



**Decision of Private Rented Housing Committee
under Section 24 (1) of the Housing (Scotland) Act 2006**

Statement of Reasons for 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/RP/14/0289

Re : 13A Hunterhill Road, Paisley PA2 6SR ("the Property")

Title No: REN59411

The Parties:-

Anthony Walsh, 13A Hunterhill Road, Paisley PA2 6SR ("the Tenant")

Kirsteen Mabel Ainsley Hunter, otherwise known as Kirsten Mabel Ainsley Hunter, 13 Hunterhill Road, Paisley PA2 6SR ("the Landlord")

The Committee comprised:-

Mr David Bartos	- Chairperson
Ms Sara Hesp	- Surveyor member
Ms Elizabeth Dickson	- Housing member

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 Property concerned, and taking account of the evidence before it, determined that the Landlord had not complied with the duty imposed by Section 14 (1)(b) of the Housing (Scotland) Act 2006.

Background:-

1. By application received on 15 December 2014, the Tenant applied to the Private Rented Housing Panel ("PRHP") for a determination that the Landlord had failed to comply with the duty to ensure that the Property met the repairing standard in section 13 of the Housing (Scotland) Act 2006.
2. In his application the Tenant complained that the Landlord had failed to meet the repairing standard in the following respects:

- (1) the wallpaper in the toilet was peeling off the walls
- (2) the wallpaper in the living room was coming off the walls.

The application related to the matters which had been raised in his letter to the Landlord sent by recorded delivery post on 8 December 2014 and which had been acknowledged by the Landlord's solicitors by their letter to the Tenant of 16 December 2014. By his letter to the Landlord sent by recorded delivery post on 25 February 2015 the Tenant intimated that dampness was the cause of the wallpaper issues.

3. The President of the Private Rented Housing Panel decided under section 23 of the 2006 Act to refer the application to a Private Rented Housing Committee. That decision was intimated to the Tenant and to the Landlord by letters of the Panel's Clerk dated 11 March 2015 and entitled "Notice of Referral, Inspection and Hearing". The intimation of the Notice of Referral to the Landlord included a copy of the Tenant's application to the Panel.
5. The date and time of the inspection of the Property and the date, time and place of the hearing was intimated to the Landlord. An inspection of the Property and hearing at the PRHP office at the Europa Building, 450 Argyle Street, Glasgow G2 8LH was fixed for 11 May 2015 at 10.00 a.m. and 11.00 a.m. respectively. The time of the hearing was changed to 11.45 a.m. and the parties were informed of this alteration.
6. The Committee issued directions to the parties dated 20 March and 24 April 2015 in response to which the Tenant lodged various documents.

The Inspection

7. The Committee inspected the Property on that date and time. The Tenant was present. The Landlord was not present. The weather was overcast and wet. The inspection revealed that the Property is a flat in the basement of an Edwardian villa in the Hunterhill area of Paisley. The Committee carefully inspected the matters which were the subject of complaint.

The Evidence

8. The evidence before the Committee consisted of:-
 - The application form
 - Copy "Short Assured Tenancy Agreement" between the Landlord and the Tenant and AT5 notice both dated 6 November 2012
 - Copy letter from Let it to the Tenant dated 19 November 2013 with prescribed information about tenant deposit
 - Copy letter from Let it to the Tenant dated 9 May 2013
 - Copy "Short Assured Tenancy Agreement" between the Landlord and the Tenant and AT5 notice both dated 24 April 2014

the bathroom. Adequate ventilation would prevent the build up of such condensation and dampness.

- (d) The living room has a bay wall on its north-east or garden side. There is a window in the bay wall with walls forming either side of the bay. Wallpaper is peeling off on the left wall of the bay and on the wall to the left of it and on the right wall of the bay. There are dark stains on the paper where it is peeling. In the left wall of the bay and on the north-east wall at the north corner of the room investigations with a damp meter showed high levels of damp for up to a foot and a half from the floor. Significant levels of damp were also shown below the window. There was no damp between the left end of the bay and the dampness near the corner.
- (e) The walls on the north-east side of the Property, including the bay wall, have had a historical stone-based damp proof course. They have also had a more modern damp proof course. The damp proof courses have been unable to prevent damp rising from the ground.
- (f) By letter from her solicitors dated 16 December 2014 to the Tenant, the Landlord confirmed that she would rectify the difficulties with the heating and wallpaper etc. By letter dated 17 December 2014 the Tenant confirmed the dates when repairs could be carried out. No repairs have been carried out.

