



Determination by Private Rented Housing Committee
Statement of Reasons for Decision of the Private Rented Housing
Committee
Under Section 24(1) of the Housing
(Scotland) Act 2006

PRHP Ref: PRHP/G82/93/10

Re:- Property at 2 Hazel Avenue, Dumbarton, G82 5BW ("the property")

Land Register Title No. DMB10688

The Parties:-

Mr Paul Edmiston and Miss Donna MacLennan residing at 2 Hazel Avenue, Dumbarton, G82 5BW ("the tenant")

and

Mr Gordon McKinlay, care of JMD Property Letting, 6 Church Street, Dumbarton, G82 1QL ("the landlord")

The Committee comprised:-

Mr James Bauld - Chairperson
Mr Alan English - Surveyor member

Decision:-

The Committee unanimously decided that the property complied with the Repairing Standard set out in Section 13 of the Housing (Scotland) Act 2006 ("the 2006 Act") and that the landlord had not failed to comply with any of the duties imposed upon the landlord by Section 14 of the same Act.

Background

1. By application dated 19th June 2010, the tenants applied to the Private Rented Housing Panel ("PRHP") for a determination that the landlord had failed to comply with the duties imposed by Section 14(1)(b) of the 2006 Act.
2. The application made by the tenant stated that the tenant considered that the landlord had failed to comply with the duty to ensure that the house met the repairing standard and, in particular the house suffered from a number of defects listed in the application.
3. The tenant had provided evidence of notification of these defects to the landlord at the address given in the Tenancy Agreement. Notification had been made via emails and correspondence to the landlord's agents on a number of dates ranging from 1st October 2008 to 5th June 2010. Copies of relevant emails and letters were produced by the tenants.
4. The President of the PRHP decided to refer the application under Section 22(1) of the 2006 Act to a Private Rented Housing Committee (the "Committee"). On 30th June 2010 the Committee served notice of referral under and in terms of the 2006 Act upon the parties. The notice of referral to the landlord was addressed care of their agents, JMD Property Letting at 6 Church Street, Dumbarton, G82 1QL. In accordance with the terms of paragraph 13 of the PRHP (Application and Determinations) (Scotland) Regulations 2007, service of any form or communication upon the known agent of a party is deemed to be service upon that party.
5. The Committee were appointed to inspect the property on the morning of 26th May 2010. The Committee was intended to comprise of three members including Mr James Bauld, Chairperson, Mr Alan English, Surveyor member and Mr Chris Harvey, Housing member. Mr Harvey was unable to attend the inspection owing to ill health. The remaining members of the Committee proceeded with the inspection and the hearing.

Evidence

6. Evidence before the Committee consisted of application form by the tenant, copy Tenancy Agreement, extract of title from the Land Register, various emails between tenant and landlord relating to issues of claimed disrepair, copy documents produced by landlord at the hearing.

Summary of Issues

7. The issues complained of by the tenants in the application before the Committee can be summarised as follows:-
 - The property was not wind and water tight
 - The property suffered from draughts
 - The washing machine within the property was not working
 - One ring on the cooker within the property was not working
 - The tumble dryer in the property was not vented
 - The hinges on the internal doors were not proper
 - The shower screen within the shower room was broken
 - The smoke alarm within the property was not working
 - The property was not properly insulated
 - Exterior repairs were required to the guttering to the property

8. During the course of the inspection the tenants were not present. The landlord was present and was also assisted by his representative Mr Alex Morris from JMD Lettings. During the course of the inspection the landlord and his representative confirmed that the tenant had vacated the property and that the property was now occupied by a new tenant.

