



Repairing Standard Enforcement Order

Ordered by the Private Rented Housing Committee

prhp Ref: PRHP/DD4/2/12

Re : Property at 41 Balunie Drive, Dundee, DD4 8PS("the Property")

Title No: ANG24334

The Parties:-

EDWARD SANDEMAN, formerly residing at 41 Balunie Drive, Dundee, ("the Tenant")

STOBMUIR ENTERPRISES LIMITED, 15 Albert Street, Dundee, ("the Landlord")

NOTICE TO STOBMUIR ENTERPRISES LIMITED ("the Landlord")

Whereas in terms of their decision dated 11 April 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;
- (b) The structure of and exterior of the Property (including drains, gutters and external pipes) are in a reasonable state of repair and in proper working order;
- (c) The installations in the Property for the supply of water, gas and electricity and for sanitation, space heating and heating water are in a reasonable state of repair and in proper working order;
- (d) Any fixtures, fittings and appliances provided by the Landlords 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:-

- (a) carry out such work as are necessary to the exterior of the windows at the Property by repairing or replacing the mastic to ensure that the windows are properly wind and water tight and otherwise in proper working order;
- (b) to carry out such works of repair and replacement to the front and rear external doors to the Property to ensure that they are properly wind and watertight and otherwise meet the repairing standard;
- (c) to produce to the Committee from a suitably qualified electrician a clear Electrical Installation Condition Report confirming that the electrical installation within the Property is compliant with the relevant regulations;
- (d) to produce a clear and current Gas Safety Certificate for the Property;
- (e) to investigate and rectify the source of the water ponding within the basement sufficient to render the basement properly water tight;
- (f) to carry out such works to the downpipes, drains, gutters and external pipes at the rear of the Property to ensure that they are in proper working order;
- (g) to reinstate or replace the kitchen, bathroom and washing machine at the Property and to ensure that they meet the repairing standards;

- (h) to carry out such works to the two showers within the Property to ensure that they are not leaking and are otherwise in proper working order;
- (i) to carry out such timber specialist treatment works to the timbers within the Property to ensure that any woodworm/rot is dealt with and the timbers are structurally sound. Due to the toxic nature of these works and to protect future tenants within the Property, such works will require to be carried out by a suitably qualified specialist and evidence of this will require to be produced to the Committee;
- (j) to reinstate the floor boards within the ground floor of the Property to a standard commensurate with the repairing standard.

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 11 April 2012 before this witness:-

L Johnson

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

prhp Ref: PRHP/DD4/2/12

Re : Property at 41 Balunie Drive, Dundee, DD4 8PS ("the Property")

The Parties:-

EDWARD SANDEMAN, formerly residing at 41 Balunie Drive, Dundee, ("the Tenant")

STOBMUIR ENTERPRISES LIMITED, 15 Albert Street, Dundee, ("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 both 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.

Background

1. By application dated 25 October 2011 the Tenants 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 Property is wind and watertight and in all other respects reasonably fit for human habitation;
 - (b) The structure of and exterior of the Property (including drains, gutters and external pipes) are in a reasonable state of repair and in proper working order;
 - (c) The installations in the Property for the supply of water, gas and electricity and for sanitation, space heating and heating water are in a reasonable state of repair and in proper working order;
 - (d) Any fixtures, fittings and appliances provided by the Landlords under the tenancy are in a reasonable state of repair and in proper working order;
 - (e) The Property has satisfactory provision for detecting fires and for giving warning in the event of fire or suspected fire.
3. By letter dated 9 January 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 Tenants.

5. Following service of the Notice of Referral neither party made written representations to the Committee although a member of the Private Sector Services Unit of Dundee City Council e-mailed the Committee on 8 March 2012 with some details of the background of the matter.
6. The Private Rented Housing Committee (comprising Mr E K Miller, Chairman and legal member Mr D Godfrey, Surveyor Member, Mr J Wolstencroft, Housing Member, accompanied by the Clerk, Mr Stuart McLagan inspected the Property on the morning of 3 April 2012. The Tenant was not present. Doctor El-Bakary, whose company is the Landlord, was not present during the inspection but his son arranged access for the Committee.
7. Following the inspection of the Property the Private Rented Housing Committee held a hearing at Douglas Community Centre, Balmoral Avenue, Dundee and heard from Dr El-Bakary for the Landlord. The Tenant was not present nor represented.
8. There were no submissions from the Tenant beyond the original application and the information received from Dundee City Council.
9. The Landlord submitted that a lot of the damage that had been done to the property had been carried out by the Tenant, who had had a number of personal issues. The Landlord accepted that the property did not meet the repairing standard given that the kitchen and bathroom had been removed as had all the flooring within the ground floor of the property. The Landlord was happy for the Committee to specify the works required by him to ensure compliance with the repairing standard. The Landlord was of the view that it might be difficult for him to specify a timescale within which he would have the works done. In relation to the water in the basement, the Landlord was of the view that this was perhaps caused by an underground stream or water seeping from a neighbouring property. Extensive investigations may be required to ascertain the source of the water, although he accepted it required to be dealt with.

