

**DETERMINATION BY PRIVATE RENTED HOUSING COMMITTEE**

**STATEMENT OF DECISION OF THE PRIVATE RENTED HOUSING  
COMMITTEE UNDER SECTION  
24(1) OF THE HOUSING (SCOTLAND) ACT 2006**

**In connection with**

**Property at Flat 2/2, 21 Fort Street, Broughty Ferry DD5 2AD  
(hereinafter referred to as "the house")**

**The Parties**

**Ms. Debbie Rennie, formerly of Flat 2/2, 21 Fort Street, Broughty Ferry (**  
**represented by Ms. Laurel Wheatley of Shelter Scottish Housing Law Service)**  
**("the Tenant")**

**Angus William Cruickshank, Digital IT Centre, 10 Douglas Street, Dundee DD1**  
**5 AJ ( represented by Ms. Linda Fyffe of Thorntons, Solicitors, Dundee) ("the**  
**Landlord")**

**DECISION**

The Committee, having made such enquiries as is 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 written evidence submitted by the Landlord and the Tenant, determined that the Landlord has complied with the duty imposed by Section 14(1)(b) of the Housing (Scotland) Act 2006 ( hereinafter referred to as "the Act")

**Background**

1. By application dated 3 April 2008 the Tenant's Solicitor, Ms. Wheatley on the Tenant's behalf, applied to the Private Rented Housing Panel ( hereinafter referred to as "PRHP") for a determination of whether the Landlord had failed to comply with the duties imposed by Section 14(1)(b) of the Act.

2. The said application by the Tenant's Solicitor states that the Tenant considers 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 compliance with Section 13 of the Act. The Tenant's application refers to a Report prepared by Dr. Stirling G Howieson, Chartered Architect and Chartered Engineer, dated 6 February 2008 which detailed Dr. Howieson's findings on the condition of the house following his inspection of the property on 5 February 2008. His findings detail a number of defects relating to the house and the report is referred to for its terms. The Tenant alleged the following breaches of the repairing standard from the said report:-

The internal stair half kite tread has collapsed; the gas supply and the gas cooker have been condemned and there are no cooking facilities; the living room radiator is not secured to the wall and that radiator is leaking water; the gas boiler has been

condemned; a section of the floor in the stair head cupboard has collapsed; the extractor fan in the internal bathroom is not working; the electrics and the fuse box require to be upgraded; the front bedroom does not comply with Building Standards (Scotland) Regulations as a habitable room and there is intermittent rain penetration in that room caused by a hole in the comb ceiling lining; there is a malfunctioning lever arm mechanism in the uPVC window in the living room; there is evidence of loose and cracked plasterwork in the house; and the laminate floor in the living room has not been laid properly and there are loose and flapping edges causing a trip hazard.

The Tenant also referred to further alleged defects within the house which breached the repairing standard and these are referred to in the copy Defences of the Tenant to a Summary Cause Action for Recovery of Possession of Heritable Property and Payment raised by the Landlord against the Tenant. These broadly referred to the defects mentioned by Dr. Howieson in his said report but also indicated in addition that the taps at the kitchen sink did not operate and that there is no water supply in the kitchen; there is a hole in the water tank; the floorboards in the property are rotten; the window frames in the bedrooms are rotten; and the house is not wind and watertight.

The Tenant submitted to the PRHP photographs of the condition of the house, copies of the Summons in the said Summary Cause Action, the copy Defences referred to along with the Notice to Quit and Notice under Section 19 of the Housing (Scotland) Act 1988, the tenancy agreement dated 28 April 2001, said Report of Dr. Howieson and a letter from a representative of Building Standards Section of the Planning and Transportation Department, Dundee City Council dated 6 March 2008 which states that the roof space area of the house referred to by the Tenant as a front bedroom has to be used for storage purposes only in terms of a Building Warrant approval.

3. By letter dated 19 May 2008 the President of the Private Rented Housing Panel intimated a decision to refer the application under Section 23(1) of the Act to a Private Rented Housing Committee.

The Committee comprised the following members:

Mrs. Aileen Devanny, Legal Member  
Mr. Robert Buchan, Surveyor Member  
Mr. Andy McKay, Housing Panel Member

4. The Private Rented Housing Committee served Notice of Referral under and in terms of Schedule 2 Paragraph 1 of the Act upon the Landlord and the Tenant. Following service of the Notice of Referral the Tenant made no further written representations to the Committee but it was indicated in a letter from her Solicitor dated 29 May 2008 that the Tenant had been offered a secure tenancy by Dundee City Council and she was no longer resident in the house but indicated that she was still willing to attend a hearing before the Committee. The Landlord (by agent's letter dated 23 June 2008) indicated that the Tenant had vacated the house which had been refurbished and re-let as a one bedroom flat. The Landlord's Solicitors indicated that following the Committee's inspection of the house, they felt no representations would be necessary.

