



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 3 Anderson Avenue, Newtongrange EH22 4BL (hereinafter referred to as “the House”)

Susan Bernard, 3 Anderson Avenue, Newtongrange EH22 4BL (hereinafter referred to as “the Tenant”)

Eileen Davidson Peacock, Tweedside Caravan Park, Innerleithen EH44 and Robert Gordon Jenks, Address Unknown (hereinafter referred to as “the Landlord”)

PRHP REFERENCE PRHP/RP/14/0142

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 and the Tenant 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 5 June 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,
(b) the structure and exterior of the house including drains, gutters and external pipes) are in a reasonable state of repair and in proper working order,
(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...”*

The Tenant complained of the following matters:

- 1 The central heating boiler did not work properly;
- 2 Cracks in walls; and
- 3 The back door was not wind and watertight.

By letter of 25 June 2014, the President of the PRHP intimated a decision under section 23(1) of the Act to refer the application to a Private Rented Housing Committee (hereinafter referred to as “the Committee”).

The Committee comprised the following members:

John McHugh, Chairperson
Christine Anderson, Housing Member
Donald Marshall, 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 20 August 2014.

The Committee inspected the House on 20 August 2014. The Tenant was present and accompanied by her mother. On behalf of the Landlord, Mrs Peacock was present and was accompanied by her partner.

Following the inspection, the Committee held a hearing at The Lasswade Centre, Bonnyrigg. The Committee considered the written evidence submitted by and heard representations on behalf of both parties.

Submissions at the Hearing

The Tenant spoke of long standing problems with the central heating and with the back door. Both had now been replaced and she accepted that the Committee was basing its decision upon what it was able to observe on inspection rather than on what may have happened in the past.

The Tenant is entirely satisfied with the new central heating boiler. The new back door is wind and watertight but there is a minor problem with closing it which she would like to be rectified, particularly as she is concerned that her young son is able to place his fingers between the door and the frame when the door is not fully closed.

She was concerned by the presence of the interior crack above the front door and those at the exterior front and rear elevations. Her concern was not so much for immediate safety but that the cracks might become worse and she saw this as a building issue which it was appropriate to bring to the Landlord's attention.

She advised that she had had difficulty in getting the Landlord to address repair issues and this had caused her stress and upset.

Mrs Peacock advised that the house had been owned by her mother who had passed away. It was inherited by her brother, Robert Gordon Jenks, and her.

Mrs Peacock advised that she had relied upon her agents, Rent Locally, to bring any problems to her attention but it appeared that there had been problems with communication. She advised that she had not been made aware of the Tenant's complaints. Mrs Peacock wanted to ensure that she complied with her obligations. She wanted the Tenant to be comfortable which she said was demonstrated by having fitted a new central heating boiler and new front and back doors.

As regards the back door, while the fault with closing appeared minor, Mrs Peacock had paid for a new door and had been advised that it had been properly installed. She intends to raise the issue with the joiner responsible for fitting the door and to have it rectified.

As regards the cracking, Mrs Peacock acknowledged that cracking was present but thought that it was consistent with minor movement/shrinkage and was not a serious issue. She acknowledged that re-harling would improve the appearance of the building and she had been looking into the availability of grants for this.

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 items of complaint detailed within the Tenant's Application.

The Committee made the following findings in fact:

- 1 The Landlord and the Tenant entered into a Tenancy Agreement in respect of the House dated 27 and 28 January 2012.
- 2 The Landlord was recorded on the Lease as Mrs Eileen Peacock.
- 3 Agnes Jane Wishart Gordon Davidson Rowley or Jenks is the registered owner of the House. Mrs Jenks has died and the house was inherited by her two children (the Landlord), who are now the owners.
- 4 The Landlord employed Rent Locally as their agent.
- 5 The Tenant took possession of the House from 14 February 2012 and remains in occupation.
- 6 The provisions of Chapter 4 of Part I of the Act apply to the tenancy.
- 7 The Tenant notified the Landlord of the defects in the house which are now the subject of the Application by email dated 26 March 2014 and letter dated 5 June 2014 addressed to the Landlord's agent.
- 8 The inspection on 9 September 2013 revealed:
 - a. The House was generally in a fair standard of repair.
 - b. A new central heating boiler had been fitted and the Tenant was entirely satisfied with the functioning of same.
 - c. A new back door had been fitted. It opens and closes. It locks and unlocks. It has a very minor fault which means that it may appear to be closed but may spring open unless the user has ensured that the door has been closed firmly.
 - d. Cracks were evident in the exterior walls at the front and rear of the property, particularly around lintels.
 - e. A single crack was present in the interior at the wall above the front door.

Reasons for the Decision

Central Heating

A new central heating boiler has been fitted. The parties agree that it functions well.

Cracks

The property is harled. There is evidence of cracking on the front and rear elevations. There have been historic attempts to fill some of the cracks. The exterior cracking appears consistent with normal shrinkage or minor settlement. The property is located in a former coal mining area where minor settlement

resulting from old mine workings is not unusual. Many other properties in the street appear to have been re-harled recently, suggesting that they may also have been affected.

The crack above the front door is a crack in the plaster which may have resulted from earlier works to install a new front door.

While the cracks are not aesthetically pleasing, they are only cosmetic and cannot be regarded as sufficiently serious that their presence would constitute a breach of the repairing standard.

Back Door

A new back door has been fitted. It opens and closes and locks and unlocks. It was noted that when the door may appear to be closed it can spring back open if it has not been firmly shut. Although the door therefore has a minor fault, the fault is such that the Committee do not consider it sufficiently serious to constitute a breach of the repairing standard.

The Repairing Standard

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

Observation - Roof

Although not part of the application, the Committee noticed on inspection that a ridge piece of the roof appeared to be missing and the Landlord may wish to investigate this issue further.

General

Although no breach of the repairing standard was identified on inspection, it was evident that the bringing of the application had prompted certain repairs to be carried out. The Committee suggested that the parties take the opportunity to improve communications between them with a view to avoiding problems escalating in future. The Committee was pleased that both parties appeared willing to do so.

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: 28 August 2014