



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 95 Galashiels Road, Stow TD1 2RQ (hereinafter referred to as “the House”)

Kirsti Hampson, formerly of 95 Galashiels Road, Stow TD1 2RQ (hereinafter referred to as “the Tenant”)

Kelvin Drury and June Tainish, Middletoun Farmhouse, Stow TD1 2RZ (hereinafter referred to as “the Landlord”)

PRHP REFERENCE PRHP/RP/13/0093

DECISION

The Committee, having made such enquiries as are 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 (hereinafter “the Act”) in relation to the House, and taking account of the evidence led on behalf of the Landlord at the hearing and of the written documentation attached to the application and submitted by the parties, determined that the Landlord had not failed to comply with the duty imposed by section 14(1)(b) of the Act.

Background

By application dated 23 August 2013 (hereinafter referred to as the “Application”) the Tenant applied to the Private Rented Housing Panel (hereinafter “the PRHP”) for a determination of whether the Landlord had failed to comply with the duties imposed by section 14(1)(b) of the Act.

The Application 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 the following paragraphs of section 13(1) of the Act:

*“(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,
(d) any fixtures, fittings and appliances provided by the landlord under the tenancy are capable of being used safely for the purpose for which they are designed...”*

The Tenant complained of the following matters:

- 1 Dampness in the bathroom and small bedroom;
- 2 The extractor fan not working;
- 3 Tiles in need of repair;
- 4 A missing skirting board and exposed crumbling plaster in the living room;
- 5 Windows being broken or in need of painting;
- 6 The penetration of water through windows in the living room and kitchen;
- 7 Water penetration through the living room roof
- 8 Damp and mould in the kitchen.
- 9 The front door was in need of painting;
- 10 There were no smoke alarms;
- 11 The water temperature was too low;
- 12 There were problems with the electrics;
- 13 Problems with the shower wiring; and
- 14 Insects in the bathroom.

On 26 November 2013, having been informed that the tenancy had been terminated, the President of the PRHP issued a Minute of Continuation under paragraph 7(2) of Schedule 2 to the Act.

By letter of 27 November 2013, the President of the PRHP intimated a decision to refer the application under section 23(1) of the Act to a Private Rented Housing Committee (hereinafter referred to as “the Committee”).

The Committee comprised the following members:

John McHugh, Chairperson
Christopher Harvey, Housing Member
Ian Mowatt, Surveyor Member.

The Committee served Notice of Referral in terms of Paragraph 1 of Schedule 2 to the Act upon the Landlord and the Tenant.

A hearing and inspection were fixed for 16 January 2014.

The Committee inspected the House on 16 January 2014. The Tenant was neither present nor represented. She is no longer the tenant of the House. Mr Drury was present.

Following the inspection, the Committee held a hearing at Langlee Community Centre, Galashiels. The Committee considered the written evidence submitted by the parties and heard representations from Mr Drury on behalf of the Landlord. Again, the Tenant was neither present nor represented at the hearing. Mr Drury was present.

Submissions at the Hearing

The Landlord advised that he had carried out works being a replacement of the bath seal and that linked, mains powered smoke alarms had been installed. He had provided insecticide to deal with insects in the bathroom. The Tenant had painted the front door.

Mr Drury advised that the House was currently being let on an ad hoc basis to contractors working on the nearby railway project.

There was a history of letting prior to the Tenant's occupation and the Landlord had themselves lived in the House before that. There was no problem with dampness via condensation other than by lifestyle. The Landlord had employed a dehumidifier during winter months when clothes had to be dried inside. The Landlord had found it easy to manage condensation. Mr Drury advised that the Tenant had refused to use either the electric heating or the dehumidifier and was of the view that any condensation resulted from that behaviour combined with the Tenant drying clothes inside.

Mr Drury had replaced the bath seal. There was evidence of raised moisture readings in the wall between the bathroom and the small bedroom but the levels were consistent with the wall drying out after the repair.

Mr Drury advised that occasionally in very high winds and rain some water might enter the living room window via the trickle vent in the window frame.

He also accepted that there may in the past have been some ingress of water from the roof in the living room. Repairs to the flashings had been effected.

Mr Drury advised that the damage to the front bedroom window sash cords had been done by the Tenant.

He advised that the House had been redecorated prior to the Tenant's entry.

He considered the absence of a skirting board where the living room extension meets the main part of the House to be irrelevant since no skirting board is required.

Mr Drury advised that the shower had been replaced.

He advised although it was some time since the house had been rewired, the electrics were in functioning order with any problems of fuses "blowing" being

because the Tenant had been operating a faulty washing machine which she had removed thereby resolving any similar problems. The electrician who had recently installed the smoke alarms had not raised any concern about the electrics.

Mr Drury accepted that the property would benefit from some additional investment including some decoration and replacement of windows. He intended to carry out some improvements when finances permit.

