



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

prhp Ref: PRHP/RP/13/0172

Re : Property at 433 Gilmerton Road, Edinburgh, EH17 7JJ

The Parties

Elaine MacDonald, previously residing at 433 Gilmerton Road, Edinburgh, EH17 7JJ ("the tenant")

Eric & Janet Monteith, c/o Steyn Lettings, 88 Newington Road, Edinburgh, EH9 1QN ("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 has not failed to comply with the duty imposed by Section 14 (1)(b) of the Act.

Background

1. By application dated 03/12/2013 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 Tenants stated that the Tenants 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 watertight in all the respects, and reasonably fit for human habitation in terms of section 13(1)(a) of the act.

(b) The structure and exterior of the house (including drains, gutters and external pipes) are in a reasonable state of repair and are in proper working order in terms of section 13(1)(b) of the act

3. By letter dated 16th 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. The committee was made up of three members;

Paul Doyle	Chairperson
Donald Marshall	Surveyor Member
Elizabeth Dickson	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 both the Landlord and the Tenant.

5. Following service of the Notice of Referral the Tenant made further written representation to the Committee dated 03/01/2014. The Landlord in a written response dated 10th January 2014 & in a subsequent sequence of emails, made written representations to the Committee.

6. The Private Rented Housing Committee inspected the property during the morning of 7 May 2014. The tenant was neither present nor represented. Eric Monteith, the landlord, was present and allowed committee members access to the property to inspect the property.

7. Following the inspection of the property, the Private Rented Housing Committee held a hearing at Thistle House, 91 Haymarket Terrace, Edinburgh. The landlord (Mr Monteith) was present. The tenant was neither present, nor represented. The case file reveals that timeous intimation of the

time, date and purpose of the hearing had been given to the tenant. No application has been made for an adjournment. We note the tenancy terminated before the inspection. We are satisfied that it is appropriate to deal with this case in the absence of the tenant.

8 The tenant's position is that the property is affected by mould and damp, and that the landlord has refused to take action to remedy those defects. The tenant says that repair is required to the damp proof course and complains in particular about a mould infestation in the rear bedroom of the property and the absence of an extractor fan to serve the bathroom. The tenant complains that the extension to the rear of the property (off the kitchen) requires repairs.

9 The landlord's position is that there are no problems with the property. It is the landlord's position that the property was entirely refurbished before the tenancy took occupation and that the tenant has failed to adequately heat or ventilate the property.

Summary of Issues

10 The issues to be determined are:

- (a) whether the house is wind and watertight and in all other aspects, reasonably fit for human habitation in terms of Section 13(1)(a) of the 2006 Act, and
- (b) whether the structure and exterior of the house (including gutters, drains and exterior pipes) are in a reasonable state of repair and in proper working order in terms of Section 13(1)(b) of the 2006 Act

Findings in Fact

11 The Committee finds the following facts to be established:

- (a) On 19 August 2013, the landlord agreed to let to the tenant the property which is the subject matter of this application. A lease was entered into between the parties and a short assured tenancy (in terms of Section 32 of the Housing (Scotland) Act 1988) was created. The landlord's obligations contained in that lease are consistent with the landlord's duty to repair and maintain the property in terms of Section 13 and 14 of the 2006 Act.
- (b) The property forms a detached bungalow with a small attic conversion. The property stands just off a main road and has gardens to front and back, and a driveway and garage to the side. There are two small rooms in the attic of the property. The main living area is on the ground floor, which has two bedrooms at the front, a central corridor, a bathroom off the corridor, a living room, a third small bedroom and a kitchen with dining area to the rear. The tenancy was to endure until 20 February 2014. The tenant removed from the property before 20 February 2014.
- (c) On 30 October 2013, the tenant contacted the landlord's letting agent by telephone, complaining of dampness in the property and stating that mould started to appear on the walls and on some furniture in the bedroom situated to the rear of the property. There was then an exchange of emails between the tenant and the letting agents until, on 7 November 2013, the letting agents contacted the landlord to suggest that a damp specialist survey should be carried out. The landlord responded by stating that there was no damp in the property and that he had previously had a damp specialist survey carried out.
- (d) On 18 November 2013, the tenant contacted the landlord's letting agent, stating that she would vacate the premises on 25 November 2013 because of the extent of the damp and mould in the property. On 20 November 2013, the landlord contacted the letting agents to state that he would arrange his own damp proofing contractor to inspect the premises after the tenant had vacated the property.

