



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

Reference Number: PRHP/RP/15/0080

Re: Property known as ALL and WHOLE of the flatted dwelling house situated on the Ground Floor on the east side of the common entrance and Close of and forming part of the Tenement block of six dwelling houses known as Block 4 Meldrum Gardens, Maxwellpark, Glasgow otherwise known as 28 Meldrum Gardens, Maxwellpark, Glasgow G41 4EA together with all rights Common, mutual and exclusive effering thereto (hereinafter referred to as "the property").

The Parties:-

Ms Janet Durand Calderon ("the Tenant")

Ms Katy Sarah Watson, residing at 1 Herries Road, Pollokshields, Glasgow G41 4DE ("the Landlord")

Decision

The Committee, having made such enquiries as it saw fit for the purpose of determining whether the Landlord has complied with the duty imposed by Section 14 (1) (b) of the Housing (Scotland) Act 2006 ("the Act") in relation to the property concerned and, taking account of the evidence submitted both on behalf of the Landlord and by the Tenant, determined that the Landlord has complied with the duty imposed Section 14 (1) (b) of the Act.

The Committee consisted of:-

| | | |
|----------------------------|----------|------------------------|
| Patricia Anne Pryce | - | Chairperson |
| Carol Jones | - | Surveyor Member |
| Christopher Harvey | - | Housing Member |

Background

- 1. By application dated 4 March 2015, the Tenant applied to the Private Rented Housing Panel for a determination as to whether the Landlord had failed to comply with the duties imposed by Section 14 (1) (b) of the Act.**
- 2. The application by the Tenant stated that the Tenant considered that the Landlord had failed to comply with her duty to ensure that the property meets**

the repairing standard and the Tenant brought forward the following breaches:-

That there was a problem with condensation and dampness in the property which had existed since the commencement of the Tenant's tenancy.

That there was no ventilation above the electric cooker nor in the bathroom.

That the radiators were in the wrong position.

The Tenant considers that the Landlord is in breach of her duties under the Housing (Scotland) Act 2006 in relation to the repairing standard and in particular the Landlord has failed to ensure:-

(iii) 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.

3. By letter dated 19 March 2015 the President of the Private Rented Housing Panel (PRHP) intimated a decision to refer the application under Section 22(1) of the Act to a Private Rented Housing Committee (PRHC). This letter was sent to the Tenant, the Tenant's representative, Mr Michael Freeman, the apparent Landlords in terms of the Land Certificate obtained by the PRHP, namely, a Mr and Mrs McTear and the Landlord's Agents, Ross and Liddell Lettings.

It was subsequently discovered that the title to the property did not appear in the Land Register but had been inherited by the Landlord, Ms Katy Sarah Watson whose solicitor produced to the PRHP an Extract from the Books of Council and Session dated 21 June 2010 of a Certificate of Confirmation together with docket transfer endorsed thereon. For the avoidance of doubt, the Landlord was aware of the present application to the Committee and was represented at the hearing before the Committee by her agents, Ross and Liddell Lettings.

4. By the letter dated 19 March 2015, the Private Rented Housing Committee (PRHC) wrote to the Landlord and to the Landlord's Agent, Ross and Liddell Lettings and to the Tenant and to the Tenant's representative, Mr Michael Freeman, to advise that the Private Rented Housing Committee intended to inspect the property on 14 May 2015 at 10 am. The letter further confirmed that a Hearing had been arranged in relation to the application, which Hearing would be held in the Office of the PRHP, Europa Building, 450 Argyle Street, Glasgow, G2 8LH commencing at 13:00.
5. The Tenant, who is a Peruvian national, requested the use of an interpreter which was provided by the Administration of the PRHP in the form of Miss Esther Dutor who attended both the inspection and the hearing.

The Inspection

6. On 14 May 2015, the Committee attended at the property for the purposes of inspection of the property. The Tenant was present at the inspection along with Miss Dutor, the interpreter, Mr Michael Freeman, Mrs Claire Monaghan and Mrs Anne McMaster both of Ross and Liddell Lettings.

