



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

PRHP Ref: PRHP/RP/14/0237

Property at: 90 Gilmerton Dykes Drive, Edinburgh, EH17 8LG

The Parties

Alan Forrest Brown, formerly residing at 90 Gilmerton Dykes Drive, Edinburgh ("the tenant")

and

Patrick Gerald McGeever, Mrs Jennifer McGeever and Ms Janet Gavin Stewart McGeever, residing at 114 The Murrays, Edinburgh, EH7 8UP ("the landlord")

Decision

The committee, having made such enquires 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 all of the evidence available to the committee, determined that the landlord has not failed to comply with the duty imposed by Section 14(1)(b) of the 2006 Act.

Background

- 1 By application dated 7 October 2014, the tenant applied to the Private Rented Housing Panel to determine whether or not the landlord had failed to comply with the duties imposed by Section 14(1)(b) of the Housing (Scotland) Act 2006 ("the 2006 Act").
- 2 The application by the tenant stated that the tenant 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:
 - (a) that the installations in the house for the supply of water, gas and electricity, and for space heating and heating water were in a reasonable state of repair and in proper working order, in terms of Section 13(1)(c) of the 2006 Act, and
 - (b) that the fixtures and fittings provided by the landlord under the tenancy were in a reasonable state of repair and in proper working order in terms of Section 13(1)(d) of the 2006 Act
- 3 By letter dated 11 March 2015, the president of the Private Rented Housing Panel intimated a decision to refer the application under Section 22(1) of the

2006 Act to a Private Rented Housing Committee. The committee was made up of three members:

Paul Doyle	Chairperson
Charles Reid Thomas	Surveyor Member
Ann MacDonald	Housing Member

- 4 The Private Rented Housing Committee served notice of referral under and in terms of Schedule 2 Paragraph 1 of the 2006 Act to the landlord and the tenant.
- 5 Following service of the notice of referral, neither party made any further representations to the committee.
- 6 The Private Rented Housing Committee inspected the property at 10.30am on 6 May 2015. The tenant had removed from the property in December 2014 and was not present. The landlord's agent arranged access to the property, which is now occupied by new tenants. The new tenants graciously allowed the committee to inspect the property.
- 7 Following inspection of the property, the Private Rented Housing Committee held a hearing at the Fisherrow Centre, South Street, Musselburgh. Neither party was present, nor were they represented. The case file reveals that all parties were timeously notified of the date and time of the hearing. No request was made for an adjournment. We note that the tenancy was lawfully terminated more than four months before the inspection. We are satisfied that it was appropriate to deal with this case in the absence of the parties.
- 8 The tenant's position is that the interior of the house is unclean, that the garden is overgrown, that the furniture in the living room is marked, that a letterbox cover is missing, that the carpets and floor coverings throughout the house are so dirty that they need to be replaced and that the furnishings and décor of the property are shabby. The tenant says that the central heating does not work and that there are no smoke alarms in the property.
- 9 The landlord's position is that the property has been well maintained and that none of the defects alleged by the tenant exist, so that the repairing standard is met.

Determination

- 10 The issues to be determined are:
 - (1) Are the installations in the house for the supply of space heating and for heating water in a reasonable state of repair and in proper working order, and
 - (2) Are the fixtures and fittings provided by the landlord under the tenancy in a reasonable state of repair

Findings in Fact

11 (a) On 6 June 2014, the landlord agreed to let the property to the tenant. A short assured tenancy was created. The landlord's obligations contained within that short assured tenancy are consistent with the obligations imposed on the landlord by the repairing standard set out in the Housing (Scotland) Act 2006.

(b) On 17 September 2014, the landlord's agents visited the property and inspected the property. A number of marks to walls were noted and damage consistent with wear and tear was noted to the fabric of some of the furnishings. That same wear and tear had existed when the tenant moved into the property on 6 June 2014. The tenancy entered into ended in December 2014, when the tenant removed from the property.

(c) The property is a ground floor flatted dwellinghouse, part of a block of four with gardens to the front and rear. The front door of the property opens into a vestibule which gives access to a central hallway which, in turn, provides access to all of the rooms of the property. There is one bedroom and one living room (on either side of the hallway) to the front of the property. To the rear of the property, there is a second bedroom, a bathroom and a kitchen. There is a rear door in the kitchen, providing access to the garden ground to the rear of the property.

(d) The front door has a letterbox. The external weather flaps is missing from the letterbox, but the letterbox is fitted with weatherproof brushes.

(e) The floor coverings throughout the property are in a reasonable state of repair. None of them have any obvious defects.

(f) The property benefits from gas central heating. The boiler for the gas central heating system is in the kitchen. The central heating works properly. There are no obvious defects with the central heating boiler or the central heating system.

(g) The bathroom is served by a white three piece sanitary suite. The taps to the wash hand basin both work properly. Neither of them are loose. A reasonable flow of water is obtained by opening each of the taps. When the taps are closed, the flow of water stops. There is a sealant around the bath. The sealant is intact and prevents water from seeping between the bath and the walls of the bathroom.

