



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

prhp Ref: prhp/RP/14/0186

Re : Property at Top Right Flat, 17 Park Avenue, Dundee, DD4 6DN ("the Property")

The Parties:-

Kelly Thomson, formerly of 17 Park Avenue, Dundee ("the former Tenant")

Mr Mohamed Esmail, care of Baker Bradley Properties, 211 Albert Street, Dundee ("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 and the documentation produced by the Landlord, determine 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 15 July 2014 the former 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 former Tenant stated 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 that the house was wind and water tight and in all other respects reasonably fit for human habitation, that the structure and exterior of the house (including drains, gutters and external pipes) were in a reasonable state of repair and in proper working order, that the installations in the house for the supply of water, gas and electricity and for sanitation, space heating and heating water were in a reasonable state of repair and in proper working order, that any fixtures, fittings and appliances provided by the Landlord under the Tenancy were in a reasonable state of repair and in proper working order and that the house had satisfactory provision for detecting fires and for giving warning in the event of fire or suspected fire.
3. The Private Rented Housing Panel then received confirmation from Dundee North Law Centre, the agent for the former Tenant, that the tenancy of the house had been terminated and accordingly under Schedule 7(1) of the Act, the Tenant was treated as having withdrawn the application under Section 22(1) of the Act. The President however issued a Minute of Continuation because it was considered that the application should be determined on health and safety grounds due to the nature of the alleged repairs which raised health/safety concerns for any future Tenant.
4. The President of the Private Rented Housing Panel accordingly intimated the decision to refer the application under Section 23(1) of the Act to a Private Rented Housing Committee.
5. 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 former Tenant.

6. The Private Rented Housing Committee (comprising of Mrs Judith Lea, Chairman and Legal Member and Geraldine Wooley, Surveyor Member) inspected the Property on 20 April 2015. A new Tenant was in occupation and the Landlord was represented at the inspection by Mr Bradley and Mr Aboobaker from Baker Bradley Property Management on behalf of the Landlord.
7. Following the inspection of the Property, the Private Rented Housing Committee held a hearing at Kirkton Community Centre, Derwent Avenue, Dundee. The former Tenant was not present or represented, no longer being a party to the case. The Landlord was not present but was represented by Mr Bradley and Mr Aboobaker.
8. A gas safety certificate dated 23 May 2014 was shown to the Committee. The Landlord's agents confirmed that the plumber was registered as a gas safety engineer. The Landlord's agents advised that they did not yet have an electrical installation condition report for the property but could obtain one from the electrician who put in the new cooker socket and cable. The Landlord's agents explained that the Council had now agreed that the former Tenant had been at fault because she had caused damage to the property to obtain a Council house. The Landlord's agents confirmed that the former Tenant had not previously allowed them access to the property to carry out the repairs but once the former Tenant left, they were able to get access and did carry out the repairs.
9. In connection with the mutual repairs, the Landlord's agents provided a copy of a letter sent to all the other owners in the tenement in August 2014. Only one owner had responded. The Landlord's agents indicated that the Council were aware of the problem and it was hoped that something would be done. The repairs however have been carried out to the roof and receipts for the work could be provided.
10. In connection with the rear bedroom window, the Landlord's agents stated that it did open and was safe and that so far as they were aware it had never been able to tilt and turn.

DECISION

11. It was clear from the representations made by the Landlord's agents and from inspection of the property that the dampness and water penetration problems in the property had been resolved and the property had been redecorated. It was also clear that the radiators had been repaired and were no longer leaking. The Committee also noted that there was no longer an operational shower unit in the property and was advised that when the new Tenant moved in she was aware that there was only a bath in the bathroom and there was hot water for the bath. There was no sign of any ongoing dampness in the property. The damp meter readings were normal.
12. The Committee noted that the cabling to the cooker connection had been replaced. The door to the living room appeared to open and close satisfactorily and did not appear to be ill-fitting. New lights had been installed in the kitchen ceiling.
13. It accordingly appeared to the Committee that most of the issues complained about by the former Tenant in her application have been resolved by the Landlord. The Committee had some concerns with regard to the fact that the rear bedroom window tilt mechanism does not appear to work. The window however appeared to open and close safely and the Committee did not consider it necessary to make a Repairing Standard Enforcement Order in respect of this. The Committee noted that the window in the rear bedroom was quite high and had a fixed panel at the bottom. The Committee noted that the smoke alarms in the property were hard wired and further noted the Landlord's agent's undertaking that in due course they would be brought up to the current standard as defined in the Buildings regulations, a copy of which is attached to this decision.
14. In connection with the mutual repairs, the Committee noted that the former Tenant did not directly raise these in her application but refers in her application to a report carried out by the Council which includes issues with mutual repairs. The Committee were concerned by