At the inspection on 14 May 2015, the Committee noted the following points:-

- (a) The subjects comprise a three apartment flat situated on the ground floor of a tenement flatted property.
- (b) The subjects comprise all on one level: Entrance Hallway, Lounge, Bedroom 1, Bedroom 2, Kitchen and Bathroom and internal hallway.
- (c) There was no apparent extractor fan in the kitchen but the windows in the kitchen were in proper working order and could be opened and closed.
- (d) There was no extractor fan in the bathroom but the window was in proper working order and could be opened and closed. There was some black spot mould growth on the ceiling above the shower.
- (e) In bedroom one which is occupied by the tenant's daughter, there was condensation on the window. The radiator was located against an internal wall.
- (f) In bedroom two which is occupied by the tenant, there was some black spot mould growth on the external wall of the room and on the back of the curtains at the window. The radiator was located against an internal wall.
- (g) In the living room, there was black spot mould growth located on and above the skirting board of the external wall behind a sofa which was located there.

The Hearing

7. The Tenant attended the hearing along with her representative, Mr Michael Freeman, the interpreter, Miss Dutor, and Mrs Claire Monaghan and Mrs Anne McMaster, both of Ross and Liddell Lettings, who confirmed that they were in attendance at the hearing to represent the interests of the Landlord. The Landlord was not personally present at the hearing.

The Tenant confirmed that she was from Peru and that she had been in Scotland for about six years. The Tenant advised that she had occupied the property for almost three years. The Tenant advised that she works about three to three and a half days per week doing a mixture of housekeeping and babysitting. She confirmed that her twelve year old daughter resides in the property with her.

The Tenant advised that she believed that her daughter's health has suffered due to the condensation and dampness in the property. The Tenant advised that her daughter had suffered three or four chest infections in the last year.

The Tenant advised that her ex-partner, who had also previously lived in the property, suffers from asthma and he had reported to the Tenant that his asthma had improved since he left the property.

The Tenant complained that there was no fan in the kitchen and that she had to open the windows in the kitchen when she was cooking. The Tenant stated that when she raised this with Ross and Liddell Lettings, they had advised the Tenant that the Landlord would not be installing an extractor fan.

The Tenant referred to the report by Bromac Limited dated 15 January 2015 which she had produced as part of her application to the PRHP. The Tenant advised that when Bromac Limited inspected the property for the purposes of preparing their report, she was not present in the property but Mr Michael Freeman was there in her place. As a result of her inability to attend this inspection herself, she left the heating on a timer but the Tenant explained that normally she does not do this. Instead, the Tenant advised that she normally puts the heating on when she comes home from work and she turns it on and off as and when she requires it.

The Tenant advised that she had tried to implement the recommendations contained within the report by Bromac Limited. She advised that she kept the trickle vents open in the windows at all times, although she did accept that at the time of Bromac's inspection, the vent in the bathroom was closed which she thinks must have happened when she was cleaning the window. The Tenant confirmed that she bought a dehumidifier and that she uses this every day. The Tenant confirmed that she has to empty the water ingathered by the dehumidifier every day as it reaches its 1.5 litre capacity every day. The Tenant complained that the use of this machine was causing an increase in her electricity bills. The Tenant advised that she tries to open the windows every morning before she goes out but she admitted that she did not like opening the windows too much as there had been a break in at a neighbouring property and the Tenant was fearful as she was a single woman who lived in a ground floor flat with only her twelve year old daughter. The Tenant confirmed that she was security aware and would not go out and leave windows open or have them open later in the evening. The Tenant also said that if she had the windows open then the property would simply become even colder. The Tenant advised that she dried clothes inside in winter and tried to dry clothes outside in the summer. The Tenant advised that she had moved furniture away from the external walls and that the sofa in the living room which was against the external wall had only been moved back there from the centre of the room within the last month.

