



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

prhp Ref: prhp/RP/14/0056

Re : Property at 116B High Street, Grantown-on-Spey, Moray PH26 3EL ("the Property")

The Parties:-

Rosie Angela Shreeve and Thomas Ryan Moore, both residing sometime at 116B High Street, Grantown-on-Spey, Moray PH26 3EL ("the Tenant"); and

Stephen George Moody and Alison Elizabeth Moody, both residing at Westhome, Willingford Lane, Burwash Weald, East Sussex TN19 7HR ("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, and taking account of the evidence led by the Landlord at the hearing, 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 received by the Private Rented Housing Panel on 24 February 2014, the Tenant applied to the 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 in all other respects 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, and
 - (c) any furnishings provided by the Landlord under the tenancy are capable of being used safely for the purpose for which they are designed.
3. On 20 March 2014, the Private Rented Housing Panel was advised by the Tenant's representative that the tenancy was terminating on 27 March 2014. The Tenant was, therefore, under Schedule 7(1) of the Act, treated as having withdrawn the application, but, by Minute of Continuation, the President of the Private Rented Housing Panel decided not to abandon the application, but to refer it to a Private Rented Housing Committee, on the grounds that the nature of the alleged complaints raised health and safety concerns for any future tenants and concerns as to whether the Property was wind and water tight and safe, all in terms of Schedule 2 paragraph 7(2) of the Act.
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 no further written representation to the Committee other than the original application dated 15 February 2014. The Landlord (by letter dated 18 April 2014, received on 22 April 2014), made written representations to the Committee.
6. The Private Rented Housing Committee inspected the Property on the morning of 18 August 2014. The Tenant was not present at the inspection. The Landlord (Mrs Alison Moody) was present at the inspection. The Committee comprised George Clark (chairman), Angus Anderson (surveyor member) and Linda Robertson (housing member)
7. Following the inspection of the Property the Private Rented Housing Committee held a hearing at Boat of Garten Community Hall, Reidhaven Park, Craigie Avenue, Boat of Garten and heard from the Landlord, who was accompanied by Mr Malcolm McMillan. The Tenant had vacated the Property prior to the date of the hearing, so was not entitled to participate in the proceedings and was not present.
8. The Tenant, in the application submitted as follows:- from the time of entering the house after signing the lease the house had gradually become damper and the patio doors would not open. The Tenant had obtained reports from the health visitor and the Fire Service pointing out the patio door problems. The Property had been unfit from day one to be let out. The whole house needed to be damproofed. Several items of furniture had been damaged by mould, the house next door was soaking wet and two previous tenants of the Property were prepared to provide written statements as to how damp the Property was prior to the Tenant moving in. The house was a massive health hazard.
9. Documents submitted with the application included a copy of a letter dated 3 January 2014, addressed to the then letting agents (Highland Property Services) for the Landlord. It was unsigned, but bore to be from Pam Sayer, Health Visitor, of Health and Social Care-Children's Services, The Highland Council. It stated that, as the Health Visitor for the Tenant and the Tenant's baby son, she had visited the Property and had seen the damp on the walls in the hall around the front door, on the wall at the lower end of the stairs, in the second bedroom, around the window in the bathroom and on the windowsill in the main bedroom. The letter was written in support of a request by the Tenant to terminate the tenancy early and its remaining comments were not relevant to the application. The Tenant also submitted a letter from Highland Property Services dated 3 January 2014, in which they noted that they had still not received from the Tenant a response regarding the electrical heater in the shower room having been fitted by a registered electrician. They referred to an assessment which had been carried out by a contractor on issues requiring repair or maintenance and confirmed that the Landlord had given permission for necessary works and repairs to be carried out. They had arranged for storm damage to guttering to be repaired, but stated that various items of mould and mildew were the result of the Property not being ventilated properly and to a build-up of condensation. They referred to a previous letter of November 2013 regarding ventilation of the Property and asked the Tenant to ensure that adequate ventilation was provided in the Property and that the Tenant use appropriate cleaning materials to treat the mould and mildew caused by the lack of ventilation. In a further letter from Highland Property Services to the Tenant dated 6 November 2013, reference was made to a leak at the front door and the fact that a tradesman had reported the door had been damaged.
10. The Landlord, in written representations to the Committee, submitted as follows:- they followed the guidance of their letting agents and acted upon any of their suggestions promptly and professionally. Highland Property Services had withdrawn from acting as their letting agents on 20 March 2014, one week before the Tenant vacated the Property. They had never in all the time of letting of the Property through Highland Property Services and a previous agent, Mr Kenny Patterson, had any complaints about damp. The Landlord had stayed in the Property on several occasions between tenancies to ensure there were no issues of concern and there had been none to date. They had never received anything at all to flag this up as an issue, from past tenants directly or through the letting agents. The Tenant had been asked by the letting agency to ventilate

and heat the Property, but this was simply not done. The mention of one specific damp patch in the front room was likely to have been caused by an overflow or blocked overflow during the tenancy. The Landlord had been charged for the plumber to attend. As at 17 April 2014, there was no damp showing at the patch described and, according to an e-mail from Highland Property Services dated 30 December 2013, there had been no signs of damp at an inspection of the Property on 23 November 2103.

