



Repairing Standard Enforcement Order

Ordered by the Private Rented Housing Committee

PRHP Ref: Prhp/EH37/78/11

Re: All and Whole the dwelling house know as and forming Three Fala Hall Cottage, Fala, Pathhead, Midlothian, EH37 5SZ together with any garden ground and outhouses pertaining thereto, which subjects form part and portion of the Oxenfoord Estate in the Parish of Fala and Soutra, all as contained in and more particularly described in Disposition by Trustees of the Oxenfoord Estate in favour of Michael Colin Dalrymple recorded in the Division of the general Register of Sasines for the County of Midlothian on Fifteenth October, nineteen hundred and ninety six (search sheet number 20418) ("the property")

The Parties:-

**Mrs Jennifer Harvey
resident at the property
("the tenant")**

and

**Hon M C Dalrymple
C/o Smiths Gore
Haddington House
28 Sidegate
Haddington
EH41 4BU
("the landlord")**

Whereas in terms of their decision dated 21 July 2011, the Private Rented Housing Committee ("the 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 that the landlord had failed to ensure that:-

- (a) the property was wind and water tight and in all other respects reasonably fit for human habitation;
- (b) the structure and exterior of the property was in a reasonable state of repair and in proper working order;
- (c) the installation for the supply of heating in the bathroom was in a reasonable state of repair and in proper working order.

The 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 Committee requires the landlord to:

- (a) investigate and identify the cause of dampness within the property and complete remedial works to ensure that all water ingress/dampness is eradicated throughout the property;
- (b) carry out such works as are necessary to ensure that the gutters to the front and rear of the property are in a reasonable state of repair and in proper working order;
- (c) repair and or replace the windows in the property to ensure that they are wind and watertight;
- (d) repair or replace the lock in the back door to ensure that it is in proper working order;
- (e) repair or replace the front door to ensure that it opens and closes properly;
- (f) repair or replace the bathroom heater (or otherwise ensure that the bathroom can be adequately heated).

The Private Rented Housing Committee orders that the works specified in this Order must be carried out and completed within the period of six 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 this and the preceding page are subscribed by Ronald G Handley, Solicitor, Chairperson of the Private Rented Housing Committee at Dunbar on the twenty first day of July 2011 before this witness:-

J Handley _____

Witness

JANE HANDLEY

Name in full

R Handley _____

Chairperson

23 LESLIE WAY

Address of witness

DUNBAR

COLLEGE MANAGER

Occupation



Determination by the Private Rented Housing Committee

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

PRHP Ref: Prhp/EH37/78/11

**Re: The residential dwellinghouse at
3 Fala Hall Cottages
Pathhead
EH37 5SZ
("the property")**

The Parties:-

**Mrs Jennifer Harvey
resident at the property
("the tenant")**

and

**Hon M C Dalrymple
C/o Smiths Gore
Haddington House
28 Sidegate
Haddington
EH41 4BU
("the landlord")**

The Committee comprised:

**Mr Ron Handley – Chairperson
Mr Donald Marshall – Surveyor
Ms Irene Kitson – Housing Member**

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 before it, unanimously determined that the landlord had failed to comply with the duty imposed by Section 14(1)(b). The Committee therefore requires that the landlord carries out such work as is necessary for ensuring that the property meets the Repairing Standard and that any damage caused by the carrying out of any work in

pursuance of the Repairing Standard Enforcement Order ("the Order") is made good. The Committee issued the Order as annexed to this Statement of Reasons.

The Background

1. On 30 March 2011 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. On 19 April 2011 the PRHP office wrote to the tenant and to the landlord confirming that the President of the PRHP had referred the application to a Committee. Both parties were asked if they wished to make written representations and if they wished to attend a Hearing. Written representations were subsequently received from both parties. The landlord's agent confirmed that he wished to attend a Hearing. The tenant advised that she would not attend the Hearing.
3. On 3 June 2011 the PRHP office wrote to both parties intimating that an inspection of the property would take place on 28 June 2011 at 10.00 am and a Hearing would be held after the inspection at 11.00 am in Dalkeith Community Centre, 6 Woodburn Road, Dalkeith. The venue for the Hearing was subsequently changed and intimation of this change was sent to both parties.

The Application

4. In her application the tenant submitted that the landlord had failed to comply with his duty to ensure that the property met the Repairing Standard (as defined in the Act) in that he had failed to ensure that:-
 - (a) the property was wind and water tight and in all other respects reasonably fit for human habitation;
 - (b) the structure and exterior of the property was in a reasonable state of repair and in proper working order;
 - (c) the installations in the property for the supply of water, gas and electricity and for sanitation, space heating and heating water were in a reasonable state of repair and in proper working order.
 - (d) any fixtures, fittings and appliances provided by the landlord under the tenancy were in a reasonable state of repair and in proper working order.

In particular it was submitted that:

- there was excessive rising damp and dry rot and that the rooms were covered in black and white mould – there were permanent condensation problems;
- the gutters were leaking and water ran down the walls;
- the doors, window and chimney were leaking;
- the heater in the bathroom was faulty and inadequate;
- the bath taps leaked;
- the back door could not be locked;
- the front door did not open easily;
- central heating required to be installed;
- exposed pipes in the bathroom and the kitchen should be boxed in.

