



Repairing Standard Enforcement Order

Ordered by the Private Rented Housing Committee

prhp Ref: PRHP/RP/16/0057

Re: Property at 42 Rose House, Hazlehead, Aberdeen, AB15 8ER

Title No: ABN78195

The Parties:-

MR ADENIYI OLUSHANU, 42 Rose House, Hazlehead, Aberdeen, AB15 8ER (“the Tenant”)

MR ANGUS CHEYNE residing at 46 Hazlehead Gardens, Aberdeen, AB15 8EA (“the Landlord”)

NOTICE TO MR ANGUS CHEYNE (“the Landlord”)

Whereas in terms of their decision dated 5 May 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:-

The Property is wind and watertight and in all other respects reasonably fit for human habitation;

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:-

- (a) To repair or replace the windows in the first right bedroom on entering the Property as necessary to ensure that they are in a reasonable state of repair and in proper working order and free from draughts.
- (b) Repair any cracks to walls beneath or adjacent to the windows in the first right bedroom on entering the Property to ensure that they are wind and watertight, free from draughts and in all other respects fit for human habitation.

The Private Rented Housing Committee order that the works specified in this Order must be carried out and completed within the period of 4 weeks 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 page are executed by Gillian Coultts Buchanan, Solicitor, Whitehall House, 33 Yeaman Shore, Dundee, DD1 4BJ, Chairperson of the Private Rented Housing Committee at Dundee on 5 May 2016 before this witness:-

J Lynch witness

G Buchanan Chairman

Ms Jennifer Lynch
Secretary
Thorntons Law LLP
Whitehall House
33 Yeaman Shore
Dundee DD1 4BJ



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

prhp Ref: PRHP/RP/16/0057

Re : Property at 42 Rose House, Hazlehead, Aberdeen, AB15 8ER
Land Register Title No. ABN78195 ("the Property")

The Parties:-

Mr Adeniyi Olushanu, 42 Rose House, Hazlehead, Aberdeen, AB15 8ER ("the Tenant")

Mr Angus Cheyne residing at 46 Hazlehead Gardens, Aberdeen, AB15 8EA (represented by Ms Ann Spence, Belvoir Lettings, 24 Rosemount Place, Aberdeen, AB25 2XU)("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) in relation to the house concerned, and taking account of the evidence led by the Tenant and on behalf of the Landlord at the hearing, determined that the Landlord had failed to comply with the duty imposed by Section 14(1)(b) of the Act. The committee therefore issues a Repairing Standard Enforcement Order.

Background

1. By application received between 12 and 18 February 2016 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 Tenant stated that the Tenant 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:-

The Property is wind and watertight and in all respects reasonably fit for human habitation.

3. By letter dated 23 February 2016 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.
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 Landlords and the Tenant.
5. Following service of the Notice of Referral the Tenant, by email dated 13 April 2016, made written representation to the Committee. The Landlord's representative, Ms Spence of Belvoir Lettings, by letter dated 30 March 2016, also made written representations to the Committee.
6. The Private Rented Housing Committee (comprising Miss G Buchanan, Chairperson and Legal Member, and Mr M Andrew, Surveyor Member) inspected the Property on the afternoon of 27 April 2016. Photographs were taken and a Schedule of Photographs is attached. The Tenant and the Landlord's representative, Ms Spence, were present during the inspection.

7. Following the inspection of the Property the Private Rented Housing Committee held a hearing at Credo Centre, 14-20 John Street, Aberdeen and heard from the Tenant and his co-tenant, Mr Luigi Fiorentino, and the Landlord's agent, Ms Spence. The Landlord did not attend.
8. In terms of his application, the Tenant submitted as follows:-
 - (a) Bedroom 1 (being the first right bedroom on entering the property occupied by the Tenant on the date of the inspection by the Committee):-
 - i. That work requires to be carried out to the windows to make them wind and watertight and free from draughts.
 - ii. That work requires to be carried out to the windows to allow them to operate correctly by opening and closing properly.

