



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

prhp Ref: PRHP/AB31/118/10

RE: Property at 75 Raemoir Road, Banchory, Aberdeenshire, AB31 5XQ
("the Property")

The Parties:-

MS TRACEY-ANNE DUNCAN formerly residing at 75 Raemoir Road, Banchory ("the Tenant")

DR STEPHEN JOHN JOLLEY and **MRS CATHERINE MARY BONAR-JOLLEY** c/o Simpson & Marwick, 4 Carden Terrace, Aberdeen (represented by their agent (Mr Steven Guild of Simpson & Marwick, Solicitors, Aberdeen) ("the Landlords")

Decision

The Committee, having made such enquiries as it saw fit for the purposes of determining whether the Landlords have complied with the duty imposed by Section 14 (1)(b) in relation to the house concerned, and taking account of the evidence led by both the Landlords and the Tenant at the hearing, determined that the Landlords had not failed to comply with the duty imposed by Section 14 (1)(b) of the Act.

Background

1. By application dated 24th August 2010 the Tenant applied to the Private Rented Housing Panel for a determination of whether the Landlords had failed to comply with the duties 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 Landlords had failed to comply with their duty to ensure that the Property meets the repairing standard and in particular that the Landlords had failed to ensure that:-
 - (a) The Property is wind and watertight and in all other respects reasonably fit for human habitation;
 - (b) The structure of and exterior of the Property (including drains, gutters and external pipes) are in a reasonable state of repair and in proper working order;
 - (c) The installations in the Property 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;
3. By letter dated 10th September 2010 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.
4. The Private Rented Housing Committee served Notice of Referral under and in terms of Schedule 2, Paragraph 1 of the Act upon both the Landlords and the Tenant.

5. Following service of the Notice of Referral the Tenant, made written representations to the Committee via email of 13th October 2010 in addition to her original application. The Landlords by way of their agent (by letter dated 7th October 2010), made written representations to the Committee.
6. The Private Rented Housing Committee (comprising Mr E K Miller (Chairman and Legal Member); Mr C Hepburn (Surveyor Member); and Mrs L Robertson (Housing Member)) inspected the Property on the morning of 3rd December 2010. The Tenant was not present during the inspection, the Tenant having left the Property prior to the Hearing and withdrawn her application to the Panel prior to the Hearing. The Landlords were present during the inspection along with their agent Steven Guild and Mr Mark Morris of Messrs AJ Bean, Chartered Building Surveyors, Aberdeen.
7. Following the inspection of the Property the Private Rented Housing Committee held a hearing at The Burnett Arms Hotel, 25 High Street, Banchory and heard from both the Tenant and their Landlords. The Landlords were represented by their solicitor, Mr Steven Guild of Simpson & Marwick, Solicitors and Mr Morris of AJ Bean. The Tenant was not present nor represented.
8. The Landlords submission was as per their written submissions of 7th October 2010.

Summary of the issues

9. The issues to be determined were as per the terms of the letter from the Tenant to the Landlords dated 24th October 2010 namely:-
 - (1) Whether the gable wall needed repair works to the rendering/pointing;
 - (2) Whether roof moss removal and cleaning was required;
 - (3) Whether the wooden door to the rear of the Property was wind and watertight;
 - (4) Whether the Property suffers from excessive levels of damp.

Reasons for the decision

10. The Committee based its decision primarily on the evidence obtained at its inspection of the Property on 3rd December 2010. The Committee inspected the gable wall of the Property. It was clear from pictures contained within the submissions of the parties that there had been a gap between the brickwork and the edge of the tiles. It was also clear, however, on the day of the inspection that repointing had been carried out and as far as the Committee could see there was now no issue in relation to this.

In relation to the moss on the roof, the Committee's view was hampered by some lying snow on the roof but in those areas where the roof could be seen there was no evidence of an excess of moss. The Landlords confirmed that they had had the roof cleaned. The Committee had no reason to doubt the Landlords in this regard and were satisfied that there was no issue here.

The Committee inspected the rear door at the Property. The Landlords confirmed that the rear door had been replaced some time ago. The door that was present was, in the Committee's view, of sound construction and properly installed. Accordingly the Committee were of the view there was no issue in relation to this.

The Committee inspected the areas within the Property that had been highlighted as having damp in the Tenant's original application. Damp meter readings were taken at various points within the Property however no material evidence of any damp was located. The Committee also inspected the sub-floor area of the Property. This had been laid with sand to minimise moisture penetrating from the solum. Whilst there was some dampness within this it was not, in the Committee's view, excessive. The Property had been constructed in the 1960s/70s and was therefore not the most thermally efficient. Damp issues could arise on occasion in this type of property but if a property was

properly aired and heated whilst occupied then these should be capable of being avoided in the main. Having considered matters the Committee were firmly of the view that the Property did indeed meet the repairing standard and that there was no merit in the Tenant's application.

The Landlords' agent queried with the Committee why the Committee had proceeded with the inspection and hearing when the application by the Tenant had been withdrawn prior to the Hearing.

In terms of Schedule 2, Paragraph 7(3) of the Housing (Scotland) Act 2006 where an application is withdrawn after it has been referred to a Private Rented Housing Committee, the Committee may (a) abandon their consideration of the application; or (b) despite the withdrawal continue to determine the application.

The Committee had noted that there is no specific guidance given within the legislation as to any factors to be taken into account in deciding whether to abandon or proceed with an application where the Tenant has withdrawn it. In this particular case the Committee had considered the Tenant's application and decided to continue with it for three primary factors. Firstly, the Landlords' Chartered Building Surveyors own report of 1st September 2010 indicated that there were potential damp issues in relation to the sub-floor void (paragraph 13). This highlighted damp sand within the sub-floor void and considerably more so in the area underneath the ground floor bedroom. It also highlighted the relevant Code of Practice 102 from 1973 which recommended that sub-floor voids are covered with either 100mm of dense concrete or a damp resisting covering. Paragraph 14 also highlighted that plastic pipes providing ventilation to the surface of the sand may have been counter-productive.

Secondly, it was apparent from the Tenant's submission that a previous Tenant had also complained of similar damp issues and it seemed to the Committee that there was a reasonable possibility that there as a recurring problem with the Property.

Lastly, the position in relation to the Tenant's motives in withdrawing the application were unclear. Although the Tenant had originally withdrawn the application she had subsequently emailed direct to the Panel Office stating that she hoped the inspection would continue. It seemed to the Committee that there was a possibility that the Tenant's withdrawal had been as a result of some inducement. The Committee were concerned that despite the withdrawal the Tenant still appeared to be aggrieved. Taking all these factors in to account the Committee had been of the view that matters should proceed.

Although it had become obvious upon the carrying out of the inspection that there was no issue with the repairing standard being met, the Committee pointed out to the Landlords' agent that it was only by carrying out the inspection that they could properly verify that this was the case. Whilst there was no doubt that the Landlords had been put to expense by the actions of the Tenant in this matter, the Committee had proceeded in the manner in which it felt most appropriate.

Decision

11. The Committee accordingly determined that the Landlords had not failed to comply with the duty imposed by Section 14 (1)(b) of the Act.
12. The decision of the Committee was unanimous.

Right of Appeal

13. **A Landlords 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

14. 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.

Signed ...
Chairperson

E Miller

.... Date..... 12/1/2011