



Determination by Private Rented Housing Committee

Statement of Decision of the Private Rented Housing Committee

(Hereinafter referred to as "the Committee")

Under Section 24(1) of the Housing (Scotland) Act 2006

Case Reference Number: PRHP/AB41/204/11

Re:- Property at The Farm Cottage, Newseat of Dumbreck, Udney, Ellon, Aberdeenshire, AB41 7PL
("the property")

The Parties:-

Miss Fiona Montgomery residing at The Farm Cottage, Newseat of Dumbreck, Udney, Ellon,
Aberdeenshire, AB41 7PL ("the tenant")

And

Aberdeen Endowments Trust per their agents Strutt and Parker, St Nicholas House, 68 Station Road,
Banchory, Aberdeenshire, AB31 5YJ ("the landlords")

The Committee comprised:-

Mr James Bauld	- Chairperson
Mr David Godfrey	- Surveyor member
Mr John Wolstencroft	- Housing member

Decision

The Committee unanimously decided that the landlords had not failed to comply with the duties imposed by Section 14(1) of the Housing (Scotland) Act 2006 ("the 2006 Act"). The Committee accordingly decided not to make a repairing standard enforcement order (RSEO) as required by Section 24(2) of the 2006 Act

Background:-

1. By application dated 23 November 2011, the tenant applied to the Private Rented Housing Panel ("PRHP") for a determination that the landlords had failed to comply with the duties imposed by Section 14 (1) of the 2006 Act.

2. The application made by the tenant stated that the tenant considered that the landlords had failed to comply with their duty to ensure that the house met the repairing standard and the application specified the list of defects alleged by the tenant.
3. After sundry correspondence, the President of the Private Rented Housing Panel decided to refer the application to the Private Rented Housing Committee. Notice of that referral was sent to the tenant and the landlords on 19th July 2012.
4. On 21st August 2012, the Committee wrote to the landlords and the tenant indicating that an inspection and hearing would take place on 17th September 2012.
5. Prior to that hearing, correspondence was received by the committee indicating that parties wished to postpone the inspection and hearing. The hearing was postponed. A direction was issued postponing the hearing to 19th October 2012.
6. Prior to that postponed hearing, further correspondence was received from the landlords and tenant. Again it was noted that the parties wished to postpone the inspection and hearing.
7. On 16th October 2012, the Committee issued a direction requiring that the tenant and the landlords' agents agreed a plan of works that were still required and agreed that those works would be completed no later than 16th November 2012. The committee also postponed the inspection and hearing set for 19th October.
8. Further emails and correspondence continued to be received from the landlords and the tenant after the issue of the direction of 16th October. On or around 25th January, the members of the Committee agreed that a further inspection and hearing would require to be set and intimation of a fresh date for the inspection and hearing was sent to the parties. The fresh date set for the inspection and hearing was 6th March 2013.
9. The Committee attended at the property on the morning of 6th March 2013 and the inspection took place. The tenant was present during the inspection. The landlord was represented during the inspection by Mr Archie Duncan from Strutt and Parker. Subsequent to the inspection, a hearing took place within the Ellon Business Centre, Bromiesburn Road, Ellon, Aberdeenshire. The tenant was present at the hearing as was Mr Duncan from Strutt and Parker.

Summary of issues

10. The issues complained of in the application before the Committee can be summarised as follows:-
 - Draughts coming into the kitchen
 - Front door not weather tight
 - Fireplace repairs required
 - Various water problems
 - Loft insulation
 - Roofing, flashing and pointing of the exterior
 - Gaps in the living room windows
 - Repairs required to guttering
11. During the course of inspection the Committee viewed the property and noted the general standard of repair of the property. The Committee also asked the tenant and the landlords' representative for comments at various points during the inspection.

