, in terms of s. 13(1)(c) of the Act.

(b) The installations in the house for the supply of water are in a reasonable state of repair and in proper working order, in terms of section 13(1)(c) of the act.

(c) The fixtures and fittings provided by the landlord under the tenancy a reasonable state of repair in terms of section 13(1)(d) of the act

the Private Rented Housing Committee now requires the landlord to carry out such work as is necessary for the purposes of ensuring that the house concerned 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 to:-

(i) Work with the proprietor of flat 3F1 8 Brandon Terrace, Edinburgh (and his agents), to ensure that the leaks from faulty plumbing in that property are remedied and that any works necessary on the joists separating this property from that property are carried out.

(ii) Provide the Private Rented Housing Panel with a copy of the report (instructed on 5 January 2015) from Kingston Property Preservation within 14 days of today's date, and thereafter to join with the proprietor of flat 3F1 8 Brandon Terrace, aforesaid, in completing the works recommended by that report.

(iii) Thereafter, to carry out all necessary plumbing, electrical, refitting and decoration works to reinstate the bath/shower-room in this property, returning the room to at least the standard it was in in July 2014.

All within two calendar months of the date of service of this order on the parties.

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 are executed by Paul Doyle, solicitor, 24 Haddington Place, Edinburgh, chairperson of the Private Rented Housing Committee, at Edinburgh on 11 January 2016 before Miriam Doyle, 24 Haddington Place, Edinburgh.

P Doyle

M Doyle

witness

chairman



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

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Re : Property at 2F1 8 Brandon Terrace, Edinburgh EH3 5EA ("the Property")

Title Number: MID67220

The Parties:-

Javier Garcia-Maurino Espino, residing at 2F1 8 Brandon Terrace, Edinburgh EH3 5EA ("the Tenant")

Yousaf Hussain, residing at 29A London Street, Edinburgh, EH3 6LY ("the Landlords")

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 house concerned, and taking account of the evidence led by both the Landlord and the Tenants at the hearing, determined that the Landlord has failed to comply with the duty imposed by Section 14 (1)(b) of the Act.

Background

- 1. By application dated 23/10/2015 the Tenant applied to the Private Rented Housing Panel for a determination of whether the Landlord had failed to comply with the duties imposed by Section 14 (1)(b) of the Housing (Scotland) Act 2006 ("the Act").**
- 2. The application by the Tenants stated that the Tenants 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 house is wind and watertight and in all other respects fit for human habitation, in terms of s. 13(1)(c) of the Act.**
 - (b) The installations in the house for the supply of water are in a reasonable state of repair and in proper working order, in terms of section 13(1)(c) of the act.**

(c) The fixtures and fittings provided by the landlord under the tenancy a reasonable state of repair in terms of section 13(1)(d) of the act

3. By letter dated 26 November 2015 the President of the Private Rented Housing Panel intimated a decision to refer the application under Section 22 (1) of the Act to a Private Rented Housing Committee. The committee was made up of two members;

Paul Doyle, legal member, and
Charles Reid-Thomas, surveyor member

4. The Private Rented Housing Committee served Notice of Referral under and in terms of Schedule 2, Paragraph 1 of the Act upon both the Landlord and the Tenant.
5. Following service of the Notice of Referral both the Tenant and the landlord made a sequence of further representation to the Committee by email.
6. The Private Rented Housing Committee inspected the Property on the morning of 6th January 2015. Both the Tenant and the Landlord were present throughout the inspection.
7. Following the inspection of the Property the Private Rented Housing Committee held a hearing at George House, George Street, Edinburgh. Both the tenant and the landlord were present. They each participated fully in the hearing, answering questions from Committee members.
8. The tenant's position is that there has been a leak from the property immediately above this property which has damaged the ceiling in the bathroom of this property. The tenant claims that the damage caused to the ceiling has rendered the bathroom unusable, and that bathroom now requires to be entirely overhauled and reinstated.
9. The landlord's position is the repairs are necessary, and he is willing to carry them out. The landlord has ripped out the installations in the bathroom, but has been unable to complete the works because there is still a leak from the upstairs property, which has damaged the joists above the bathroom. The landlord is in daily contact with the upstairs proprietor's agents and his plumber and is ensuring that the leak is fixed properly (and the ceiling void dried out) before he installs upgraded bathroom fittings, and renovates the bathroom.

Summary of the issues

10. 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 of fact

11. (a) The property is second-floor flatted dwelling-house entering from a common and stair. The front door of this property opens onto a central hallway providing access to each of the rooms. The property contains six bedrooms, each one occupied by a separate tenant, an internal kitchen, and two internal bathrooms. The bathroom which is the subject matter of this application is close to the front door the property.

(b) The landlord is the heritable proprietor of the property. The tenant took entry on 18 July 2014. When the tenant moved into the property the bathroom adjacent to the front door contained a three-piece sanitary sweet with a shower over the bath

(c) On 22nd of February 2015 the tenant noticed a leak coming from the flat immediately above this property. The leak was penetrating the ceiling of the bathroom adjacent to the front door. At times the leak amounted to little more than a drip, at other times there was a steady stream of water penetrating the ceiling. The tenant immediately contacted the landlord to complain that there was a leak from the upstairs property.

