

A Repairing Standard Enforcement Order

Ordered by the Private Rented Housing Committee

prhp Ref: DD2/91/11

Re : Property at 13 Denhead of Gray, Invergowrie, Dundee being All and Whole Pieces of land, one on the north side and the other on the south side of the public road through Denhead of Gray with dwellinghouse thereon forming the Pendiele or Allotment number 13 on Plan of Denhead of Gray as described in Disposition to Elizabeth Mudie recorded in the General Register of Sasines on 11 December 1918 ("the Property")

The Parties:-

Rose-Marie Van Der Flaes, 13 Denhead of Gray, Invergowrie, Dundee ("the Tenant")

Mr M McGlashan and Mrs M Smith, 16 Denhead of Gray, Invergowrie, Dundee ("the Landlords")

NOTICE TO:-

Mr M McGlashan and Mrs M Smith, 16 Denhead of Gray, Invergowrie, Dundee

Whereas in terms of their decision dated 22 August 2011, The Private Rented Housing Committee having determined that the Landlords have failed to comply with the duty imposed by Section 14 (1)(b) of the Housing (Scotland) Act 2006 and in particular that the Landlords have failed to comply with the duty to ensure that:- the house is wind and water tight and in all other respects reasonably fit for human habitation and 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 Private Rented Housing Committee now requires the Landlords 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 of the work in terms of this Order is made good.

In particular, the Private Rented Housing Committee requires the Landlords to:-

1. Repair / replace all the windows in the property to ensure that they are wind and water tight, in a reasonable state of repair and in proper working order.
2. Fit weatherproofing to both external doors to make them wind and water tight.
3. Replace broken floor tiles in the hall and kitchen or provide alternative floor coverings.

The Private Rented Housing Committee orders that the work should be carried out within a period of eight weeks from the date of service of this notice.

A landlord or a tenant aggrieved by this 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 variation is suspended until the appeal is abandoned or finally determined, and where the appeal is abandoned or finally determined by confirming the decision, the variation 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 Judith V Lea, solicitor, Unit 3.5 The Granary Business Centre, Coal Road, Cupar, Fife, KY15 5YQ, chairperson of the Private Rented Housing Committee at Cupar on 22 August 2011 before this witness:-

R Graham

..... Witness

Rachel Graham
Unit 3.5, The Granary Business Centre
Coal Road
Cupar
Fife

J Lea

..... Chairman



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

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The Parties:-

Rose-Marie Van Der Flaes, 13 Denhead of Gray, Invergowrie, Dundee ("the Tenant")

Mr M McGlashan and Mrs M Smith, 16 Denhead of Gray, Invergowrie, Dundee ("the Landlords")

Decision

The Committee, having made such enquiries as it saw fit for the purposes of determining whether the Landlords had 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 Landlords and the Tenant at the hearing, determined that the Landlords had failed to comply with the duty imposed by Section 14 (1)(b) of the Act.

Background

1. By application dated 28 April 2011 the Tenant applied to the Private Rented Housing Panel for a determination of whether the Landlords 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 Landlords had failed to comply with the duty to ensure that the house meets the repairing standard and in particular that the Landlords had failed to ensure that:- the house was wind and water tight and in all other respects reasonably fit for human habitation, 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 and that 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. 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 Landlords and the Tenant.
5. The Private Rented Housing Committee (comprising Mrs Judith Lea, Chairman and Legal Member, Scott Campbell, Housing Member and David Godfrey, Surveyor Member) inspected the Property on 17 August 2011. The Tenant and her partner were present and the Landlords were both present at the inspection.

