



## **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 1/1, 1361 Shettleston Road, Glasgow, G32 9AT ("the property")

Mr Maureen McNally, Flat 1/1, 1361 Shettleston Road, Glasgow, G32 9AT ("the tenant")

Scottish and Newcastle Breweries, c/o W.M. Cumming, Turner and Watt, 40 Carlton Place, Glasgow, G5 9TS ("the landlord")

Reference number: PRHP/RP/13/0031

#### **Decision**

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) of the Housing (Scotland) Act 2006 ("the Act") in relation to the property concerned and taking into account the evidence led from the tenant and the landlord at the hearing and the documentation submitted to the Private Rented Housing Panel ("PRHP") by the parties, the Private Rented Housing Committee ("the committee") determine that there has been no failure on the part of the landlord to comply with the duty imposed by Section 14 (1) (b) of the Act.

#### **Relevant Statutory Provisions**

Section 13: The repairing standard

(1) A house meets the repairing standard if—

- (a) the house is wind and water tight 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,
- (c) 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,
- (d) any fixtures, fittings and appliances provided by the landlord under the tenancy are in a reasonable state of repair and in proper working order,
- (e) any furnishings provided by the landlord under the tenancy are capable of being used safely for the purpose for which they are designed, and
- (f) the house has satisfactory provision for detecting fires and for giving warning in the event of fire or suspected fire.

Section 14: Landlord's duty to repair and maintain

(1) The landlord in a tenancy must ensure that the house meets the repairing standard—

- (a) at the start of the tenancy, and
- (b) at all times during the tenancy.

### Background

1. By application dated 3<sup>rd</sup> June 2013 ("the application") the tenant applied to PRHP seeking a determination of whether or not the landlord had failed to comply with the duties imposed by Section 14 (1) (b) of the Act.
2. In the application the tenant stated that the landlord had failed to comply with section 13 (1) (a) (c) and (d) of the Act ("the repairing standard").
3. In the application, at section 4, the tenant specified how she considered the landlord to have failed to meet the repairing standard:  
*"I have had water coming through my windows for nearly three and half years my sitting room window the amount of water is like a shower when raining the windows have been condemned 3 times and are not repairable I have no heating only what I have provided myself the doors are needing replaced internal and external I have myself put in a kitchen and bought a bathroom suite (continued on separate sheet) I am not willing to spend another penny on this property until these issues have been dealt with. This is affecting my health and well being and financially in winter I cannot afford to heat this flat in its condition I have no bedroom door so any heating being provided by me is a waste of money. "*
4. In the application, at section 5, the tenant specified the nature of the work which she considers requires to be done, as:  
*"New windows  
New doors  
Covers for boilers/draught proofing  
Central heating"*
5. In support of the application, the tenant had submitted copies of letters which she had sent to the landlord's letting agents, W. M. Cumming, Turner and Watt ("the landlord's letting agents") dated, 10<sup>th</sup> September 2009 and 13<sup>th</sup> May 2013 and a copy of a lease between the parties, dated 13<sup>th</sup> December 2012. The landlord's letting agents had responded in writing to the application by letters dated 12<sup>th</sup> and 29<sup>th</sup> November 2013. The landlord's representative, Mr Walter Heggie, had responded to the application by emails to PRHP dated, 13<sup>th</sup> September, 17<sup>th</sup> and 25<sup>th</sup> October 2013, 11<sup>th</sup>, 12<sup>th</sup> and 20<sup>th</sup> November 2013.

6. By letter dated 26th November 2013, the President of PRHP, having considered the application in terms of Section 23(1) of the Act, referred the application to the committee in terms of Section 23 (1) of the Act. In their letter, dated 12<sup>th</sup> November 2013, the landlord's letting agents confirmed that they were aware of the tenant's complaint about the property and had, "forwarded all correspondence to the owners of the property." By email of 13<sup>th</sup> September 2013 to PRHP from the landlord's representative, Mr Walter Heggie, provided an undertaking on behalf of the landlord that a schedule of repair works would be undertaken at the property. It was stated that,

*"It is the intention of the company to have upgrading works commenced & indeed completed before the on set of winter."*

