



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 5/6 Moat House, Moat Drive, Edinburgh EH14 1NS ("the House")

Krzysztof Kulpa ("the Tenant")

Mr & Mrs J Collatine, 10 Cunningham Crescent, Broxburn, EH52 6TN ("the Landlords")

PRHP REFERENCE PRHP/RP/13/0133

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 ("the Act") in relation to the House, and having taken account of the evidence led at the hearing and of the written documentation attached to the application and submitted by the parties, has made the following decision:

It has determined that the Landlords have not failed to comply with the duty imposed by section 14(1)(b) of the Act.

The decision was unanimous.

Background

By application dated 30 October 2013 (the "Application") the Tenant applied to the Private Rented Housing Panel ("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 Landlords had failed to comply with the duty to ensure that the House meets the repairing standard and in particular that the Landlords 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...”

The Tenant complained that condensation levels in the House were very high. He was of the view that double glazing required to be installed by the Landlords in order to rectify the problem.

By letter of 20 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:

Maurice O'Carroll, Chairperson
Scott Campbell, Housing Member
Charles Reid Thomas, 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 on 17 January 2014.

The Committee inspected the House at 10.00am on 6 February 2014. The Tenant was not present. The House appeared to have been vacated. The Landlords were both present along with their letting agent, Angus King of Craigflower Lettings.

Following the inspection, the Committee held a hearing at Thistle House, Haymarket Terrace, Edinburgh. The Committee considered the written evidence submitted by the parties and heard representations from Mr King on behalf of the Landlord which was at times augmented by the Landlords themselves. The Tenant was neither present nor represented. He had previously indicated in correspondence that he did not wish to attend the hearing.

Submissions at the Hearing

At the hearing, Mr King explained that the original lease started on 9 January 2012 for a period of six months. In terms of Clause 2 of the lease agreement, the tenancy thereafter continued from month to month until 9 January 2014 when sheriff officers served a notice to quit on the instruction of the Landlords. The notice to quit allowed two months to vacate so that the tenancy legally was due to terminate on 8 March 2014. At the time of the original lease being granted there were only two adult occupants who in time were joined by their grown up child and partner and in due course by a grandchild raising the total number of persons in occupancy to five.

Mr King further explained that there was in fact no condensation issue: the condensation experienced in the House was in fact a lifestyle problem. Despite

having been advised by a local contractor from Paragon Services on how to properly ventilate the property and having been provided with a leaflet of advice on that subject, the Tenant continued to keep all windows closed with the heating up high at the same time as carrying out cooking and washing within the House.

The condensation stains clearly visible in the kitchen, living room and bathroom were as a result of that excessive usage and failure to heed the advice given regarding maintaining adequate ventilation. During inspections he had carried out in the course of the tenancy, he had noticed that the kitchen door had been siliconed shut and that to introduce double glazing as desired by the Tenant would merely exacerbate the problem.

Mrs Lorna Collatine for the Landlords explained that she used to live in the property both alone and for a time with Mr Collatine prior to it being let out and had never experienced condensation during that time. In future, if the property were ever to become so over-occupied again, a similar problem would be bound to recur. However, the quotations received for double glazing installation or other replacement glass were academic as they were not necessary in order to prevent condensation from taking place. What was necessary was simply to open the windows that were already there present as and when the need arose.

Summary of the Issues

The issue to be determined is whether (a) the House meets the repairing standard as laid down in section 13(1)(a) of the Act, namely that the House is wind and water tight and in all other respects fit for human habitation and (b) whether the Landlord has complied with the duty imposed by section 14 (1)(b).

Findings in Fact

The Committee made the following findings in fact:

The Landlords and the Tenant entered into a Tenancy agreement in respect of the House on 9 January 2012.

The Landlord was recorded on the Lease as being Mrs Lorna Collatine.

The registered owner of the House is Mrs Lorna Collatine as designated above under Title Number MID63657.

The Tenant took possession of the House from 9 January 2012 and remained in occupation until some time shortly prior to 6 February 2014. The lease will legally terminate on 9 March 2014 following the service of a notice to quit.

The provisions of Chapter 4 of Part I of the Act apply to the tenancy.

The Tenant notified the Landlord of the defects in the house which are now the subject of the Application on or around the same time as the Application was lodged with PRHP.

The inspection on 6 February 2014 revealed:

The property is a fifth floor flat in a large block of flats.

There was no one within the House at the time of the inspection. It appeared that the Tenant had vacated the property as there were no personal effects within the House. Neither the Landlords, nor Mr King were aware that the tenant had intended to vacate prior to the inspection.

In the living room, kitchen and bathroom, there were black striations on the metal frame window cills which are indicative of water flow across them caused by condensation.

At the time of the inspection, the heating was turned off and no gas or electrical appliances were in operation. No condensation was visible at that time.

There was a battery operated smoke alarm in the hallway.

Otherwise, there was nothing else of note in relation to the condition of the House.

Reasons for the Decision

The Committee was satisfied that the condensation which was evident in the House was caused as a result of the behaviour and lifestyle of the Tenant, rather than due to any failure on the part of the Landlords to comply with the repairing standard as set out in s 13(1) of the Act.

Decision

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

The Committee was therefore of the view that it was unnecessary for it to make a Repairing Standard Enforcement Order in terms of section 24(2) 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.

M O'Carroll

Maurice O'Carroll
Chairperson

Date: 6 February 2014