



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

prhp Ref: PRHP/DD3/27/10

Re : Property at 80 Beaully Avenue, Dundee, DD3 0DW ("the Property")

The Parties:-

Mr Paul Feltham and Ms Kim Spiers residing together at 80 Beaully Avenue, Dundee ("the Tenants")

Mrs Lisa Mary Campbell residing at North Lodge, Baxter Park (represented by their agent Mrs Maureen Moran ("the Landlords"))

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 and the Tenants 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 31 January 2010 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 Property 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 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 house for the supply of water, gas and electricity and for sanitation and space heating and heating water are in a reasonable state of repair and in proper working order
 - (d) the property has satisfactory provision for detecting fires and for giving warning in the event of fire or suspected fire
3. By letter dated 4 March 2010 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 the Tenants (by letters dated 21 March, 24 March and 12 April all 2010), made further written representations to the Committee in addition to their original application. The Landlord (by letters and faxes dated 24 March and 13 April 2010 made written representations to the Committee.
6. The Private Rented Housing Committee inspected the Property on the morning of 25 May 2010. The Committee comprised Mr E K Miller, Chairman and Legal Member; Mr D Godfrey, Surveyor Member; and Mr J Wolstencroft, Housing Member. The Committee were accompanied by Mr Robert Shea, Clerk to the Committee. The Tenants were present during the inspection. The Landlords' building agent Mr Ian Coull was present during the inspection. The Landlord was not present
7. Following the inspection of the Property the Private Rented Housing Committee held a hearing at The Apex Hotel, Dundee and heard from both the Tenants and the Landlord. The Landlords had additional representation in the form of their solicitor, Mrs Maureen Moran. The Landlords' builder Mr Ian Coull was also in attendance. The Tenants represented themselves. Also in attendance was Mr Lindsay Watson of Dundee City Council Private Sector Unit who had advised both the Landlords and the Tenants on certain aspects of their case.
8. The Tenants submitted as follows:-

That the issues to be resolved were as per the revised list submitted to the Committee and their landlords on 21 March 2010 with the exception of the garage key and the sewerage issue which had now been dealt with by the Landlords. Hardwired interlinked smoke alarms had also been installed since the original application and were therefore no longer an issue. The Tenants had given the Committee the benefit of their comments on the individual items during the course of the inspection and therefore had little to add in relation to each of the individual items of repair. The Tenants had additional comments to make in relation to other aspects of the relationship with the Landlord and in particular the question of the giving of access to the Property although they accepted that these were not pertinent to the decision of the Committee.

9. The Landlord submitted as follows:-

The Landlord accepted that there were some works outstanding at the property and was happy to address these. The landlords had suffered some difficulty in obtaining access to the Property and also in getting quotations arranged from tradesmen. The Landlord advised that she had been advised by Mr Watson from Dundee City Council to hold off from carrying out any further repairs until such time as the Committee had carried out their inspection and a definitive list of works that were required to meet the repairing standard was available. The Landlord also had comments in relation to previous difficulties with access and the relationship with the tenants regarding the returning of phone calls. Again these comments were accepted as not being pertinent to the Hearing. The Landlord had also raised with the Private Rented Housing Panel office the possibility of a Hearing of a decision in respect of the current market value rent of the property but again this fell outwith the remit of the Committee at this particular Hearing. The Landlord highlighted that they had Mr Coull attend at the Property during the course of the inspection so that he was aware of the work that was required and he had confirmed that he would be taking on some of the repair work. The Landlord submitted that they would require time to carry out the works given that access needed to be arranged, quotes obtained (part of the repairs would be claimed under the Landlords insurance).

Summary of the issues

10. The issues to be determined are:-

- (a) What works, if any, are required to meet the repairing standard due to damage occasioned by a leak through the kitchen ceiling.
- (b) Whether the damp in the large bedroom and upstairs hallway wall required repair works to ensure compliance with the repairing standard.
- (c) Whether the cupboard backs beside the dishwasher required to be repaired or replaced.
- (d) Whether the kitchen floor tiles met the repairing standard.
- (e) Whether the guttering and downpipe at the side and back of the Property was in proper working order.
- (f) Whether the windows were wind and watertight and whether repair or replacement was required.
- (g) Whether the front and back doors were wind and watertight and whether repair or replacement was required.
- (h) Whether the electrical systems in the property required to be checked and also whether sockets and switches needed to be repaired.
- (i) Whether the shower was leaking and causing damage to the kitchen wall.
- (j) Whether the tiles on the roof required to be repaired or replaced.
- (k) Whether the fridge/freezer in the Property was in proper working order.
- (l) Whether the central heating system was in proper working order and required to be repaired or replaced.
- (m) Whether the cupboards adjacent to the boiler required to be refitted to the wall.

Findings of fact

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

- It was clear that there had been a leak in the kitchen (although the Tenants readily accepted that the cause of the leak had now been dealt with). However there was a large hole in the kitchen ceiling and this required to be repaired and redecoration works carried out.
- There was water penetration occurring in the large bedroom upstairs and also on the upstairs hallway wall.
- The cupboard backs beside the dishwasher required to be replaced.
- A number of the kitchen floor tiles were broken and would require to be replaced.
- The guttering at the rear and side of the Property and the downpipe at the rear of the property required to be repaired or replaced.

