



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

prhp Ref: PRHP/RP/14/0027

Property at 11 Broomhouse Place South, Edinburgh, EH11 3TU

The Parties

Mrs Rehana Islam, residing at 11 Broomhouse Place South, Edinburgh, EH11 3TU ("the tenant")

Mr & Mrs A Rehman, residing at 13 Hartington Place, Edinburgh, EH10 4LF ("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 duty imposed by Section 14 (1)(b) in relation to the house concerned, determined that the Landlord has not failed to comply with the duty imposed by Section 14 (1)(b) of the Act.

Background

1. By application dated 27/01/2014 the Tenant applied to the Private Rented Housing Panel for a determination of whether the Landlord 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 Tenants stated that the Tenants considered that the Landlord had failed to comply with his duty to ensure that the house meets the repairing standard and in particular that the Landlord had failed to ensure that:-

The house is wind and watertight in all the respects, and reasonably fit for human habitation in terms of section 13(1)(a) of the act.

3. By letter dated 7th February 2014 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. The committee was made up of three members;

Paul Doyle	Chairperson
Donald Marshall	Surveyor Member
Helen Barclay	Housing Member

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 Landlord and the Tenant.



5. Following service of the Notice of Referral neither party made further written representation to the Committee .

6 The Private Rented Housing Committee inspected the property during the morning of 27 May 2014. The tenant was present and was accompanied by her representative (Ms Burrows). The landlord was neither present nor represented.

7 Following the inspection of the property, the Private Rented Housing Committee held a hearing at Thistle House, 91 Haymarket Terrace, Edinburgh. The landlord (Mr Rehman) was present. The tenant was not present, but Ms Burrows attended the hearing on her behalf.

8 The tenant's position is that the property is affected by mould and damp, and that the landlord has refused to take action to remedy those defects. The tenant complains in particular about a mould infestation in the 3 bedrooms and the living-room of the property. The tenant originally complained that the cooker hob was defective, but is now satisfied that there is no defect affecting the cooker.

9 The landlord's position is that there are no problems with the property. It is the landlord's position that the tenant has failed to adequately heat or ventilate the property.

Summary of Issues

10. The issues to be determined are whether the house is wind and watertight and in all other aspects, reasonably fit for human habitation in terms of Section 13(1) (a) of the 2006 Act, and

Findings in Fact

11 The Committee finds the following facts to be established:

(a) On 1 March 2012, the landlord agreed to let to the tenant the property which is the subject matter of this application. A lease was entered into between the parties. The landlord's obligations contained in that lease are consistent with the landlord's duty to repair and maintain the property in terms of Section 13 and 14 of the 2006 Act.

(b) Clause 11 of the lease entered into between the landlord and the tenant obliges the tenant to *"...keep the property properly aired and fired and will take all reasonable precautions to protect the property from damage..."*.

(c) The property forms a lower flatted dwelling-house in a flat roofed block of four houses, with gardens to the front and rear. There is a central hallway providing access to all rooms. The property has three bedrooms, a bathroom, kitchen and living room. Each of the rooms is entered by an astragal glazed door. The entrance vestibule has an astragal glazed door. A number of the glass panes in the vestibule door are broken. Some are held together with duct tape. The property has the benefit of gas central heating, but a number of the radiators show signs of rust.

- (d) The tenant moved into the property on 1 March 2012. In 2013, the tenant complained to the landlord that the ceiling in the living room had collapsed. The landlord replaced the ceiling and started a planned programme of redecoration of the entire property. In January 2014, the tenant asked the landlord to stop the redecoration, explaining that the tenant would complete the redecoration and (instead of paying monthly rental) would apply each month's rent to the cost of redecoration. The tenant has not paid any rent since January 2014.
- (e) In or about December 2013, the tenant complained to the landlord that each of the three bedrooms and the living room in the property were affected by damp. The landlord contacted a damp proofing company who inspected the property. The damp proofing company advised the landlord that the property was not affected by either rising or penetrating damp, but that - because the property was not properly ventilated and not regularly heated - there had been a build-up of condensation, causing mould on walls and furniture, and damage to window frames.
- (f) To the front of the property (and the left side of the hall on entry) there is a bedroom. The wallpaper has been removed from parts of that bedroom. There are signs of mould and black stains on the interior face of the exterior walls there.
- (g) The second bedroom is situated to the side and rear of the property. Wallpaper has been removed from parts of that bedroom. There are signs of mould staining around the window and on the inside face of the exterior walls in that bedroom.
- (h) The third bedroom is situated in the centre rear of the property. None of the walls in the third bedroom show any signs of either mould or damp.
- (i) The living room is to the front of the property. It has been recently decorated. It contains more furniture than can comfortably (and usefully) fit into the room. A leather three piece suite is jammed against the front (exterior) wall of the living room.
- (j) On the date of inspection, damp meter readings were taken within the property. The damp meter readings indicated that this property is not affected by either rising or penetrating damp. The damp staining seen in the first, second and third bedrooms are most likely to have been caused by lack of heat and poor ventilation, causing condensation. The amount of furniture in the living room prevents free movement of air and contributes to the traces of low damp meter readings found around the window in the living room. The dampness caused by condensation can be eradicated if this property is properly heated and ventilated, and if items of furniture are moved away from the inside faces of the exterior walls to allow the condensation moisture to leave the property.
- (k) The interior of the property has been neglected and requires redecoration. It would be unwise to redecorate the property until the moisture now present in the property and caused by condensation is entirely removed. It would be desirable to properly heat and ventilate the property, and then to strip the wallpaper to allow the moisture to leave the property fully before redecoration is commenced.