Summary of the issues

10. The issues to be determined are:-
 - (a) Whether the front and back doors are properly wind and watertight and otherwise meet the repairing standard.
 - (b) Whether the windows of the Property meet the repairing standard.
 - (c) Whether the electrical installation within the Property were safe and compliant with the repairing standard.
 - (d) Whether the gas supply and appliances within the Property met the repairing standard.
 - (e) Whether the basement of the Property was watertight and otherwise met the repairing standard.
 - (f) Whether there were leaks from the kitchen sink and washing machine that were contributing to the flooding problems in the basement.
 - (g) Whether the upstairs shower was leaking.
 - (h) Whether snails were entering the Property via holes in the bathroom wall.
 - (i) Whether the shower in the downstairs bathroom was in proper working order and otherwise met the repairing standard.

- (j) Whether works were required to the joists/floor boards of the Property to render the Property structurally safe and otherwise compliant with the repairing standard.

Reasons for the decision

11. The Committee based its decision primarily on the information obtained from carrying out an inspection of the Property.

It should be noted that all floor boards on the ground floor of the Property had been removed. Some wooden planks and doors were laid across these and the Committee were, therefore, able to make a limited inspection of the ground floor. However, by necessity, the inspection of the ground floor of the Property required to be brief given that there were significant health and safety risks for the Committee remaining on the ground floor. A number of the joists were suffering from rot/woodworm and there was a significant drop beneath the joists to a basement level. The kitchen and bathroom had been removed in their entirety and the water was turned off. It was therefore impossible for the Committee to form a view at this stage of the items of complaint narrated by the Tenant.

The Committee first inspected the windows at the Property. Internally these were, whilst dated, in a reasonable state of repair and generally in working order. Externally, however, on a number of these windows the mastic surrounding them had deteriorated and was coming away. The Landlord would require to carry out appropriate repairs/replacement of the mastic to ensure that they remained properly wind and water tight.

The Committee then inspected the front and rear external doors of the Property. These were poorly fitted and a number of gaps could be seen between the door and the frame. Accordingly, the Committee was satisfied that they were not properly wind and watertight and the Landlord was required to repair or replace these as appropriate to ensure compliance with the repairing standard.

The Committee next inspected the electrical system at the property. There were a number of loose wires and sockets and, given the extent of the works ongoing in the Property, the Committee could not be satisfied that the electrical installation within the Property met the repairing standards. Accordingly, the Landlord was required to produce a clear Electrical Installation Condition Report, from a suitably qualified electrician confirming that the electrical installation within the Property was compliant.

The Committee inspected the gas boiler at the property. This was dated and was missing its front panel. The Committee were not of the view that the boiler did not comply simply by virtue of the fact that the front panel was missing. However, no gas safety certificate was produced by the Landlord at the Hearing and accordingly a current and clear Gas Safety Certificate would be required to be exhibited to the Committee prior to any Repairing Standard Enforcement Order being lifted.

The Committee next inspect the basement of the Property. Given the dubious structural condition of the Property, the Committee were unwilling to enter into the basement although a visual inspection was able to be carried out from the ground floor by viewing the basement through the joists. It was apparent that there was water pooling at the rear portion of the basement. The Committee noted that the downpipe at the rear of the Property was exposed and was causing water to pool at the rear external basement wall. This may be contributing to the water within the basement internally. It was apparent that the pipes in the general area were damaged. The Committee were satisfied that the Landlord was required to investigate and rectify the cause of the water ingress to the basement sufficient to render the basement properly watertight.

The Committee were unable to make a decision at this stage on the issues complained of in relation to the kitchen, bathroom and washing machine given that they had all been

removed. Suffice to say that the Landlord would require to replace or reinstate the kitchen, bathroom and washing machine and ensure that they met the repairing standard before any Repairing Standard Enforcement Order could be lifted. In relation to the complaints regarding the two showers at the Property, again, because of the lack of water supply to the Property, the Committee could not determine this at this stage. Again, the Landlord would require to ensure whatever works were appropriate were carried out to meet the repairing standard at the time of the re-inspection.

The Committee noted that the Tenant had complained that the structure and the exterior of the Property was not in a reasonable state of repair. The Committee, during the course of its inspection, noted that all the floorboards within the ground floor had been removed. The exposed joists showed signs of decay caused by woodworm and rot. The Landlord would require to carry out such works as were necessary to properly treat any woodworm/rot within the Property. This would, given the toxicity of these works, require to be carried out by a proper timber specialist company to ensure there was no future danger to subsequent tenants. The Landlord would also require to reinstate and make good the floorboards within the ground floor prior to any Repairing Standard Enforcement Order being lifted.

Lastly, the Committee looked at the smoke detectors within the property. These appeared to be in proper working order and were mains wired and compliant with the regulations.

The Committee then considered a timescale for the works to be carried out. The Committee were satisfied that if the Landlord was to deal with these issues promptly, then three months should be more than sufficient time for all matters to be rectified.

Decision

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

Right of Appeal

15. 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

16. 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
Chairperson

E Miller

Date..... 12/9/2017