However, the Tenant confirmed that she did not follow the recommendation that the heating should be on a low constant level throughout the property. The Tenant advised that she simply could not afford to heat the property, even at a low temperature, on a constant basis.

The Tenant complained that she had no trust in the Landlord's agents, Ross and Liddell Lettings, as she advised that they never responded to her complaints unless she put them in writing and even then she never received a written response from them.

Mrs Claire Monaghan of Ross and Liddell Lettings then gave evidence. She confirmed that she was employed by Ross and Liddell Lettings as a Lettings Inspector and had been employed by them in that capacity for three or four years. Mrs Monaghan stated that she inspected all the properties she looked after about every four months or so. She confirmed that the Tenant does not receive a copy of an inspection report but this report goes onto Ross and Liddell's system and a copy of it is provided to the Landlord. Mrs Monaghan disagreed with the Tenant's view that condensation had existed in the property since the start of the Tenant's tenancy around three years ago. Mrs Monaghan advised that she did not have the exact dates to hand but she was of the opinion that condensation had only existed in the property as a problem for the last nine to twelve months. Mrs Monaghan believed that the Tenant had gone back to Peru last year for two months during June and July 2014, returning in August 2014, and that extended period of the property lying empty without heating had contributed to the condensation. Mrs Monaghan was also of the opinion that the condensation had only become a problem after the Tenant's ex-partner had left the property.

Mrs Monaghan explained that she inspected the property by way of a simple walk through and that it was an opportunity for the Tenant to advise her of any repairs issues.

Mrs Monaghan advised that the Tenant had signed an inventory which contained no mention of black spot mould growth and therefore this was at odds with the Tenant's contention that the condensation and black spot mould growth had existed since the start of her tenancy.

Mrs Monaghan advised that she and the Landlord had attended the property in November or December 2014 in relation to the Tenant's complaints about condensation. Mrs Monaghan advised that the Tenant stated at that time that she was opening the windows to ventilate the property and that she had the dehumidifier. Mrs Monaghan stated that she felt that any potential dampness issue should be investigated and she suggested that a report be obtained from an appropriate contractor. The Landlord instructed the agents to obtain a report which was produced by Bromac Limited on 15 January 2015.

Mrs Monaghan confirmed that she was of the opinion that the report by Bromac confirmed that there was no problem with dampness in the property and that the problem was with condensation alone which was caused by the Tenant's use of the property. Although there are suggestions contained in the report in relation to extractor fans and the position of the radiators, the recommendations of the report all related to the Tenant's use of the property.

Mrs Monaghan confirmed that the Landlord was not prepared to install extractor fans in the kitchen or bathroom as both had adequate ventilation by way of the windows.

Mrs Monaghan also confirmed that the Landlord was not prepared to pay for the radiators to be moved to external walls in all of the circumstances of the case.

Mrs Monaghan advised that the Landlord and her elderly mother were very distressed by the present proceedings hence the Landlord's decision not to attend the hearing and that the Landlord and her mother had stated that the property had

been in their family for over sixty years and there had never been an issue with black spot mould growth.

Mrs Monaghan advised that she had checked with the Landlord after the inspection and before the hearing and that the Landlord had confirmed that there was an extractor fan in one of the cupboards in the kitchen.

Mrs Monaghan advised that she had spoken to the person from Bromac Limited who had produced the report and he was firmly of the view that the condensation and black spot mould growth was due to the Tenant's use of the property. Mrs Monaghan accepted that the written report which had been produced to the Committee did not go as far as to clearly state that.

Mrs Anne McMaster advised that she was employed as the Lettings Manager by Ross and Liddell Lettings and had been so employed in that capacity for four years. She advised that she had been managing lettings for the last fifteen years.

Mrs McMaster confirmed that any issues raised by the Tenant are always reported back to the Landlord. She advised that the Landlord wanted to act in her best interests to look after her property but that the Landlord did not want to start moving radiators unnecessarily if a problem can be resolved by simply opening windows.