The Hearing

9. The landlord and his agent attended the hearing. One of the tenants, Paul Edmiston, attended the hearing along with his representative, his father James Edmiston.
10. At the hearing the tenant was asked if he wished to make any representations to the Committee. The tenants' representative addressed the Committee at length indicating that the tenants had left the property at the end of June and had now moved elsewhere. He indicated that in the tenants' view the property had not been generally wind and water tight throughout their tenancy and had suffered substantially from draughts. He also indicated that the shower cubicle was not sealed properly, that the frame had been broken and that the smoke alarm was not functioning. He also complained that the exterior of the property required general repairs. He also indicated that other interior matters required repair including the washing machine door, the one ring on the cooker and the vent to the tumble dryer. The tenants' representative indicated the tenants were not aware of any work having been done since they had left. He advised that the tenants also complained of mould on a window in the bedroom and indicated that tiling was missing around the cooker power point and on the splash guard in the kitchen. He indicated they had also advised that there was a door knob missing on a cupboard door in the kitchen. The tenant's representative indicated that the tenants were aware of the repairing standard and did not believe that the landlord had carried out repairs within a reasonable time. He indicated it had taken 4 months to have repairs carried out to the shower and that the repair to the washing machine took between 6 weeks and 2 months. The tenants' representative accepted that the washing machine had been repaired and that the shower had also been repaired. He complained that there were draughts through all the windows in the property and through the front door and that when it rained there was leakage at the front door. He also complained of draughts coming through the hatch at the foot of the stairs where the gas and electric meters were housed. He indicated that the tenants' electricity bill for the year from July 2009 to June 2010 had been £758 which he claimed was excessive and demonstrated that the property was insufficiently insulated.
11. The landlord's agent was then asked to respond to matters. The landlord's agent indicated that in their view they had no doubts that the property met the repairing standard. They indicated that the property is wind and water tight and that they regarded the complaints being made by the tenants as unfounded and in some regards farcical. The landlord's agent also indicated that they believed that the complaints of disrepair were simply being made as an excuse by the tenants not to pay the rental which was due for the property. The landlord's agent produced correspondence and documentation showing various invoices for repairs carried out and also indicated that at times there had been difficulty in obtaining access to carry out repairs owing to the tenants' failure to allow access. The landlord's position was that the property was in a proper condition and fully met the repairing standard.
12. The tenants' representative was then asked to comment on the matters raised by the landlord's agent. The tenants' representative indicated that the tenants did not accept that access had ever been refused.

Findings of Fact

13. Having considered all the evidence the Committee finds the following facts to be established:-
 - a) The subjects of let comprise a flat in a four in a block property. The building is relatively new having been constructed in or around 1983. The building extends to two storeys in height and the flat is located on the first floor. Access to the flat was gained from a door at ground level from which a staircase provided access to the flat. The flat itself consisted of a living room with a window to the front, a single bedroom with a window to the rear, a

kitchen with a window to the rear and a shower room which had no exterior window. There was also a small hallway within the property.

- b) The property is believed to be of a timber frame construction with a brick or concrete block exterior and was part dry-dashed. The roof was tiled.
- c) The Committee in its inspection could find no evidence of any substantial disrepair within the property. The property appeared to be in a reasonable state of repair. The members of the Committee carefully checked the windows within the property and found that the windows appeared to be functioning and that there appeared to be no significant gaps which would be causing any significant draughts. The Committee could find no evidence to support any of the tenants' allegations relating to disrepair.

The Committee could find no evidence of any failure to meet the repairing standard or any of the duties incumbent on the landlord.

Reasons for Decision

- 14. The Committee had carefully inspected the property and could find no evidence to support any of the allegations made by or on behalf of the tenants. The tenants were not present during the inspection. At the inspection, the property was in a state of repair which more than met the Repairing Standard.

The decision of the Committee was unanimous to dismiss the application

Rights of Appeal

- 15. 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
- 16. The appropriate respondent in such appeal proceedings is the other Party to the proceedings and not the PRHP or the Committee which made the decision

Effect of Section 63

- 17. 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.
- 18. 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.

J Bauld

Signed...

Chairperson

Date

20 September 2010

Signature of Witness. L McManus ..

Date 30 September 2010

LAURA MCMANUS, SECRETARY

7 WEST CEDRICE ST

GLASGOW G2 1BA