

Repairing Standard Enforcement Order
Ordered by the Private Rented Housing Committee

Case reference number : PRHP/EH9/57/10

Re:- Property at 9/8 Summerhall Square, Edinburgh, EH9 1QD

("the property")

The Parties:-

Mr Philip Mellor residing at 9/8 Summerhall Square, Edinburgh, EH9 1QD
("the tenant")

and

Mr Andrew Smith residing at 35 Morningside Drive, Edinburgh, EH10 5LZ
("the landlords")

Notice to Mr Andrew Smith

Whereas in terms of the decision dated 23 June 2010 the Private Rented Housing Committee determined that the landlord had failed to comply with the duty imposed by Section 14(1)(b) of the Housing (Scotland) Act 2006 and in particular the landlords had failed to ensure that:-

- (a) the house is wind and watertight and in all respects reasonably fit for human habitation
- (b) the 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 purpose of ensuring that the house concerned meets the repairing standard and that any damage caused by the carrying out of the works in terms of the order is made good.

In particular the Private Rented Housing Committee requires the landlords to carry out the work specified in the attached Schedule of Works, the terms of which form part of this order.

The Private Rented Housing Committee orders that the works specified in this order must be carried out within six months of the date of this Order.

A landlord or tenant aggrieved by the decision of the Committee may appeal to the Sheriff by summary application within 21 days of being notified of that decision. The appropriate respondent in such appeal proceedings is the other party to the proceedings and not the PRHP or the Committee which made the decision.

Where such an appeal is made the effect of the decision or 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 are to be treated as having effect from the day on which the appeal is abandoned or so determined.

Signed.. **J Bauld**
Chairperson

Date... *23 June 2010*

Signature of Witness. **G Williams**

Date... *23/6/10*

Name: Gillian Williams

Address: 7 West George Street, Glasgow, G2 1BA

Designation: Senior Court Administrator

Notice to Andrew Smith ("the landlord")

Schedule of work ordered by the Private Rented housing Committee

Case reference number : PRHP/EH9/57/10

The Private Rented Housing Committee requires the landlords to carry out such works as are necessary to:-

- Repair the roof of the tenement building to ensure that the property is wind and water tight and to prevent further water ingress into the property itself.
- To instruct a suitably qualified electrician to carry out a periodic inspection report certifying that all electrical fittings within the property are safe

Any damage caused by the carrying out of the work specified in the Order must also be made good in terms of the Housing (Scotland) Act 2006 Section 14 (2)(b)

A landlord who, without reasonable excuse, fails to comply with a Repairing Standard Enforcement Order commits an offence. A landlord who is guilty of an offence under this subsection is liable on summary conviction to a fine not exceeding level 3 of the standard scale (Housing (Scotland) Act 2006 Section 28 (1) and (7)).

Signed..

J Bauld

Date.. 23 June 2010

Chairman

Signature of Witness..

G Williams

Date.. 23/6/10

Name: Gillian Williams

Address: 7 West George Street, Glasgow, G2 1BA

Designation: Senior Court Administrator

Statement of Decision of the Private Rented Housing Committee
Under Section 24(1) of the Housing
(Scotland) Act 2006

PRHP Ref: PRHP/EH9/57/10

Re:- Property at 9/8 Summerhall Square, Edinburgh, EH9 1QD ("the property")

The Parties:-

Mr Philip Mellor residing at 9/8 Summerhall Square, Edinburgh, EH9 1QD
("the tenant")

and

Mr Andrew Smith residing at 35 Morningside Drive, Edinburgh, EH10 5LZ
("the landlord")

The Committee comprised:-

Mr James Bauld	- Chairman
Mr George Campbell	- Surveyor member
Ms Christine Anderson	- Housing member

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 2006 Act") in relation to the property and taking account of the evidence led at the hearing, unanimously determined the landlord had failed to comply with the duty imposed by Section 14(1)(b) of the 2006 Act. The Committee accordingly proceeded to make a Repairing Standard Enforcement Order (RSEO) as required by Section 24(2) of the 2006 Act.

Background

1. By application dated 27th October 2009, the tenant applied to the Private Rented Housing Panel (PRHP) for a determination of whether the landlord had failed to comply with the duties imposed by Section 14(1)(b) of the 2006 Act.
2. The application made by the tenant stated that the tenant considered that the landlord had failed to comply with his duty to ensure that the house met the repairing standard and, in particular the landlords had failed to ensure that :-
 - a. the house was wind and water tight and in all respects reasonably fit for human habitation
 - b. the installations in the house for the supply of water, gas and electricity and sanitation, space heating and heating water were in a reasonable state of repair and in proper working order.
 - c. the fixtures, fittings and appliances provided by the landlord under the tenancy were in a reasonable state of repair and in proper working order

The tenant attached to the application a note detailing the defects and subsequent to the application, provided further written representations to the Committee dated 11 May 2010.