(h) The curtains and blinds serving the property are in a reasonable state of repair.

(i) The living room has two leather settees. Both of them are in good condition.

(j) The decoration of the property is reasonable.

(k) There are mains wired smoke alarms in the hall and the kitchen of the property. Both of them work.

(l) The property has been re-let to a new tenant. The new tenant is happy with the condition of the property.

(m) At the date of inspection, the property meets the repairing standard set out in the Housing (Scotland) Act 2006.

Reasons for Decision

12 (a) Committee members inspected this property during the morning of 6 May 2015. The tenant was neither present nor represented. The landlord's agent introduced committee members to the new tenant of the property who allowed committee members access to the property and allowed committee members to carry out an inspection.

(b) In the application form, the tenant focuses on Sections 13(1)(c) and 13(1)(f) of the 2006 Act. However, there is an ambiguity in the way the form has been completed. For the avoidance of doubt, committee members inspected the interior and the exterior of the property and were satisfied that the property is wind and watertight and in all other respects, fit for human habitation (Section 13(1)(a) of the 2006 Act); that 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 (Section 13(1)(b) of the 2006 Act); that the fixtures, fittings and appliances which have been provided by the landlord to the tenant under the short assured tenancy are in a reasonable state of repair and in proper working order (Section 13(1)(d) of the 2006 Act); and that the furnishings provided by the landlord are capable of being used safely for the purpose for which they are designed.

(c) It is possible that the tenant complains that the house is not wind and watertight. The weather flap on the letterbox is missing. On 17 September 2014, the landlord's agents inspected the property and noted under comments concerning "front door" that "*the letterbox is broken*". Although the external weather flap is missing from the letterbox, weatherproof insulating brushes are fitted. Committee members are satisfied that the weatherproof brushes protect the property from wind & water ingress.

At the date of inspection, there were no defects affecting the letterbox.

(d) The tenant complains that the interior of the house is "*filthy*", that there are marks on the walls and on items of furniture, and that the garden is "*overgrown with trees...*". None of those complaints are made out. At the date of inspection, committee members could see that the garden is not overgrown, that cuttings from the trees are not lying in either the front or the rear garden (they may have been in September 2014 when the landlord's agents noted "*the trees in the back garden are overgrown*"). Committee members inspected the furniture, the floor coverings and the walls, and found that the furniture is not marked, the walls are not marked, none of the furnishings and fittings are stained, there are no defect betraying anything other than ordinary wear and tear; the furniture, furnishings, fixtures and fittings are all in proper working order and are all capable of safe use.

(e) Committee members inspected the bathroom. Committee members turned the taps to the wash hand basin on and off. The tenant complains that the hot water

tap has a defect in it. At the date of inspection, there was no such defect and the taps worked properly.

(f) There is a seal around the bath. At inspection on 17 September 2014, the landlord's agent noted "*sealant around the bath is discoloured and starting to come away from the bath*". The landlord's agent also made notes concerning a hole in the wall of the bathroom and damage to the skirting board. None of those defects were evident at the date of inspection. Although the tenant complains that the seal around the bath is defective, close inspection by committee members revealed that at the date of inspection, there was no defect in the seal around the bath.

(g). The tenant complains that "*the door entrance needs replacing...*". Despite inspection, committee members cannot find any defect with the door or the vestibule area or with any of the internal doors of the property.

(h) The tenant complains that there is a defect with the central heating system. It is a non-specific complaint. The tenant says in his letter of 14 July 2014 "*central heating doesn't seem to be working properly*". Committee members inspected the radiators and the central heating boiler. Committee members could not see any defect in any part of the central heating system.

(i) The tenant complains that the blind in the kitchen is worn and past its useful life. The tenant's complaint is not supported by the record of inspection by the landlord's agent dated 17 September 2014. Committee members inspected the blind and could see no defect with the blind. It is neither frayed, nor worn, nor past its useful life.

(j) The remainder of the tenant's complaints relate to the standard of decoration and the standard of cleanliness in the property. They do not engage the repairing standard set out in Section 13 of the 2006 Act.

(k) A hearing took place at 11.30am in the Fisherrow Centre, South Street, Musselburgh, on 6 May 2015. Neither the landlord nor the tenant came to the hearing, nor were they represented. Committee members attended the hearing and were ready to listen to evidence and submissions, none of which was presented.

(l) The committee members considered the documentary evidence produced in this case. Committee members rely on their own observations at inspection of the property and come to the unanimous conclusion that the property meets the repairing standard set out in Section 13 of the 2006 Act. The landlord has therefore fulfilled his duty to repair and maintain the property set out in Section 14 of the 2006 Act.

Decision

13 The committee accordingly determined that the landlord has not failed to comply 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..... **P Doyle** Date..... 22/5/2015
Chairperson