



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

In connection with

Property at Flat 2/2, 248 Paisley Road West, Glasgow G51 1BS
(hereinafter referred to as "the house")

Ms. Jean Wilson, Flat 2/2, 248 Paisley Road West, Glasgow G51 1BS (represented
by Ms. Laura Simpson of Govan Law Centre, Units 4&6 Orkney Street Enterprise
Centre, 18-20 Orkney Street, Glasgow G51 2BX) ("the Tenant")

Mr. Varpal Singh Padda, 28 Garngaber Avenue, Lenzie, Glasgow G66 4LL
(represented by Mr. Ian Boyle, of Flats in Glasgow Letting Agents, 1279
Dumbarton Road, Glasgow G14 9XL) ("the Landlord")

PRHP REFERENCE G51/68/10

DECISION

The Committee, having made such enquiries as is 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 the Tenant and the Landlord at the hearing and the written documentation attached to the application and submitted by the parties, determined that the Landlord had failed to comply with the duty imposed by Section 14(1)(b) of the Housing (Scotland) Act 2006 (hereinafter referred to as "the Act")

Background

1. By application dated 12 April 2010 and received on 15 April 2010 the Tenant applied to the Private Rented Housing Panel (hereinafter referred to as "PRHP") for a determination of whether the Landlord had failed to comply with the duties imposed by Section 14(1) (b) of the Act.
2. The application by the Tenant stated that the Tenant considered that the Landlord had failed to comply with the duty to ensure that the house meets the repairing standard

and in particular that the Landlord had failed to ensure compliance with Section 13(1)(a),(b), and (c) of the Act which states that " the house is wind and watertight and in all other respects reasonably fit for human habitation; the structure and exterior of the house (including drains, gutters and external pipes) are in a reasonable state of repair and in proper working order; and the installations in the house 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". The Tenant's complaint of disrepair within the application related to dampness and water ingress in the flat and concerns that the water ingress may be affecting the electricity in the flat. She submitted photographs in the application to illustrate the alleged problems, along with copies of correspondence which had passed between her solicitor and the letting agents dated 24 and 25 November 2009 and 13 January 2010 intimating the alleged repairs and calling upon the Landlord or his agents to rectify the defects. With the application was produced a copy of a report dated 22 January 2010 from Dr. Stirling Howieson, Chartered Architect and Chartered Engineer, which detailed his findings on the condition of the flat following upon his inspection on 15 January 2010. The findings in his report states that there is water penetration within the property and the external rear wall and stairwell is saturated; that there is water staining to bedroom walls and a ceiling in a bedroom cupboard has been brought down by water penetration. He concluded that the "dwelling is not "tenantable and habitable" due to severe traumatic dampness". A copy of the short assured tenancy agreement between the Landlord and the Tenant was submitted as a production.

3. By letter dated 22 April 2010 the President of the Private Rented Housing Panel intimated a decision to refer the application under Section 23(1) of the Act to a Private Rented Housing Committee.

The Committee comprised the following members:

Mrs. Aileen Devanny, Legal Member
Mr. George Campbell, Surveyor Member
Mrs. Christine Anderson, Housing Panel Member

4. The Private Rented Housing Committee served Notice of Referral under and in terms of Schedule 2 Paragraph 1 of the Act upon the Landlord and the Tenant. Following service of the Notice of Referral the Tenant made no further written representations to the Committee beyond confirming on 5 May 2010 her wish to attend a hearing before the Committee. The Landlord's agent submitted no written representations.

5. The Private Rented Housing Committee inspected the house on the morning of 30 June 2010. The Tenant, Ms. Jean Wilson was present. Neither the Landlord nor his agent attended the inspection.

6. Following the said inspection the Private Rented Housing Committee held a hearing at the offices of the Private Rented Housing Panel at 140 West Campbell Street, Glasgow.

The Committee considered the written evidence submitted and heard representations from the Tenant's solicitor, Ms. Simpson and from the Landlord's agent, Mr. Boyle. After hearing representations, the Committee adjourned to consider all the evidence and the representations, and to make their determination.

Submissions at the Hearing

7. It was pointed out by the Committee Chairperson at the start of the hearing that the Committee was there to determine whether the house met the repairing standard in terms of the Act.