(d) The property immediately above this property is a flatted dwelling-house of similar proportions. Shortly before the leak in the bathroom of this property became apparent, the upstairs proprietor had refitted their own bathroom. The upstairs property is tenanted. The landlord contacted the tenants of the upstairs property to complain of water ingress. The landlord then contacted the letting agents for the upstairs property, who instructed a plumber to find the source of the leak. Despite their efforts the leak persisted.

(e) By August 2015 water damage from the leak from the upstairs property was evident in the ceiling of the bathroom in this property. A small portion of the corner of the ceiling began to bulge. By that time the landlord had intimated the water ingress to his own insurers, who initiated their own investigations. The landlord's insurers are still investigating the source of the leak & assessing whether or not they will indemnify the landlord.

(f) Until early December 2015 the tenant and the other tenants within this property continued to use the bathroom, despite the water damage to the ceiling. Although the water damage was unsightly, it did not prevent the use of the bath, the WC and wash hand basin.

(g) Between 20 December 2015 and 4 January 2016, the landlord initiated works to completely refit & upgrade the bathroom. The three-piece sanitary sweet was stripped from the bathroom, the floor has been lifted & the walls have been stripped back to the laths. The landlord halted the refitting works when he removed a section of the ceiling to find that the pipes servicing the bath in the upstairs property continue to leak and drip water into this bathroom.

(h) The landlord has continued his discussions with the letting agents for the upstairs property and has direct access to the plumber working on the upstairs bathroom. He is using his discussions with the letting agent and with the plumber to ensure that effective works are carried out to stem the flow of water from the upstairs property. On 5 January 2016 the landlord instructed Kingston Property Preservation to inspect the joists below the bath in the upstairs property. He found that those joists now have sections affected by rot because they have been immersed in water for so long. The landlord awaits a written report from Kingston Property Preservation so that he can ascertain what work is required to remove the rot and make the joists good.

(i) Between February 2015 and the date of inspection, the landlord and the tenant have remained in contact discussing the damage that is done by the leak of water into the bathroom. The tenant has become increasingly unhappy about the deteriorating state of the ceiling bathroom. The landlord is reluctant to complete refitting works because the source of the problem is a leak from a neighbouring proprietor and, for works to have any lasting effect, that leak must be remedied first.

(j) The landlord has already made plans to refit and upgrade the bathroom, despite the fact that his insurers have not yet indicated whether or not there will indemnify him. The landlord has the materials and the tradesmen ready, but cannot complete the work until the leak from the upstairs property is remedied and the rotten joists are repaired or replaced. In the meantime the bathroom which was fitted, and worked properly at the date the tenant moved into the property, no longer exists. In its place there is an entirely empty room stripped back to the laths, with a section of ceiling missing, and with services brought into the walls and floor of the property, but disconnected.

(k) Because of the water ingress from the property upstairs, this property is not watertight. Because the bathroom fittings and fixtures have been removed the fixtures and fittings and appliances provided by the landlord under the tenancy are not in a reasonable state of repair nor of in proper working order. The landlord therefore fails to comply with the repairing standard and a repairing standard enforcement order is necessary.

(l) During the inspection, the surveyor member of the committee took photographs within the property. Copies of those photographs are in the schedule annexed hereto.

Reasons for the decision

12 (a) Committee members inspected this property at 10am on 6 January 2016. It was a clear, bright, dry, January morning. The stair door was open, so committee members made their way to the front door this property. As the tenant was opening the door to the property, the landlord entered the common stair. The tenant welcomed committee members and the landlord into the property.

(b) Both the tenant and the landlord explained that there are six separate self-contained bedrooms in this property, each one occupied by a different tenant - each of whom has separate tenancy agreements. Committee members could see that there is an internal kitchen entering from the hallway. The landlord and the tenant agreed that there are two bathrooms in the property. During the inspection, the bathroom which is not the subject matter of this complaint was in constant use by other tenants in the property.

(c) There was no great dispute about the facts of this case. The focus is on an internal bathroom immediately adjacent to the front door of the property. The day before the inspection, as part of his submissions, the landlord sent the Private Rented Housing Panel a video (that he had taken on 5 January with his mobile phone) which quite clearly showed that what was once the bathroom had been stripped out entirely, and that water was leaking from the underside of the Bath in the upstairs property which could clearly be seen through the incomplete ceiling. In the course of inspection, the landlord repeatedly offered to take committee members to the flat above this property to inspect the corresponding bathroom (Committee members turned his invitation down).

(d) The room which had once been a bathroom is entirely empty. It has bare floorboards. The walls have been stripped back to the laths. The ceiling has been taken down, exposing the joists separating this property from the property upstairs. It is common ground that, between 20 December 2015 and 4 January 2016 the landlord removed the three-piece sanitary suite which had been in the bathroom, lifted the floor, took down the ceiling & stripped the walls back to the laths. The landlord did that because he agrees that the bathroom has been damaged by a constant leak throughout most of 2015.

