



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

prhp Ref: prhp/RP/13/0041

Re: Property at 116 Paradykes Avenue, Loanhead, Midlothian EH20 9LF ("the Property")

The Parties:-

Heather Bertram, sometime residing at 116 Paradykes Avenue, Loanhead, Midlothian EH20 9LF ("the Tenant")

Thomas Thomson, 102 Gaynor Avenue, Loanhead, Midlothian EH20 9LS ("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, determined that the Landlord had not failed to comply with the duty imposed by Section 14 (1)(b) of the Act.

### Background

1. By application dated 25 June 2013, 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 otherwise 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,, and
  - (e) the house has satisfactory provision for detecting fires and for giving warning in the event of a fire or suspected fire.
3. By letter dated 13 December 2013, 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 made written representations to the Committee. The Landlord (by e-mail dated 22 January, 2014), also made written representations to the Committee.
6. The Private Rented Housing Committee ("the Committee") was scheduled to inspect the Property on 6 March, 2014, but on 3 March, the Committee received information from the Landlord that the Tenant had vacated the Property. The Committee, on 6 March, 2014, determined to continue to determine the application, as the nature of the alleged defects, if substantiated, would raise significant health/safety issue for the occupants.
7. The Committee inspected the Property on the morning of 17 April, 2014. The Tenant was not present or represented at the inspection. The Landlord was present during the inspection. The Committee comprised George Clark (Chair), Ian Mowatt (Surveyor Member) and Christine Anderson (Housing Member).
8. Following the inspection of the Property the Private Rented Housing Committee held a hearing at Thistle House, Haymarket Terrace, Edinburgh. Neither party was present or represented at the hearing.
9. The Tenant, in her application, submitted as follows:-
  - The kitchen cupboards had no backing and were black with mould
  - The shower was not staying hot
  - The oven was not working properly
  - There were no smoke detectors or carbon monoxide monitors
  - The back rhone was leaking and flooding the garden
  - The garage door was dangerous and had no lock on it
  - The garden fence was dangerous and broken to front and back
  - The outhouse windows were all broken
  - The front door was difficult to lock
10. In her written submissions, the Tenant advised that the Landlord had replaced the oven (although the Tenant had had to arrange for an electrician to install it) and that the Landlord had fixed the front garden fence. The Tenant had arranged for someone to fix the garage door and added the following further items to those in her application:-
  - Draughts were coming through the main and side door when it was windy
  - The roof leaked and water was coming in through the bedroom ceiling
  - The stair window leaked and the wall was wet and damp
11. The Landlord, in his written submissions, advised that he was progressing the repair of the back rhone, that, although an electrical contractor had confirmed that the original oven was working satisfactorily, he had, as a goodwill gesture, replaced the oven. He had repaired the garden fence and had arranged for a joiner to adjust the front door, which was swollen and was not closing properly. He also stated that the garage was not part of the leased subjects and that British Gas, with whom he had a maintenance contract, had confirmed that there was nothing wrong with the water temperature in the shower.

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

12. The issues to be determined were whether the Property met the repairing standard as laid down in Section 13 of the Act and whether the Landlord had complied with the duties imposed on landlords by Section 14(1)(b) of the Act.

## Findings of fact

13. The Committee finds the following facts to be established:-

- The tenancy is a Short Assured Tenancy.
- The Tenant has vacated the Property.
- The Committee members were able to look behind some of the backboards of the kitchen units and found no evidence of significant mould.
- The electricity supply was switched off at the time of the inspection, so it was not possible to test the shower, but the Committee had no reason to disbelieve the assertion of the Landlord that British Gas had found no fault with it.
- The oven has been replaced and this is accepted by the Tenant.
- There are mains-wired smoke detectors in the ground floor hallway and first floor landing and carbon monoxide monitors in the kitchen and outside the upstairs cupboard which houses the central heating boiler.
- There is no sign of flooding from the back rhone. The weather was dry on the date of the inspection, but there was no evidence of staining on the wall below or on the garden ground.
- The Committee has no reason to disbelieve the statement by the Landlord that the garage does not form part of the leased subjects and did not, therefore, inspect the garage door.
- Minor repairs are required to the back fence, but it is not in such a state of disrepair as to merit the issuing of a Repairing Standard Enforcement Order. The front fence is in a good state of repair.
- The window of the outhouse comprises a single sheet of Perspex. The Perspex is broken and broken pieces are lying in the garden and should be lifted and removed, with the window being replaced or completely removed, but the outhouse does not have a door, so cannot be made wind and water tight.
- The outside doors of the Property fitted, opened and closed properly and the locks were in working order. There was a very strong wind on the day of the inspection, but the Committee found no evidence of draughts at either external door.
- There was a small hole in the bedroom ceiling, but no evidence of rainwater leaking through from the roof space above and no staining on the surrounding decoration.
- There was no evidence of any continuing dampness at the stair window and no obvious sign of a cause of any water penetration in the window area.

## Reasons for the decision

14. The Committee was unable to test the smoke detectors in the Property, as the electricity supply was not switched on, but the complaint from the Tenant had not been that they were not functioning properly. It had been that there were no such detectors and the Committee found that they were in place by the time of the inspection. It was also not possible to test the shower, but the Committee was satisfied with the Landlord's written statement that it had been inspected by British Gas, with whom he had a maintenance contract. The Committee also accepted the statement by the Landlord that, whilst the Tenant had been using, or allowing others to use, the garage, it did not form part of the leased subjects and, as a result, could not be the subject of a Repairing Standard Enforcement Order. The outhouse window was, as the Tenant had contended, broken, but an Order in respect of the outhouse would have been to make it wind and water tight and, as there was no door, that would not be possible.

## Decision

15. The Committee accordingly determined that the Landlord had not failed to comply with the duty imposed by Section 14 (1)(b) 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 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 will be treated as having effect from the day on which the appeal is abandoned or so determined.

Signed ..... **G Clark** ..... Date... 17 April 2014 .....  
Chairperson