



## **Repairing Standard Enforcement Order**

**Ordered by the Private Rented Housing Committee**

**PRHP REFERENCE PH7/197/12**

**Re: Property at 2 Academy Road, Crieff PH7 4AT being the subjects registered in the Land Register for Scotland under Title Number PTH 30291 (hereinafter referred to as "the house")**

### **The Parties**

**Mr. Brian Docherty, formerly of 2 Academy Road, Crieff PH7 4AT ("the Tenant")**

**Mr. Duncan Deans Telfer, formerly of 2 Academy Road, Crieff PH7 4AT and now of Flat 4-9 The George Court, High Street, Portsmouth PO1 2NA (represented by Messrs Miller Hendry, Solicitors, 14 Comrie Street, Crieff PH7 4AZ) ("the Landlord")**

### **NOTICE TO Duncan Deans Telfer ("the Landlord")**

Whereas in terms of their decision dated 12 April 2013, 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 ("the Act") and in particular that the Landlord has failed to ensure that the house meets the repairing standard in that:-

- (1) the house is wind and watertight and in all other respects reasonably fit for human habitation;
- (2) the structure and exterior of the house (including drains, gutters and external pipes) are in a reasonable state of repair and in proper working order; and
- (3) Any fixtures, fittings and appliances provided by the landlord under the tenancy are in a reasonable state of repair and in proper working order.

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:-

- (1) to carry out repair to the chimney stack and pots and an overhaul of the rainwater disposal system by a roofing contractor to ensure the house is wind and watertight and that the structure and exterior of the house (including drains, gutters and external pipes) are in a reasonable state of repair and in proper working order;
- (2) to carry out the internal works recommended by Tay Property Services Limited in their report of 26 February 2013, and any damage caused by these and other works to be made good to ensure compliance with the duty in Section 14(2) of the Act. Thereafter, the house requires to be suitably ventilated and heated to eradicate any residual dampness;
- (3) to repair or replace the front door to render it wind and watertight; and
- (4) to remove, repair or replace the shelving in the top floor bedroom and make good any damage caused by these works.

The Private Rented Housing Committee order that the works specified in this Order must be carried out and completed within the period of 8 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 signed by Aileen Margaret Devanny, Chairperson of the Private Rented Housing Committee, at Glasgow on Twenty Fourth day of April, Two Thousand and Thirteen in the presence of the undernoted witness:-

WITNESS K MacLeary

KATE MACLEARY

PANEL CLERK

EUROPA BUILDING  
450 ARGYLE ST, GLASGOW

**A Devanny**



**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 2 Academy Road, Crieff PH7 4AT  
(hereinafter referred to as "the house")**

**Mr. Brian Docherty, formerly of 2 Academy Road, Crieff PH7 4AT ("the Tenant")**

**Mr. Duncan Deans Telfer, formerly of 2 Academy Road, Crieff PH7 4AT and now of  
Flat 4-9 The George Court, High Street, Portsmouth PO1 2NA (represented by  
Messrs.' Miller Hendry, Solicitors, 14 Comrie Street, Crieff PH7 4AZ) ("the  
Landlord")**

**PRHP REFERENCE PH7/197/12**

**DECISION**

The Committee, having made such enquiries as is 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 written documentation attached to the application and written representations submitted by the parties; and the findings at an inspection of the house, determined that the Landlord had failed to comply with the duty imposed by Section 14(1) (b) of the Housing (Scotland) Act 2006 (hereinafter referred to as "the Act")

**Background**

1. By application dated 17 October 2012 and received on 19 October 2012 the Tenant applied to the Private Rented Housing Panel (hereinafter referred to as "PRHP") for a determination of whether the Landlord had failed to comply with the duties imposed by Section 14(1) (b) of the Act.
2. The application by the Tenant 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 Landlord had failed to ensure compliance with Section 13(1) (a), (c), (d), and (e) of the Act. The Tenant's complaint of disrepair within the application relates to sewage leaking under the floor causing an odour and an infestation of flies; dampness on a rear exterior wall and internally within two bedrooms; defective seals on windows throughout the house and a front door which is not wind and watertight; hissing sounds from light switches and a defective light fitting in the bathroom; oven not in working order and oven hood held in place by tape; low water pressure and an insecure shelf in a bedroom. The tenant submitted photographs and a copy report from Perth and Kinross Council Environmental Services and a copy letter to the Landlord's agents, Miller Hendry, notifying them of required repairs. A copy of the missives of let and AT5 was submitted as a production.

