



Determination by a 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

Re: - Property at Bogend Bungalow, Catrine, Mauchline, Ayrshire KA5 6NJ
("the property")

Registered in the Sasine Register, County of Ayr: - being the property comprising.....and forming part of lands and farms of Bogend and Lonsayhill, extending to 293.678 acres, described in Disp to George Peden, recorded 7th Jan 1921.

The Parties:-

Ms Jean Kane residing at Bogend Bungalow, Catrine, Mauchline, Ayrshire KA5 6NJ
("the tenant")

and

Mr Andrew Christopher Forrest, residing at Bogend Farmhouse, Bogend Farm,
Catrine, Mauchline, Ayrshire KA5 6NJ

("the landlord")

The Committee comprised:-

Ms I. R. Montgomery - Chairperson.
Mr M. Links - Surveyor member.
Mr C. Harvey - Housing member.

Representatives for parties:-

Representative for tenant – Ms Dawn Cadwell, East Ayrshire Council.

Representative for landlord – Mr R. Hunter, R. D. Hunter & Co, Solicitors.

Decision: -

The Committee unanimously determined that the Landlord had complied with the duty imposed by Section 14(1) (b) of the Housing (Scotland) Act 2006 ("the 2006 Act"). The Committee accordingly made no order.

Background

1. By application dated 28th July 2008 the tenant applied to the Private Rented Housing Panel (**prhp**) for a determination of whether the landlords had failed to comply with the duty imposed by Section 14(1)(b) 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 meets the repairing standard, and, in particular, that the landlords had failed to ensure that:-
 - a) The house is wind and watertight and in all other respects reasonably fit for human habitation(section 13(1) (a));
 - 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 (section 13(1)(b));
 - c) The installations in the house for the supply of water, gas and electricity and for sanitation, space heating and heating water are in a reasonable state of repair and in proper working order (section 13(1)(c));
 - d) Any fixtures, fittings and appliances provided by the landlord under the tenancy are in a reasonable state of repair and in proper working order (section 13(1)(d));
 - e) Any furnishings provided by the landlord under the tenancy are capable of being used safely for the purpose for which they are designed (section 13(1) (e));
 - f) The house has satisfactory provision for detecting fires and for giving warning in the event of fire or suspected fire (section 13(1)(f).

A list of the defects complained of was attached to the application and was headed "Details of complaint in respect of current tenancy".

3. The tenant produced evidence of notification of defects to the landlord at the address given in the application form and confirmed by the Title Deeds as being the address of the owner of the property. The President of the **prhp** decided to refer the application under Section 22(1) of the 2006 Act to a Private Rented Housing Committee ("a Committee"). On 19th September 2008 the Committee served Notice of Referral under and in terms of Schedule 2, paragraph 1 of the 2006 Act upon the Parties.
4. The Committee inspected the property on the morning of 28th November 2008. The tenant was present during the inspection. The landlord was also present during the inspection and was accompanied by his mother, Mrs P. Forrest and his legal representative, Mr Hunter.

The evidence

5. The evidence before the Committee consisted of:-

- Application form;
- Copy Minute of Let between the parties;
- Notification to landlord of issues of claimed disrepair;
- Report by Stef Kenny, East Ayrshire Council, re inspection carried out on 3rd September 2008;
- Copy memo from David Whyte, Environmental Health Officer, East Ayrshire Council, re inspection carried out on 16th June 2008;
- Written representations from the tenant dated 8th October 2008 with attached medical evidence relative to Mr Dino Corletti;
- Written representations from the landlord dated 14th October 2008;
- Letters to PRHP from R.D. Hunter & Co dated 15th and 29th September 2008;
- Copied photographs of the claimed issues of disrepair;
- Copies of correspondence between the Parties;
- Extract of Title from the Sasine Register.

Summary of the issues

6. The issues raised by the tenant can be summarised as follows:-

- The loft insulation in the property is inadequate;
- The traditional sash and case windows in the property are excessively draughty and let in water and should be replaced by double glazed units;
- The gutters are overflowing and leaking onto the path;
- There is evidence of damp/fungal growth in the rear porch.
- The paving slabs surrounding the house are uneven and difficult to walk on;
- The present heating system of dimplex radiators and a coal fire is inadequate for the size of the property;
- The cooker and fridge supplied by the landlord under the tenancy were old and not in good working order;
- The three piece suite supplied by the landlord under the tenancy was not adequate due to its age and state of repair;

Although the tenant had ticked the box in the application form stating that the property did not meet section 13(1) (f) she confirmed at the inspection that this had been an error on her part. She confirmed that the property does have a fully functional smoke detector/alarm.