(l) The kitchen is situated to the rear of the property. It has an electric cooker and gas hob. The gas hob has four rings; each of the gas rings work properly.

(m) The kitchen floor is uneven.

Reasons for Decision

12 (a) The inspection of this property took place during the morning of 27 May 2014. The tenant was present with her representative, Ms Burrows. The landlord was not present. The tenant welcomed committee members into the property and allowed committee members access to each room of the property to carry out inspection.

12 (b) Committee members inspected each of the rooms of this property, all of which are on the ground floor. The surveyor member took damp meter readings from the floors and interior walls of the property. Each room was inspected and evidence of black mould, some peeling paper and staining was noted in the bedroom to the front and the bedroom to the side and rear of the property (but not in the third bedroom), consistent with damp conditions. Meter readings were taken and recorded in the mid-range of the scale. The mould was evident on ceilings, and walls including behind furniture and is a typical indication of condensation. The living room had been recently decorated. There was no evidence of mould staining there, but mid-range damp meter readings were obtained in the living room.

(c) The damp meter readings and the observations of the committee led the committee to the conclusion that there is no evidence of either rising or penetrating damp affecting this property. On the balance of probabilities, placing reliance on the level of the damp meter readings obtained by the surveyor member as well as the nature and extent of old staining on the interior face of the exterior walls, it is most likely that the staining has been caused by condensation.

(d) Condensation occurs when a property is not adequately heated and ventilated. It typically occurs on the colder surface, which will be the exterior wall. The signs of damp which can be seen in the first and second bedrooms were of some age. The living room contains too much furniture. A leather three piece suite is pressed hard against the interior face of the exterior wall, so that the movement of air between the wall and the furniture is restricted.

(e) The remedy lies in the hands of the tenant. The evidence before the committee indicates that the tenant complained of signs of damp at the start of the last winter. Condensation damp is not a sign of a defect in the property. It is caused by the use of the property. Condensation damp and the associated mould can be remedied by the tenant's actions. The main factors which cause condensation in a property are an excess of moisture produced in a property which does not have enough ventilation and has cold surfaces when the outside temperature is low. The problems which have been caused can be remedied by careful ventilation of the property to remove moist air and ensure a through flow of (warm) dry air.

(f) The committee's observations in this case lead the committee to the conclusion that the staining caused by mould growth is around the window frames, sills, walls and ceilings of two of the bedrooms within this property. The tenant would

do well to seek advice on managing and eradicating condensation and the availability of fungicidal washers to remove the stains which have now accumulated around the windows, the sills and the ceilings in two bedrooms.

(g) In her application, the tenant complained of a defect in the cooker, stating that only one of four gas rings worked. Committee members' inspection indicated that all four gas rings now work. At the hearing, Ms Burrows (for the tenant) stated that a repair had been carried out since the application was submitted, and that the tenant is now satisfied that there is no longer a defect in the cooker.

(h) Committee members noted that there were a number of fixtures in the property which are tired and worn. Broken glass panes in the astragal door leading from the entry vestibule to the hallway were noted. Significant movement in the kitchen floor was also noted. The floor of the kitchen is uneven. The landlord might want to give consideration to checking the floor and sub floor area to see whether or not any repairs are required there. None of these matters form part of the subject matter of this application, but they are matters which the landlord will want to deal with to ensure the safety of the tenant and the tenant's comfortable enjoyment of the property, as well as to preserve the value of landlord's asset.

(i) A hearing took place in Thistle House, Haymarket Terrace, Edinburgh at 11 am on 27 May 2014. The Landlord, Mr Rahman, attended and so did the tenant's representative, Ms Burrows. The tenant could not come to the hearing. After the procedure was explained to Mr Rahman and Ms Burrows, Ms Burrows answered questions from committee members, explaining that this application is now limited to consideration of whether or not this property is affected by damp and explaining the history of damp from the tenant's perspective. Mr Rahman then answered a number of questions from committee members, providing details of the works that he has carried out to the property and his contact with the tenant and her family. At the hearing the landlord advised that a report he instructed from a local specialist firm identified the problem as condensation. The details noted at the inspection are consistent with that conclusion.

(j) The committee considered every strand of evidence in this case. Although the tenant complains that the property is affected by damp, the weight of evidence indicates that the property does not suffer from either rising or penetrating damp and that the moisture within the property, and the staining caused by that moisture, is caused entirely by condensation. As the committee noted earlier, condensation is caused by the manner in which the property is used. It is the tenant who uses this property. The lease (a copy of which is placed before committee members) obliges the tenant (clause 11) to adequately heat and ventilate the property. If the tenant takes advice about dealing with condensation and the need to heat and ventilate the property, the problem identified by the tenant will be remedied.

(k) Taking a holistic view of all of the evidence in this case, the committee comes to the conclusion that although this property has been damaged by condensation, the property fulfils the requirements of the repairing standards set out in the 2006 Act and the landlord has fulfilled his obligations in terms of Section 14 of the 2006 Act.

Decision



13 The committee accordingly determined that the landlord has complied with the duty imposed by Section 14(1)(b) of the Act.

14 The decision of the committee was unanimous.

Right of Appeal

15. 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

16. 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

P Doyle

..... Date..... 2/6/2014