

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 11 Burghtoft, Gilmerton, Edinburgh EH17 8RR ("the house")

The Parties:-

Mr. Ahmed El Boghdady and Mrs. Monika El Boghdady, both residing at 11 Burghtoft, Edinburgh EH17 8RR ("the Tenant")

Mr. David Low, residing formerly at 1 Panmure Place, Tollcross, Edinburgh and then at 11 Burghtoft, Edinburgh and now care of Alba Residential, 21-23 Church Hill Place, Edinburgh EH10 4BE ("the Landlord")

Reference PRHP/EH17/85/10

DECISION

The Committee, having made such enquiries as is fit for the purpose 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 presented and the written representations, 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 received on 21 May 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 Sections 13(1) (a) of the Act which states that " (a) the house is wind and watertight and in all other respects reasonably fit for human habitation". The Tenant's application related to complaints of defective windows and doors which needed replaced to be wind and watertight and the lack of window locks which made the house insecure. The Tenant submitted to PRHP a copy of the Lease with a copy of the notice under Section 32 of the Housing (Scotland) Act 1988, copy e-mails which have passed between the Tenant and the Landlord in February 2010 indicating the Landlord has been notified of the required repairs.

3. By letter dated 7 June 2010, PRHP gave intimation that the President of the PRHP had made 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. Mike Links, Surveyor Member
Mrs. Irene Kitson, Housing 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 Landlord's agent indicated that the Landlord did not wish to attend a hearing before the Committee. The Landlord's agent submitted written representations. The Tenant did not submit any further representations after the Notice of Referral and indicated that the Tenant wished to attend the hearing.

5. The Private Rented Housing Committee inspected the house on the morning of 12 August 2010. The Tenant and an interpreter from Alpha Interpreting Services, Ms. Eva Kilborn attended the inspection and the hearing. A friend of Mrs. El Boghdady, Mrs. Margaret Eakin, attended the hearing. Neither the Landlord nor his agent attended the inspection or hearing.

6. Following the said inspection the Private Rented Housing Committee held a hearing at Gilmerton Community Centre, 4 Drum Street, Edinburgh.

Submissions from the Parties

7. At the hearing the Committee considered the application with the accompanying correspondence from the Tenant and the written representations submitted by the Landlord's agent. The Committee heard evidence and representations from Mrs. El Boghdady.

7.1 Mrs. El Boghdady indicated that the Landlord had promised in 2009 to replace the windows and had sent workmen to measure up for new windows at the end of 2009. However, no works to replace the windows had been undertaken and the only works carried out to the windows involved inserting bolts in some of the lower sash windows to prevent the upper sash windows falling down. Workmen had carried out a repair to the front door lock to ensure that the door closed properly. She had complained to the Landlord about the windows and doors not being wind tight. The back door was not watertight. She stated that water gathered on the kitchen linoleum at the back door and a number of windows were draughty. The windows locks in a number of the windows in the house did not work and the windows could be easily opened from the outside which made the house insecure. She also complained that the lock on the door in the front upstairs children's' bedroom was faulty and it was difficult to open the bedroom door after it was closed which raised a safety issue. There were also handles missing from the cupboard doors in the kitchen and in the front hall.

7.2 Neither the Landlord nor his agent attended the hearing but a letter from the landlord's agent, Alba Residential, dated 29 June 2010, confirmed that the landlord had already agreed to replace the windows before winter and the Tenant has accepted and agreed to this. The landlord was not willing to replace the windows at present as they are not in urgent need of repair

Once evidence had been given, and representations made on the application, the Committee adjourned to consider the evidence and representations, and to make their determination.

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. The Tenant entered into a lease with the Landlord for the rent of the house on 7 July 2006.

9.2. The Tenant notified the Landlord of the required works to the house and the required works were specified in an e-mail dated 9 February 2010 which the Landlord responded to. The Landlord indicated in response to the Tenant's e-mail that the new windows would be installed within 2 months.

9.3. The house is a semi detached modern property built around 1987. The Committee confined their inspection to the items specified in the application and the alleged breaches of repairing standard. The weather was sunny and dry at the time of inspection with little wind.

