

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

Re: The northmost ground floor flat at 70 Church Street, Broughty Ferry, Dundee, DD5 1HD (as referred to in the Disposition to Isabella Jamieson Cruickshank or Merchant recorded 28 February 1955) (“the Property”).

The Parties:-

**Mr Alastair Smith
resident at the Property
 (“the Tenant”).**

and

**Mr Ian Potts
per Blackadders, Solicitors,
30 & 34 Reform Street
Dundee
DD1 1RJ
 (“the Landlord”).**

The Committee’s Decision

The Committee, having made such enquiries as it saw fit for the purposes of determining whether the Landlord had complied with the duty imposed by Section 14(1)(b) of the Housing (Scotland) Act 2006 (“the Act”) in relation to the Property, and taking account of the evidence made available, the Committee unanimously determined that the Landlord had not complied with the duty imposed by Section 14(1)(b).

The Background

- 1. The Tenant applied to the Private Rented Housing Panel (“the PRHP”) for a determination as to whether or not the Landlord had failed to comply with the duties imposed by Section 14(1)(b) of the Act.**

2. Following receipt of the Tenant's application, the President of the PRHP intimated that the application should be referred to a Private Rented Housing Committee in accordance with Section 22(1) of the Act.
3. The Committee served a Notice of Referral on the Landlord and on the Tenant in accordance with the terms of Schedule 2, Paragraph 1 of the Act.
4. The Committee inspected the property on 24 July 2009 at 10.00 am. The Tenant was present during the inspection. The Landlord was not present and not represented at the inspection. A Hearing took place after the inspection at 11.00 am in the Apex Hotel, Dundee.

The Application

5. In his application the Tenant submitted that the Repairing Standard had not been met for the following reasons:
 - the Property was not wind and water tight and was not in all other respects reasonably fit for human habitation;
 - the structure and exterior of the Property (including the drains, gutters and external pipes) were not in a reasonable state of repair and not in proper working order;
 - the installations in the Property for the supply of water, gas and electricity and for sanitation, space heating and water heating were not in a reasonable state of repair and not in proper working order.
6. In particular the Tenant submitted (in the document of 8 May 2009 entitled "Notification of work to be carried out") that the units in the kitchen and bathroom were faulty, there was a crack in the kitchen wall and signs of mould in the bedroom and in the kitchen.

The Inspection

7. In the course of the inspection, the Tenant advised the Committee that since making application to the PRHP, the heating system had been serviced and (as far as he understood), was now maintained under an agreement with British Gas. He confirmed that he had no particular concerns about the heating/hot water system which appeared to be functioning properly.
8. The Tenant also advised the Committee that the washing machine and the cooker had now been replaced and were in working order.
9. The Committee inspected the bedroom in the Property and noted that the ceiling (which had previously been damaged by water ingress) had been repaired. The Committee also noted that works had been carried out in an effort to address the problem of dampness in the "walk in

cupboard". A Protimeter (Electronic Damp Meter) test revealed evidence of light dampness in the bedroom and in the walk in cupboard.

10. The Committee inspected the exterior of the Property and noted that vegetation appeared to be growing in the external gutters at the rear of the Property. It was also noted that an external down pipe at the front of the Property was leaking and was in a poor state of repair.

The Hearing

11. As indicated, a Hearing was held after the inspection. The Tenant attended the Hearing as did the Landlord who was represented by Mr Allison (solicitor).
12. The Chairman introduced the Committee to the parties and reminded them of the issues which the Committee would consider and determine.
13. The Committee drew Mr Allison's attention to the Short Assured Tenancy Agreements (which were before the Committee) in which the Landlord was named as Mr Gordon Potts (and not Mr Ian Potts). Mr Allison was asked if he had any concerns about the validity of the Tenancy Agreements. Mr Allison advised the Committee that the Landlord was the brother of Mr Gordon Potts. Following the death of Mr Gordon Potts, the Landlord had assumed responsibility for his affairs. Mr Allison made no further submissions to the Committee in regard to this matter. The Committee noted that in the correspondence before the Committee the Tenant had indicated that in January 2008 he had been sent a Tenancy Agreement which covered the period July 2007 – July 2009. He told the Committee that he had executed this Agreement in January or February 2008. The Committee asked Mr Allison if he had any comments in regard to this issue. In response Mr Allison submitted that a previous Tenancy Agreement (which covered the period 6 July 2005 – 5 July 2006) had continued by tacit relocation.
14. At the Hearing the Tenant told the Committee of the problems he had experienced in the Property. He advised the Committee that as a consequence of dampness in the bedroom, he had been sleeping in the living room for the past 9 or 10 months.
15. Mr Allison suggested that the Landlord had made efforts to effect repairs but attempts to gain access to the property had proved unsuccessful on a number of occasions. He provided the Committee with a copy of a letter of 18 June 2009 from Shepherd Chartered Surveyors (with attachment).
16. The Tenant advised the Committee that he had attempted to remove mould from the walls by the use of bleach. He confirmed that works had been carried out in the bedroom and in the walk in cupboard in February 2009. At the Hearing the Landlord confirmed that he had issued instructions for remedial works to be carried out to the bedroom and the

walk in cupboard. He accepted that he had not visited the Property since these works had been completed. Whilst he had also instructed that the guttering at the rear of the Property be cleared, he was not aware that these instructions had not been complied with.

Summary of the issues

17. The issue to be determined by the Committee was whether the Landlord had complied with the requirements of the Act in ensuring that the Property met the Repairing Standard.

