



REPAIRING STANDARD ENFORCEMENT ORDER
Ordered by the Private Rented Housing Committee

Re: Property at 170 Lochee Road, Dundee, DD2 2NH registered in the name of the Landlord on 13 May 2015 in the Land Register under Title Number ANG66073 ("the House")

In connection with

Property at Flat 2R, 170 Lochee Road, Dundee, DD2 2NH ("the House")

Mr Ross Alexander McLellan residing at the House ("the Tenant")

and

John Street (Scotland) Ltd, c/o Carling & Co Ltd, 1 Faraday Court, Dundee, DD2 3UD ("the Landlord")

PRHP REFERENCE PRHP/RP/16/0066

NOTICE TO

John Street (Scotland) Limited

WHEREAS in terms of their decision dated 24 May 2016 the 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 House meets the repairing standard in that:

"(b) the structure and exterior of the house...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 capable of being used safely for the purpose for which they are designed"

The Committee now requires the landlord to carry out such work as is necessary for the purposes of ensuring that the House 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:

1. To comply with Scottish Government Statutory Guidance on the provision of smoke alarms as set out at www.prhpscotland.gov.uk and in particular to carry out the following:
 - (i) install a mains operated smoke alarm within the living room of the House
 - (ii) install a mains operated heat detector within the kitchen of the House, and
 - (iii) Ensure that the smoke detectors in the hallway and living room and the heat detector in the kitchen are interlinked as described in the said guidance.
2. To repair the guttering to the rear of the tenement block above the kitchen of the House.
3. To eliminate the mould within the House as narrated in the said decision and to eradicate the condensation occurring within the House.
4. To repair or replace the washing machine and oven within the House.

The Committee order that the works specified in this Order must be carried out and completed within two calendar months from the date of service of this Notice and for written proof of having done so to be supplied to the Private Rented Housing Panel.

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 the decision.

Where such an appeal is made, the effect of the decision and 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 arrangement 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 these presents typewritten on this and the preceding page are signed by Maurice O'Carroll, Chairperson of the Private Rented Housing Committee at Edinburgh on the twenty fourth day of May, Two Thousand and sixteen in the presence of the undernoted witness:

Chairperson **M O'Carroll**

Witness: **J Morland**

Name in full: *John Ross Morland*

Occupation: *Faculty Officer*

Witness Address: *59/8 Moredun Park View,
Edinburgh
EH17 7NB*



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**

In connection with

Property at Flat 2R, 170 Lochee Road, Dundee, DD2 2NH (“the House”)

The parties:

Mr Ross Alexander McLellan residing at the House (“the Tenant”)

and

**John Street (Scotland) Ltd, c/o Carling & Co Ltd, 1 Faraday Court, Dundee, DD2
3UD (“the Landlord”)**

PRHP REFERENCE PRHP/RP/16/0066

DECISION

The Committee having made such enquiries as are 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 House, and having taken account of the evidence led at the hearing and of the written documentation attached to the application and submitted by the parties, has made the following decision:

It has determined that the Landlord has failed to comply with the duty imposed by section 14(1)(b) of the Act.

The decision was unanimous.

Background

By application received on 16 February 2016 (the “Application”) the Tenant applied to the Private Rented Housing Panel (“PRHP”) for a determination of

whether the Landlord had failed to comply with the duties imposed by section 14(1)(b) of the Act.

The Application stated that the Tenant considered that the Landlord had failed to comply with the duty to ensure that the House meets the repairing standard and in particular that the Landlords had failed to ensure compliance with the following paragraph of section 13(1) of the Act:

*“(b) the structure and exterior of the house...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 capable of being used safely for the purpose for which they are designed; ...”*

The Tenant complained that the structure and exterior of the House was such that mould was present within the House and that the white goods in the kitchen were not in proper working order.

By Minute of Decision dated 3 March 2016, the President of the PRHP decided to refer the Application to a Private Rented Housing Committee under section 23(1) of the Act. That decision was intimated to the parties by letters dated 23 March 2016.

The Committee comprised the following members:

Maurice O'Carroll, Chairperson
Ian Murning, Surveyor Member

The Committee inspected the House at 11.30am on Wednesday 4 May 2016. The Tenant was present along with his father, Mr Murray McLellan . At the inspection, the Landlord's letting agent, Mr Carling, was also present.

Following the inspection, the Committee held a hearing at 2pm at Caledonian House, Greenmarket, Dundee. The Tenant and Mr McLellan senior were again present as was Mr Carling on behalf of the Landlord. The Committee considered the written evidence submitted by the parties and heard representations from the parties.