The inspection revealed: - that there were draughts at some windows and doors, particularly at the kitchen windows and at the external kitchen door. There was evidence of water ingress at the external kitchen door and the door was warped. A damp meter reading of the floor at the kitchen door registered some dampness and the hardwood screed under the linoleum showed signs of dampness. There was some movement in the floor at the kitchen back door suggestive of decay due to dampness. This is evidence supportive of the external kitchen door not being watertight. The security locks are broken in the two lounge windows, the two kitchen windows and the upper 2nd left front bedroom which is used by the Tenant's children. There were slight draughts felt at the lounge windows, at the said children's bedroom window and at the front door. The Tenant demonstrated the defective catch on the door in the children's bedroom and there were handles missing on cupboard doors in the front hall and kitchen. During the inspection the Committee observed that there is an asbestos panel used as a backing on the kitchen cupboard which houses the boiler. This panel is safe in its present state but care should be taken not to damage it. There are battery smoke detectors in the house and the Tenant confirmed that they were installed before her entry to the house in 2006. Should these alarms require to be replaced, then the Landlord should ensure that any replacement comply with current regulations.

Reasons for the Decision

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

Inspection of the house indicated that the windows in the kitchen, lounge and 2nd left front bedroom were not wind tight and the safety catches did not work properly. The kitchen external door was not wind and watertight and the front external door was not wind tight. The Committee considers that to comply with Section 13(1) (a) and (b) of the Act that these items require remedial works. Sections 13(1) (a) and (b) provide that the house meets the repairing standard if (a) the house is wind and watertight and in all other respects reasonably 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. The Committee considered that a period of 42 days from service of the Notice on the Landlord would be a reasonable period of time for the works to be carried out.

The Committee is unable to make a determination in respect of the faulty door catch in the 2nd left front bedroom and the defective handles on the cupboards in the kitchen and front hall as there was no evidence of prior notification of these works on the Landlord and they did not form part of the works complained of in the application. However, the Committee considered that the defective catch on the bedroom door is a safety issue and would strongly recommend the Landlord rectify this as a priority matter.

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), which Order is referred to for its terms.
13. The decision of the Committee was unanimous.

Right of Appeal

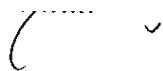
14. A Landlord or Tenant aggrieved by the decision of the Private Rented Housing Committee may appeal to the Sheriff by Summary Application within 21 days of being notified of that decision.

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,
12 August 2010





Repairing Standard Enforcement Order

Ordered by the Private Rented Housing Committee

PRHP REFERENCE- EH17/85/10

RE: Property at 11 Burghtoft, Gilmerton, Edinburgh EH17 8RR, being the subjects more particularly described in the Feu Disposition by Robertson (Homes) Limited in favour of Ian Stewart Vaughan and Another dated Tenth and recorded in the Division of the General Register of Sasines for the County of Midlothian on Thirtieth, both days of June, Nineteen hundred and eighty seven; ("the house")

The Parties:-

Mr. Ahmed El Boghdady and Mrs. Monika El Boghdady, both residing at 11 Burghtoft, Edinburgh EH17 8RR ("the Tenant")

Mr. David Low, residing formerly at 1 Panmure Place, Tollcross, Edinburgh and then at 11 Burghtoft, Edinburgh and now care of Alba Residential, 21-23 Church Hill Place, Edinburgh EH10 4BE ("the Landlord")

NOTICE TO David Low ("the Landlord")

Whereas in terms of their decision dated 12 August 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:-

- (a) the house is wind and watertight and in all other respects reasonably fit for human habitation;
- (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;

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 repair or renew the two lounge windows, two kitchen windows and 2nd left front bedroom window, to ensure that the said windows are wind and watertight, in a reasonable state of repair and in proper working order.
- (b) To draught proof the front entrance door to ensure that it is wind and watertight.
- (c) To renew the external kitchen door so that it is wind and watertight.

The Private Rented Housing Committee order that the works specified in this Order must be carried out and completed within the period of 42 days 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 page are signed by Aileen Margaret Devanny, Chairperson of the Private Rented Housing Committee, at Motherwell on Twentieth day of August, Two Thousand and Ten in the presence of the undernoted witness:-

WITNESS... **A Allison**

Executive Officer

140 West Campbell Street

Glasgow

A Devanny