- The windows were in poor order throughout the Property and required a mixture of repair and replacement.
- The front and back doors were not wind and watertight and required to be replaced.
- A periodic inspection report of the electrical system would be required and any necessary works carried out including the repair or replacement of loose and broken sockets and switches.
- There was a leak from the bathroom down into the kitchen wall and this required to be repaired and any damage made good.
- There were a number of missing, loose and broken tiles on the roof and these required to be made good.
- The fridge/freezer required to be checked as part of the periodic inspection report mentioned above.
- The central heating system required to be repaired to avoid future loss of pressure.
- The cupboards beside the boiler did not need to be refitted on the wall (both the landlords and tenants agreed during the Hearing that they would be happy for them to be removed permanently). Redecoration, however, did need to occur where the cupboards had been removed.

Reasons for the decision

12. The Committee reached its decision based on the evidence obtained by the Committee at the inspection on 25 May 2010.

In relation to the hole in the kitchen ceiling nearest the window, it was clear from a visual inspection by the Committee that water damage had occurred. The Committee accepted the Tenants confirmation that the water penetration was no longer continuing. However, the Committee were of the view that the hole required to be repaired and an appropriate standard of redecoration carried out thereafter.

In relation to the large bedroom upstairs it appeared to the Committee that there were two areas at issue. In the corner of the large bedroom nearest the front window, there was a very small area of mould. The Committee were of the view that this was very minor and caused by some internal condensation. The Committee were not of the view that the Landlord required to do anything in relation to this. However in relation to the large bedroom wall adjacent to the hallway it was clear that water penetration had occurred at some point recently as a small hole had formed. The Surveyor Member inspected the roof space and it appeared that there had been some water ingress arising as a result of the loose and missing tiles on the roof. The Committee were confident that if the loose and missing tiles were attended to then no further water ingress would occur. The Landlords would require to redecorate any damage caused by the previous water ingress.

In relation to the damp patch that had appeared on the upstairs hallway wall, the Committee noted that this was approximately adjacent to the rear downpipe. The Committee noted that the rear downpipe was in poor condition and there was a crack in the harling immediately behind this. Combined with the loose and missing tiles in that area of the roof also, it appeared likely the water ingress was occurring as a result of a damaged downpipe and/or the poor guttering/missing roof tiles. Again, addressing these other issues should cure the damp patch in the hallway.

The Committee inspected the back of the cupboards beside the dishwasher. These had suffered from water damage and were badly warped and stained and would therefore require to be replaced.

A number of the kitchen floor tiles were cracked and broken and represented a trip hazard. These would require to be replaced.

The Committee inspected the guttering at the rear and side of the Property. At the side of the house this was badly cracked in places and had a section missing. The Committee were of the view that this could not be repaired and would require to be replaced. The guttering at the rear of the Property was in poor condition but could perhaps be repaired instead of being replaced (at the option of the Landlord). The downpipe at the rear of the Property was in poor condition and may be choked. The Landlords would require to repair or replace this as appropriate.

The windows throughout the Property were in poor condition. The majority of the windows suffered from missing handles and opened and closed very poorly. The majority of the windows were warped and the opening parts of the windows did not fit well in to the surrounding frames. A mixture of repair and/or replacement was required. The lounge window had missing handles and the seal had gone. Accordingly this would require to be replaced. In relation to the downstairs bedroom window there was a handle missing on this and it did not close smoothly. The landlords would require to repair or replace this. In relation to the kitchen and bathroom windows these were generally in poor condition and the landlords would require to either repair any missing handles and ensure the windows opened and shut smoothly or alternatively to replace the windows. In relation to the two upstairs bedroom windows, these were both badly warped and had large gaps between the frame and the opening part of the windows. There were numerous missing handles although one frame in the smaller bedroom had four handles installed (two on either side) in an ineffective effort to ensure it shut properly. Both these windows would require to be replaced.

The Committee inspected the front and back door. These were in poor condition and at the very end of their useful life. On neither door did the handle mechanism work properly nor did the doors sit neatly within the frame. On the rear door the level of the floor on the internal and external side of the door was the same and water could readily penetrate. On the front door the door sat back from the sill rather than proud of it and accordingly water would simply collect in the sill and penetrate into the house. The Committee deliberated whether or not the doors and the surrounding frames could be repaired but after extensive discussion decided that the overall condition was so poor that replacement was the only feasible option.

The Committee noted that there were a couple of loose and broken sockets in the Property and also a loose switch. The Committee were also mindful that there had been three separate incidences of water penetration within the Property and this could have had a detrimental effect on the electrical system. The Tenants had reported a high incidence of bulbs blowing and the fuse box tripping. In the circumstances, after deliberation, the Committee decided that a clean periodic inspection report from a qualified electrician confirming that the system was in proper working order would require to be produced by the Landlord.