5. Since the tenancy of the house had been terminated by mutual agreement of the Landlord and Tenant and a new tenant is now within the house, the Committee considered the terms of Schedule 2 paragraph 7 of the Act and noted that a tenant is to be treated as having withdrawn an application under Section 22 (1) if the tenancy concerned has been lawfully terminated. In terms of Schedule 2 para. 7(3) of the Act, the Committee may abandon consideration of the application or, despite the Tenant's withdrawal, continue to determine the application. The Committee decided to continue determination of this application as the report of Dr. Howieson had given details of repairs which raised issues of safety such as a condemned gas supply, condemned cooker and condemned boiler; unsafe fixtures; exposed cables; a broken window mechanism and hazardous stairs, and the Committee considered for reasons of safety for the new tenant and others that the application should proceed. It was also noted that the action at Dundee Sheriff Court had been sisted to await the outcome of the application to the PRHP.

6. The Private Rented Housing Committee inspected the house on the morning of 9 July 2008 paying particular attention to the alleged repairs noted in the report of Dr. Howieson and in the Defences. The Landlord's agent Ms. Linda Fyffe, Solicitor, was present with Ms. Amy Jones, Trainee Solicitor, both of Thorntons, Solicitors, Dundee. The new tenant, Ms. Ashley Ogilvie, was also present. At the inspection the Landlord's agents produced a condition report on the property from D M Hall, chartered surveyors, dated March 2008 which broadly agreed with a number of the issues raised in the report from Dr. Howieson. The Landlord's agent indicated that the Landlord had recently carried out works to the house since it had been vacated by the Tenant. She indicated that there had been an issue gaining access to the house during Ms. Rennie's tenancy.

7. Following the said inspection the Private Rented Housing Committee held a hearing at the Apex City Quay Hotel, Dundee. The Tenant, Ms. Rennie, did not attend. The Landlord's agent, Ms. Fyffe, with Ms. Jones attended the hearing. Ms. Fyffe indicated that she would only make representations if the Committee, following the inspection, decided that the Landlord had not complied with his duty under section 14(1)(b) of the Act. The Committee advised that they were satisfied from the inspection that the Landlord had complied with the requirements of Section 14(1)(b) of the Act. In light of the Committee's findings the Landlord's agent, Ms Fyffe indicated that she had no representations to make to the Committee.

### **Findings in Fact**

8. The Committee made the following findings in fact:-

8.1. On 18 April 2001 the Tenant entered into a lease for the rent of house at Flat 2/2, 21 Fort Street, Broughty Ferry. The Landlord, Mr. Cruickshank, purchased the house around June 2007. The Tenant vacated the house around May 2008 and the house has been relet by the Landlord to another tenant.

8.2. It is disputed when the Tenant advised the Landlord of the need for repairs to the house. However, reports on the condition of the house were carried out for the Tenant and the Landlord in February and March 2008 so the Landlord would have been

aware at these dates if not earlier of the need for works to the house.

8.3. The house comprises a maisonette on the second floor and attic of a traditional stone building constructed circa 1900 with a pitched and slated roof. The attic was converted to provide the current accommodation at some point in the past. The accommodation comprises a livingroom, kitchen, and bathroom on the second floor, and a bedroom, boxroom and walk-in cupboard in the former attic. The windows are uPVC double glazed units. There is a gas central heating system.

At the inspection it was observed that there is only one bedroom in the property and the other attic room is now used as a boxroom for storage which complies with the Building Warrant. There is no obvious signs of water penetration. There is a modern condensing boiler with a new venting flue and modern copper feeder pipes. A new chipboard floor has been laid at the entry to the upstairs walk-in cupboard. There is no evidence of loose or cracked plasterwork but there is evidence of recent artexing. The flat has new carpeting throughout and there are modern radiators throughout the property. The electrical heating system appears satisfactory and a new fuse box is evident. The windows are modern uPVC double glazed units and there was no observed problem with the window mechanism in the living room window. The water supply and taps in the kitchen were in proper working order and there is a new electric cooker and new kitchen units. It was observed that there are no gas appliances in the kitchen. The extractor fan in the bathroom was operable although the present tenant explained that a plumber had disabled the fan at her request because she found the noise annoying after the bathroom light was switched off.

8.4 The inspection revealed no obvious required repairs.

### **Reasons for the Decision**

9. In considering the repairing standard issue the Committee carried out an internal and external inspection of the house and in particular closely examined the repairs highlighted by the Tenant in her application. Inspection showed that the house was in a good state of repair and no obvious defects were noted by the Committee. Works appear to have been recently carried out on the property and the bathroom and kitchen are modern, carpets new, and the house is in a fresh decorative condition. The windows appear in a good state of repair and the house appears to be wind and watertight. There is no sign of any external defect which would be capable of allowing water to penetrate the structure. The gas and electrical installations are modern and from inspection appear to be in proper working order. There is a modern electric cooker, modern combination boiler and new radiators in the house, all of which appear to be in proper working order. The Committee are satisfied that the house is fit for human habitation. The Committee using its expert knowledge did not consider that there had been a failure by the Landlord to comply with the repairing standard laid down in Section 13(1) of the Act.

As pointed out to the Landlord's agent at the hearing, disputes about rental payments are outwith the jurisdiction of the Committee which must confine itself to considering whether the Landlord has complied with the repairing standard and the provisions of the Act as at the date of the inspection and hearing when the Committee will make a determination of the application.

## **Decision**

10. The Committee accordingly determined that the Landlord has complied with the duty imposed by Section 14(1)(b) of the Act.

11. The decision of the Committee was unanimous.

## **Right of Appeal**

**12. 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**

13. 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.

# A Devanny

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Chairperson,  
14th July 2008