Separately, in an email, dated 11<sup>th</sup> November to PRHP, it was confirmed by Mr Heggie the works would include replacing the windows of the property. Mr Heggie confirmed that intimation of the proposed works had been extended to the tenant. In an email to PRHP of 12<sup>th</sup> November 2013, Mr Heggie advised that glaziers had been instructed to attend the property on 15<sup>th</sup> November 2013 to undertake measurements for replacement windows. At the request of the tenant, this had been rescheduled for Monday 18<sup>th</sup> November 2013. A hearing was assigned for 16<sup>th</sup> December 2013. This was intimated to the parties by PRHP by letters dated 26<sup>th</sup> November 2013. By email of 20<sup>th</sup> November 2013, Mr Heggie provided an update to PRHP that progress was being made with the works and that the landlord was hopeful that the windows would be replaced by Christmas 2013. By email of 2<sup>nd</sup> December 2013, Mr Heggie sought an adjournment of the proposed hearing to enable the works to be completed at the property. The tenant confirmed to the clerk of PRHP at the telephone on 10<sup>th</sup> December 2013 that she was satisfied that the works were ongoing and had no opposition to the proposed adjournment. The committee, being satisfied that the landlord's agent had shown good reason why an adjournment was necessary in terms of Section 21 (1) (b) of the Private Rented Housing Panel (Applications and Determinations) (Scotland) Regulations 2007 ("the regulations") and that the tenant had received notification of the request and offered no opposition to it, allowed the adjournment. A second hearing was assigned for 24th March 2014. Having received a citation to attend Court on the proposed date, the tenant requested an adjournment of the second hearing. The tenant made the request in a telephone call to a clerk of PRHP on 4<sup>th</sup> March 2014. This request was made formally, in writing, by the tenant who provided a copy of the citation. Intimation of the request was given to the landlord's representative, Mr Heggie, by the PRHP clerk by telephone who offered no opposition to the proposed adjournment. The committee allowed a second

adjournment, being satisfied that the tenant had shown good reason why an adjournment was necessary in terms of Section 21 (1) (b) of the regulations and that the request had been intimated to the landlord's representative who had offered no opposition. A third hearing was assigned for Friday 2<sup>nd</sup> May 2014. On Tuesday 30<sup>th</sup> April 2014, the tenant contacted PRHP by telephone requesting that the proposed hearing be postponed by 1 month. No explanation was provided to support the request. The landlord's representative, Mr Heggie, confirmed that he was in agreement with the proposal. There being no reason submitted to justify the hearing being discharged for a third time and to avoid any undue delay in the proceedings, the committee refused the tenant's request and determined that the matter proceed to an inspection and hearing of evidence on Friday 2<sup>nd</sup> May 2014, all in terms of Section 21 (1) (b) of the regulations.

7. The committee comprised the following members:
  - (i) Miss Simone Sweeney, Legal member;
  - (ii) Mr Mike Links, Surveyor member and;
  - (iii) Mr Christopher Harvey, Housing member.
  
8. An inspection of the property took place at 10am on 2<sup>nd</sup> May 2014. The tenant was present. Also in attendance was the landlord's representative, Mr Heggie.
  
9. Following the inspection, a hearing of evidence took place within the Europa Building, 450 Argyle Street, Glasgow. In attendance at the hearing were the tenant and the landlord's representative, Mr Heggie. The committee heard submissions from the tenant and Mr Heggie on behalf of the landlord. The committee gave consideration to the documentation submitted by the parties. At the conclusion of the parties' submissions, the committee adjourned to consider all the evidence presented and to make its determination.

#### **Submissions at the hearing**

##### **Submissions of the tenant**

10. The committee chair opened the hearing by advising that the committee required to determine whether or not the issues set out in the application meant that the property met the repairing standard in terms of the Act. The chair referred to the 5 issues which the tenant had set out in her application at section 5 as requiring repair; (i) the windows; (ii) the doors (iii) a cover for the boiler (iv) draught proofing and (v) central heating. The tenant confirmed that she was no longer insisting on the issue of the windows as these had been repaired. The tenant confirmed that her application was

now restricted to the 4 remaining issues. The tenant went through each of the four remaining issues in turn.