The Tenant's solicitor indicated that the Tenant had 3 children aged 16, 12 and 6 years and her client was concerned for their safety given the condition of the house. Her firm had corresponded with the Landlord's agent and intimated the repairs and requested that the Landlord remedy the defects. She agreed that the required works were common repairs and her firm had written to the Factor in an attempt to resolve the problems but the Factor had responded indicating that they could not proceed with the repairs as they lacked instructions and funding. Her firm had obtained a report from Dr. Howieson which confirmed that the house was not habitable and was not tenantable. A copy of that report was sent to the Landlord's agent on 1 February 2010. An approach was made by the Tenant's solicitor to the Environmental Health Department of Glasgow City Council in April 2010 to try to seek their involvement and a suggestion was made to them that they consider serving statutory notices on proprietors. However, the Council had to date not done so. It was at this stage that an application had been made to Prhp. She pointed out that the repairing standard covered parts of the common areas used by the Tenant and ultimately if the Factor or other owners did not carry out repairs, then it is open to the Landlord to carry out the works and raise a court action to recover a proportion of the maintenance costs in terms of the title deeds to the house. The Tenant had no contract with the Factor and her contract is with the Landlord that the house should meet the repairing standard. She submitted that the Landlord possessed the necessary rights of access to carry out the works to the common areas in terms of the titles and so the exclusion detailed in Section 16(4) of the Housing (Scotland) Act 2006 did not apply.

The Landlord's agent submitted that the roofing problems are matters which he had referred to the Factor as these are common repairs. Far from refusing to carry out works to the house, he submitted that he had actively tried to resolve the issues but had had no success in getting the Factor to take appropriate action regarding the repairs to the roof and gutters. He considered it unreasonable to expect the Landlord to carry out major roofing works which would involve thousands of pounds and then attempt to recover a share of the costs from the other owners possibly by court proceedings which would further add to the costs. The Landlord's agent indicated that he had inspected the roof himself and it was his considered opinion that a new roof was required which would involve scaffolding and thereafter major stonework repairs were needed to point the building. He also felt that there were chimney repairs required. He conceded that the

house did not meet the repairing standard but blamed the situation on the lack of activity of the Factor who collected money for works and then did not proceed with the repairs as some owners did not pay their share of the costs. He produced a list of works which the Landlord had completed in the flat including the installation of double glazing. He disputed any suggestion in the paperwork that the Landlord had refused to install a heating system.

Summary of the issues

8. The issue to be determined is whether the house meets the repairing standard as laid down in Section 13 of the Act and whether the Landlord had complied with the duty imposed by Section 14(1) (b).

Findings in Fact

9. The Committee made the following findings in fact:-

9.1. In 15 July 2009 the Tenant entered into a lease with the Landlord for the rent of the house. The Tenant has continued in occupation of the house from that date. The lease is a short assured tenancy in terms of the Housing (Scotland) Act 1988. The provisions outlined in Chapter 4 of the Act apply.

9.2. The Tenant notified the Landlord of the required works to the house on or around November 2009 and the Landlord indicated that he had referred the issue of the roof repairs to the Factor. A report prepared on 22 January 2010 by Dr. Stirling Howieson, Chartered Architect, indicated the house was "not tenantable and habitable" due to traumatic dampness. He was of the opinion that the problem had been ongoing for a number of years. He felt that the reason for the dampness was leaking rainwater goods.

9.3. The inspection by the Committee on 30 June 2010 revealed:-

The house is a top floor flat in a three storey and basement sandstone tenement block built around 1900. The repairing complaints in the house relate to the bedrooms and the Committee confined their internal inspection to these rooms in the house as well as the common close and stairwell leading to the house.

The weather at the time of inspection was dry.

Findings externally: the roof appears in poor condition so far as could be seen and the Committee noticed that the stonework to the rear of the tenement had rainwater staining and looked wet and there appeared to be leaks from the downpipe at the rear elevation and mature ferns were growing from the downpipes. There was also a dripping overflow pipe. The weather was dry at the time of the inspection and the Committee observed no specific leaks from the gutters at the time of inspection.

Findings internally: water penetration staining was noticed in the walls and ceiling of the two rear bedrooms. The ceiling in the walk in cupboard in the rear bedroom has come down due to water penetration and the plaster was lying on the floor. A temporary repair has been effected using plastic sheeting. In the same room the Tenant indicated that she has put her finger through the plasterwork on the wall when re-hanging curtains. She stated that this occurred because of the condition of the wall. Wallpaper was peeling off the wall in the second rear bedroom and evidence of water staining was observed on the false ceiling in the third bedroom to the front elevation of the house. The Tenant complained that the electricity supply was affected by the water ingress and that the lights flickered when it was wet. The Committee saw the house when it was dry and observed no flickering in the electric lights but did think that it was entirely possible that the electricity supply may be affected by water ingress in bad weather.