Evidence and submissions at the Hearing

The Tenant narrated the background to his tenancy within the House. He works as a bookseller with Waterstones in Dundee and moved into the House on 4 February 2015 under a 12 month lease, together with his co-tenant Sarah Burt.

At that time, the letting agent was Robertson Property Management but subsequently Carling and Company Ltd took over and remain the relevant letting agents. Carling and Co. took over the maintenance and management of the House on 22 April 2016, although Robertson (trading under the name You Move) apparently remained the letting agents. In May 2015, the lease was changed to a six month tenancy which had expired by the time of the inspection but had

continued from month to month since then. The validity of the purported changeover in the terms of the lease was not an issue before the Committee.

A gap in the guttering to the rear of the tenement building, above the window of the kitchen to the House had been noticed by a workman sent round to inspect the property in Autumn of 2015. At that time, the workman noted that that defect might be the cause of problems within the block. The whole side of the building at the rear was in fact wet as a result and may have been the cause of water ingress. There was a brown mark by the window in the kitchen which appeared to be water staining although it had not become worse since the end of 2015.

The Tenant had noticed from that time that mould was covering a large part of the bathroom wall, although he was unsure of the source. The bathroom within the flat upstairs had at one point been the source of a leak into the extractor fan within the bathroom of the House, although this had apparently been fixed by the time of the inspection. The extractor fan was in any event not powerful enough to reduce the moisture level within the bathroom to an acceptable level. This was confirmed by another tradesman who came round to the property at a later date to replace the taps.

The Tenant also gave evidence that items of clothing, in particular two jackets and a laptop case, had been affected by mould. This was supported by photographs taken at the time, with the result that he and his partner avoided placing items near the wall in the main built in wardrobe nearest the external wall. A chest of drawers which had been near the window in the main bedroom had become mouldy and there was some evidence of mould on the mattress in the main bedroom. He had placed 3 portable, crystal dehumidifiers in the bedroom in a bid to reduce the condensation caused within the House. These required to be changed every 6 weeks. The Tenant also gave evidence that the washing machine and oven failed to operate properly. Clothes sometimes came out of the washing machine still sodden wet on occasions and the oven failed to reach a temperature necessary to cook, apparently because the door did not close properly.

Mr Carling for the Landlord explained that there had been a transfer of properties, including the House, to You Move recently and that it had acquired a portfolio of 85 properties in the Dundee area recently which it managed. He apologised for the breakdown of communication which had occurred whereby it had been suggested to the Tenant by an employee within the organisation that it was his responsibility to organise and effect repairs to the guttering to the rear of the property. This was quite clearly not the case.

Mr Carling explained that nothing had been brought to his attention at the time the Tenant first complained of the defects within the House. He also explained that it ought to have been explained to the Tenant that all of You Move's properties were let on an unfurnished basis. What normally would happen is that a tenant with items of furniture at the time of the transfer of property to them would be given the option to either have all furniture removed or to have the option to receive them as a gift from You Move. The validity of that approach in relation to compliance with the Repairing Standard is discussed below.

In relation to the damaged guttering, Mr Carling explained that this was a communal issue and that he was currently attempting to obtain information from the local authority as to the identity of the other owners in order to get the work done. Unfortunately, Dundee City Council was inundated with such requests and it was proving to be a slow and difficult process.

Mr Carling produced a report dated 28 April 2016 from a company called Morgan Timber Preservation at the hearing. The report confirmed that certain works required to be done, which Mr Carling confirmed had been instructed. Those works were:

1. upgrading of the extractor fan in the bathroom
2. installing a vent in the window in the rear bedroom
3. installation of a vent to the window in the main bedroom to the front of the property and
4. installation of an extractor fan in the kitchen.

Another company by the name of McGill was to install a heat detector in the kitchen and to provide mains operated smoke alarms in the hallway and living room, all inter-connected.

At the time of this decision, no vouching for the above works having been carried out had been received by PRHP. The most recent Electrical Installation Condition Report was dated 10 April 2013 and was produced by Mr Carling at the hearing.

Summary of the Issues

The issue to be determined is whether (1) the House meets the repairing standard as laid down in section 13(1)(b) and (d) of the Act and therefore (2) whether the Landlord has complied with the duty imposed by section 14 (1)(b).

Findings in Fact

The Committee made the following findings in fact:

The Landlord and the Tenant entered into a Tenancy agreement in respect of the House on 21 May 2015, although the Tenant had taken entry the month prior under a previous lease as narrated above. The rent payable is £450 per calendar month.