11. Starting with the doors, the tenant confirmed that there are 3 internal doors at the property. The internal doors were replaced in December 2013 by the landlord. The tenant submitted that she is unhappy with the standard of the doors. When asked for specification of her dissatisfaction with the standard, the tenant advised that her complaint was that (i) the internal doors had not been painted and that (ii) the door of the living room had been left with a number of drilled holes where a door handle had previously been fitted, incorrectly and removed. The tenant had assumed that the doors would be complete by 6<sup>th</sup> January 2014 when the landlord's tradesmen had attended the property to carry out other works. This had not occurred. The tenant confirmed to the committee that she had never contacted her landlord nor it's representative, Mr Heggie, nor the landlord's letting agent to bring to their attention that she wished (i) the internal doors to be painted and (ii) for the holes in the living room door to be filled in. There was no suggestion that the doors did not open and close properly.

12. The chair referred to the copy lease which the tenant had submitted with her application of 3<sup>rd</sup> June 2013. The tenant confirmed that the lease allows the tenant to decorate the interior of the property provided that she has the authority of the landlord. The lease reads,

*"No STRUCTURAL ALTERATIONS OR RE-DECORATION is to be undertaken without prior consent, in writing, from the landlord".*

The tenant accepted this was part of the lease and submitted that she had undertaken a great deal of decoration and improvement works in the property throughout the tenancy. The tenant submitted that she had fitted a new bathroom and kitchen. The tenant accepted that she could request the authority of the landlord to paint the internal doors, as per the lease, if she wished to do so.

13. The tenant confirmed to the surveyor member that the internal doors are all in working order.

14. In respect of the external door, the tenant submitted that she had requested that the landlord replace the lock at the top of the door. The tenant explained that the external door to the property has two locks. One is positioned at the bottom of the door. The other has a 'Yale' mechanism and is positioned above the middle of the door. In her submissions, the tenant advised that the 'Yale' lock had become loose. The tenant

advised that the response of the landlord was that she should simply make use of the bottom lock. This was disputed by the landlord's agent, Mr Heggie, who submitted that the lock at the top of the door had been replaced. The tenant conceded that the 'Yale' lock had been replaced by the landlord. The tenant confirmed in answer to the surveyor member that the lock was secure and that the door can be locked.

15. The tenant also stated to the committee that draught proofing had been applied around the external door in December 2013. The tenant advised that this had made a considerable difference to the property. She found that there were fewer draughts emanating from the main door into the property. Draught proofing was no longer an issue which she was insisting upon in her application therefore.
16. Turning to the issue which was included at Section 5 of the application as, 'covers for boilers', the tenant confirmed that it was in fact the hot water cylinder positioned within the bedroom to which she was referring here. The tenant confirmed that there was no boiler at the property. The tenant confirmed that the hot water cylinder was in proper working order. The tenant submitted that because the metal cylinder has no cover, she believed this to be the reason that the water temperature would drop. She submitted, further, that should a cover be applied to the hot water cylinder then the temperature of the hot water might be retained. The tenant confirmed to the surveyor member that the hot water cylinder had never had an insulating jacket during the period of the tenancy.
17. With regard to the final issue, central heating, the tenant confirmed that the property had never had central heating at any point since she had moved into the property. The tenant confirmed that she had entered into a lease with the landlord in the knowledge that there was no heating at the property. The tenant advised that this had been about 10 years ago. The tenant submitted that she had accepted the lease at this time but had not realised that there was no central heating. The housing member enquired of the tenant whether she had requested heating from her landlord. The tenant advised that she had contacted the landlord about repairs with the windows over a period of time and had asked about heating. The tenant expressed dissatisfaction with the fact that she understood that the property positioned above that in which she resides had been fitted with central heating. The surveyor member enquired if the tenant was aware of the fact that there were various Government schemes which offer assistance and advice on central heating systems being fitted in properties and whether the tenant might be inclined to make enquiries. The tenant confirmed that she was unaware of such initiatives and expressed doubt as to whether or not she would qualify for assistance in light of the fact that she is in full time employment.

18. When asked if she had anything further to bring to the attention of the committee, the tenant advised that she wanted to emphasise that the issues which she had raised in her application had been ongoing for many years and she felt that only since bringing this application before the committee had her landlord begun to address her complaints.