(e) After the inspection, a hearing took place at 11am within George house George Street Edinburgh. Both the landlord and the tenant were present at the hearing. Neither the landlord nor the tenant were represented, but they both participated fully in the hearing, answering questions from committee members without hesitation.

(f) The landlord's intention had been to entirely refit & upgrade the bathroom, so that the works would be completed on the tenant's return from Christmas holiday on 4 January 2015. He was unable to complete the work because, once the bathroom was stripped out, it was obvious that there is faulty plumbing in the bathroom of the property immediately above this property. That is the source of the leak which has caused damage in the bathroom of this property. It is necessary to stop the leak & remedy the damage that a constant flow of water for months has done before the bathroom can be refitted.

(g) The tenant told committee members (at the hearing) that, when he moved into the property, the bathroom was complete. It had a fully functioning three-piece sanitary suite. The tenant gave a history of discovering the leak in 2015 & reporting the leak to the landlord. He told committee members that he was

able to use the bathroom until November 2015, when he chose not to use the bathroom because of its deteriorating condition. The tenant went on holiday immediately before Christmas 2015, returning to the property on 4 January 2015 to find that the bathroom had been completely stripped out.

(h) The landlord agreed that he had been told of the leak and explained that he had spent months dealing with the upstairs proprietor and the proprietor's agents in an attempt to stem the flow of water. The landlord told us that he had notified his insurers without delay, but had decided to strip out the old bathroom and upgrade the bathroom between 20 December 2015 & 4 January 2016 because the tenant would not be in the property between those dates. The landlord told us that work had ground to a halt when a continuing leak from the property upstairs was discovered. The landlord told us that he is in constant contact with the upstairs proprietor's agents and the upstairs proprietor's plumber. He told us he is making every effort to ensure that adequate work is carried out to remedy the faulty plumbing which is the source of the leak and to make good the damage that the flow of water has done to the joists before he completes refitting the bathroom.

(i) Committee members have no doubt that the landlord has tried hard to remedy the problem caused by water ingress, but the weight of reliable evidence indicates that when the tenant moved into this property there was a functioning bathroom with a three-piece sanitary suite. At the date of inspection there was just a shell of a room where a bathroom had once been.

(j) At the commencement of the tenancy, the bathroom contained installations for the supply of water which were in proper working order. At the date of inspection, the installation for the supply of water is not in proper working order. When the tenant moved into this property, the bathroom contained fixtures and fittings which were in proper working order. At the date of inspection, the fixtures and fittings are not in proper working order. The very fact that both the landlord and the tenant agree that there has been a leak dard Enforcement Order inspection there continues to be a leak, indicates that the house is not watertight.

(k) In his application to the Private Rented Housing Panel, the tenant appears to have focused his attention solely on section 13(1)a of the 2006 Act. Committee members find that the landlord has failed to meet his obligations in terms of sections 13(1)(a), 13(1)(c) and 13(1)(d) of the 2006 Act. Committee members are satisfied that consideration a section 13(i)(c) & (d) is within their jurisdiction because, when the application is read as a whole, it is clear that the tenant's complaint relates to sections 13(1)(a)(c) &(d) of the 2006 Act. The fact that the appellant did not tick each box (on the application form) correctly does not mean that the committee should turn a blind eye to the words used by the tenant to support his application and to the undisputed facts in this case.

(l) The committee is encouraged that the landlord is still vigorously seeking a solution and is ready to reinstall the bathroom, however because the bathroom does not exist at the date of inspection, and because water continues to leak into this property the committee make a repairing standard enforcement order requiring the landlord to

(i) Work with the proprietor of flat 3F1 8 Brandon Terrace, Edinburgh (and his agents), to ensure that the leaks from faulty plumbing in that property are remedied and that any works necessary on the joists separating this property from that property are carried out.

(ii) Provide the Private Rented Housing Panel with a copy of the report (instructed on 5 January 2015) from Kingston Property Preservation within 14 days of today's date, and thereafter to join with the proprietor of flat 3F1 8 Brandon Terrace, aforesaid, in completing the works recommended by that report.

(iii) Thereafter, to carry out all necessary plumbing, electrical, refitting and decoration works to reinstate the bath/shower-room in this property, returning the room to at least the standard it was in in July 2014.

All within two months of the date of service of the order.

Decision

13. The Committee accordingly determined that the Landlord has to comply with the duty imposed by Section 14 (1)(b) of the Act.

14. The Committee proceeded to make a Repairing Standard Enforcement Order as required by section 24(1) of the Act

15. The decision of the Committee was unanimous.

Right of Appeal

16. 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

17. 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.

P Doyle

Signed
Date.....
Chairperson

..... 11/01/2016

Davidson & Robertson

RURAL

Photographic Record of: 2F1, 8 Brandon Terrace, Edinburgh, EH3 5EA



Front Elevation. 8 Brandon Terrace, 2F1



Looking up through the joists to defective pipework in the bathroom in the flat above



Bathroom has been completely stripped out.