



Statement of decision of the Private Rented Housing Committee under Section 24 (1) of the Housing (Scotland) Act 2006

prhp Ref: EH7/157/11

Re : Property at 73/2 Brunswick Road, Edinburgh EH7 5PD("the Property")

The Parties:-

Mary Ali, 73/2 Brunswick Road, Edinburgh EH7 5PD("the Tenant")

Murray Taylor, 13 Auldgate, Kirkliston, EH29 9HB ("the Landlord")

Decision

The Committee, having made such enquiries as it saw fit for the purposes of determining whether the Landlord has complied with the duties imposed by Section 14(1) of the Housing (Scotland) Act 2006 ("the Act") in relation to the house concerned, and taking account of the evidence led by the Landlord at the hearing, was unable to determine that the Landlord has failed to comply with the duties imposed by Section 14(1)(b) of the Act.

The Committee comprised George Clark (chairperson), Carol Jones (surveyor) and John Blackwood (housing member). The Clerk to the Committee was Iain MacLean and Lorraine Hewie and Caroline Oliphant attended as observers.

Background

1. By application dated 9 September 2011 the Tenant applied to the Private Rented Housing Panel for a determination of whether the Landlord had failed to comply with the duty imposed by Section 14(1)(b) of the Housing (Scotland) Act 2006 ("the Act").
2. The application by the Tenant stated that the Tenant considered that the Landlord had failed to comply with its duty to ensure that the house meets the repairing standard and in particular that the Landlord had failed to ensure that:-
 - (a) the house is wind and water tight and in all other respects reasonably fit for human habitation (Section 13(1)(a) of the Act.
 - (b) 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) of the Act).
 - (c) 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) of the Act.
4. By letter dated 5 October 2011 the President of the Private Rented Housing Panel intimated a decision to refer the application under Section 22 (1) of the Act to a Private Rented Housing Committee.
5. The Private Rented Housing Committee served Notice of Referral under and in terms of Schedule 2, Paragraph 1 of the Act upon both the Landlord and the Tenant.

6. The Private Rented Housing Committee arrived to inspect the Property on the morning of 10 February 2012, but were unable to gain access to the Property, as the Tenant was not present. The Landlord was not present or represented.
7. Following the failure to inspect the Property the Private Rented Housing Committee held a hearing at Thistle House, 91 Haymarket Terrace, Edinburgh EH12 5EH and heard from the Landlord. The Tenant was not present or represented at the hearing.
8. The Housing Member of the Committee advised the landlord that he was a Director of the Scottish Association of Landlords, that Mr Taylor had been a member of the Association at one time, but did not appear to be a member at the present time. He asked the Landlord if he had any concerns that this created a conflict of interest for the Housing Member and the landlord confirmed that he had no concerns in that regard.
9. The Chairman began the proceedings by explaining to the landlord that the Committee had been unable to inspect the property, so would be unable to make a Repairing Standard Enforcement Order.
10. The Landlord advised the committee that he had ascertained from his own enquiries that the Tenant had moved out of the Property, but, as she had changed the locks and the Landlord did not have a key, he had been unable to verify the situation for himself.
11. The Chairman advised the landlord that the Committee would make its own enquiries and endeavour to ascertain whether or not the Tenant was still living in the Property, before determining what further action, if any, to take, but that it was possible the Committee would determine that the application had been withdrawn, if the Tenant had left the Property and had failed to attend or be represented at the Inspection or the Hearing. The Landlord then left the Hearing.
12. The Committee determined that, if it could be established that the Tenant had vacated the property, the Application should be regarded as having been withdrawn, as there were no elements in the application which in the absence of inspection, raised issues of safety for future occupants of the Property. The Clerk was instructed to make such enquiries as he reasonably could of other agencies and of the Edinburgh Housing Advice Partnership, who had advised the tenant at the time of the application, as to whether the Tenant was now living elsewhere.

Findings of fact

11. In the absence of an inspection, the Committee could make no findings of fact in relation to the matters included in the Application.

Reasons for the decision

12. The Committee having been unable to inspect the Property and the Tenant having failed to attend the inspection or the Hearing, the Committee was unable to determine that the Property fails to meet the repairing standard under Section 13(1)(a), (c) and (d) of the Act.

Decision

13. The Committee accordingly determined that the Landlord had not failed to comply with the duty imposed by Section 14(1)(b) of the Act.

17. The decision of the Committee was unanimous.

Right of Appeal

18. 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

19. 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.

G Clark

Signed Date 10 February 2012
Chairperson