3. By letter dated 15th April 2010, the President of the Private Rented Housing Panel intimated a decision to refer the application under Section 22(1) of the 2006 Act to a Private Rented Housing Committee ("the Committee")
4. The Private Rented Housing Committee served Notice of Referral under and in terms of Schedule 2, Paragraph 1 of the 2006 Act upon both the landlords and the tenant.
5. Following service of the Notice of Referral, the tenant, made further written representation to the Committee in addition to the original application. Those written representations were dated 11 May 2010. The Landlord also submitted a written representation via e-mail sent to the PRHP on 20 May 2010.
6. The Committee inspected the property on the morning of 15 June 2010. The tenant and the landlord were both present during the inspection.
7. Following the inspection of the property, the Committee held a hearing at Leith Community Centre in Edinburgh. At that hearing the tenant attended along with his father Stephen Mellor. The landlord was also present at the hearing.

Summary of Issues

8. The issues complained of by the tenant in the application before the Committee and left to be determined by the Committee at the time of the inspection and hearing can be summarised as follows:-
 - The front bedroom to the property had suffered water ingress and there was wallpaper hanging from the ceiling of that bedroom.

- The light fitting in the back bedroom was in a state of disrepair and this room had also been subject to water ingress.
- There had been water ingress in the window at the back bedroom at the window frame
- There were general damp patches on the ceilings of both rooms

During the course of the inspection and the hearing, the tenant accepted that the extractor fans to both the Kitchen and bathroom had been repaired and both were now functioning.

The Hearing

9. At the hearing the Committee heard representations from both the tenant and the landlord regarding the matters which were outstanding. The tenant expressed the views that he had been complaining with regard to the state of repair of this property since September 2009. He was concerned regarding the safety of the electrical fittings and indicated that there continued to be water leaks in the back bedroom up until two weeks ago. The tenant stated that the internal condition of the front bedroom with the wall paper hanging from the ceiling was unacceptable.
10. The landlord then addressed the Committee. He indicated that he was not aware of the details of the repairing standard but indicated that this particular property had had a full roof repair just over two years ago at a substantial cost. When the property was leased to the tenant in June 2009 it had just been fully upgraded and was in excellent condition. The landlord indicated that when he had first heard of the leaks through the roof and into the ceiling that he had contacted his letting agent and told them to take steps to contact Edinburgh City Council to remedy matters. The landlord believed that the Council would be liable as they had carried out the previous roof repair works and he understood that there may be some form of guarantee. The landlord indicated the advice that he was given was that he was required to let the ceilings dry out before any repairs could be undertaken. He indicated that two weeks ago he had sent along a contractor who could not find a leak in the roof. The landlord indicated that he was attempting to work with Edinburgh City Council to have a further statutory Notice placed on the property to enable further repairs to be done to the roof. The landlord accepted that the roof was leaking and that it required to be repaired.
11. Both the tenant and the landlord answered a variety of questions from members of the Committee. It appeared to be a matter of agreement among all parties that the roof to this property was leaking and that substantial damage had been caused to the internal ceilings in the front and back bedrooms and the damage had been caused to the light fitting in the back bedroom. The landlord indicated that he wished to have the property brought back to the state of repair in which it had been let in June 2009. The tenant indicated that he would not be remaining in the property beyond termination date of his Lease which is 30 June 2010. The tenant indicated that he was a student at Edinburgh University in his 2nd year and found it almost impossible to live in the property owing to the constant water ingress which had caused a substantial inconvenience and distress.

Findings of Fact

12. Having considered all the evidence the Committee finds the following facts to be established:-
 - a) The subjects of let comprise a top floor flat in a four storey tenement building. The building is grey sandstone and has a pitched tile roof. The flat consists of a hall, living room, 3 bedrooms, kitchen and bathroom. The windows within the property are double glazed tilt and turn windows.

- b) Within the front bedroom to the property there was evidence of significant water ingress and significant damp staining to the ceiling. One patch of wallpaper had peeled away from the ceiling and was hanging loose at the time of inspection. There was also a hole in the ceiling near the window where water ingress had occurred.
- c) In the back bedroom, there had also been substantial water ingress. The light fitting on the ceiling was hanging loose and the connecting wires were visible. The earth wire did not appear to be connected. There was no ceiling rose on the light fitting. There was no light shade of the fitting. There were damp patches on the ceiling.

Reasons for Decision

13. The Committee considered the issues of disrepair set out above in paragraph 13 and reached the following conclusion:-

- The evidence of water ingress within both bedrooms indicated that the property was not water tight and the Committee was satisfied that this failure constituted a clear breach of section 13 (1)(a) of the 29006 Act.
- The Committee were satisfied that the light fitting with in the back bedroom was not in a proper state of repair nor in reasonable working order and considered this as a breach of Section 13 (1)(d) of the 2006 Act.
- The Committee determined that all of the above matters required to be attended to before the house could be said to meet the repairing standard.

14. The decision of the Committee was unanimous

Rights of Appeal

- 15. A landlord or tenant aggrieved by the decision of the Committee may appeal to the Sheriff by Summary Application within 21 days of being notified of that decision
- 16. The appropriate respondent in such appeal proceedings is the other Party to the proceedings and not the PRHP or the Committee which made the decision

Effect of Section 63

- 17. Where such an appeal is made, the effect of the decision and of any Order made in consequence of it is suspended until the appeal is abandoned or finally determined.
- 18. Where the appeal is abandoned or finally determined by confirming the decision, the decision and the Order made in consequence of it are to be treated as having effect from the day on which the appeal is abandoned or so determined.

Signed.... **J Bauld**
Chairperson ✓

Date... *23 June 2010*

Signature of Witness. **G Williams** ..

Date... *23/6/10*

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