11. The Landlord had visited the Property on 18 February 2014 and had been shocked at its condition. Whilst the Tenant, Ms Shreeve, and members of her family were there, the Property did not look as though it was being lived in at that time. All the furniture, mattresses and hand-made curtains had been put into the garage and garden shed. The shed was an entirely unsuitable place to store soft furniture. One settee and one double bed remained in the Property and the bed had been damaged during the tenancy. The Landlord did not know how long the items had been out of the Property, but the Landlord suspected they had been in the garage and shed from a date early in the tenancy, as a report from September 2013 had highlighted the fact that furniture was missing. At some point between the Landlord's visit on 18 February 2014 and the date the Tenant vacated the Property (27 March), the Tenant had put the furniture back in the Property and had photographed it in situ as if it had been in that condition throughout the tenancy and claimed in the application to the Panel that furniture had been damaged by mould. The Landlord provided the Committee with photographs taken on the visit on 18 February 2014 which showed, in the Landlord's view, a total lack of respect and care shown to the Property by the Tenant. The view of the Landlord was that it was the Tenant who had caused the damage to the front door which had resulted in the leak referred to in the letter from Highland Property Services to the Tenant dated 6 November 2013.
12. The documents provided by the Landlord also contained a number of photographs taken before the tenancy commenced and a letter from the owners of the adjoining house, 116A High Street, who confirmed that a previous tenant of theirs had claimed that there was damp in their house, but they had sought professional advice, which confirmed that it was condensation and a lack of ventilation. This had been explained to the tenant and there had been no further issues. The Landlord stated that, in a telephone call on 16 April 2014, the owners of the adjoining house had said that she had been invited in to the Property by the Tenant on one occasion, and there had been wet washing everywhere and the heat was stifling.
13. Since the day after the tenancy ended, the Landlord had had a builder working full-time to repair the damage done to the Property. The builder had reported that a 1910 stone-built house needed to be steadily heated so that it did not feel damp. He had stripped out a wall cupboard beside the wood-burning stove and on the party wall with the neighbouring house and had found it to be dusty and dry.
14. At the hearing, the Landlord, Mrs Moody, advised the Committee that, since the Tenant had moved out, the patio doors had been replaced, as had most of the windows. New heaters had been installed throughout and some of the carpets had been replaced. The Property had been redecorated and had had to be extensively cleaned. The furniture and soft furnishings which the Tenant had stored in the garden shed and then put back in the Property were ruined, so were not available for inspection by the Committee and were no longer in the Property, as it was going to be offered for let on an unfurnished basis. The Tenant had not produced the Fire Service report referred to in the application.
15. The Landlord was not aware of any specific repairs having been carried out to the guttering at the Property.
16. The view of the Landlord was that any issues of damp were the result of poor heating and lack of ventilation during the tenancy. The letting agents had repeatedly asked the Tenant to heat and properly ventilate the Property.

Summary of the issues

17. 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

18. The Committee finds the following facts to be established:-
- The tenancy is a Short Assured Tenancy.
 - Any dispute between the parties as to the right or otherwise of the Tenant to terminate the lease early and any consequential issues regarding damage to the Property and furniture allegedly caused by the Tenant are outwith the remit of the Committee and a matter for the parties and their legal advisers.
 - The Property has undergone significant change since the photographs which were taken by the Landlord at the inspection on 18 February 2014. That inspection was made only a few days before the Panel received the application and it is, therefore, likely that the photographs reflect the condition of the Property and its contents at the time of the application.
 - The Committee noticed some staining on the rear wall of the Property, which suggested a problem with leaking gutters to the rear, but the staining is dry and the Committee concluded that the problem was historic. There are no signs of leakage from gutters or downpipes elsewhere in the Property. The day of the inspection had been preceded by several days of wet weather.
 - The patio doors and most of the windows in the Property appear to be new. The patio doors open and close properly and there is no evidence of water ingress at the doors or of dampness in any of the areas specified in the report by the health visitor.
 - A house of the age of the Property, stone-built and with the walls plastered on the hard is difficult to keep damp-free and will require care on the part of occupants in order to manage dampness and condensation.
 - The house at the time of the inspection was unoccupied and unfurnished.
 - The surveyor member of the Committee tested walls throughout the Property, using a damp meter, but found no unusually high moisture readings which would be inconsistent with hard plastered walls in an unoccupied property.

Reasons for the decision

- The Committee accepts that the health visitor had concerns regarding dampness in the Property, but based on its own knowledge of the age and construction of the building, accepts the evidence given by the Landlord to the effect that the dampness issues in the Property are the result of inadequate heating and ventilation during the tenancy. The Committee found no significant dampness in the Property at the date of the inspection and is not, therefore, prepared to make a Repairing Standard Enforcement Order in respect of dampness.
- The Committee's view is that, whilst dampness may have contributed to damage to furniture and soft furnishings, it accepts the evidence of the Landlord that the Tenant stored the majority of the furniture and the furnishings in unsuitable conditions in a garden shed during a very damp winter period. In any event, as the Property is now unfurnished, the Committee would have been unable to make a Repairing Standard Enforcement Order in relation to the furniture.

Decision

19. The Committee accordingly determined that the Landlord had not failed to comply with the duty imposed by Section 14 (1)(b) of the Act.
20. The decision of the Committee was unanimous.

Right of Appeal

21. 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

22. 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 **G Clark** Date *18 August 2014*
Chairperson