The Committee inspected the bath within the bathroom and the shower. It was apparent that water was coming down from the shower and pooling on the shelf at the rear of the bath. It was apparent that the shelf was angled back towards the wall and there insufficient seal between the shelf and the wall with the result that water was penetrating down the back of the bathroom wall and into the kitchen. It was apparent that the Landlord would require to carry out works to the bath to ensure that the pooling stopped, to create a proper seal and to make good the damage caused to the kitchen. For the avoidance of doubt the Committee considered the point raised by the Landlord's agent that it may have been the case that this damage has been caused as a result of the

replacement shower installed by the Tenants upon their taking occupation. Having considered matters the Committee were satisfied that the damage was not being caused by the Tenants shower specifically but simply by virtue of the fact that the shelf at the rear of the bath was defective. The damage would have occurred regardless of which shower had been present. Accordingly this was the responsibility of the Landlord rather than the Tenants to address.

The Committee noted that the Tenants had complained of the fridge/freezer being temperamental. The Committee noted that a periodic inspection report was required in relation to the general electrical system and an electrician could readily check the position in relation to the fridge freezer at the same time. Depending on the results of the electrician's investigations the Landlord would require to carry out any repair or replacement in line with the electrician recommendations.

The Committee noted from the Tenants that central heating pressure was being lost in the Property. The Committee were advised by both Landlord and Tenants that the problem had been identified by a plumber and a part was on order and indeed the plumber was coming to repair this the following day.

In relation to the cupboards that had previously sat over the boiler, during the course of the Hearing both parties agreed that these did not need to be refitted but simply that redecoration to make good any damage from their removal needed to be made good.

The chairman noted that there had been issues from both parties regarding access. The Committee intimated to both parties that they expected them both to act reasonably to each other and to ensure that any repairs were carried out timeously.

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 decision of the Committee was unanimous.

Right of Appeal

16. **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

17. 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.

E Miller

Signed ...
Chairperson

..... Date..... 1/6/2010



Repairing Standard Enforcement Order

Ordered by the Private Rented Housing Committee

prhp Ref: PRHP/DD3/27/10

Re : Property at 80 Beaully Avenue, Dundee, DD3 0DW ("the Property")

Title No: ALL and WHOLE that semi-detached property known as 80 Beaully Avenue, Dundee and being the subjects registered in the Land Register of Scotland under Title Number ANG46063

The Parties:-

Mrs Lisa Mary Campbell residing at North Lodge, Baxter Park, Pitkerro Road, Dundee (represented by their agent Mrs Maureen Moran ("the Landlord"))

Mr Paul Feltham and Ms Kim Spiers residing together at 80 Beaully Avenue, Dundee ("the Tenants")

NOTICE TO MRS LISA MARY CAMPBELL ("the Landlord")

Whereas in terms of their decision dated 28 May 2010, 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 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 house for the supply of water, gas and electricity and for sanitation and space heating and heating water are in a reasonable state of repair and in proper working order
- (d) the Property has satisfactory provision for detecting fires and for giving warning in the event of fire or suspected fire

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 the large hole in the kitchen ceiling adjacent to the rear window and to carry out such redecoration works as are necessary;
- (b) To make good the damage caused by water ingress to the larger of the two bedrooms upstairs and to carry out such repair works as may be necessary to the roof of the Property to prevent any further water ingress;
- (c) To make good damage caused by water ingress to the upstairs hallway wall and to carry out such further works as are necessary in relation to the external harling and rear downpipe to prevent any further damage being occasioned;
- (d) To install new back panels to the cupboards adjacent to the dishwasher in the kitchen;

- (e) To replace all broken, split and cracked floor tiles within the kitchen;
- (f) To replace the guttering to the side of the Property;
- (g) To repair or replace the guttering at the rear of the Property;
- (h) To repair or replace the rear downpipe at the Property and make good any damage to the harling behind the downpipe;
- (i) To replace the lounge window and the two upper floor bedroom windows;
- (j) To repair or replace the downstairs bedroom window, the kitchen window and bathroom window and in particular to ensure that the said windows are capable of being opened and shut smoothly and all necessary handles are in place and properly operational;
- (k) To replace both the front and back doors and the surrounding frames and to ensure that the replacements are properly wind and watertight;
- (l) To provide the Committee with a clear periodic inspection report by a qualified electrician confirming that the property is compliant with the relevant regulations and to secure any loose sockets and switches within the Property;
- (m) To carry out such remedial works as are necessary to the rear of the bath to stop the pooling of water and water ingress to the kitchen below. Also, to carry out such remedial works as are necessary to repair damage caused to the kitchen wall by the water ingress that has occurred to date;
- (n) To repair/replace all loose, missing and slipped tiles on the roof;
- (o) To carry an appropriate check on the fridge/freezer to ascertain whether it was in proper working order or not and to take such steps as are necessary to ensure that it is in proper working order; and
- (p) To carry out such repairs as are necessary to ensure that the pressure within the central heating system is maintained at an appropriate level and is in proper working order.

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(s) 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 May 2010 before this witness:-

L Johnston

witness

E Miller

chairman

Lindsay Johnston
 Legal Secretary
 Whitehall House
 33 Yeaman Shore
 Dundee
 DD1 4BJ