



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

prhp Ref: DD2/90/12

Re : Property at 3 Briarwood Terrace, Dundee DD2 1NX ("the Property")

The Parties:-

Lee Krzyzanowski, 3 Briarwood Terrace, Dundee DD2 1NX ("the Tenant")

Springfield Properties Group Limited, incorporated under the Companies Acts (SC305697) and having their Registered Office at c/o Accel Business Llp, 4 Valentine Court, Dunsinane Industrial Estate, Dundee DD2 3QB ("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 the Tenant and the Landlord at the hearing, determined that the Landlord had failed to comply with the duty imposed by Section 14 (1)(b) of the Act, but that the Landlord had carried out some of the works required by the Repairing Standard Enforcement Order dated 12 July 2012 and should be granted a short extension of time within which to carry out the remaining works,

Background

1. By application dated 27 April 2012 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 house is wind and water tight and in all other respects fit for human habitation; and
 - (b) 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. By letter dated 10 May 2012 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 (by letter dated 17 May 2012), made written representations to the Committee. The Landlord made no written representations to the Committee.

6. The Private Rented Housing Committee ("The Committee") inspected the Property on the morning of 12 July 2012. The Tenant was present during the inspection. The Landlord was not present or represented during the inspection. The Committee members were George Clark (chair), Geraldine Wooley (surveyor) and John Wolstencroft (housing member).
7. Following the inspection of the Property the Committee held a hearing at Menzieshill Community Centre, Dundee and heard from the Tenant. The Landlord was not present or represented at the hearing.
8. At the conclusion of the hearing, the Committee issued a Repairing Standard Enforcement Order on 12 July 2012.
9. The Committee re-inspected the Property on the morning of 1 March 2013. The Landlord and Tenant were both present during the inspection.
10. Following the inspection, the Committee held a hearing at Douglas Community Centre, Dundee and heard from the Landlord and the Tenant. The Committee also heard from Mr Dave Feeney of the firm of DF Roofing. Mr Feeney told the Committee that he had carried out the installation of underlay and green mineral felt on the flat roof at the Property, the work having been completed shortly before the Committee's original inspection on 12 July 2012. A few months later he had carried out further work to seal a joint and had also been made aware of a further leak, but was waiting for wet weather in order to trace the leak. This would enable him to carry out the necessary repair work, which he had instructions from the Landlord to carry out. He had not removed any vegetation from the rear wall of the Property, but he regarded this as a simple matter and stated that he would be happy to carry out the work. The Landlord agreed that this should be done. The Landlord also accepted responsibility for redecoration of that part of the master bedroom, adjacent to the bathroom, that had been affected by water penetration and the Tenant agreed that, as the Scope of Works which had been agreed with the Landlord's agents at the commencement of the tenancy included redecoration of the hall and stairway, he (the Tenant) would carry out this work when the further leak in the roof had been investigated and the roof repaired.

Summary of the issues

11. The issues to be determined are whether the Property meets the repairing standard as laid down in Section 13 of the Act, whether the Landlord has complied with the duties imposed on him by Section 14(1)(b) of the Act and whether the Landlord has carried out the works required by the Repairing Standard Enforcement Order issued on 12 July 2012.

Findings of fact

12. The Committee finds the following facts to be established:-
 - There is evidence of internal damage, probably caused by penetrating water, in the ceiling and wall areas at the top of the internal staircase.
 - The partition wall between the master bedroom and the bathroom appears to have dried out, but the necessary redecoration has not been carried out.
 - There are no visible evidence of further water penetration on the underside of the lintels above the windows in the master bedroom, the spare bedroom and the dining room.
 - The Committee could not find any evidence of ongoing water penetration, other than in the ceiling and wall areas at the top of the internal staircase.
 - The green staining below the guttering to the west side of the window of the master bedroom appears to have died back, but the vegetation growth immediately below the guttering has not been removed.

Reasons for the decision

13. The Committee determined that, with the exception of the area identified at the top of the internal staircase, the work carried out on the flat roof appeared to have dealt with the problem of water ingress. The affected walls and areas beneath the window lintels had had some months to dry out and there was no evidence that further problems had arisen during the drying out period. The Committee was also of the view that the Tenant had not been responsible for the water penetration in the party wall between the master bedroom and the bathroom and that, as it had affected areas that he had previously decorated, he should not be liable for the cost of redecoration. The Committee noted that as, in terms of the Scope of Works agreed at the commencement of his Lease, the Tenant was responsible for redecorating the hall and stairway, the cost of this work should be borne by the Tenant when the further repair work to the roof was carried out. The Committee was of the view that the gutters to the rear of the Property did not appear to be leaking and that the green staining on the wall beneath the rear guttering appeared to have died back, but that the vegetation growth on the rear wall of the Property had not been removed, as required by the Repairing Standard Enforcement Order. It was, therefore, not appropriate to discharge the Repairing Standard Enforcement Order, but it was appropriate to permit the Landlord a short extension of time within which to identify the source of the leak affecting the area at the top of the internal staircase and carry out the necessary repair work, to redecorate the wall between the master bedroom and the bathroom and to remove the vegetation from the rear wall of the Property. The Committee felt that a period of one month from the date on which notification of its decision was made to the Landlord and the Tenant would be sufficient time to have the works carried out and that the Committee would be content to discharge the Repairing Standard Enforcement Order without further inspection, when the Tenant confirmed that the works had been carried out.

Decision

14. The Committee accordingly determined that the Landlord had failed to comply with the duty imposed by Section 14 (1)(b) of the Act.
15. The Committee proceeded to vary the Repairing Standard Enforcement Order in terms of Section 25 of the Act.
16. The decision of the Committee was unanimous.

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 **G Clark** Date 17th March 2013

Chairperson