The Committee observed evidence of water ingress and dampness on the rear external wall in the common stairwell leading to the house. The only means of access to the house is via this stairwell which forms part of the subjects used by the Tenant. The ceiling of the common stair has a crack and plaster from the ceiling has fallen onto the stair. The Committee is concerned that the ceiling is capable of coming down at any time with the resulting safety issues and has asked for a referral to be made to the appropriate Council Departments.

Reasons for the Decision

10. In considering the repairing standard and dampness issue the Committee carried out an internal and external inspection of the house and in particular closely examined the specific defects highlighted by the Tenant in the application and detailed in the correspondence. In addition the Committee carefully considered the written documentation and oral evidence submitted. The Committee considered the representations of the parties in relation to the repairing standard.

Visual inspection of the house confirmed the presence of dampness in the house and this was confirmed by the report of Dr Howieson commissioned by the Tenant's agent. The Committee considered whether the extent of the dampness was to a level which made the house not "reasonably fit for human habitation".

The Committee considered that the degree of dampness in the house was to a level that the house could not be said in all respects to be reasonably fit for human habitation and the house did not meet the repairing standard laid down in Section 13(1) (a) of the Act which states the repairing standard is met if "the house is wind and water tight and in all other respects reasonably fit for human habitation".

The Committee observed the need for external repairs to the roof, downpipes and

gutters and considered that these repairs have an impact on the dampness issues within the house which the Tenant complained of in her application. These findings are in line with the report of Dr. Howieson. The Landlord himself and his agent acknowledged that the roof required to be replaced and that dampness was caused by the outstanding repairs needed to the roof and rainwater goods.

In order to ascertain if these external repairs to the tenement fall within the Landlord's duty of repair, it is necessary to examine the responsibility of the Landlord for these repairs as laid down in Section 15(1) of the Act which provides

"Where a house forms part only of any premises, the reference in section 13(1)(b) to the house includes reference to any part of those premises which the owner of the house is responsible for maintaining (solely or in common with others) by virtue of ownership, any real burden or otherwise."

From examination of Land Certificate GLA35581 which is the document evidencing the Landlord's ownership of the house, it is clear that the roof, outside walls, chimney stalks, close and common stair, and rainwater pipes, gutters and rhones are part of the common ownership rights of the Landlord and Burden (Third) in the Disposition by Ibrox Property Trust Limited in favour of Paul Hecht registered on 7 March 1988, which forms one of the Burdens Writs or documents giving the ownership conditions of the house narrates the maintenance liability of the portions of the tenement held in common ownership.

Burden (Third) of the said Disposition states that

"the portions of the said tenement and others held in common shall be maintained at the mutual expense of our said disponee and his foresaids and of the proprietors of the remainder of the said tenement in the ratio which the assessed rental of the subjects ... bears to the assessed rental of the whole of the tenement Number 248 Paisley Road West aforesaid, as disclosed in the Valuation Roll for the time."

From the title conditions relating to the Landlord's ownership of the house, the Committee concluded that the external repairs identified by the Committee fell within the Landlord's duty to ensure the house meets the repairing standard in Section 13(1) (b) which requires that "the structure and exterior of the house (including drains, gutters, and external pipes) are in a reasonable state of repair and in proper working order".

The Committee having established that the external repairs fell within the responsibility of the Landlord, went on to consider whether the Landlord had the necessary rights of access or otherwise to carry out the repair of Common Parts as the absence of these rights may provide an exception to the Landlord's repairing duty. Section 16(4) details this exception

" A landlord is not to be treated as having failed to comply with the duty imposed by section 14(1) where the purported failure occurred only because the landlord lacked

necessary rights (of access or otherwise) despite having taken reasonable steps for the purposes of acquiring those rights”.

Examination of the Landlord’s Land Certificate revealed that the Landlord does have such access rights as in the Description of his ownership rights in the Property Section of his Land Certificate GLA 35581, it states that

“Together also with access to the said tenement and others for all necessary purposes when required and free access to and egress from the subjects in this Title by the street fronting the same and also to the roof of the said tenement and the said chimney stalks for the purpose of cleaning vents and any other necessary purposes”.