Reasons for Decision

- 11. The Committee required to decide whether in respect of the complaints the Property failed to meet any aspect of the repairing standard in section 13 of the Act.
- 12. Complaint (1) related to the wallpaper and dampness in the bathroom. While the Tenant had not indicated in his application form the exact provision of the repairing standard that he alleged had not been met, the only possible provisions which could have been breached were that the Property was not reasonably fit for human habitation (2006 Act, s.13(1)(a)); or that the structure of the Property was not in a reasonable state of repair (2006 Act, s.13(1)(b)).
- 13. The Committee found that there was nothing in the nature of the Property which caused the dampness in the bathroom and the peeling of the wallpaper. It was caused through condensation as noted above and this may be remediable through adequate ventilation. The Committee concluded that the state of the bathroom did not render the Property not reasonably fit for human habitation. There was no failure to meet the repairing standard in section 13(1)(a) of the 2006 Act.
- 14. The wallpaper is not part of the structure of the Property. It is decoration which lies on the surface of the structure. In these circumstances the duty to keep the structure in a reasonable state of repair does not apply and

- there was no failure to meet the repairing standard in section 13(1)(b) of the Act.
15. Complaint (2) related to the wallpaper and dampness in the living room. Again, the Committee considered whether it indicated that the Property was not reasonably fit for human habitation (s.13(1)(a) of the 2006 Act). In order for a dwellinghouse to be reasonably fit for human habitation it must be fit to be used in safety and with reasonable comfort.
 16. The villa was built with a stone-based damp proof course in order to prevent rising damp. A newer damp proof course has subsequently been installed. This is a clear indicator that the villa and the Property within in require a fully operational damp proof course to allow them to be used with reasonable comfort. The extent and level of damp found in the living room is strong evidence that the living room of the Property and therefore the Property itself cannot be used with reasonable comfort. For these reasons the Committee concluded that the Property is not reasonably fit for human habitation and that the repairing standard in section 13(1)(a) is not being met.
 17. The Committee considered also whether the structure and exterior of the Property was in a reasonable state of repair and in proper working order (s.13(1)(b) of the 2006 Act). In deciding that issue the Committee took account of the age, character and prospective life of the Property and the locality in which it was situated. The nature of the findings of damp, which did not extend fully around the north-east facing walls of the Property, allowed the Committee to infer that in certain areas the damp proof courses within the walls had failed to prevent the rising of damp. A wall with a defective damp proof course, even of a house of the age of the villa, cannot be said to be in a reasonable state of repair or in proper working order. For this reason the Committee concluded that the Property also failed to meet the repairing standard in section 13(1)(b) of the Act.

Decision

18. The Committee determined that the Landlord had failed to comply with the duty imposed by section 14 (1) (b), of the 2006 Act in relation to the Property meeting the repairing standard as stated above in relation to complaint (2) in the respects set out above but not otherwise.
19. The Committee therefore proceeded to make a Repairing Standard Enforcement Order. The Committee considered the time limit for the works. The Committee also took account of the need for investigation works to be carried out before remedial works. In the circumstances balancing the interests of the Tenant and the Landlord the Committee concluded that a time limit of 8 weeks was appropriate.

Rights of Appeal

- 20. A landlord or tenant aggrieved by this decision of the Committee may appeal to the Sheriff by summary application within 21 days of being notified of that decision.
- 21. Unless the lease or tenancy between the parties has been brought to an end, the appropriate respondent in such appeal proceedings is the other party to the proceedings and not the Committee which made the decision.

Effects of Section 63 of the 2006 Act

- 22. Where such an appeal is made, the effect of this decision and of any Order made in consequence of it is suspended until the appeal is abandoned or finally determined.
- 23. 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.

D BARTOS

SignedDate: 14 May 2015.....

David Bartos, Chairperson

GA GRANT

Signature of Witness.

.....Date 14 MAY 2015

Name of witness: GILLIAN ANNE GRANT

Address: 20 WHITE DALES
EDINBURGH
EH10 7JQ

Occupation of witness: DIRECTOR