- (e) On 3 December 2013, the tenant submitted her application to the Private Rented Housing Panel. Thereafter, the landlord's agents and the landlord arranged for a specialist damp proofing contractor (Peter Cox Ltd) to inspect the property on 14 January 2014.
- (f) On 14 January 2014, Peter Cox Ltd inspected the property and recommended that certain works (involving stripping back plaster and inserting a ventilated membrane) should be carried out. The landlord did not instruct Peter Cox to carry out the work that they recommended.
- (g) Before the tenant took occupancy of the premises, the landlord spent 8 months renovating the property and decorating the property. A new kitchen and a new bathroom were installed in the property. The windows and doors throughout the property were renewed. After the tenant vacated the property, the landlord instructed the cleaning, clearing and painting of the rhones and gutters, and the installation of two vents leading from the sub-floor area beneath the small rear bedroom to the outside of the property.
- (h) On the date of inspection, damp meter readings were taken within the property and no signs of damp were found.
- (i) On the date of inspection, no mould could be found on any of the surfaces within the property.

Reasons for Decision

12 (a) The inspection of this property took place during the morning of 7 May 2014. The tenant was not present. The landlord was present. The tenancy had come to an end and the tenant had vacated the property. The property had been re-let to a new tenant who allowed members of the committee access to the property.

(b) Committee members inspected each of the ground floor rooms of the property and the exterior of the property. The surveyor member took readings using a damp meter and found that there was no damp on the floors nor the interior walls in any of the rooms on the ground floor.

(c) Each member of the committee inspected the interior walls in each of the three bedrooms, the bathroom, the hallway, the living room, the kitchen and the outshoot. None of the committee members could find any evidence of mould on any of the interior surfaces.

(d) After the inspection, a hearing took place at Thistle House, 91 Haymarket Terrace, Edinburgh. The landlord (Eric Monteith) attended. The tenant did not attend and was not represented. The case file reveals that the tenant had received timeous notification of the date, time, place and purpose of the hearing. We decided that we had adequate information before us to justly determine this application in the absence of the tenant.

(e) The Committee consider the condition of the property at the date of the hearing. The tenant complained in October and November 2013 that the interior walls of the property, the furniture and the tenant's possessions were infested with mould caused by damp within the property. After the tenant vacated the property, specialist contractors (Peter Cox Ltd) provided an estimate for works, but the specialist contractors only provide what they call "*a brief specification of the proposed work...*" and refers to "*dampness to fabric of lower walls*". The evidence placed before us indicates that that work was not carried out. Instead, the landlord has carried out maintenance work to the gutters and rhones, has ventilated and heated the property and carried out some redecoration.

(f) The surveyor member took damp meter readings. Each committee member closely inspected the interior surfaces. There were no signs of mould in the house and no signs of pooling water or damp. Meter readings confirmed observations made by sight, touch and smell. Normal damp meter readings were obtained.

(g) The Committee consider every strand of evidence in this case. Although the tenant complains that mould is evident on interior surfaces, particularly in the rear bedroom, there was no sign of mould evident to committee members. No specialist report is placed before the Committee by either party. The new tenant within the property has not complained of either dampness or mould. The Committee therefore come to the conclusion that any difficulty which might have previously existed has been remedied by ventilation and heating, and that this property fulfils the requirements of the Repairing Standards set out in the 2006 Act. The landlord has therefore fulfilled their obligations in terms of Section 14 of the 2006 Act.

Decision

13 The committee accordingly determined that the landlord has complied with the duty imposed by Section 14(1)(b) of the Act.

14 The decision of the committee was unanimous.

Right of Appeal

15. 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

16. 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.

Signed **P Doyle** Date 16/5/2014

Chairperson