3. The Tenant intimated by e-mail on 19 November 2012 that he had vacated the house and the tenancy had been terminated.

On 10 December 2012 the President of the Private Rented Housing Panel decided that the application should continue to be determined in terms of Schedule 2 Paragraph 7 (2) of the Act due to the nature of the alleged complaints which could give rise to health and safety issues for future occupants of the house. By letter dated 7 January 2013 the President of the Private Rented Housing Panel intimated a decision to refer the application under Section 23(1) of the Act to a Private Rented Housing Committee.

The Committee comprised the following members:

Mrs. Aileen Devanny, Legal Member  
Mr. Robert Buchan, Surveyor Member  
Mrs. Elizabeth Dickson, Housing Member

4. The Private Rented Housing Committee served Notice of Referral under and in terms of Schedule 2 Paragraph 1 of the Act upon the Landlord. Following service of the Notice of Referral the Landlord's agents submitted invoices for the repair of the sewage pipe; the repair to the bathroom light; and an inspection of the boiler. The Landlord's agents also submitted written representations on 1 February 2013. Further requests from the Committee for information regarding the other complaints resulted in submission of an invoice for repair to the oven; and submission of reports from Tay Property Services Ltd. and Neil B Campbell, Joiner, outlining works still requiring to be carried out to the house.

5. The Private Rented Housing Committee inspected the house on the morning of 12 April 2013. Ms. Carol Capper, a representative from the Landlord's agents attended the inspection. The house was unoccupied.

6. Following the said inspection the Private Rented Housing Committee held a hearing at Strathearn Community Campus, Pittenzie Road, Crieff. No parties attended the hearing and the Committee considered the findings from the inspection, representations and productions and made their determination of the application.

## **Landlord's representations**

7. It was submitted by the Landlord's agents that they had not refused to tackle the problems and had initiated works; that the items in the report of the Council's Environmental Services had been attended to; and, whilst the works to the sewage pipe were ongoing, B & B accommodation had been arranged for two nights for the Tenant. They considered that the shelf falling down may be due to the acts of the Tenant.

## **Summary of the issues**

8. The issue to be determined is whether the house meets the repairing standard as laid down in Section 13 of the Act and whether the Landlord had complied with the duty imposed by Section 14(1) (b).

## **Findings in Fact**

9. The Committee made the following findings in fact:-

9.1. On 10 July 2012 the Tenant entered into a lease with the Landlord for the let of the house. The Tenant has continued in occupation of the house and the Panel was notified that by 19 November 2012 the tenancy had been terminated. The lease is a short assured tenancy in terms of the Housing (Scotland) Act 1988. The provisions outlined in Chapter 4 of the Act apply.

9.2. The Tenant notified the Landlord of the required works to the house and submitted an application to the Panel on 19 October 2012. It is clear from e-mail correspondence that the Landlord's agents were aware of the Tenant's complaints. The repair to the oven hood is the only item of repair which the Landlord's agent state was not notified.

9.3. The inspection by the Committee on 12 April 2013 revealed:-

The house is a three storey end terraced house comprising 4 apartments, bathroom, kitchen and cloakroom built of stone with a slate roof built around 1900. The Committee confined their inspection to the complaints in the application.

The weather at the time of inspection was damp as it had been raining earlier.

High instrumental moisture meter readings were noted on all three floors of the gable wall whilst lower readings were noted on parts of the back wall in the ground floor rooms.

Inspection of the gable chimney stack from the skylight in the bathroom showed a cracked pot and cracked mortar

The Committee inspected the exterior of the property and observed dampness staining

on the external rear wall suggestive of defects in the rainwater disposal system which is consistent with the modest readings on the internal surfaces of the rear wall.

The Committee considered that the windows were in an acceptable condition and there was no evidence of defective seals. The Committee considered that the windows were in a reasonable state of repair and in proper working order.

The Committee observed daylight through the letter box of the front door and the draught proofing was loose. The Committee did not consider the front door to be wind and watertight.