Mr Michael Freeman confirmed that he has been a self-employed Business Consultant for twenty years. He is a friend of the Tenant and has assisted the Tenant with her present application due to her language difficulties. He confirmed that he was at a party at the Tenant's house in November 2013 and at that time there was black spot mould growth on the ceiling in the bathroom.

Mr Freeman confirmed that he was in attendance at the inspection by Bromac Limited and that the only window vent which was closed was the one in the bathroom. He also advised that any time he has been in the property the windows have been frequently open.

Mr Freeman advised that he spoke to Mrs Monaghan about the Bromac report and she confirmed to him that the Landlord was not going to carry out any of the work suggested within the report. Mr Freeman did complain that Ross and Liddell had failed to reply to the Tenant's emails about the works suggested within the Bromac report.

Mrs Monaghan confirmed that she had spoken to Mr Freeman and explained to him why the Landlord would not be carrying out any works to the property in light of the Bromac report. She stated that she advised Mr Freeman that she had spoken to the person who had compiled the report at Bromac and Bromac was of the opinion that the Tenant did not open the windows and that the property lying empty for two months when the Tenant was in Peru would not have helped the situation.

Mrs Monaghan did accept that she did not respond in writing to the emails from the Tenant but this was because she felt it was often more useful for matters to be sorted out by way of a phone call and that emails can lead to misunderstandings.

The Tenant confirmed that she had only extended her lease to the property as she did not have enough money for a deposit for another property and that she needed to be near her daughter's school.

Discussion on Evidence

8. The Committee is satisfied on the evidence that the Landlord has met the repairing standard in respect of the property. At the time of inspection, there was some black spot mould growth in the property. However, the property felt cold and the Tenant admitted that she did not heat the property on a constant basis nor did she open the windows as often as she could as she felt unsafe. The Tenant accepted in her evidence that her two month absence from the property had not assisted the situation. There was disagreement between the parties regarding the length of time that condensation had existed as a problem within the property. There was also disagreement between the parties as to the interpretation of the report by Bromac Limited. In the Committee's opinion, the report by Bromac Limited was clear in its terms. The recommendations within the report related to the use of the property by the Tenant. The report also contained suggestions for the Landlord but these were not recommendations, simply suggestions. The Tenant accepted that she did not follow all of the recommendations within the report.

Given all of the circumstance, the Committee is satisfied that 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. Although the Tenant did not include within her application that she wished the Committee to consider whether or not the property was wind and watertight and fit for human habitation, given the nature of the Tenant's complaints regarding the property, the Committee considered that it was also appropriate to consider the Tenant's complaints under this paragraph of the repairing standard. Having considered this, the Committee is satisfied that the property is wind and watertight and fit for human habitation.

Decision

9. The Committee accordingly determines that the Landlord has complied with the duty imposed by Section 14 (1) (b) of the Act.
10. The decision of the Committee was unanimous.

Reasons for Decision

11. The Committee heard from all the parties whose views differed greatly as regards the Tenant's use of the property and the cause of the condensation and subsequent black spot mould growth. It was clear to the Committee that the Tenant kept the property clean to a high standard but at inspection the property felt cold. It was clear to the Committee that the property was not being adequately heated by the Tenant. The Tenant admitted in evidence that the heating was not kept on throughout the day but only switched on when the Tenant was in the property, as and when she felt she needed to switch it on. The Committee was of the view that the Tenant's use of the windows in the property also exacerbated the condensation problem. The Tenant was open and clear in her evidence advising that she did not like to open the windows too often or leave them open for security reasons. While the Committee sympathised with the Tenant's situation, the Committee felt that it was the Tenant's use of the property which led to the problem of condensation and subsequent black spot mould growth.

Right of Appeal

1. 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

2. Where such an appeal is made, the effect of the decision 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 will be treated as having effect from the day on which the appeal is abandoned or so determined.

Signed

Patricia Ann

P. Pryce

Date

31 May 2015