



Repairing Standard Enforcement Order

Ordered by the Private Rented Housing Committee

prhp Ref: PRHP/DD10/61/13

Re: 55A Bents Road, Montrose, DD10 8QA ("the Property")

Title No: ANG34207

The Parties:-

RAYMOND STEWART residing at 48 Coronation Way, Borrowfield, Montrose, DD10 9DJ ("the Landlord")

DAVID GARDINER residing at 55a Bents Road, Montrose, DD10 8QA ("the Tenant")

NOTICE TO RAYMOND STEWART ("the Landlord")

Whereas in terms of their decision dated 20 June 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 and in particular that the landlord has failed to ensure that the property is:-

- (a) 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;
- (b) 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 carry out such works to the Property as are necessary to allow the exhibition to the Committee of a clear electrical installation condition report confirming compliance with the relevant regulations. Said certificate to be produced by a suitably qualified electrician.
- b) To carry out such works as may be required to the gas appliances within the Property to allow the Landlord to exhibit to the Committee a clear gas safety certificate. Said certificate to be produced by a suitably qualified and registered Gas Safe engineer.
- c) To install a hardwired smoke alarm compliant with the relevant regulations.
- d) To (1) install a proper seal around the join between the kitchen sink and the worktop (2) install a proper seal between the back of the kitchen worktop and the tiled wall and (3) to properly affix the kitchen tap to the sink itself.

The Private Rented Housing Committee order that the works specified in this Order must be carried out and completed within the period of 6 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 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 20 June 2013 before this witness:-

C Baillie _____ witness

E Miller _____ -Chairman

Christina Baillie
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/DD10/61/13

Re: 55A Bents Road, Montrose, DD10 8QA ("the Property")

The Parties:-

DAVID GARDINER residing at 55a Bents Road, Montrose, DD10 8QA ("the Tenant")

RAYMOND STEWART residing at 48 Coronation Way, Borrowfield, Montrose, DD10 9DJ
("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 and the Tenant 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 20 March 2013 the Tenant 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 Tenant stated that the Tenant 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 has satisfactory provision for detecting fires and for giving warning in the event of fire or suspected fire.
 - (b) The Property is wind and watertight and in all other respects reasonably fit for human habitation;
 - (c) 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;
 - (d) 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;
 - (e) Any fixtures, fittings and appliances provided by the Landlords under the tenancy are in a reasonable state of repair and in proper working order;
3. By letter dated 9 April 2013 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 Tenant.
5. Following service of the Notice of Referral the Tenant made no further written representation to the Committee other than their original application. The Landlord made no written representations to the Committee.
6. The Private Rented Housing Committee comprising Mr E K Miller (Chairman and Legal Member), Mr D Godfrey (Surveyor Member) and Mr J Wolstencroft (Housing Member) accompanied by Mr S McLaggan (Clerk to the Committee) inspected the Property on the morning of 4 June 2013. The Tenant and the Landlord were both present. Neither were represented.
7. Following the inspection of the Property the Private Rented Housing Committee held a Hearing at The Park Hotel, Montrose. Both the Tenant and Landlord were present. Neither party had representation.
8. The Tenant submitted that the Property was in poor condition. He was particularly concerned regarding the electrical wiring within the Property. The Tenant alleged that a number of the sockets were heating up and despite this having been complained of to the Landlord, no safety certificates had been provided. He was also concerned regarding the gas appliance within the Property and the lack of a clear gas safety certificate. The Tenant also had concerns regarding condensation and damp within the Property which was having an adverse effect on both his and his child's health, he alleged.
9. The Landlord submitted that the Property was, as far as he was concerned, in good order and little required to be done to it, if anything. The Tenant was not paying any rent at present and this restricted the ability of the Landlord to carry out any works.

Summary of the issues

10. The issues to be determined are:-
 - (1) Whether the electrical installation within the Property was safe and met the repairing standard.
 - (2) Whether the gas appliance within the Property was safe and met the repairing standard.
 - (3) Whether the smoke alarm within the Property was in proper working order and met the repairing standard.
 - (4) Whether the carbon monoxide detector required to be hardwired.
 - (5) Whether ventilation was required in the kitchen.
 - (6) Whether the polystyrene kitchen roof tiles and coving required to be replaced to meet the repairing standard.
 - (7) Whether the front door was properly wind and watertight and otherwise met the repairing standard.
 - (8) Whether the windows were properly wind and watertight and otherwise met the repairing standard.
 - (9) Whether the guttering at the Property was leaking and required to be repaired or replaced.
 - (10) Whether the Property was suffering from condensation and did not meet the repairing standard.

(11) Whether there were leaks in the bathroom and kitchen that required to be attended to to meet the repairing standard.