Summary of the Issues

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 has complied with the duty imposed by section 14(1)(b).

Findings in Fact

The Committee confined their inspection to the items of complaint detailed within the Tenant's Application.

The Committee made the following findings in fact:

- 1 The House is a ground floor flat forming part of a stone built house of considerable age. It includes a later, single storey extension built at the side.
- 2 The Landlord and the Tenant entered into a Tenancy Agreement in respect of the House on or around 21 December 2011.
- 3 The Landlord was recorded on the Lease as Kelvin Drury and June Tainish.
- 4 Mr Drury and Ms Tainish are the registered owners of the House.
- 5 The Tenant took possession of the House from 21 December 2011.
- 6 The Tenant ceased to occupy the House from on or around the date of termination of the Lease (21 November 2013).
- 7 The provisions of Chapter 4 of Part I of the Act apply to the tenancy.
- 8 The Tenant notified the Landlord of the defects in the House which are now the subject of the Application by letter addressed to the Landlord dated 15 November 2013.
- 9 The inspection on 16 January 2014 revealed:
 - a. The House was generally in a basic standard of repair with a number of areas where improvements would be beneficial.

- b. The weather at the time of inspection was dry and there was little wind.
- c. The House is heated by wall mounted electric heaters and by a wood burning stove in the living room.
- d. Some mosaic tiles were missing from the top cover of the toilet cistern.
- e. A dehumidifier was running in the hall.
- f. Mains powered smoke alarms were present.
- g. The shower worked.
- h. The hot water temperature could not be assessed.
- i. The front door had been repainted.
- j. The sash cords in the front bedroom window had been removed although the window still opened and closed.
- k. A relatively modern electrical consumer unit was present.
- l. There was no evidence of problems with the electrics.
- m. There was evidence of a recent repair to the bath seal and to there having been water ingress into the wall separating the bathroom from the small bedroom.
- n. There was no evidence of water ingress at any windows.
- o. There was no evidence of a leak in the living room roof.
- p. There was no skirting present on a section of the living room wall near to the entrance to the kitchen.
- q. There was no evidence of the presence of insects in the bathroom.
- r. An extractor fan was present in the bathroom window.

Reasons for the Decision

There was no evidence of water ingress or of dampness when a damp meter was used at locations in the kitchen and living room. There was no evidence of any water ingress from the windows or the roof at the time of inspection and no evidence of any history of significant water ingress.

There was evidence that there had been dampness in the wall between the bathroom and the small bedroom but that the cause of the dampness (water entering from the shower over the bath after the bath seal had been removed) had been repaired and that dampness levels were reducing consistent with an effective repair.

Mains powered smoke alarms were present. The Landlord advised that these were interlinked.

The shower was in working order.

We were unable to assess the water temperature because the hot water heater had been turned off but we accepted the evidence of Mr Drury that he had increased the water temperature when requested to do so by the Tenant and that that had resolved the issue.

Similarly, the Landlord had fitted an extractor fan in the bathroom window. It could not be established that it worked because it only operates when a certain level of humidity is reached which was not reached at the time of inspection. We accepted Mr Drury's evidence that the fan worked as intended.

The front door had been painted by the Tenant. Although the quality of the paintwork was poor, the door was in acceptable condition with no evidence of rot.

Although the front bedroom window sash cords were missing the window remained operable and we do not consider its condition to breach the repairing standard. We therefore need make no finding as to whether this item had been damaged by the Tenant.

Otherwise, the windows appeared to be in acceptable condition.

There was no evidence of the presence of insects in the bathroom and the Landlord's evidence was that insecticide had been employed.

We accepted the evidence of Mr Drury that, properly managed, there was no significant condensation problem in the House. At the time of inspection, there was no evidence of a condensation problem.

There was no evidence of crumbling plaster in the living room. Although a skirting board was not present on a section of wall close to the entrance to the kitchen, it was not apparent whether a skirting board had ever been present there and there was no evidence of its absence presenting any kind of problem.

The absence of a few mosaic tiles on the cistern top cover was not significant and did not constitute a breach of the repairing standard.

There was no evidence that the electrics were not functioning as intended.

The Repairing Standard

The Committee consider that there is no breach of the repairing standard. Accordingly, no Repairing Standard Enforcement Order should be made.

Decision

The Committee, considering the terms of section 13(3) of the Act, determined that the Landlord had not failed to comply with the duty imposed by section 14(1)(b) of the Act.

The decision of the Committee was unanimous.

Right of Appeal

Section 64 of the Act provides a right of appeal to a landlord or tenant aggrieved by a decision of a private rented housing committee. An appeal may be made to the Sheriff within 21 days of the Landlord or Tenant being informed of the decision.

Where such an appeal is made, the effect of the decision and 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 McHugh

John M McHugh
Chairperson

Date: 21 January 2014