the fact that the stair treads were worn and damaged presenting a potential trip hazard. The Committee strongly recommend that the Landlord pursues this matter with some urgency. Given the mutual nature of the repairs and the fact that they were not specifically mentioned in the former Tenant's application, the Committee however did not consider it appropriate to make a Repairing Standard Enforcement Order in respect of this issue. The door entry system has, according to the Landlord's agents, been out of operation for years and is unlikely to have worked when the former Tenant moved in. The Committee noted that the rhones had been mainly cleared of vegetation but there is still some growth which requires to be removed. It is strongly suggested that the Landlord deals with this matter as if it is left unresolved it may well lead to further problems with damp.

15. In the circumstances, the Committee agreed to continue the matter to allow the Landlord to produce a copy of the gas safety certificate shown to the Committee and also an electrical installation condition report for the property within four weeks. The Landlord produced both of these documents and the Committee noted that the gas safety certificate was carried out by a gas safe registered engineer. The Committee noted that the electrical installation condition report still refers to the shower and indicates that it has not been disconnected. The Committee did not consider it necessary to make a Repairing Standard Enforcement Order in respect of this but strongly recommend that the shower unit is disconnected from the electrical circuit and removed from the bathroom.
16. In the whole circumstances, the Committee did not consider it necessary to make a Repairing Standard Enforcement Order.
17. The decision of the Committee is unanimous.

Right of Appeal

18. **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

19. 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 **J. Lea** Date... 8 May 2015
Chairperson

HOUSING (SCOTLAND) ACT 2006: SCOTTISH GOVERNMENT GUIDANCE ON SATISFACTORY PROVISION FOR DETECTING AND WARNING OF FIRES

1. Section 13(1) of the Housing (Scotland) Act 2006 sets out the criteria that must be met if a house is to comply with the Repairing Standard. One part of the Repairing Standard is that a house should have satisfactory provision for detecting fires and for giving warning in the event of fire or suspected fire. There are more than 7000 reported fires in dwellings (e.g. houses, flats and maisonettes) every year in Scotland. Fires can have a devastating effect on the lives of people and results in around 60 deaths and 1700 injuries each year. According to national fire statistics dwelling fires in which smoke alarms raise the alarm continue to:

- be discovered more rapidly (less than 5 minutes) after ignition; and
- be associated with lower fatal casualty rates.

2. The installation of smoke and fire detectors is intended to reduce the risk of fire and the consequent loss of life, injury and damage to property. Because of these dangers, the Repairing Standard sets a high benchmark for smoke and fire detection, matching the standard required for new building and which is higher than many owner-occupiers will meet for their own homes. All privately rented homes should, if at all possible, meet this standard. However, the most important thing is that there should be some provision to detect fires and that this should be operational and in good working order.

3. As stated in section 13(5) of the 2006 Act, in deciding whether this standard is met in relation to the fire safety standard, regard must be had to any building regulations and any guidance on the subject issued by the Scottish Ministers.

4. Building regulations set out the essential standards to be met when building work or a conversion takes place. The reference to building regulations in the Repairing Standard does not mean that privately rented property must always comply with building regulations. However, landlords should be aware of what the building regulations say in relation to smoke and fire detectors and have regard to those regulations in assessing what level of smoke and fire detectors are needed to ensure that the home has satisfactory provision for detecting fires and for giving warning in the event of fire or suspected fire. This means that landlords should either install smoke and fire detectors that meet the standard set by building regulations or be able to justify why a lesser level of protection is appropriate in a particular home. Reasons why a lesser level of protection might be appropriate could include:

- Where the proximity of an open fireplace would make a detector impracticable,
- Where the cost of installing detectors would be prohibitive (this is more likely to be due to the cost of structural alterations necessary to install detectors rather than the cost of the detectors themselves)
- Where the landlord intends to install detectors within a reasonable timescale as part of a programme of upgrading property.

5. Landlords are entitled to rely on professional advice from qualified electricians on their compliance with the standards in building regulations.

6. Landlords should note that building standards were amended from 1 October 2010, and revised technical guidance has been issued by Building Standards Division (Technical Handbooks 2013: – Domestic – Fire, <http://www.scotland.gov.uk/Topics/Built-Environment/Building/Building-standards/publications/pubtech/th2013dom2>).

