



**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 8/10 Quality Street, North Berwick, EH39 4HP (“the House”)

Leonardo Carbiner (“the Tenant”)

Mr David Henderson, c/o 35 West Gate, North Berwick, EH39 4AG (“the Landlord”)

PRHP REFERENCE PRHP/RP/13/0127

DECISION

The Committee having made such enquiries as are fit for the purposes of determining whether the Landlord has complied with the duty imposed by section 14(1)(b) of the Housing Scotland Act 2006 (“the Act”) in relation to the House, and having taken account of the evidence led at the hearing and of the written documentation attached to the application and submitted by the parties, has made the following decision:

It has determined that the Landlord has not failed to comply with the duty imposed by section 14(1)(b) of the Act.

The decision was unanimous.

Background

By application dated 24 September 2013 (the “Application”) the Tenant applied to the Private Rented Housing Panel (“PRHP”) for a determination of whether the Landlord had failed to comply with the duties imposed by section 14(1)(b) of the Act.

The Application stated that the Tenant considered that the Landlords had failed to comply with the duty to ensure that the House meets the repairing standard and in particular that the

Landlords had failed to ensure compliance with the following paragraphs of section 13(1) of the Act:

“(a) the house is wind and water tight and in all other respects reasonably fit for human habitation...

(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,

(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....”

The Tenant complained of a number of defects in the House in particular in relation to a lack of heating, drafts and dampness.

By email dated 9 December 2013, the Tenant intimated to the PRHP that he had vacated the House but considered that the continued involvement of the PRHP would be of benefit to future tenants.

The Private Rented Housing Committee (hereinafter referred to as “the Committee”) served Notice of Referral in terms of Paragraph 1 of Schedule 2 to the Act upon the Landlord on 13 December 2013.

By Minute of Continuation dated 14 December 2013, the President of the PRHP intimated confirmation that the tenancy of the house had been lawfully terminated and that the application was to be treated as withdrawn in terms of section 22(1) of the Act.

However, in terms of Schedule 2(7)(2) of the Act, the President considered that the application should be determined and continued to refer the application to the Committee in view of the allegation that the House is not wind and watertight and is damp.

The Committee comprised the following members:

Maurice O'Carroll, Chairperson

Irene Kitson, Housing Member

Ian Murning, Surveyor Member

The Committee inspected the House at 10.00am on 21 February 2014. The Tenant was not present and the House had been vacated. The Landlord was present along with his property manager/solicitor, Edward Danks of Messrs Paris Steele WS.

Following the inspection, the Committee held a hearing at The Port Seaton Community Centre, Prestonpans. The Committee considered the written evidence submitted by the parties and heard representations from Mr Henderson and Mr Dank. The Tenant was neither present nor represented. The Committee asked questions of the Landlord and his agent in relation to the relevant issues.

Summary of the Issues

The issues to be determined are whether (a) the House meets the repairing standard as laid down in section 13(1)(a) of the Act, namely that the House is wind and water tight and in all other respects fit for human habitation; (b) the installations in the House for the supply of

space heating are in a reasonable state of repair and in proper working order and (c) the fixtures, fittings and appliances provided by the landlord are in a reasonable state of repair and in proper working order.

Findings in Fact

The Committee made the following findings in fact:

The Landlord and the Tenant entered into a Tenancy agreement in respect of the House on 15 August 2011 and possession was taken up by the Tenant on or about that date.

The registered owner of the House is Mr David Henderson as designated above under Title Number ELN4179.

The lease was terminated by agreement between the parties on or around 1 November 2013 and the Tenant ceased occupation as of that date.

The provisions of Chapter 4 of Part I of the Act apply to the tenancy.

The Tenant notified the Landlord of the defects in the house which are now the subject of the Application in detail and in writing on or around the same time as the Application was lodged with PRHP. He had previously complained to the Landlord in person on or about February 2013.

The inspection on 6 February 2014 revealed:

The property is a fourth floor, top flat in a large block comprising three flats per floor. It had a living room to the front, a kitchen at the back, a master bedroom and a second bedroom off a central corridor. The shower room off the corridor consisted of a shower cubicle with WC and wash hand basin being located adjacent to it.

The flat was in good condition and decorative order throughout.

On the day of the inspection the outdoor temperature was 3 degrees centigrade. However, inside the flat it was very well heated and comfortably warm in all parts, although less so in the kitchen.

At the time of the inspection, the heating was on. The electric storage heaters in the flat had been removed (except one storage heater retained in the corridor) and replaced with wall mounted electric heaters in the living room, and both bedrooms. The electric wall mounted heaters could be switched on as necessary to give instantaneous heat and also could be timer operated to come on at various points of the day. The new wall mounted electrical heaters had been installed some time after the House had become vacant in November 2013. The Landlord produced an invoice for the work carried out to install the new heating dated 20 December 2013. A freestanding portable electric heater was also provided to produce additional heat in the main bedroom (or elsewhere in the House) if necessary.

