

**Decisions of Private Rented Housing Committee**

under

- (1) Schedule 2, paragraph 7 (3) of the Housing (Scotland) Act 2006;**
- (2) Section 24 (1) of the Housing (Scotland) Act 2006**

Statement of Reasons for Decisions of the Private Rented Housing Committee

(Hereinafter referred to as "the Committee")

Under (1) Schedule 2 , paragraph 7(3) of the Housing (Scotland) Act 2006; and
(2) Section 24(1) of the Housing (Scotland) Act 2006

Case Reference Number: PRHP/RP/14/0137

Re : 32/5 Saughton Mains Terrace, Edinburgh EH11 3NL ("the Property")

Title No: MID88520

The Parties:-

Ms Linda McLachlan 32/5 Saughton Mains Terrace, Edinburgh EH11 3NL ("the Tenant")

(care of her agent Ms Rebecca Reilly, Community Help and Advice Initiative, Els House, 1st Floor, 555 Gorgie Road, Edinburgh EH11 3LE)

Kenneth Fowler, care of his agents Pure Property Management, 141 Gilmore Place, Edinburgh EH3 9PW ("the Landlord")

The Committee comprised:-

Mr David Bartos	- Chairperson
Mr Donald Marshall	- Surveyor member
Mrs Irene Kitson	- Housing member

Decisions

- (1) The Committee, having considered the withdrawal of the application by the Tenant, decided that despite the withdrawal they would continue to determine the application.
- (2) 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) of the Housing (Scotland) Act 2006 in relation to the Property concerned, and taking account of the evidence led for the Tenant and Landlord at the hearing, determined under section 24(1) of the 2006 Act that the Landlord had complied with that duty.

Background:-

1. By application received on 2 June 2014, the Tenant applied to the Private Rented Housing Panel ("PRHP") for a determination that the Landlord had failed to comply with the duty to ensure that the Property met the repairing standard in section 13 of the Housing (Scotland) Act 2006.
2. In her application the Tenant complained that the Landlord had failed to meet the repairing standard in the following respects:
 - (1) the heating system had been broken since 19 January 2014
 - (2) the main bedroom required to be treated against damp following a leak into it on 27 December 2013

The application related to the matters which had been raised in the letter from her representative Ms Rebecca Reilly of Community Help & Advice Initiative ("CHAI") to the Landlord's then agents Key Contacts Letting Solutions Ltd dated 15 May 2014. With reference to the matter in the main bedroom the letter also stated, "Damp and black mould in the bedroom making the room uninhabitable."

3. The President of the Private Rented Housing Panel decided under section 23 of the 2006 Act to refer the application to a Private Rented Housing Committee. That decision was intimated to the Tenant, to her representative Rebecca Reilly of CHAI and to the Landlord's former agents Key Contacts Letting Solutions by letter of the Panel's Clerk dated 20 June 2014 and entitled "Notice of Referral". The intimation of the Notice of Referral to the Landlord's former agents included a copy of the Tenant's application to the Panel.
5. During June 2014 the Landlord appointed fresh agents, Pure Property Management. Following intimation of the Notice of Referral, an inspection of the Property and a hearing was fixed. An inspection of the Property and hearing at George House, 126 George Street, Edinburgh, was fixed for 26 August 2014 at 10.00 a.m. and 11.00 a.m. respectively. The date and time of the inspection of the Property and the date, time and place of the hearing was intimated to the Landlord, his new and former agents and to the Tenant and her representative. The time for the hearing was altered subsequently to 11.30 a.m. and the Tenant and Landlord's agents were informed.
6. On 25 August the Tenant telephoned her representative to inform her that a combi boiler had been installed into the Property and that she wished to withdraw her application. The representative passed this information to the Committee's clerk who in turn passed it onto the Committee. The Landlord's agents also telephoned the Committee's clerk asking if the inspection and hearing could be cancelled.