6. Following the inspection of the Property the Private Rented Housing Committee held a hearing at West Park Centre, Perth Road, Dundee and heard from both the Tenant and the Landlords.
7. It was confirmed by both parties that the issues of the broken guttering, the drain / soak away pipes, the broken slab on the steps and the broken drainpipe near the steps had all been rectified to the Tenant's satisfaction. The Tenant raised an issue with regard to polystyrene tiles on the kitchen ceiling but this matter had not been raised in the application and was not pointed out at the inspection and accordingly could not be considered by the Committee.
8. The Committee heard submissions in connection with the outstanding issues:
 - 1) The windows in the property
The Tenant submitted that the biggest issue with the windows was that the lower half of the windows were rotten and in the winter there was a problem with black mould appearing on the inside of the windows which was not good for the Tenant's health. Since the wood burning stove was installed in December 2008 matters had improved. There was no longer a damp issue in the property. However in the winter there was still a problem with condensation on the inside of the windows. The Tenant stated that the windows required to be repaired or replaced. The Landlords advised that a joiner and painter had been out to fix the windows and paint them in June 2010. The Tenant stated that the property suffered from draughts when it was windy and that sometimes water trickled down on the inside of the windows. The Landlords explained that they had attempted to have a contractor come in and repair and windproof the windows prior to the inspection but this had not been possible due to a lack of access.
 - 2) Doors in the property
The Tenant stated that seals required to be fitted to both doors and that the side door had wobbly glass in it and the insulation was not good. The Landlords stated that the joiner was going to come and measure up to windproof the doors prior to the inspection but could not do this due to a lack of access. It was explained that the Tenant had recently been on holiday.
 - 3) Broken tiles in the kitchen and the hall
The Tenant stated that the floor tiles were cracked and in a dangerous state. It was explained that the tiles had been laid eight years ago and this had been arranged by the Tenant but paid for by the Landlords. The Tenant advised that the tiles had been fine for five years but during the last three years they had started to crack. The Landlords stated that on an inspection on 15 March 2010 there were two broken tiles but at a later date there were 14. The Landlords stated that their solicitor advised that this was not a matter for them but was a matter for the Tenant. The Tenant submitted that the tiles were cracked along the main traffic area and the cracks had been caused by the floors not being properly supported. The Landlords indicated that they would have the joiner look at the floor and if anything required to be done this would be sorted.

Decision

9. The Committee carefully considered the evidence available from the inspection and the submissions from both parties.
 - 1) Windows
It was clear from the inspection that the windows in the property have rotten sills and parts of the window frames are decayed and several of the casements do not open. In the Committee's view, a lack of ventilation together with poor heating could cause a condensation problem in the winter. Although the installation of a wood burning stove has helped the situation, there is still an ongoing problem. The Committee consider that the windows in their present state do not meet Section 13(1)(a) and (b)

of the Repairing Standard and accordingly the Committee proceeded to make an Order that the windows be repaired or replaced in order to ensure that the Repairing Standard is met.

2) Doors

It was clear from the inspection that there was a gap down the side of the front door and a slight gap down the side of the side door. The Committee consider that these gaps would mean that the doors are not wind and water tight in their present state which is accordingly a breach of Section 13(1)(a) and (b) of the Repairing Standard. The doors seem to be in a reasonable condition and weatherproofing of the doors should rectify the situation. The Committee did not consider that the glass in the side door breached the Repairing Standard. The Committee accordingly made an Order that weatherproofing be fitted to both external doors to ensure compliance with the Repairing Standard.

3) Tiles in the hall and the kitchen

It was clear from the evidence that the tiles had been installed on the instruction of the Tenant but paid for by the Landlords. The tiles are part of the structure of the building and it was clear from the inspection that some of the tiles are presently broken and not in a reasonable state of repair. There was no evidence available to the Committee to suggest that the cracks in the tiles were caused by the Tenant not using the house in a proper manner. The cracks in the tiles appear to be in the areas where the tiles would be regularly walked on. The Committee accordingly consider that the state of the tiles is a breach of Section 13(1)(b) of the Repairing Standard and accordingly made an Order to either have the broken tiles replaced or an alternative floor covering provided.

10. The Committee accordingly determined that the Landlords had failed to comply with the duty imposed by Section 14 (1)(b) of the Act and proceeded to make a Repairing Standard Enforcement Order as required by section 24(1). The Committee consider that as none of the work is particularly major, it is reasonable that this be carried out within a period of eight weeks.

11. The decision of the Committee was unanimous.

Right of Appeal

12. **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

13. 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.

J Lea

Signed Date 22 August 2011
Chairperson