Findings of fact

18. On 24 June 2005 the Tenant and Mr Gordon Potts (deceased) executed a Short Assured Tenancy Agreement relative to the Property. In terms of this Agreement the commencement of the let was 6 July 2005 and the date of termination of the let was 5 July 2006. Three further Short Assured Tenancy Agreements were subsequently executed by the Tenant and by Mr Gordon Potts. These Agreements covered the periods 6 July 2006 to 5 July 2007, 6 July 2007 – 5 July 2008 and 6 July 2007 – 5 July 2009.
19. Although all the Short Assured Tenancy Agreements were executed by the Tenant and Mr Gordon Potts, the Tenant and the Landlord are parties to a valid Short Assured Tenancy Agreement which relates to the Property.
20. The heating/hot water system has been serviced and is in a reasonable state of repair and in proper working order.
21. The washing machine and the cooker have been replaced and are in proper working order. The kitchen units are dated but are in a reasonable state of repair.
22. The bathroom fittings are dated and stained but are in a reasonable state of repair.
23. There is a crack in the kitchen wall but it did not have an adverse effect on the structure of the Property.
24. The ceiling in the bedroom (which had been previously been damaged by water ingress) has been repaired. Works have been carried out to remove the areas of dampness in the “walk in cupboard”.
25. There was evidence of slight dampness in the bedroom and in the walk in cupboard.
26. Vegetation is growing in the guttering at the rear of the Property. This is likely to cause rainwater to overflow. This gutter is not in a reasonable state of repair and not in proper working order.

27. The external down pipe at the front of the Property is cracked and leaking. This pipe is not in a reasonable state of repair and not in proper working order.
28. The under floor ventilation grills are blocked and not in proper working order. Additionally the outside ground level is higher than the internal floor level which is considered to be contributing to the recent damp problems experienced by the tenant.

Reasons for the decision

29. The Short Assured Tenancy Agreements (copies of which were before the Committee) were executed by the Tenant and Mr Gordon Potts. The Committee accepted that following the death of Mr Gordon Potts, his interest in the Short Assured Tenancy Agreement valid at the time of his death, passed (under his will or intestacy) to his brother - the Landlord. Consequently the Committee had jurisdiction to consider and determine the application.
30. The Short Assured Tenancy Agreement covering the period 6 July 2007 – 5 July 2009 was executed by the Tenant in January or February 2008. However since neither party had given due notice that they intended to end the previous Short Assured Tenancy Agreement the tenancy was continued by tacit relocation.
31. As indicated, the Tenant confirmed that the heating/hot water system had been serviced and was functioning properly. He also told the Committee that the washing machine and the cooker had been replaced and were in working order. The Committee accepted his evidence in this matter. Whilst the kitchen units are dated they are fit for their purpose and are in a reasonable state of repair. There is a crack in the kitchen wall but the Committee were satisfied that this crack would not have an adverse effect on the structure of the Property.
32. The noted that the bathroom fittings were dated and stained. However they were in a reasonable state of repair.
33. During the course of the inspection the Committee noted the poor state of repair of the guttering at the rear of the Property and of the external down pipe at the front of the Property. Whilst it was not raining at the time of the inspection, it was clear to the Committee that rain water would overflow from the guttering and would leak from the external down pipe. The guttering and the external down pipe are not in a reasonable state of repair and not in proper working order.
34. It was clear to the Committee that there had previously been significant dampness within the Property. This had an adverse impact on the Tenant over a considerable period of time. The Committee had no reason to doubt the Tenant's claim that dampness prevented him from sleeping in the bedroom. However works had been carried out to remove

the areas affected by dampness. Nonetheless a Protimeter test revealed that there was light dampness within the Property.

35. In the course of the inspection the Committee noted that the under floor ventilation was blocked and not in proper working order.

Decision

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

Right of Appeal

39. A Landlord or Tenant aggrieved by the decision of a PRHP Committee may appeal to the Sheriff by summary application within 21 days of being notified of that decision.

Effect of section 63

40. 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. 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.

R Handley

Signed
Chairperson

Date...16/1/09.....

Repairing Standard Enforcement Order

Ordered by the Private Rented Housing Committee

Re: The northmost ground floor flat at 70 Church Street, Broughty Ferry, Dundee, DD5 1HD (as referred to in the Disposition to Isabella Jamieson Cruickshank or Merchant recorded 28 February 1955) ("the Property").

The Parties:-

**Mr Alastair Smith
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**Mr Ian Potts
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("the Landlord").**

NOTICE TO THE LANDLORD

Whereas in terms of their decision dated 16 September 2009, 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 had failed to ensure that the guttering at the rear of the Property and the external down pipe at the front of the Property were in a reasonable state of repair and in proper working order. Moreover the Landlord had failed to ensure that the under floor ventilation grills were in proper working order.

The Private Rented Housing Committee now requires the Landlord to carry out such works as are necessary for the purposes of ensuring that the Property 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 to:-

- (a) clear the guttering at the rear of the Property to ensure that all rain water drains from the guttering into the external down pipe and that the gutters are in proper working order;

- (b) repair the external down pipe at the front of the Property to ensure that it is in proper working order and in a reasonable state of repair;
- (c) carry out such works as are necessary to ensure that the under floor ventilation grills are not blocked and are in proper working order;
- (d) carry out such works as are necessary to ensure that dampness does not occur as a consequence of the outside ground level being higher than the internal floor level.

The Private Rented Housing Committee order that the works specified in this Order must be carried out and completed within the period of 28 days 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 Ron Handley, Solicitor, Chairperson of the Private Rented Housing Committee at Edinburgh on the sixteenth day of September 2009 before this witness:-

N Allison

____ Witness

R Handley

____ Chairman

NIGEL ALLISON Name in full

CITY CHAMBERS Address

EH1 3YJ

solicitor Occupation