



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

prhp Ref: PRHP/RP/15/0043

Re : Property at 68 High Street, Stonehaven AB39 2JQ ("the Property")

**The Parties:-**

**Derek John Warnock, residing sometime at 68 High Street, Stonehaven AB39 2JQ ("the Tenant")**

**Dr Christopher Butler and Dr Nicola Tessen, c/o Kinnear and Falconer, 20 Ann Street, Stonehaven AB39 2EN ("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, and taking account of the evidence led by the Landlord's representative at the hearing, determined that the Landlord had not failed to comply with the duty imposed by Section 14 (1)(b) of the Act.**

### **Background**

1. By application dated 30 January 2015, received on 4 February 2015, 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 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 that the house is wind and water tight and otherwise fit for human habitation.
3. By letter dated 26 March 2015, 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.
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 the Tenant made no further written representation to the Committee other than the original application dated 30 January 2015. The Landlord made no written representations to the Committee.
6. By e-mail dated 8 April 2015, the Tenant advised the Private Rented Housing Panel that he had vacated the Property on 31 March 2015, on the termination of his contractual tenancy. The Committee determined, however, that it would continue to consider the application as the issues raised by the Tenant in his application, could, if established, be detrimental to the health and safety of any future tenants or occupants of the Property.
7. The Private Rented Housing Committee inspected the Property on the morning of 21 May 2015. The Tenant was not present or represented at the inspection. The Landlord was

represented during the inspection by the Landlord's solicitor, Mary Birse of Kinnear and Falconer.

8. Following the inspection of the Property the Private Rented Housing Committee held a hearing at The Credo Centre, 14-20 John Street, Aberdeen and heard from the Landlord's solicitor, Mary Birse, of Kinnear and Falconer. Having vacated the Property and, therefore, being deemed to have withdrawn the application, the Tenant was neither present nor represented at the hearing. The Committee comprised George Clark (chair), David Godfrey (surveyor member) and John Wolstencroft (housing member).
9. The Tenant, in his application and supporting e-mail evidence, submitted as follows:- he had moved in to the Property when his lease commenced on 31 March 2014. On 24 April 2014, he had advised the Landlord's agents by e-mail of a number of problems relating to the Property, including a hole in the side of the roof, issues with the guttering and the beading on the patio doors. The photographs which were attached to the e-mail indicated that the seal on the outside of the kitchen window had failed and that the facings on some of the other windows were missing.
10. The Landlord's agents advised the Tenant on 14 May that the landlord had instructed them to arrange for a slater to repair the roof tiles and guttering and on 20 May, the Tenant told the landlord's agents that the roof had two holes in it, not one as he had originally stated. He said that they were situated at either side of the roof at the back. On 21 May, 2014, a roofing contractor inspected the Property and on 23 May, the Landlord's agents e-mailed the Tenant to say that the contractor would be sending estimates for works. These would have to be forwarded to the Landlord to make the decision on what work the Landlord wanted carried out and when it was to be done.
11. On 6 June, the Tenant asked the Landlord's agents if they had their client's response. They replied on the same day, to say that the Landlord was willing to go ahead with the repairs, but that he had asked for the quotation to be broken down, as the roof repair costs might end up being shared with the owners of the other flats in the building.
12. On 21 July 2014, the Tenant e-mailed the Landlord's agents on an unrelated matter, but also asked them to look at the previous e-mails regarding the roofing issue, adding "The property has not been wind and water tight since I've moved in". He also commented that it appeared that the matter seemed to have been put in the "we don't care box"
13. On 11 August, the Tenant e-mailed the Landlord's agents to report a substantial leak from the patio door frame and a leak from the window frame of one of the upstairs bedrooms, together with the sound of water running down the cavity wall in the living room, probably, he said, from the hole in the roof. The Landlord's agents replied later that day to say they had arranged for their joiner to look at the patio door frames and the upstairs bedroom window. They had e-mailed their client with regards to the issues and were waiting for his response, but told the Tenant that they had advice that it should not be possible for water to run down the cavity wall as the building was sandstone with lath and plaster.
14. On 7 November, the Tenant's partner reported leaks in the windows of three further rooms, namely the living room, one of the bedrooms and the toyroom/bedroom and the Landlord's agents responded that they had passed the Tenant's concerns to the Landlord and awaited his response. The Tenant's partner then reminded the Landlord's agents that it was 5 months since the Tenant had highlighted the issues with the roof. The agents replied that it was unfortunate that "other factors" had delayed the repair work but that "this is now in hand and will be completed as soon as possible".
15. The Landlord's agents inspected the Property on 11 November 2014 and e-mailed the Tenant later that day to say that the contractor had done an extremely good job with the patio doors and that he had taken measurements of all the windows to the front of the Property, in order to provide the Landlord with a quotation for replacing them. The agents also advised that a contractor should be confirming that week a start date for work on the flat roof. On 2 December, the Tenant asked for an update regarding the windows and the

Landlord's agents replied that they had chased the contractor at the end of the previous week, but he was still awaiting a price from his supplier. The agents also agreed to chase the roofing contractor, as the Tenant had confirmed that the contractor had telephoned at the end of the previous week to say that he was waiting for the weather to break.