7. The Committee considered whether in the light of the Tenant's withdrawal of the application their consideration of the application should be abandoned or whether despite the withdrawal it should be continued. The Committee has a discretion in making this decision under paragraph 7(3) of schedule 2 to the 2006 Act.
8. While the information before it indicated to the Committee that the heating system complaint had been dealt with, the Committee had no information that the allegation of damp and black mould in the bedroom had been dealt with. The inspection and hearing were on the following day and there was no practicable opportunity to check on the outstanding matter beforehand.
9. Accordingly on the same day the committee decided that given the nature of that allegation and the potential effect on future tenants were it to be substantiated, they should carry on and determine the application. This was intimated to the Tenant's representative and Landlord's agents on the same day.

The Inspection

10. The Committee inspected the Property on the date and time as fixed. The Landlord's agents Pure Property Management's Ashley Puren was present. The Tenant and her representative Ms Reilly of CHAI were present.
11. The weather was dry and bright. The inspection revealed that the Property is a flat on the second or top floor of a block of six flats constructed in the 1970s by the former Edinburgh Corporation in the Saughton Mains area of Edinburgh. The Committee carefully inspected the matters which were the subject of complaint.

The Evidence

12. The evidence before the Committee consisted of:-
 - The application form
 - Copy Lease between the Landlord and the Tenant dated 3 March 2009.
 - Copy letter from CHAI to Key Contract Letting Solutions dated 15 May 2014 with recorded delivery slip
 - Registers Direct copy of Land Register title MID88520
 - Written representations of the Tenant's Representative
 - The oral evidence of the Tenant
 - The oral evidence of Mr Ashley Puren of Pure Property Management
 - Their inspection

The Hearing

13. The Committee held a hearing as fixed. The Tenant's representative Rebecca Reilly of CHAI appeared at the hearing with the Tenant. The Tenant gave evidence. The Landlord's agents' Mr Ashley Puren appeared at the hearing and gave evidence.
14. It was common ground between the Tenant and Mr Puren that a new boiler and new radiators had been installed during the week commencing 18 August. The Tenant spoke to her and her daughter having been very cold in late January and February following the breakdown of the old system. The new system had been operated and had worked. She was content with the heating.
15. Turning to the main bedroom, at the end of December 2013 there had been a leak in the corner of the bedroom in the outer corner of the block itself. Water had poured down and she had required to move out. She telephoned Key Contacts straight away. Key Contacts took time to act. The state of the ceiling became worse and by February 2014 the whole ceiling in that corner had required to be taken down. During this a bird's nest fell into the room from the loft. She could see a hole of daylight in the corner where the ceiling had come down. Key Contacts sent workmen to repair the damage. She was not sure of what work had been carried out to the roof although the workmen said that they had repaired the roof. No scaffolding had been erected. The loft had been full of feathers, bird droppings and was in a disgusting state. The Tenant was unaware of whether the loft had been sealed against the birds entering it but she had not heard them since the work. Before the work she had heard them. The repair work in mid-February also involved the insertion of a square patch of artexed ceiling into the corner. This replaced the fallen part of the ceiling. There was still black mould left on the wall near the vent into the side wall of the block. It had been treated when Mr Puren had taken over. She had no issue with watertightness of the room and would now move back.
16. Mr Puren gave evidence. He noted that the landlord was in America and had not been made aware of what had occurred in the winter. Pure Property Management had been appointed in about early June 2014. On initial inspection they found that the bedroom wall was not damp and the black mould had dried. They arranged for contractors to treat the wall with anti-fungal treatment and stain block and repainted the affected area. This was done on or about 3 June 2014 and he had an invoice verifying this. From his investigation there had been no further leaks since that at the beginning of the year but he had not been into the roof. However he was confident that his contractor would have informed him had the wall still been wet when the work was carried out.
17. Both Ms Reilly and Mr Puren informed the Committee that there had been a telephone call that morning of water coming into the flat below. Mr Puren

confirmed that a plumber was due to attend in the afternoon. Neither representative was in a position to speak to the causes of the leak.