In particular the right most window does not consistently close properly and even when it closes properly initially it does not stay fully closed. The handyman employed by the Landlord's representative said to the Tenant that the the right most window was slightly warped having been in that position for so long.
 - iii. That work requires carried out to the walls beneath and adjacent to the windows to seal any cracks and make them free from draughts.
 - iv. That it was impossible to sleep in the bedroom due to the constant draughts.
 - v. That electric heaters required to be left on all night as the room is so cold.
 - (b) Bedroom 2 (occupied by Mr Luigi Fiorentino on the date of the inspection by the Committee):-
 - i. That work requires to be carried out to the windows to make them wind and watertight and free from draughts.
 - ii. That when it is windy outside draughts can be felt when lying in bed making it impossible to sleep.
 - iii. That when it is windy there is noise from the window which stops when the frame is pushed hard.
 - (c) Living Room
 - i. That work requires to be carried out to the windows in the living room (other than the small narrow window) to make them wind and watertight and free from draughts.
 - ii. That between November and mid March the living room could not be used due to it being too cold.
9. The Landlord's representative submitted as follows:-
 - (a) That there was no work required to the windows.
 - (b) That on receipt of the Tenant's complaints a handyman was instructed to attend and that he repaired and adjusted all windows.
 - (c) That on receipt of the Tenant's further complaints a glazing company was instructed to attend which serviced and realigned the windows.

- (d) That on receipt of the Tenant's continuing complaints the glazing company was approached to return to the property but it refused to do so as it was felt to be a waste of money.
- (e) That the handyman was instructed to attend the property for the second time and meet the Tenant which he did but he could not see any issues with the windows and no further works were therefore done.
- (f) That the Landlord had previously lived in the property without any problems with the windows.
- (g) That the Landlord had previously rented the property to other tenants without complaint about the windows.

Summary of the issues

10. The issues to be determined are:-

- (a) Whether work is required to the windows in the bedrooms and the living room to make them wind and watertight and free from draughts.
- (b) Whether work is required to any cracks in the walls beneath and adjacent to the windows in the right most bedroom on entering the property (Bedroom 1 above) to make them wind and watertight and free from draughts.
- (c) Whether work is required to the windows in the right most bedroom on entering the property (Bedroom 1 above) to make them operate correctly by opening and closing properly.

Findings of fact

11. The Committee finds the following facts to be established:-

- (a) That the property is situated on the eleventh floor of a twelve storey block of flats.
- (b) That the elevated character of the Property is such that it will be adversely affected by high winds.
- (c) That the left most window in Bedroom 1 (above described) is missing a draught proof strip.
- (d) That the right most window in Bedroom 1 does not close correctly.
- (e) That there is a crack in the corner of the wall beneath the windows in Bedroom 1 which is causing draughts.
- (f) That the windows in Bedroom 2 (above described) open and close correctly.
- (g) That the windows in Bedroom 2 are wind and watertight.
- (h) That the windows in the living room open and close correctly.
- (i) That the windows in the living room are wind and watertight.

Reasons for the decision

12. The Property is situated on the eleventh floor of a twelve storey block of flats. The property comprises a hallway leading to two bedrooms, a living room with adjoining kitchen and a bathroom.

At the time of the inspection there was light wind and intermittent rain.

In Bedroom 1 (above described) the Committee found the left most window to be missing a draught proof strip and the right most window to not open and close correctly and consistently. A crack was also noticed by the Committee running from the lower right hand corner of the window downwards towards the floor from which a draught could very clearly be felt.

In Bedroom 2 (described above) the Committee could find no evidence of draughts. Mr Fiorentino who occupied that bedroom at the date of the Committee's inspection confirmed the windows in Bedroom 2 to operate correctly in that they opened and closed properly.

In the living room, there is a large expanse of glazing due to there being a number of windows situated in a row. The Tenant confirmed the windows to operate correctly. The Committee could find no evidence of draughts from the windows.

Being situated on the eleventh floor of a twelve storey high rise block of flats the elevated character of the property is such that it will be adversely affected by high winds and changes in temperature.

The Committee considered how long was required for the required works to be carried out to Bedroom 1 and determined that 4 weeks would be sufficient.

Decision

13. The Committee accordingly determined that the Landlord had failed 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).
15. The Committee proceeded to serve notice upon Aberdeen City Council as required by section 24(6).
16. The decision of the Committee was unanimous.

Right of Appeal

17. **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

18. 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 **G Buchanan** Date 5/5/16
Chairperson

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ROSE HOUSE, HAZLEHEAD, ABERDEEN



Rose House



Bedroom 1 - Crack beneath right hand corner of window

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Bedroom 1 - Window in closed position showing gap to edge which admits draught



Bedroom 2 - windows

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Living room – windows



Living room side window