The hearing

7. The tenant attended the hearing and was represented by Ms Cadwell. The landlord was also present and was represented by Mr Hunter. The landlord's mother was present as an observer.
8. No preliminary issues were raised. The Committee confirmed with both parties that the matters in issue are those matters set out in paragraph 6 above. The landlord made no challenge to the adequacy of the notice given in relation to those issues. It was accepted on behalf of the tenant that no notice had been given to the landlord *before* the lodging of the application, relative to the issues of a) modernisation of the kitchen and bathroom fittings or b) of any need for rewiring or re-plumbing. These matters are therefore *not* validly before the Committee in these proceedings.
9. The tenant stated in evidence that the windows were very draughty. She stated that the problem had not been so bad since she had put up plastic sheeting inside the windows, but, before that, the property had been very cold. She stated that one of the splayed windows in the bay window in the living room lets in water occasionally but only in really heavy rain. This had not occurred for some time. One of the front bedroom windows also occasionally lets in water in extreme weather conditions. She stated that the gutters had been leaking when she moved in and were still leaking, despite promises that this would be fixed. She stated that this was annoying because drips of water dropped on people walking past. She complained that the path around the property was uneven, particularly at the back area leading to the coal house. She stated that she had tripped because of this, but had managed to save herself from falling by holding onto the ivy. In relation to the heating, she stated that the coal fire works perfectly well but that she is no longer fit enough to bring in coal. She complained also that lighting a coal fire did not adequately heat the room. She complained that, as the chimney had no damper, the heat dissipated up the chimney. She stated that the storage heaters work well in the morning, except for one beside the living room window which is difficult to turn on and off. She stated that the problem occurs in the late afternoon and evening by which time the supply of heat from the storage heaters has been exhausted. In relation to the cooker, fridge and three piece suite, Ms Kane confirmed that she had disposed of and replaced the cooker and the suite with the consent of the landlord. She confirmed that she regarded these items as her property. She also confirmed that the fridge currently in the property belongs to her. She complained that the back porch is very cold and still has a musty smell, although she stated that the porch is not damp at present. She stated that the problem had been worse last winter when the water was running down the walls. In June 2008 the ivy which had previously covered the outside of the wall adjacent to the area which had been damp had been removed. The

situation had improved since then. However, she complained of the smell in the porch which she stated must be addressed.

10. The landlord stated that the tenant knew when she agreed to rent it, that the property has single glazed windows and an open fire in the living room with a back boiler. The property was built in 1961. He stated that the windows are traditional sash and case windows which are perfectly functional. He stated that the tenant was causing condensation problems within the property by her habit of blocking off all forms of ventilation. He complained that she had placed plastic sheeting over the air vents in the property and described her placing of plastic sheets over the windows as "nonsense". He stated that the storage heating system is perfectly functional and is above minimum requirements as it provides a source of heating in every room. He stated that the heat output on the radiators could be controlled and that the tenant had been advised how to use the control. He stated that two of the radiators were one year old and the other two were two years old. He claimed that they were modern and fully functional. He stated that the loft has now been fully insulated to a depth of at least 200mm and has a depth of 250 mm in some parts. He stated that "one or two" of the joints in the gutters had been leaking and he had fixed those. He stated that in response to the tenant's complaints he had re-set some of the paving slabs surrounding the house, which he pointed out are not broken. He stated that the cooker, fridge and suite he had provided had been in good working order, but confirmed that the items in the property now are the property of the tenant and he would not expect her to leave them at the end of the tenancy. In relation to the fungus on the porch wall he explained that the outside wall had previously been covered in ivy, which had been removed to see if that would resolve the damp problem. Once the ivy was gone, it became apparent that the rendering was cracked and this was then repaired. He stated that any remaining problems were due to condensation caused by the current lack of ventilation in the property.
11. Ms Cadwell stated that the matters of most concern were the lack of insulation, the inadequacy of the heating and the condition of the gutters. She stated that these matters should be rectified. She asked the Committee to make a RSEO.
12. Mr Hunter submitted that the landlord has had insulation put into the loft and argued that the heating system is perfectly adequate. He stated that the windows are traditional sash and case windows which are not designed to be completely airtight. He submitted that the landlord considers that the property complies with current standards. He reminded the Committee that the cottage is old and urged the Committee to make no order.

Findings of fact following inspection and hearing on 28th November 2008

13. The Committee accepted that the property was built in 1961 and noted that it is built on farm land in an exposed rural location. It is a bungalow with traditional sash and case single glazed windows. It is surrounded by garden ground and there is a coal cellar at the rear of the property easily accessible from the back door.