18. The Committee found the Tenant's evidence credible and reliable. Equally the Committee found Mr Puren's evidence credible and reliable.

Findings of Fact

19. Having considered all the evidence, including their inspection, the Committee found the following facts to be established:-
- (a) On 3 March 2009 the Tenant entered into a lease of the Property from the Landlord. The lease was for a duration of 6 months from and including 16 March 2009. It was renewed by tacit relocation. It continues in force.
 - (b) The Property is a flat on the second or top floor of a block of six flats constructed in the 1970s by the former Edinburgh Corporation in the Saughton Mains area of Edinburgh. It comprises a hallway, two double bedrooms, a living room, kitchen and bathroom. It has UPVC double glazing throughout.
 - (c) The Property has a rear-facing bedroom at the corner of the block with a vent into the side wall of the block. The bedroom has been affected by the events set out by the Tenant in her evidence noted above. It has had the work done to it set out by the Tenant and Mr Puren in their evidence noted above. It no longer suffers from damp. It no longer has any black mould.
 - (d) The Property has the benefit of central heating with a Vokera gas fired boiler in the kitchen. A new boiler and new radiators in the bedrooms and living room were installed in the week commencing 18 August 2014.
 - (e) Those events spoken to by the Tenant and Mr Puren in their evidence noted above.

Reasons for Decision

20. The Committee required to decide whether in respect of any of the complaints the Property failed to meet any aspect of the repairing standard in section 13 of the Housing (Scotland) Act 2006.
21. Complaint (1) was that the heating system was broken and was not in a reasonable state of repair and in proper working order (2006 Act,

s.13(1)(c)). The Committee noted that a new boiler and new radiators had been installed into the bedrooms and living room. Whatever had been the position at the time of the sending of the application, the position had since changed. Judging the matter at the time of the inspection and hearing, the Committee had no evidence of the new boiler and radiators not being in a reasonable state of repair and in proper working order. Accordingly this complaint was refused.

22. Complaint (2) was that there was mould and damp in the main bedroom following the leak in December 2013 which features made the Property not reasonably fit for human habitation (2006 Act, s.13(1)(a)) and left the fixtures and fittings not in a reasonable state of repair (2006 Act, s.13(1)(d)). In order for a dwellinghouse to be reasonably fit for human habitation it must be fit to be used in safety and with reasonable comfort. The Committee's findings of fact as to the condition of the bedroom are stated above. No evidence of mould was seen. Whatever had been the position at the time of the sending of the application at the end of May, the position had since changed. Judging the matter at the time of the inspection and hearing, the Committee concluded that the main bedroom could be used in safety and with reasonable comfort and did not render the flat unfit for human habitation. As the black mould had been removed the fixtures and fittings were in a reasonable state of repair. Accordingly this complaint was refused.

Decisions

23. The decisions of the Committee are set out above. They were unanimous.

Rights of Appeal

24. The decision to continue with the application is not appealable.
25. The decision under section 24(1) of the 2006 Act is appealable. A landlord or tenant aggrieved by that decision may appeal to the Sheriff by summary application within 21 days of being notified of that decision.
26. Unless the lease or tenancy between the parties has been brought to an end, the appropriate respondent in such appeal proceedings is the other party to the proceedings and not the Committee which made the decision.

Effects of Section 63 of the 2006 Act

27. Where such an appeal is made, the effect of this decision and of any Order made in consequence of it is suspended until the appeal is abandoned or finally determined.

- 28. Where the appeal is abandoned or finally determined by confirming the decision, the decision and the Order made in consequence of it are to be treated as having effect from the day on which the appeal is abandoned or so determined.

D Bartos

SignedDate: 8 September 2014.....

David Bartos, Chairperson

G Grant

Signature of Witness...Date 8 September 2014

Name of witness: GILLIAN GRANT

Address: 20 WHITE DALES
EDINBURGH
EH10 7JR

Occupation of witness: DIRECTOR