



Repairing Standard Enforcement Order

Ordered by the Private Rented Housing Committee

prhp Ref: PRHP/AB11/172/12

Re: Property at 158/6 Market Street, Aberdeen, AB11 5PP ("the Property")
Title No: ABN64633

The Parties:

LUKE GARDEN residing at 158/6 Market Street, Aberdeen, AB11 5PP ("the Tenant")

JAMES ALASTAIR FIELDING residing at 22 St Aiden Crescent, Banchory ("the Landlord")

NOTICE TO JAMES ALASTAIR FIELDING ("the Landlord")

Whereas in terms of their decision dated 28 November 2012, 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:-

- (a) 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 replace the lounge window at the Property in such a manner that the replacement is properly wind and watertight and sufficient to remain so, taking into account the size of the window opening and the location of the Property.

The Private Rented Housing Committee order that the works specified in this Order must be carried out and completed within the period of 3 months 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 type written on this and the preceding page are executed by Ewan Kenneth Miller, Solicitor, Whitehall House, 33 Yeaman Shore, Dundee, DD1 4BJ, Chairperson of the Private Rented Housing Committee at Dundee on 28 November 2012 before this witness:-

L Johnston

witness

E Miller

Chairman

Lindsay Johnston
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

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Re: Property at 158/6 Market Street, Aberdeen, AB11 5PP ("the Property")

The Parties:-

LUKE GARDEN residing at 158/6 Market Street, Aberdeen, AB11 5PP ("the Tenant")

JAMES ALASTAIR FIELDING residing at 22 St Aiden Crescent, Banchory ("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 at the hearing, determined that the Landlord had failed to comply with the duty imposed by Section 14 (1)(b) of the Act.

Background

1. By application dated 18 September 2012 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:-
 - (a) The Property is wind and watertight and in all other respects reasonably fit for human habitation;
3. By letter dated 5 October 2012 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 Landlord and the Tenant.
5. Following service of the Notice of Referral the Tenant made no further written representation to the Committee other than their original application. Various correspondence from the Landlord and his agent Martin & Company were made to the Committee via email.
6. The Private Rented Housing Committee inspected the Property on the morning of 19 November 2012. The Tenant was present. The Landlord was not present nor represented. The Committee comprised Mr E K Miller, Chairman and Legal Member; Mr M Andrew, Surveyor Member; Mrs L Robertson, Housing Member; accompanied by the Clerk to the Committee Mr D Barclay.

7. Following the inspection of the Property the Private Rented Housing Committee held a hearing at The Credo Centre, John Street, Aberdeen and heard from the Tenant. The Landlord was not present or represented. The Tenant represented himself.
8. The Tenant submitted that he had been trying to have this window replaced since he had moved in during 2009. He had notified the Managing Agents, Martin & Co on numerous occasions. Whilst they had sent many contractors out they had never properly addressed the issue. The glazing had been replaced at some point but the Tenant did not feel that this was the issue. The issue was that when the wind pressed upon the glass, water was able to ingress through the frame. The Tenant indicated he was frustrated that this had been going on for so long without resolution and had, on occasion, been dangerous. Water was coming in and pooling on the floor and, on one occasion, around a socket.
9. There were no formal submissions from the Landlord to consider but it was noted that from Martin & Co that they had sent several contractors out to look at the issue. The Landlord had emailed the Committee directly to advise that he had been unaware that the issue was still going on and had not been resolved. The Landlord indicated his dissatisfaction with Martin & Co.

Summary of the issues

10. The issue to be determined was whether the lounge window at the Property was wind and watertight and otherwise in proper working order and met the repairing standard.

Findings of fact

11. The Committee found the following fact to be established:-
 - The lounge window at the Property did not meet the repairing standard.

Reasons for the decision

12. The Committee based its decision primarily on the evidence obtained during the course of its inspection. The Committee inspected the window. The window was a relatively modern unit. There did not appear to be any issue with the glazing within the window. The Property was on the top floor of a tenement and the lounge window faced out over Aberdeen harbour. The window was very large and the double glazed unit was of relatively low quality. The issue appeared to be the fact that when the wind was blowing off the sea it was causing the frame to flex and create gaps through which water was penetrating. An external inspection of the building showed that this window was the largest in the block. The Committee considered whether or not the window could be repaired. The Committee were of the opinion that the window could not be repaired. There was an inherent defect in that the frame was too flexible for the size of the window, particularly taking into account the location of the Property. Accordingly the Committee were of the view that the window would need to be replaced to allow compliance with the repairing standard. The Landlord may be able to deal with the matter by ordering a replacement unit of better quality and with a stronger central post. Alternatively the Landlord may wish to consider splitting the window in to two parts or having more fixed elements within the frame to lend structural stability. It was for the Landlord to take advice and ascertain the most appropriate window unit/works required to address the issue.

The Committee considered a timescale for the work to be carried out in. Given that a cherry picker would require to be utilised and the Landlord would need to do some investigation to ascertain the most appropriate method of resolving this issue, the Committee were of the view that 3 months would be an appropriate timescale.

13. The Committee had some sympathy for the Landlord as it appeared the failings here were by his letting agent rather than the Landlord himself. However, the Committee were satisfied that the window did not meet the repairing standard and accordingly a Repairing Standard Enforcement Order was still appropriate.

Decision

- 14. The Committee accordingly determined that the Landlord had failed to comply with the duty imposed by Section 14(1)b of the Act.
- 15. The Committee proceeded to make a Repairing Standard Enforcement Order was required by Section 24(1).
- 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 **E Miller** Date 29/11/12
Chairperson