The Landlord was recorded on the Lease as being John Street (Scotland) Limited and the lease itself is on Carling & Co headed paper.

The registered owner of the House is John Street (Scotland) Limited as recorded in the Land Register on 17 October 1997 under Title Number ANG66073.

The provisions of Chapter 4 of Part I of the Act apply to the tenancy.

The Tenant notified the Landlord of the defects in the house which are now the subject of the Application on 4 and 5 January 2016 by email to an employee within Carling and Co.

The inspection on 4 May 2016 revealed:

The House is a second floor flat within a four storey traditional tenement block of flats. There are 2 flats per floor and 8 flats in total within the tenement. The common stairwell is accessed via a main door from the street and which also provides access to a communal drying green to the rear.

The House is a two bedroom flat consisting of a central hallway with all rooms off it. On entry from the stairwell, the main bedroom is directly ahead and living room to the left at the front of the building. At the end of the hallway is the internal bathroom with WC and shower. To the right of the hallway and at the rear of the property is the second bedroom containing the hot water tank. There is then a storage cupboard off the hallway to the right and kitchen adjacent.

The House is double glazed throughout and had a mains operated smoke detector in the hallway.

The House is not served by gas.

There was a clear positive result (indicated by a red light) from the damp meter reading when taken from inside the main built-in wardrobe where it meets the external wall. The back wall within the wardrobe produced an amber meter reading showing the presence of some dampness.

Within the bathroom, there was evidence of mould on the back wall. A wet wall had recently been placed next to the bath. The seals around the bath were complete. There was evidence of dampness on the back wall. A low powered extractor fan had been installed above the shower unit.

There was some mould to the left of the window in the second bedroom to the rear of the property. The hot water tank was located within a cupboard opposite the window. Damp meter readings were negative. A portable de-humidifier had been placed in the room by the Tenant.

In the kitchen, there was evidence of damp staining near the window. There was a washing machine, oven and fridge which had been present within the House since the commencement of the tenancy. The oven door did not appear to close correctly.

When the rear of the tenement block was viewed from the exterior, a gap in the guttering above the location of the kitchen window to the House could be seen.

Photographs relative to the above findings have been produced and are attached to this decision.

Decision of the Committee and reasons

There was no evidence of penetrating dampness from anywhere within the House. The Committee was therefore of the view that the positive damp meter readings taken were therefore most likely to have been as a result of condensation within the House.

This is a matter which requires to be rectified by the Landlord and will therefore form part of the Repairing Standard Enforcement Order (“RSEO”) to accompany this decision. The Committee was, however of the view that the works as detailed in the Morgan Timber Preservation report dated 28 April 2016 would in all likelihood alleviate if not eradicate the problem.

The Committee accepted that the washing machine and oven did not function properly as narrated by the Tenant in evidence at the hearing. The lease between the parties described the House as being “unfurnished” on the first page. However, section 13(1)(d) of the Housing (Scotland) Act 2006 requires appliances provided by the landlord under the tenancy require to be in a reasonable state of repair and in proper working order.

Since the washing machine and oven were present in the House at the start of the tenancy, they are deemed to have been provided as part of the tenancy. They therefore require to be in proper working order throughout the tenancy in terms of section 14(1)(a) and (b). The Landlord is therefore required to repair or replace those items as part of the RSEO to follow this decision.

In terms of the exterior of the House, the Committee saw that there guttering to the rear of the house was incomplete and required repair. It accepted that this is likely to be a communal repair. It will be for the Landlord to make arrangements for contributions by the other common owners, if so advised.

In the interests of safety, the RSEO also contains a requirement that smoke alarm arrangements are brought up to current standards. The Committee understands that these works were currently in hand in any event.

It is also recommended that an up to date Electrical Installation Condition Report be obtained for the House showing no action required.

In light of the findings above, the Committee, considering the terms of section 13(3) of the Act, determined that the Landlords had failed to comply with the duty imposed by section 14(1)(b) of the Act.

The Committee was therefore of the view that it was necessary for it to make a Repairing Standard Enforcement Order in terms of section 24(2) of the Act.

The decision of the Committee was unanimous.

Right of Appeal

Section 64 of the Act provides a right of appeal to a landlord or tenant aggrieved by a decision of a private rented housing committee. An appeal may be made to the Sheriff within 21 days of the Landlord or Tenant being informed of the decision.

Where such an appeal is made, the effect of the decision and 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 O'Carroll

Maurice O'Carroll
Chairperson

Date: 24 May 2016