The Landlord’s written representations seem to imply that by reporting the repairs to the Factor that this discharges his repairing standard obligation. However, the Tenant’s contract of let is with the Landlord and not the Factor and the Landlord has a duty to ensure that external repairs, for which he is responsible, in common with others, are carried out within a reasonable time of him becoming aware that the work is required. The Landlord’s title gives him access rights to carry out the repairs to roof and chimney stalks for any necessary purposes. Approximately seven months have elapsed since the Tenant’s agent wrote to the Landlord complaining of dampness and water ingress and stating her concern about the electrics and it is five months since the Landlord was first made aware of the terms of the report from Dr. Howieson confirming the need for external repairs to the tenement and in these circumstances, the Committee considers that the Landlord has had a reasonable time to carry out repairs and has failed in his duty under Section 14(1) (b) of the Act and had not complied with the repairing standard detailed in Section 13(1) (b) of the Act.

Decision

11. The Committee, considering the terms of Section 13(3) of the Act, determined that the Landlord had failed to comply with the duty imposed by Section 14(1) (b) of the Act.

12. The Committee proceeded to make a Repairing Standard Enforcement Order as required by Section 24(2).

13. The decision of the Committee was unanimous.

Right of Appeal

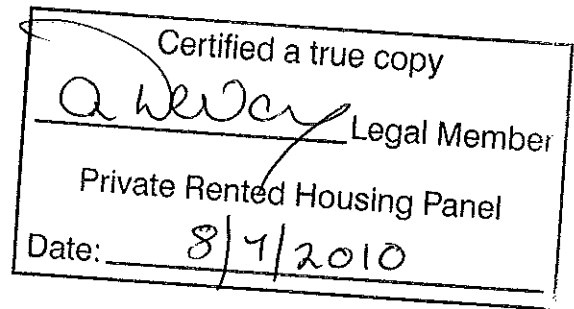
14. A Landlord or Tenant aggrieved by the decision of the Private Rented Housing Committee may appeal to the Sheriff by Summary Application within 21 days of being notified of that decision.

Effect of Section 63

15. 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.

A Devanny

Chairperson, 30 June 2010



Repairing Standard Enforcement Order

Ordered by the Private Rented Housing Committee

RE: Property at Flat 2/2, 248 PAISLEY ROAD WEST, GLASGOW G51 1BS, being the west-most house on the second floor above the ground floor of the tenement known as 248 Paisley Road West, Glasgow all as more particularly described in Land Certificate Title number GLA35581 (hereinafter referred to as "the house")

PRHP REFERENCE: G51/68/10

The Parties

Ms. Jean Wilson, Flat 2/2, 248 Paisley Road West, Glasgow G51 1BS (represented by Ms. Laura Simpson of Govan Law Centre, Units 4&6 Orkney Street Enterprise Centre, 18-20 Orkney Street, Glasgow G51 2BX) ("the Tenant")

Mr. Varpal Singh Padda, 28 Garngaber Avenue, Lenzie, Glasgow G66 4LL (represented by Mr. Ian Boyle, of Flats in Glasgow Letting Agents, 1279 Dumbarton Road, Glasgow G14 9XL) ("the Landlord")

NOTICE TO VARPAL SINGH PADDA ("the Landlord")

Whereas in terms of their decision dated 30 June 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 house meets the repairing standard in that:-

(1) The house is wind and water tight and in all other respects reasonably fit for human habitation;

(2) The structure and exterior of the house (including drains, gutters and external pipes) are in a reasonable state of repair and in proper working order;

(3) The installations in the house 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;

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 works (including those works identified in the report of Stirling Howieson, Chartered Architect and Chartered Engineer) to prevent water ingress and eliminate dampness in the house (including the common stairwell) and to ensure that the house is reasonably fit for human habitation,

(b) to carry out works to the external fabric of the tenement as identified in the said report of Dr Howieson to ensure that the structure and exterior of the house (including drains, gutters and external pipes) are in a reasonable state of repair and in proper working order;

(c) on completion of remedial works detailed at (a) and (b), the electrical supply should be checked by a qualified electrician and certification produced to Prhp confirming the installation is in reasonable repair and 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 6 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 typewritten on this and the preceding two page are signed by Aileen Margaret Devanny, Chairperson of the Private Rented Housing Committee, at Motherwell on Eighth day of July, Two Thousand and Ten in the presence of the undernoted witness:-

A Devanny

Alexander Devanny

WITNESS....'

ALEXANDER DEVANNY.....

SOLICITOR

70 HIGH STREET, LANARK