The Evidence

5. The Committee had various documents before it including a copy of the tenant's application (to the PRHP), the Tenancy Agreement, written submissions and copies of various e-mails and letters made available by the tenant and the landlord.

The Inspection

6. The Committee inspected the property on 28 June 2011 at 10.00 am. The tenant did not attend and the landlord was represented by Mr Thomas Stanley.

The Hearing

7. A Hearing took place in the County Hotel, Dalkeith after the inspection. Mr Stanley attended on behalf of the landlord. The tenant did not attend. Mr R Shea (Clerk to the Committee) was also present at the Hearing.
8. Prior to commencing the Hearing, the chairman reminded Mr Stanley that the issue before the Committee was whether the Repairing Standard (as defined in the Act) had been met.
9. The evidence heard by the Committee at the Hearing can be briefly summarised as follows.

Dampness in the property

Mr Stanley advised that works were presently being carried out to remedy the dampness problems within the property. These works included removing existing plasterwork and injecting a damp proof course. Moreover the floors would be painted with a sealant and the property would be insulated.

The gutters

The Committee advised Mr Stanley that it appeared from the inspection that the gutters were not in proper working order. In particular the discharge pipe at the front of the property was not properly aligned and a section of guttering at the rear of the property was leaking. Mr Stanley undertook to investigate these matters.

The back door

Mr Stanley accepted that the lock on the back door was not in proper working order.

The windows

Mr Stanley accepted that some of the windows in the property were not wind and watertight but advised the Committee that the windows would be repaired or replaced.

The chimney

In regard to the suggestion that the chimney was leaking, Mr Stanley advised that he had doubts that the chimney was indeed leaking and didn't think the chimney was causing dampness within the property.

Misc

Mr Stanley advised that in addition to the works already referred to central heating was being installed in the property and new kitchen and bathroom units were to be fitted.

Summary of the issues

10. 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

11. The Committee found the following facts to be established:-
 - On or around 28 November 2006 the tenant and the landlord entered into a Tenancy Agreement which relates to the property. This Agreement has now been terminated.
 - On 30 March 2011 the tenant applied to 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.
 - The property is a terraced cottage built pre 1920. The roof of the property is slated and is in a reasonable state of repair and in proper working order.
 - There has been water ingress/dampness throughout the property.

- On the day of the inspection works had been commenced to remedy the dampness problems within the property.
- The gutters are not in a reasonable state of repair and not in proper working order. The discharge pipe in the gutter at the front of the property is not properly aligned and a section of gutter at the rear of the property requires to be repaired or replaced.
- The windows in the property are not wind and watertight.
- The lock in the back door is not in proper working order.
- The bathroom suite and all kitchen fixtures and fittings have been removed from the property.

Reasons for the decision

12. As indicated the appellant stated in her Application Form that there was dampness throughout the property. On the day of the inspection there was little remaining evidence of the dampness but Mr Stanley acknowledged that there had been dampness and pointed out that works had been commenced to remedy this problem.
13. Although the inspection was carried out on a day when it was not raining, it was clear that the gutters were not in a reasonable state of repair. The discharge pipe in the gutter at the front of the property is not properly aligned and a section of gutter at the rear of property is not in proper working order.
14. The Committee was unable to carry out a proper inspection of the chimney. However, as indicated, Mr Stanley was of the view that the chimney was not leaking and not causing or contributing to the dampness within the property. The Committee considered that it was unlikely that the chimney was a cause of the dampness. Nonetheless a proper inspection of the chimney would be necessary to confirm that the chimney was in a reasonable state of repair and in proper working order.
15. The Committee noted that many of the windows were in a poor state of repair and were not wind and water tight.
16. It was clear from the inspection that the lock in the back door was not in proper working order.
17. On the day of the inspection the front door appeared to open and close properly. However given the previous problems of dampness within the property the Committee accepted that it was reasonably likely that the front door did not always open and close properly.

18. At the time of the inspection the electrical supply to the property had been disconnected (to allow the remedial works to be progressed). Consequently it was not possible to determine if the bathroom heater was in proper working order. However the Committee noted that central heating was to be installed throughout the property.
19. As already indicated, all bathroom fixtures and fittings had been removed and were to be replaced by new units. Consequently the Committee was unable to determine if the bath taps had been leaking.
20. The Committee noted that in her application the tenant suggested that a central heating system should be installed in the property. However at the time of entering the Tenancy Agreement there was no central heating system in the property. Other than the heater in the bathroom, the tenant made no reference in her application to any other defective installations for space heating. The Committee did not accept that the Repairing Standard was not met solely because the property did not benefit from a central heating system. The tenant also submitted that pipes in the bathroom and kitchen should be "boxed in". It appeared that these pipes had been removed by the time the inspection took place but in any event the Committee considered that this issue was an aesthetic one and that exposed pipes would not give rise to a failure to comply with the Repairing Standard.

Decision

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

Right of Appeal

24. 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

25. 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.

Signed..... **R Handley** Date..... 21 July 2011
Chairperson