16. The e-mails provided by the Tenant ended with one which he sent to the Landlord's agents on 16 January 2015, asking when the work on the windows was going to be carried out.
17. In the application, received by the Private Rented Housing Panel on 4 February 2015, the Tenant stated that the issues with the roof had been notified in May 2014, a survey had been carried out, which revealed that extensive repairs were required, that five windows were leaking and that this had been notified in August/September 2014. A survey had been carried out and had recommended that the windows be replaced. The Tenant's view was that, in order to make the Property wind and water tight, the roof would have to be fixed as recommended in the survey report. The flat roof had two holes at either end and 25 square metres of the roof required new insulation board and new roofing felt. The five front windows required to be replaced, as a result of rain water entering the house and this had been recommended and agreed when the Property had been surveyed by a windows expert.
18. The Landlord's agents, at the hearing, submitted as follows:- the roof "survey" that had been referred to in the application had been a roof report and the recommended work, insofar as it related to the parts of the roof that were the Landlord's sole responsibility had been carried out, but the agents had not been able to obtain the consents of the owners of the other flats in the building to repairs that were recommended for common parts of the roof. The patio doors had been completely replaced following the Tenant's complaint. The windows had been inspected, but no work had been done, as the contractors had not recommended any remedial work. The Landlord's agents accepted that there had been occasions when water had come in through the windows, but it had only happened when the weather conditions were exceptionally bad.

#### **Summary of the issues**

19. The issues to be determined were whether the Property met the repairing standard as laid down in Section 13 of the Act and whether the Landlord had complied with the duties imposed on landlords by Section 14(1)(b) of the Act.

#### **Findings of fact**

20. The Committee finds the following facts to be established:-
  - The tenancy is a Short Assured Tenancy, which commenced on 31 March 2014 and terminated on 31 March 2015.
  - The Tenant vacated the Property on 31 March 2015.
  - The Property comprises a double upper flat in a stone built property, built approximately 150 years ago. The accommodation comprises a sitting room, dining room, toyroom/bedroom and kitchen on the first floor level and four bedrooms, bathroom and shower room on the top floor.
  - Patio doors at the top floor level lead out to a balcony area to the rear of the Property. The patio doors appear to have been installed recently and there is no evidence of water penetration at the door frames.
  - There is a section of flat roof to the rear (north facing) elevation of the Property. The fascia boarding appears to have been recently replaced. There is a visible hole at the east end of the fascia boarding.
  - There is evidence of past water penetration in the ceiling of the upper hallway, adjacent to the patio doors, but the area was found to be dry when tested with a moisture meter at the inspection. There is no evidence of water staining on the ceilings of the top floor rooms.
  - The bathroom ceiling has recently been repainted. One of the walls in the bathroom is adjacent to the hole in the fascia boarding, but there is no evidence

of water ingress and testing with a moisture meter did not provide any indication of a problem of water penetration from outside.

- The windows to the front of the Property are all of the same tilt and turn, double glazed design. The window frames include small "weep holes", designed to allow rainwater to drain away and these are choked in places. To the rear, the seal at the base of the dining room window has become partially detached and decorative external glazing bars have also become detached from a number of the windows. Some of the window catches are defective.

### **Reasons for the decision**

21. The Committee could not find any evidence of water penetration through the roof of the Property and, whilst there was a hole in the end of the fascia board, there was no evidence that it had caused any ingress of water to the adjacent bathroom. The windows to the front are showing signs of wear and tear. They are not an appropriate design for the location, but that does not mean that they fail to meet the repairing standard. It is likely that in exceptionally bad weather conditions the windows will admit rainwater, but, having regard to the age and character of the Property and its exposed harbour location, that is unsurprising and the Committee found no evidence of the dampness that would be expected if rainwater ingress was a persistent problem. The Committee would recommend that the Landlord carry out some routine maintenance to the windows, but did not consider that the Property failed to meet the repairing standard.

### **Decision**

22. The Committee accordingly determined that the Landlord had not failed to comply with the duty imposed by Section 14 (1)(b) of the Act.
23. The decision of the Committee was unanimous.

### **Right of Appeal**

24. 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**

25. 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 ..... **G. Clark** ..... Date... 21 May 2015 .....

Chairperso