**Submissions of the landlord's agent**

19. The chair invited Mr Heggie to address the committee on the issues raised in the tenant's application. The chair reminded Mr Heggie that the tenant was satisfied with the replacement windows and the draught proofing around the main entrance door so these were no longer to be considered as part of her application.
20. Mr Heggie began by extending an apology to the tenant and to the committee on behalf of the landlord. He explained that he had been taken aback at presentation of the internal doors which he had not seen until he had arrived at the property inspection earlier that morning. He did not consider the works to internal doors to have been completed to a satisfactory standard. Mr Heggie explained that he had instructed the internal doors to be replaced in December 2013. He had understood the works to the doors to have been completed by 6<sup>th</sup> January 2014. This was the last date on which the tradesmen he had instructed had attended the property. Mr Heggie had not been inside the property between December 2013 and the date of the inspection. The tenant had never advised him that the doors were incomplete. Mr Heggie advised that he had contacted his tradesmen immediately after the conclusion of the hearing. He had instructed the holes in the door of the living room to be filled in and for all three internal doors to be painted. He explained that he would require the tenant to allow access to the tradesmen to enable them to complete the works. The tenant confirmed that access would be given.
21. Turning to the hot water cylinder positioned within the cupboard of the bedroom, the chair invited Mr Heggie to share what comments, if any, he had to the tenant's earlier submissions. Mr Heggie advised that it made sense to him to look into the possibility of covering the hot water cylinder although he was not sure that there was any requirement for it to be covered. He provided an undertaking to the committee that he would make enquiries about the possibility of an insulation jacket for the hot water cylinder.
22. Finally with regard to the complaint of the tenant of there being no central heating at the property, Mr Heggie confirmed that there was no central heating in the property. He submitted that there had never been any central heating in the property since

commencement of the lease and that the absence of a central heating system was reflected in what Mr Heggie considered to be a low rental charge of £250 per month for the property.

23. When invited to share with the committee any final comments he may have in relation to the tenant's application, Mr Heggie again extended an apology for the failure to complete the works to the door to a satisfactory standard and indicated to the committee that these works would be completed as soon as possible.

#### **Summary of the issues**

24. The issues to be determined are;
- (i) whether the property meets the repairing standard set out at section 13 (1) of the Act in terms of (a) the internal doors having not been painted and (b) the door of the living room having been left with a number of drilled holes where a door handle had previously been fitted and removed (c) the hot water cylinder in the bedroom cupboard having no insulating jacket and;
  - (ii) whether the landlord has complied with the duty imposed by Section 14 (1) (b).

#### **Findings in fact**

25. The committee make the following findings in fact:
26. That the tenancy between the parties for the property is dated 13<sup>th</sup> December 2012. The lease is a short assured tenancy in terms of the Housing (Scotland) Act 1988. The provisions of Chapter 4 of the Act apply.
27. That the tenant has resided at the property for 10 years.
28. That there has never been any system of central heating at the property throughout the tenancy between the parties.
29. That in letters dated, 10<sup>th</sup> September 2009 and 13<sup>th</sup> May 2013, the tenant intimated to letting agents, W.M. Cumming, Turner and Watt, that the windows were leaking causing water ingress, that the windows required repair, that there was no central heating system in the property.
30. That the tenant submitted an application to the PRHP on 3<sup>rd</sup> June 2013.

31. That, by email dated 13<sup>th</sup> September 2013, a representative of the landlord, Mr Heggie, confirmed receipt of the application setting out the tenant's complaints.
32. That the landlord's representative, Mr Heggie, accepted in evidence that the work to the internal doors had not been completed to a reasonable standard and provided an undertaking to the committee that the internal doors would be painted and the holes filled in on the door of the living room.
33. That the landlord's representative, Mr Heggie, gave an undertaking to the committee that he would arrange to look into the possibility of the hot water cylinder being covered with an insulation jacket.