7. The revised Domestic Technical Handbook guidance states there should be at least:

- one functioning smoke alarm in the¹ room which is frequently used by the occupants for general daytime living purposes,
- one functioning smoke alarm in every circulation space, such as hallways and landings,
- one heat alarm in every kitchen, and
- all alarms should be interlinked.

8. When the Repairing Standard was introduced (3 September 2007) the building standards regulations required that there should be one or more than one functioning smoke alarm installed in the house, the number and position of alarms to be determined by the size and layout of the house. There was normally to be at least one smoke alarm on each floor. If there were multiple alarms, they should be interlinked. A smoke alarm installed from 3 September 2007 onwards had to be mains powered with a standby power supply. Note that the manufacturer's recommended life span of a fire alarm is usually 5-10 years and all battery-powered fire alarms in private rented houses should be hardwired when they are replaced.

9. If there is a requirement for the house to meet a more stringent standard of provision for detecting and giving warning of fire (for example, in a house in multiple occupation (HMO) requiring to be licensed, or under building regulations), then the Repairing Standard criterion is only to be regarded as met if that requirement is met. An alarm should be installed in accordance with the recommendations contained in the British Standard on the design of fire detection installations for dwellings (BS5839 Part 6) in conjunction with the Domestic Technical Handbook guidance under Standard 2.11 Communication. The fitting of a hardwired smoke/heat alarm system may require a building warrant and landlords should consult the Building Standards department of the local authority.

10. The repairing standard does not include carbon monoxide alarms. At least 50 people die of carbon monoxide poisoning every year in the UK and installation of carbon monoxide alarms is recommended as good practice. However, from 1

¹ Text amended September 2014. Building regulations were updated in May 2014 and the word "every" was replaced by "the" in clause 2.11.1 of the technical handbook.

See <http://www.scotland.gov.uk/Topics/Built-Environment/Building/Building-standards/techbooks/techhandbooks/therrt14>.

October 2013 Scottish building regulations require carbon monoxide detectors to be fitted when a new or replacement boiler or other fixed heating appliance is installed in a dwelling. The need for carbon monoxide detection applies to any fixed heating appliance powered by a carbon based fuel, that is, gas (both mains and liquid petroleum gas), oil and solid fuel (coal, coke, wood, wood pellets, etc.).

11. Landlords should ensure that smoke and heat alarms are regularly maintained in accordance with the manufacturer's recommendations.

12. It is recommended as good practice that landlords advise tenants to test alarms on a weekly basis. It is also recommended that landlords should advise tenants not to tamper with alarms.

13. The risk of fire can be reduced by ensuring the electrical installations and appliances are safe. It is also part of the Repairing Standard that the installations in the house for the supply of electricity and any appliances provided by the landlord are in a reasonable state of repair and in proper working order. The Electrical Safety Council suggest that the best way for landlords to comply with this is by having a registered electrician carry out an inspection and test of the electrical installation (known as an Electrical Installation Condition Report) and Portable Appliance Testing at suitable intervals. Landlords may also wish to provide advice for tenants on ensuring the safety of any appliances brought into the house by the tenants.

14. Before a tenancy commences, landlords should:

- Carry out an inspection check to confirm that the house meets the repairing standard (required by section 19 of the Housing (Scotland) Act 2006, see page 3 of this advice pack).
- Provide a new tenant with a copy of a gas safety certificate (required by regulation 36 of the Gas Safety (Installation and Use) Regulations 1998).
- Provide a new tenant with a copy of an electrical safety certificate (best practice).
- Provide a new tenant with a copy of a valid energy performance certificate (required by the Energy Performance of Buildings (Scotland) Amendment (No. 2) Regulations 2012).

15. The Scottish Fire and Rescue Service (SFRS) offer free home (i.e. domestic premises) fire safety visits (HFSVs) comprising an assessment of fire risk within the home at that time and the provision of advice on preventing fires, avoiding fire spread and formulating an escape plan in event of fire. Additionally, SFRS staff may on occasion, if available and appropriate, fit long life battery operated smoke and heat alarm(s). Note that a HFSV is neither a substitute for responsible persons complying with their specific legal obligations under the Fire (Scotland) Act 2005 nor does it signify compliance by persons with any other legislative requirement or standard. To arrange a free Home Fire Safety Visit: call 0800 0731 999; or visit www.firescotland.gov.uk.