The Hearing

12. The hearing took place in the Ellon Business Centre in the afternoon of 6th March. The tenant was in attendance and the landlord was represented by Mr Duncan as stated above.
13. At the commencement of the hearing, the Committee ascertained from the parties that the only matters which remained in dispute were the problems with the water supply, in particular the hot water, the problems with draughts and a potential minor problem with dampness. It was agreed between the parties that the front door had been replaced, the fireplace had been repaired, loft insulation had been installed, roofing flashing and pointing repairs had been carried out, the gap in the living room window had been sealed and the guttering had been repaired.
14. The committee accordingly determined that they should address each of these issues in turn and asked the parties to put forward their views.
15. With regard to the problems with the hot water supply, the tenant's position was that the amount of hot water being supplied from the use of the immersion heater was intermittent. She did not know how much hot water she would obtain at any time and her view was that regularly there was not enough hot water to provide her with a full bath. It was accepted by the parties that the hot water to the subject is provided by an immersion heater. It was accepted that the element in this immersion heater has been replaced a number of times. It seems to be accepted that this was caused by the initial quality of the water supply to the property. The tenant agreed that the element was last replaced last year at some point. She also indicated that a new cold water storage tank had been installed in the loft last year.
16. The landlords' representative indicated the water supply to the property was a private supply and that the landlords had recently introduced a treatment plant which was installed outside. He hoped that this would resolve the problem with the element to the immersion heater becoming a problem. The landlords' representative took the view that the immersion heater was sufficient to provide enough water to fill a bath and that they had had their plumber look at it. The plumber's view is that nothing was wrong with the system and that simply the immersion heater was not being allowed to heat the water for long enough to heat it to the temperature required by the tenant. The tenant did not agree that the immersion heater was sufficient. She indicated that on certain occasions she could have the heater on for one and a half to two hours and it did still not produce sufficient water for the bath. She also complained that at times there would not even be enough hot water to have a shower. During the course of the inspection, the Committee were not able to check the temperature of the water as the tenant had that morning emptied the hot water tank to fill the bath to demonstrate the level of water which she obtains when the full tank is heated.
17. The surveyor member of the Committee had during the inspection looked into the loft space. Based on his inspection of the hot water tank and the information from both parties it is believed that the hot water tank was a 90 litre tank which is understood to be the standard sized tank used in many properties around Scotland.
18. The Committee then turned to the complaint by the tenant of draughts throughout the property. During the inspection the tenant had pointed out draughts in two particular areas in the kitchen and the bathroom.
19. At the hearing the tenant indicated that draughts had been a problem since she moved into the property and in her view they were significant draughts particularly at the kitchen and the bathroom. She wanted this to be resolved.
20. The landlords' representative took the view that this was not a new property and that any draughts in it were to be expected in a traditional stone built cottage. Mr Duncan

indicated that he had the joiner for the landlords out to carry out various works to include putting expanding foam into gaps to try to reduce draughts. A new bath had been fitted in the bathroom and there was a small gap through which some draught may be coming but the landlords' representative took the view that it is impossible to exclude draughts throughout this property. He took the view that he did not notice any significant draughts during the inspection and that any draughts which existed did not cause the property to fall below the repairing standard of being wind and water tight.