The bathroom light fitting has been replaced and appears to be in reasonable repair and in proper working order. Invoices submitted indicate that an electrician has attended at the house and there was no evidence of electrical faults observed at the inspection.

The oven and oven hood appear to be in a reasonable state of repair and in proper working order.

The Committee observed no problems with the water pressure at the time of inspection.

There was no smell of sewage and no sign of flies and the Committee are satisfied that the complaint regarding the sewage pipe has been resolved as suggested by the invoices confirming the completion of works.

Although not an item of complaint in the application, the Committee observed that there was only one battery smoke detector on the second floor of this three storey house. There is a requirement in Section 13(1) (f) of the Act that in order for a house to meet the repairing standard the house must have satisfactory provision for detecting fires and for giving warning in the event of fire or suspected fire. In determining the standard of repair mentioned in Section 13(1) (f) regard has to be had to building regulations and any guidance issued by Scottish Ministers, a requirement of Section 13(5) of the Act. Such guidance issued by Scottish Ministers requires that there should be at least one functioning alarm on each floor and that the alarms should be hardwired and interlinked.

### **Reasons for the Decision**

10. In considering the repairing standard and dampness issue the Committee carried out an internal and external inspection of the house and in particular closely examined the specific defects highlighted in the application and detailed in the correspondence. In addition the Committee carefully considered the written documentation submitted. The Committee considered the representations of the Landlord's agents in relation to the repairing standard.

Visual inspection of the interior of the house as well as the smell of dampness indicated the presence of dampness in the house and this was confirmed by the moisture meter

readings obtained.

The Committee considered that the degree of dampness in the house was to a level that the house could not be said in all respects to be reasonably fit for human habitation and the house did not meet the repairing standard laid down in Section 13(1) (a) of the Act which states the repairing standard is met if "the house is wind and water tight and in all other respects reasonably fit for human habitation". The Committee observed that the dampness in the affected areas appeared to be long standing and it is disappointing that there was a lack of proper pre-tenancy check carried out by the Landlord or his agent which is a statutory requirement in terms of Section 19 of the Act.

The front door is not wind and watertight and because of the defects narrated could not be said to be in a reasonable state of repair and proper working order. The report from the joiner commissioned by the Landlord's agent recommended that the door needed replaced. The house therefore in this respect does not comply with the repairing standard in Sections 13(1) (a) and (b) of the Act, which states that the house meets the repairing standard if "the house is wind and watertight and in all other respects reasonably fit for human habitation; and the structure and exterior of the house ... are in a reasonable state of repair and in proper working order."

The shelving in the top floor bedroom has become detached from the wall and there are holes in the walls where the shelving was attached. The house in this respect does not meet the repairing standard in Section 13 (1) (d) that "any fittings, fixtures and appliances provided by the Landlord under the tenancy are in a reasonable state of repair and proper working order". The Landlord's agents suggested that this repair may be due to misuse by the Tenant but no evidence was presented of this and, in the absence of such evidence, the repairing standard duty lies with the Landlord.

The inspection findings and invoices supported that the other complaints in the application had been rectified and complied with the repairing standard. However, it would be good practice prior to any pre-tenancy check, which is a requirement in Section 19 of the Act, that the Landlord or his agents instruct a periodic electrical inspection report from a qualified electrician. Furthermore, the Landlord should make good the plastering and re-decoration required to the small bedroom on the ground floor in consequence of recent works as there is a duty to make good damage caused by carrying out such works in terms of Section 14(2) of the Act.

The Committee is unable to make a determination in respect of the absence of hardwired and multiple smoke alarms which comply with the statutory guidance as there was no evidence of prior notification of these required works on the Landlord and they did not form part of the works complained of in the application. However, the Committee considered that the absence of multiple and hardwired smoke detection devices which comply with statutory requirements is a safety issue and the Committee would strongly recommend the Landlord rectify this as a priority matter.

## **Decision**

11. The Committee, considering the terms of Section 13(3) of the Act, determined that the Landlord had failed to comply with the duty imposed by Section 14(1) (b) of the Act.
12. The Committee proceeded to make a Repairing Standard Enforcement Order as required by Section 24(2).
13. The decision of the Committee was unanimous.

## **Right of Appeal**

14. 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**

15. 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.

**A Devanny**

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Chairperson, 12 April 2013