A new Ventaxia air extraction unit had been installed in the shower room with ducting from it going through a cupboard in the flat with exhaust being emitted externally

through the roof of the property. The partially tiled shower room had been newly redecorated prior to the date of inspection and since the date of vacation by the Tenant.

There were sash and case windows throughout the House with the exception of the second bedroom which had a skylight. All sash and case windows with the exception of the kitchen had a secondary glazing unit installed internally. The sash windows were operational, albeit that the window in the living room was slightly impeded by electrical wiring running along the right side of the rightmost window. It was, however, capable of being opened for cleaning purposes. None of the sash and case windows were fitted with a lock. The skylight in the second bedroom was not capable of being opened.

There was a mains operated fire alarm in the hallway.

Otherwise, there was nothing else of note in relation to the condition of the House. In particular, there was no evidence of damp, whether by way of condensation or penetrating dampness on the walls or ceilings.

Submissions at the Hearing

At the hearing, the Landlord appeared, accompanied by Mr Dank. The written evidence contained in the Application and the Tenant's email to the Landlord's agents on 8 September 2013 were taken into account by the Committee and put to the Landlord and his representative during the course of the hearing.

Mr Henderson accepted that during February 2013, the upper sash in the kitchen had at times fallen down. It had therefore had not been wind tight when that had occurred due to the absence of secondary double glazing on that window. However, having received a complaint from the tenant, the upper sash had been repaired so that it stayed up in place with the result that the kitchen was now wind tight and drafts were no longer a problem. The Committee accepted that evidence but pointed out that if a lock were to be fitted to the kitchen window, it would ensure that the upper sash could never slide down in future.

It was accepted by the Landlord that an extractor fan above the stove in the kitchen might be desirable but there had never been one installed at the outset of the tenancy and it had been accepted in that condition by the Tenant. Cooking odours could be excluded by the simple expedient of opening the kitchen window.

Regarding heating, it had never been provided in the kitchen or the shower room and again, that had been accepted by the tenant at the outset of the tenancy. The Committee accepted that evidence given the relatively small size of the kitchen and bathroom and given that both could obtain heat permeating from the hallway due to their location.

It was stated that the heating which could now be seen in the rest of the House was of a standard size with sufficient output for that size of property. Their efficiency could be gauged by future tenants by looking at the energy performance certificate on display in the kitchen. The heating was in fact likely to be more cost effective than the storage heating which it replaced since it did not require to be on all night (nor radiate heat during periods when the occupants were out of the House).

The Landlord accepted that the screw operated roof light in the second bedroom did not open and undertook to the Committee to ensure that it was fixed, for which the Committee was grateful.

Reasoning of the Committee

The Committee was satisfied that all of the sash and case windows were in working order and that the window in the kitchen had been repaired such that the property was now wind and watertight. It therefore found that it met the repairing standard set out in s 13(1)(a) of the Act. However, the Committee **recommends** that a lock be fitted to the kitchen window in order to ensure that it remains wind and watertight in the future.

Although not forming part of the Application, the Committee also considered that it would be desirable for locks to be fitted to the remaining sash and case windows in order to ensure that each can remain in a closed position to preserve wind and water tightness and as security for the occupants against intruders. It also noted the Landlord's **undertaking** to repair the screw operated sky light in the second bedroom. The Committee considers it appropriate that such a repair be effected prior to the next tenants taking up occupancy.

Whatever the position might have been prior to the end of the tenancy regarding adequate heating for the House, the Committee was satisfied that at the time of inspection, the heating appliances were adequate for the areas which they served and therefore did not consider that it required to impose a Repairing Standard Enforcement Order in relation to that issue.

In relation to the fixtures and fittings in the shower room and kitchen, the Committee was satisfied that although desirable, it was not necessary for the kitchen to have an extractor fan fitted above the cooker, nor to install separate heating there. Both the kitchen and bathroom could, in the view of the Committee, be adequately heated by the heat feeding from the rest of the flat. It was also satisfied that the new extractor fan fitted in the bathroom was of appropriate design, in proper working order and was in a reasonable state of repair.

The Committee therefore considered that the installations and appliances now installed by the Landlord met the repairing standard set out in section 13(1)(c) and (d) of the Act in relation to space heating and air extraction.

In light of the above, the Committee agreed not to uphold any of the complaints contained in the Application.

Decision

Accordingly, the Committee, considering the terms of section 13(3) of the Act, determined that the House complied with the repairing standard as set out in section 13(1)(a), (c) and (d) of the Act.

The Committee was therefore of the view that it was unnecessary for it to make a Repairing Standard Enforcement Order in terms of section 24(2) of the Act.

The decision of the Committee was unanimous.

Right of Appeal

Section 64 of the Act provides a right of appeal to a landlord or tenant aggrieved by a decision of a private rented housing committee. An appeal may be made to the Sheriff within 21 days of the Landlord or Tenant being informed of the decision.

Where such an appeal is made, the effect of the decision and 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.

M O'Carroll

Maurice O'Carroll
Chairperson

Date: 26 February 2014