21. On being questioned by Committee members it was agreed that the heating the property is by a coal fire in the living room plus wall heaters in other rooms in the property. There is no door between the living room and the kitchen but a curtain is draped over the gap.
22. The Committee then turned to the question regarding pointing to the exterior of the property. The tenant had taken the view that when pointing works had been done in the past she had been advised by the workman that he would not fill all of the holes because the existing pointing was no longer stuck to the wall and sounded "hollow". He indicated that the roofer who had attended indicated that the property needed repointing. She thought that this had occurred in or around September 2012.
23. The landlords' representative took the view that all necessary pointing repairs had been carried out. Significant works had been carried out to the roof of the property and the property did not need repointing.
24. The parties were then asked to provide any further information to the Committee.
25. The tenant indicated she had lived in the property for five years. She believed that she had been a good tenant and had taken good care of the property internally. She had maintained the property and carried out redecoration and external decoration of the windows. She had tried to get her landlord to carry out repairs and it was only when she had lodged the application with the Panel that the various repairs to the roof and the exterior had been carried out. She indicated that the current representative Mr Duncan was the third different representative she had had from Strutt and Parker and she had sometimes found it difficult to communicate with them. She had raised the application with the Panel because she was not getting the communication that she required. She indicated she had heard nothing from her landlords since January until the night before the hearing when Mr Duncan had phoned her asking her if she was willing to drop the case.
26. Mr Duncan then indicated that he was disappointed to be facing the Panel. He indicated it was the first time that he had been in a case before the Panel and it was not something that he wished to do. He took the view that his landlords the Aberdeen Endowments Trust were good landlords who attempted to maintain their properties correctly. He had indicated earlier in the hearing that the Trust had about forty properties and that he personally was responsible for managing 200 properties in his job with Strutt and Parker. He indicated that from an annual rent of about £180,000 the Aberdeen Endowment Trust paid about £55,000 a year in repairs. He indicated that they were a socially responsible organisation who had tried to provide affordable housing within a rural area. He indicated the rent paid in this tenancy had never been reviewed since the start of the tenancy. He indicated that in respect of this tenancy the landlords had spent almost £7,000 in capital works and nearly £5,000 in general repairs in the last five years. He confirmed that he had telephoned the tenant the previous evening in an attempt to resolve matters. In his view the landlords had carried out a huge amount of work to this property and that the property was now at a standard where it met the repairing standard. He indicated that the repairs now being sought by the tenant were not required and would not be reasonable.
27. The Committee then thanked the parties for their attendance and for the information and evidence that they had presented.

28. At that stage the hearing was concluded and the parties were advised by the Committee that the committee would now consider the various submissions which had been made and would proceed to make a decision which would be issued to the parties.

Decision

29. After the inspection and hearing, the Committee carefully considered the evidence which had been obtained at both the inspection and the hearing and also the evidence contained in the various papers submitted prior to the hearing and during the hearing. The Committee determined that the property met the repairing standard and that no RSEO should be made.

Findings in Fact

30. The property was a traditional stone built farm cottage. It was a single storey cottage with a pitched tiled roof. Internally the property consisted of a hall, the living room, kitchen, bathroom and two bedrooms.
31. The heating to the property was provided by a coal fire within the living room and electric heaters in other rooms within the property.
32. Externally the property was in a sound condition. The roof, roof edges and gutterings had been recently repaired and the pointing to the roof was sound.
33. Internally the Committee could find no evidence of significant draughts to the property nor any evidence of dampness within the property.
34. The Committee determined that the immersion heater within the property was of a normal standard and was adequate for the size of the property. The Committee were unable to determine that the immersion heater was faulty, that the tank was insufficient or that there was any suggestion that the immersion heater and hot water system fell short of the repairing standard of being in a proper state of repair and in reasonable working order.
35. Accordingly the Committee determined that the property met the repairing standard and decided not to issue an RSEO.
36. The Committee noted that during the inspection, the landlords' representative indicated that he believed the property had an electric shower fitted. It was clear during the inspection that no such electric shower was fitted within the property. The shower was provided simply by a mixer tap coming from the taps. The Committee has no power to order that any such improvement works should be carried out but the Committee were of the opinion that if an electric shower was provided within the bathroom that it may resolve the tenant's complaints regarding the immersion heater and the level of supply of hot water.
37. The committee took the view that the property met the repairing standard and determined that an RSEO should not be made.
38. The decision of the Committee was unanimous.

Rights of Appeal

39. A landlord or tenant aggrieved by the decision of the Committee may appeal to the Sheriff by summary application within 21 days of being notified of that decision.

40. The appropriate respondent in such appeal proceedings is the other Party to the proceedings and not the PRHP of the Committee which made the decision.

Effects of Section 63

41. Where such an appeal is made, the effect of the decision and of any Order made in consequence of it is suspended until the appeal is abandoned or finally determined.
42. Where the appeal is abandoned or finally determined by confirming the decision, the decision and the Order made in consequence of it are to be treated as having effect from the day on which the appeal is abandoned or so determined.

Signed..... **J Bauld**

James Bauld, Chairperson

Date..... *22 March 2013*

Signature of Witness..... **J Wilson**

Date..... *22/3/13*

Name: *JONATHAN WILSON*

Address: 7 West George Street, Glasgow, G2 1BA

Designation: *TRAINEE SOLICITOR*