14. The property has the benefit of storage heating and also has a coal fire in the living room. The Committee's inspection was scheduled for 10.00 am and lasted for about 40 minutes. During the time of the Committee's inspection, the house was warm and the storage heaters were hot. The tenant confirmed that the fireplace and chimney are fully functional.
15. The weather on the day of the inspection was bright, dry and still. There was no evidence of wind penetration during the inspection. The plastic sheets covering the single glazed sash and case windows showed no sign of movement caused by wind or air penetration.
16. Despite the dry weather, water was dripping intermittently from five of the gutter joints.
17. Inspection of the loft showed that all areas visible from the entry hatch had been insulated.
18. The back porch was cold and has a concrete floor. The modern back door has a double glazed window pane, which was wet internally. There was evidence of black mould discolouring the inside of the outside wall. The distinctive musty smell associated with damp was present in the back porch at the time of inspection.
19. Both parties agreed that the cooker, fridge and three piece suite now in the property belong to the tenant, and are *not* supplied by the landlord under the terms of the tenancy. That being so, they do not fall within the terms of the Repairing Standard.

Procedural matters

20. The tenant complains that the traditional sash and case windows in the property are excessively draughty, let in water and should be replaced by double glazed units. The repairing standard does not require that single glazed windows be replaced by double glazed units. However, it does require that the property be wind and watertight. The Committee considered the evidence available. The weather on the day of the inspection was very still and therefore the Committee considered that they could not make a proper assessment of the extent of the wind penetration. The report from Stef Kenny dated 3rd September 2008 refers to the "*plastic sheeting bulging and pulsating with the draughts*" but Ms/Mr Kenny was not available to be questioned and so the reliability of this evidence could not be tested and assessed. The report from David Whyte refers only to the windows being "*draughty*," which is not unusual in sash and casement windows, as such windows need to be slightly loose in order to allow them to function properly. The Committee determined in these circumstances that an expert report was required and adjourned the case to obtain such a report. The case was therefore adjourned to a continued hearing on 18th December 2008.
21. The Committee made arrangements to obtain a suitable expert report from a specialist company named Oxley Conservation, based in Oxfordshire. Unfortunately, the report could not be obtained in time to be available for the

adjourned hearing scheduled for 18th December 2008. The hearing was therefore further adjourned to a date to be determined. Subsequent to that, the tenant informed the landlord in writing that she had decided to vacate the premises and gave notice that she would do so on 16th January 2009. The tenant's representative subsequently confirmed that the tenancy had been brought to an end.

22. In terms of Schedule 2(7)(1) of the 2006 Act, the tenant is deemed to have withdrawn her application if the tenancy concerned is lawfully terminated. However, in terms of Schedule 2(7)(3)(b) the Committee may, at their discretion, proceed to determine the application. In this case, the Committee decided that it was appropriate to proceed. They did so because, at that point in time, there were repair issues which required to be addressed.

23. By letter dated 19th January 2009 the landlord wrote to the Committee to advise them that he had made arrangements to have the sash and case windows removed and replaced with double glazed window units. In these circumstances, the proposed testing by Oaxley Conservation was cancelled and the case was continued to allow the work to be carried out. The Committee determined that a further inspection of the property should then be carried out by the surveyor member alone, who would report his findings to the Committee. The Committee could then decide whether a further committee inspection was required in the light of those findings.

24. On Monday 16th February 2009 the surveyor member duly carried out a further inspection of the property. He reported back to the Committee that all the timber sash and casement window frames had been replaced with new upvc frames containing double glazing. He also noted that the leaking joints in the gutters had been repaired and the gutters appeared to be in satisfactory condition.

Supplementary findings of fact following inspection on 16th February 2009

25. The timber sash and casement window frames had been replaced with new upvc frames containing double glazing.

26. The leaking joints in the gutters had been repaired and the gutters appeared to be in satisfactory condition.

Reasons for the decision

27. The Committee considered the issues of disrepair set out in paragraph 6 above. As the timber sash and casement window frames have now been replaced with new upvc frames containing double glazing, the Committee accepted that the windows in the property are wind and watertight and meet the requirements of the repairing standard.

28. The Repairing Standard does not specify any minimum requirements in relation to loft insulation. In considering subsection 13(1)(a) the committee must have regard to the extent (if any) to which the house, by reason of disrepair or sanitary defects, falls short of the provisions of any building regulations. However, as this

property was built in 1961 current building regulations do not apply to it. The tenant argued that a minimum thickness of 250mm is the relevant legal requirement, but this figure was (until recently, when it was increased to 270mm) merely the recommended guideline for achieving maximum energy efficiency. While it may be *desirable* to achieve such levels of energy efficiency, it is not currently a requirement of the Repairing Standard. The Committee noted that the loft has been insulated throughout and accepted the evidence of the landlord that it is insulated to a thickness of at least 200mm with a thickness of 250mm being provided in some areas. The appearance of the insulation was consistent with that evidence and no conflicting evidence was produced. On the basis of the evidence presented, the Committee was satisfied that the loft insulation in the property is adequate for the purposes of meeting the Repairing Standard.