Findings of fact

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

- The Committee were not satisfied that the electrical installation was safe and an electrical installation condition report required to be provided.
- A clear up to date gas safety certificate required to be provided to ensure compliance with the repairing standard.
- There was only a battery powered smoke alarm within the Property and this did not meet the required regulations.
- Carbon monoxide detectors do not need to be hardwired to meet the repairing standard.
- Although the kitchen would benefit from mechanical ventilation nonetheless there was an opening window within the kitchen and this would have met the required standard at the time of its installation.
- The polystyrene kitchen roof tiles and coving did not require to be replaced.
- The front door did not require to be repaired or replaced.
- The windows were wind and watertight and did not require any corrective works.
- The guttering did not need to be repaired or replaced.
- The condensation within the Property was caused by the everyday use by Tenant, rather than any fundamental repair issue within the Property.
- There was no leak in the bathroom that required to be attended to. There were works in relation to the leaks in the kitchen sink that required to be attended to.

Reasons for the decision

12. The Committee based its decision primarily on the evidence obtained during the course of its inspection. The Committee first inspected the electrical installation within the Property. The Committee noted that the consumer unit had been replaced within the last year or two. In order for compliance with the relevant electrical regulations an electrical installation certificate/condition report should have been provided to the Landlord at the time. The Landlord was unable to produce this. Given the Tenant's complaints and the fact that the consumer unit had been replaced relatively recently the Committee thought it appropriate that an up to date clear electrical installation condition report be produced by a suitably qualified electrician and provided to the Committee by the Landlord.

Whilst the Landlord produced a gas safety certificate this did not confirm that a gas tightness test had been carried out. Accordingly the Landlord would require to produce to the Committee an up to date gas safety certificate confirming full compliance with the relevant regulations. This would be sufficient confirmation for the Committee that everything was in order in the Property with the gas appliances.

The Landlord had only provided a battery powered smoke alarm. The Committee confirmed to the Landlord that the relevant regulations required a hardwired smoke alarm and the Landlord would require to install this.

The Committee was aware that carbon monoxide detectors do not yet require to be hardwired in order to comply with the relevant regulations. Accordingly the Landlord did not need to do anything in this regard.

The Committee inspected the kitchen. There was no mechanical ventilation but there was a large opening window. Whilst there was some evidence of condensation and staining within the kitchen, this appeared to the Committee simply to be within the tolerances of everyday usage. Whilst it would be beneficial to have mechanical ventilation the Committee were satisfied that the ventilation within the kitchen did meet the repairing standard.

The Committee inspected the polystyrene kitchen roof tiles and coving. Whilst there was some very mild staining this was consistent with normal use of the kitchen. The Committee accept that whilst polystyrene kitchen roof tiles and coving are not a particularly modern or satisfactory method of decoration, nonetheless there is no requirement to remove these to comply with the repairing standard. The Tenant had highlighted some areas of browning of the roof tiles around the kitchen light. The Committee was of the view that this was very minor and did not represent any fire risk.

The Committee inspected the front door. This was somewhat dated and was not of a perfect fit. Nonetheless it was still in reasonable condition and appeared to the Committee to meet the repairing standard. Whilst the Committee accepted that there may have been some water ingress recently it appeared to the Committee that this would only occur in very adverse weather conditions and the door did generally meet the repairing standard.

The Committee inspected the windows at the Property. These were modern UPVC units that had been installed within the last year or two. Some mastic/silicone repairs had been carried out around the frames that were a little unsightly and were a little stained. However the Committee was satisfied that the windows did indeed meet the repairing standard and that they were properly wind and watertight and capable of being opened and closed in the usual fashion.

The Committee inspected the guttering at the front of the Property. The Tenant produced a video on his phone at the Hearing that he alleged showed water spilling from the gutter. Unfortunately the Committee was unable to determine from the video whether this was simply rain itself or an overflow from the gutter. The owner of the other upstairs property, who was working outside at the time, confirmed that as far as he was aware there were no issues with the gutter. The Committee could not identify visually any defects in the guttering and was satisfied that any defects were of a minor nature and that compliance with the repairing standard had been achieved.

The Committee considered whether there was excessive condensation within the Property. The Committee took into account that the Property was small and had two adults and a small child living within it. In a Property of this age and character there would always be some elements of condensation arising from normal usage unless the property were kept very well ventilated. The Committee was satisfied that what condensation there was arose from the Tenant's everyday use of the Property rather than any defective aspect of the building itself.

The Committee inspected the bathroom. There was some minor condensation damage, again caused, in the view of the Committee, by ordinary everyday usage rather than anything else.

The Committee inspected the kitchen sink. This was badly fitting and would benefit from silicone/mastic being installed around the edges between the sink and the worktop. Also, at the back of the worktop at the join with the tiles there were gaps that would allow water to seep down into the units below. This would require to be remedied. The tap unit itself was also very loose and required to be fixed.

The Committee considered how long the Landlord would require to carry out the necessary works. The Landlord indicated that as he was receiving no rent he could not afford to do any works at the present time. He thought 6 months was an appropriate period. The Committee noted that a lack of funds or non-payment of rent are not valid grounds for non-compliance with the repairing standard. The items that required to be dealt with could be done without major disruption and should be able to be carried out by the Landlord swiftly. The Committee was satisfied that, in the circumstances, a period of 6 weeks was an appropriate timescale for the works to be carried out in.

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.
16. The opinion of the dissenting member was as follows:-

Right of Appeal

17. 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

18. 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 **E Miller** Date..... *20/6/2013*

Chairperson