



**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 26 Park Avenue, Dundee DD4 6LU (hereinafter referred to as “the House”)

Nadine Henderson and Sheila Nicolson, 26 Park Avenue, Dundee DD4 6LU  
(hereinafter referred to as “the Tenant”)

Martin Kellerman, 50 Chengshijingdian, 399 Xiangnan Road, Pudong, Shanghai,  
200120, China (hereinafter referred to as “the Landlord”)

**PRHP REFERENCE PRHP/RP/14/0066**

**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 (hereinafter “the Act”) in relation to the House, and taking account of the evidence led on behalf of the Landlord at the hearing and of the written documentation attached to the application and submitted by the parties, determined that the Landlord had not failed to comply with the duty imposed by section 14(1)(b) of the Act.

**Background**

By application dated 24 January 2014 (hereinafter referred to as the “Application”) the Tenant applied to the Private Rented Housing Panel (hereinafter “the 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 Landlord had failed to comply with the duty to ensure that the House meets the repairing standard and in particular that the Landlord 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,”*

The Tenant complained of a leaking roof.

By letter of 15 March 2014, the President of the PRHP intimated a decision to refer the application under section 23(1) of the Act to a Private Rented Housing Committee (hereinafter referred to as “the Committee”).

The Committee comprised the following members:

John McHugh, Chairperson  
Michael Scott, Housing Member  
David Godfrey, Surveyor Member.

The Committee served Notice of Referral in terms of Paragraph 1 of Schedule 2 to the Act upon the Landlord and the Tenant.

A hearing and inspection were fixed for 19 May 2014.

The Committee inspected the House on 19 May 2014. The Tenant was neither present nor represented. They are no longer the tenant of the House. The Landlord was represented by his letting agent, Lisa Harris of SGL Property.

Following the inspection, the Committee held a hearing at Kirkton Community Centre, Derwent Avenue, Dundee. The Committee considered the written evidence submitted by the parties and heard representations on behalf of the Landlord. Again, the Tenant was neither present nor represented at the hearing. Ms Harris represented the Landlord.

### **Submissions at the Hearing**

Ms Harris, on behalf of the Landlord, advised that the Tenant had moved out on 4 March 2014. Ms Harris advised that roof repairs had commenced before the Tenant moved in and had continued for a time thereafter. She was unaware of any water leaking into the premises during the course of the tenancy. There was water staining in the front bedroom which was historic and this had been explained to the Tenant.

We raised with Ms Harris other matters of complaint which had been mentioned in correspondence but not the Application being: the toilet not being secured to the floor; mess on the stair windows; the electric heating not working and the existence of condensation. She confirmed that the toilet had been secured; she had no knowledge of the window problem but thought that it might relate to mess made during the roofing works; as far as she was aware the heating worked and had been turned on by the cleaners who had worked in the flat when the Tenant vacated; and she knew of no condensation problem. She produced invoices evidencing the repairs history at the House.

## Summary of the Issues

The issue to be determined is whether the House meets the repairing standard as laid down in section 13 of the Act and whether the Landlord has complied with the duty imposed by section 14(1)(b).

## Findings in Fact

The Committee confined their inspection to the item of complaint detailed within the Tenant's Application.

The Committee made the following findings in fact:

- 1 The House is a top floor traditional tenement flat.
- 2 The Landlord and the Tenant entered into a Tenancy Agreement in respect of the House on 4 September 2013.
- 3 The Landlord was recorded on the Lease as Mr M Kellerman.
- 4 Martin Kellerman is the registered owner of the House.
- 5 The Landlord employed SGL Property as his agent.
- 6 The Tenant took possession of the House from 4 September 2013.
- 7 The Tenant ceased to occupy the House from on or around 4 March 2014.
- 8 The provisions of Chapter 4 of Part I of the Act apply to the tenancy.
- 9 The Tenant notified the Landlord of the defect in the house which is now the subject of the Application by letter addressed to the Landlord's agent dated 24 January 2014.
- 10 The inspection on 19 May 2014 revealed:
  - No evidence of water ingress.
  - Raised moisture readings were present in the walls of the front bedroom.

## Reasons for the Decision

Raised moisture readings found in the walls of the front bedroom could be related to historic roof leaks. There was no other evidence of water ingress.

### **Observations**

The toilet had been secured to the floor. There was no evidence of condensation at the time of the inspection (when the property was unoccupied). The electricity supply was off so it was not evident whether the electric heating was working.

### **The Repairing Standard**

The Committee consider that there is no breach of the repairing standard. Accordingly, no Repairing Standard Enforcement Order should be made.

### **Decision**

The Committee, considering the terms of section 13(3) of the Act, determined that the Landlord had not failed to comply with the duty imposed by section 14(1)(b) 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.

**J McHugh**

John M McHugh  
Chairperson

Date: 2 June 2014