29. The Committee next considered the issue of the condition of the gutters. The tenant argued that the gutters were overflowing and leaking onto the path. On the dry day when the Committee visited to carry out the first inspection, there was some evidence of this. The problem, so far as could be seen, was relatively minor, but nevertheless the gutters were dripping at five different joints. We accepted that the landlord may well have carried out some repairs to the gutters, but either those repairs were not fully effective or some additional joints had started leaking. We considered that it would be reasonable to assume that this problem would exacerbate in wet weather. The primary purpose of a gutter is to carry water from the roof area and channel it into the down pipes and in doing so they should not leak. Section 13(1) (b) requires that the gutters are in "a reasonable state of repair and in proper working order". The Committee considered that gutters which leak at several joints fall short of this standard. The Committee had regard to the age, character and prospective life of the house, and also took account of its location, but, even taking those factors into account, we considered that the gutters should not leak at the joints. We considered that, because of the condition of the gutters, the property failed to meet the requirements of 13(1)(b) at the time of the first inspection. By the time of the second inspection on 16th February 2009, however, this problem had been rectified by the repairs carried out by the landlord in the interim period. That being so, the Committee accepted that the condition of the gutters does now meet the requirements of section 13(1)(b).

30. The Committee considered the condition of the path. At the rear of the property some paving slabs were missing and the pathway was not entirely even. However, the Committee considered that the condition of the path fell within acceptable limits for a path constructed of earth and paving stones. Although the tenant complained that she had tripped, the Committee did not consider that the condition of the path was such as to pose a significant risk of tripping. In considering subsection 13(1)(b), the Committee is required to have regard to the age, character and prospective life of the house and to its locality. This property was built in 1961 in land adjacent to a farm in a remote rural setting. The Committee considered that it would be unreasonable to expect such a property to have a completely level pathway. The Committee was satisfied that the condition of the path met the requirements of section 13(1)(b).

31. The Committee considered the issue of damp/black mould in the back porch which occurs on the inside of the outside wall. The tenant no longer complains of the wall being damp, but the Committee considered that there appeared to be an element of continuing damp. It is possible, however, that the wall is still in the process of drying out completely after the repairs carried out to the rendering in the summer of 2008. The Committee considered that any residual damp was likely to be caused by condensation, rather than any structural defect in the building. The evidence of the tenant was that the problem is worse in winter which is consistent with a problem caused by condensation. The lack of ventilation in the property caused by the air vents and windows being covered by plastic sheeting may well have contributed significantly to this issue. The Committee was not satisfied that there was any ongoing structural defect in the property and considered that the problem was likely to be alleviated by improving the ventilation within the property. For these reasons, the Committee found that the condition of the back porch did not constitute a breach of the Repairing Standard.
32. The Committee next considered the issue of heating. Section 13(1)(c) requires (amongst other things) that the installations in the house for space heating and heating water are in a reasonable state of repair and in proper working order. The subsection does not require that the most ideal or most effective form of heating be supplied. In this case, what is supplied by the landlord is a form of storage heating, and there is a coal fire with a back boiler in the living room. The tenant confirmed that the coal fire is in good working order. She complained that she is no longer fit enough to bring in coal for a fire and also that a coal fire is not the most efficient method of heating, as the heat goes up the chimney. However, the tenant's state of health is a personal circumstance and cannot be taken into account when considering the Repairing Standard. The Committee accepts that a coal fire has the drawback described by the tenant, but that is not the issue. The Committee found that the coal fire is in a reasonable state of repair and in proper working order. We also found the storage heating system to be in a reasonable state of repair and in proper working order. Although the tenant complained that one of the control knobs on the heater was stiff she confirmed that she could turn it with some difficulty. While it may not heat the room to the temperature desired by the tenant for the length of time she desired, that does not necessarily mean that the heating system supplied by the landlord is defective. The output of the heat can be controlled if the occupier wishes, failing which it may be considered desirable to top up the system using some other means. The Committee considered that the storage heating system supplied by the landlord met the requirements of section 13(1) (c).
33. On the basis of the evidence available, the Committee was satisfied that the property now meets the requirements of section 13(1) of the Housing (Scotland) Act 2006. The Committee accordingly determined that the Landlords had complied with the duty imposed by Section 14(1)(b) of the 2006 Act and made no order.
34. The decision of the Committee was unanimous.

Right of Appeal

- 35. 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.
- 36. 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

- 37. 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.
- 38. 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..... **I Montgomery** Date..... 16th March 2009
Chairperson. 