### **Reasons for decision**

1. That, in support of her application of 3<sup>rd</sup> June 2013, the tenant had submitted to the PRHP, copies of letters which she had written and sent to her landlord's letting agents, dated 10<sup>th</sup> September 2009 and 13<sup>th</sup> May 2013.
2. The landlord's representative, Mr Heggie, had responded in writing to the application by emails to the PRHP dated, 13<sup>th</sup> September, 17<sup>th</sup> and 25<sup>th</sup> October, 11<sup>th</sup>, 12<sup>th</sup> and 20<sup>th</sup> November 2013. The landlord's letting agents had responded in writing to the application by letters, dated 12<sup>th</sup> and 29<sup>th</sup> November 2013. The letters set out the issues which formed the basis of the tenant's application. There was no suggestion by the landlord's representative, Mr Heggie, that the tenant's letters had not been received. The committee was satisfied that the landlord had received intimation of the tenant's original issues.
3. That, following inspection of the property and having heard the submissions of the parties, the committee concluded that the issues which remained unresolved were the standard of workmanship to the internal doors and the hot water cylinder having no insulation cover. At the hearing, the tenant withdrew from her application, the issues of replacement windows and draught proofing, these issues having now been addressed by the landlord to her satisfaction.
4. That, on inspection, the committee found that there was no boiler at the property. Within the cupboard of the bedroom there was a hot water cylinder which the tenant confirmed she had referred to as a boiler on her application, in error. The committee found that the hot water cylinder was without any cover. In evidence the tenant confirmed that the hot water cylinder was in proper working order. The committee accepted the evidence of the tenant the fitting of an insulation jacket to the cylinder may cause the water temperature to be retained. This evidence was not challenged

by the landlord's representative, Mr Heggie. The committee is not of the view that the failure to cover the hot water cylinder is a failure to meet the repairing standard of section 13 (1) (c). However the committee noted that Mr Heggie provided an undertaking on the part of the landlord to look at the possibility of a cover being applied to the hot water cylinder.

5. That, on inspection, the committee found that there was no system of central heating at the property. Heating was provided by way of 2 electric convector heaters which the tenant had purchased herself an electric fire in the bedroom. The tenant and the landlord's representative, Mr Heggie, confirmed in evidence that there had never been a system of central heating at the property. Had there been such a system and it had fallen into disrepair the committee may have considered a property enforcement order being issued. Having heard evidence from both parties that no such system had ever existed during the course of the lease and that the tenant had accepted the lease in the knowledge that there was no system of central heating, the committee do not consider that it has the jurisdiction to make any order in this regard. In light of this evidence, the committee finds no failure on the part of the landlord to meet the repairing standard of section 13 (1) (c) in respect of central heating.
6. That, on inspection, the committee identified a smoke detector on the ceiling of the hall of the property. No tests were undertaken to identify if the smoke detector was in proper working order. Therefore the committee can make no comment as to whether the smoke detector meets the repairing standard of section 13 (1) (f).
7. That, by email of 8<sup>th</sup> May 2014 to PRHP, from the landlord's representative, access was gained to the property on 7<sup>th</sup> May 2014 by the landlord's tradesmen to enable works to be undertaken to the internal doors of the property.
8. That, by email of 16<sup>th</sup> May 2014 to PRHP, from the landlord's representative, Mr Heggie, confirmation was provided that the holes in the door of the living room at the property had been filled, that the internal doors had been painted and that the tenant had confirmed satisfaction with the works by way of text message to Mr Heggie.

#### **Decision**

9. The committee determined that the landlord complies with the duties imposed by sections 13 (1) (a) (c) and (d) and 14 of the Act.
10. The committee shall make no Repairing Standard Enforcement Order as required by Section 24 (1).

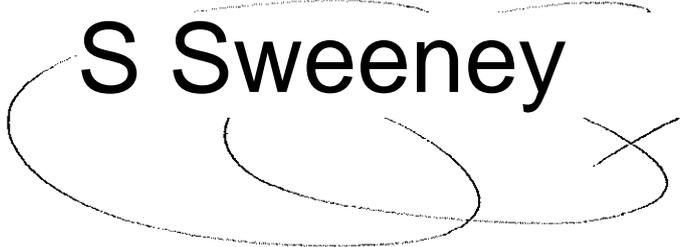
11. The decision of the committee was unanimous.

**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 determined.

S Sweeney

22nd May 2014