



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

Re : 28 Dumbain Crescent, Balloch ('the Property')

The Parties:-

Janice Gower residing at 28, Dumbain Crescent, Balloch, G83 8DW ('The Tenant')

Laura Grey residing at Flat 1/2, 66 Howard Street, Glasgow, G1 4EE ('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, determined that the Landlord had failed to comply with the duty imposed by Section 14 (1)(b) of the Act.

Background

1. By application dated 6th September 2010 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 she considered that the Landlord had failed to comply with her duty to ensure that the house meets the repairing standard. She advised that the property was not wind and watertight and in all other respects reasonably fit for human habitation; that the installations in the property for the supply of water, gas and electricity and for sanitation, space heating and heating water are not in a reasonable state of repair and proper working order and the house does not have satisfactory provision for detecting fires and for giving warning in the event of fire or suspected fire.

In particular the application stated that there was no hot water or heating at the property; the lock to the back door was not working; the smoke alarm was faulty; the window frame in the back bedroom needed to be made secure; the fire place needed to be sealed to prevent woodlice getting into the property; the leak to the shower was in need of repair; the grout around the tiles in the bathroom needed to be repaired as it was stained and breaking off; the washing machine was in need of repair as it only operates on one programme and takes over two hours to complete a cycle; there is a stair banister missing that needs to be replaced to comply with current building regulations; there is a partly infilled inspection pit in the garden that needs to be made safe and secure; some of the electric sockets in the property do not work properly; a current gas safety certificate for the property is required; the pipes underneath the sink in the kitchen have been incorrectly plumbed and require repair to ensure the smell from the pipes is removed; the patio doors need to be repaired.

3. The President of the Private Rented Housing Panel, having considered the application, referred 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, dated 20th September 2010.
5. Following service of the Notice of referral the Landlord made written representations to the Committee by forwarding:-
 - (a) Letter dated 21st September 2010 stating *inter alia* that the property was in suitable condition on the date of entry.
 - (b) Undated letter from the Landlord stating that she disagrees with the Tenant's assertions.
 - (c) Copy letter from the Landlord's agents to the Tenant regarding changes to the rent payment dates.
 - (d) Gas Safety Record dated 13th September 2009, confirming that the boiler was safe.
 - (e) Letter dated 30th September 2010 advising *inter alia* :-
 - Notice to Quit has been served on the Tenant.
 - There are arrears of rent that have arisen due to the change in the rent payment date.
 - They had received a letter from Gary Stewart stating that at no point had he stated that the property was unfit for habitation.
 - There had been no prior notification of bugs falling onto the cooker from gaps in the ceiling.
 - Also there had been no prior notification of the matter of burnout of the cooker plug.
 - The smoke detector was in full working order at the commencement of the tenancy. On 20th August 2010 East Dumbartonshire Council intimated to them that it wasn't working. They had arranged for tradesmen to repair the alarm but due to access difficulties this did not happen.
 - The gas safety certificate was left in the property when the engineer inspected the property, which appears to have been mislaid. A further copy was provided. The boiler was repaired and is now in full working order.
 - Water purification and the matter of the garage pit were only raised after the Notice to Quit was served.
 - NAR plumbing inspected the shower and reported that there was a loose valve causing a minor drip. They had advised that as the valve was no longer available a new shower would cost the landlord approximately £200. However, as far as they are concerned the shower is safe and still in good working order.
 - Their tradesman had sealed the fireplace to prevent small bugs entering the property. The Tenant bought insect plug-in repellents and she was refunded the cost.
 - The defective lock of the patio doors was repaired by the Landlord but the Tenant reported that the doors had dropped by 2mm again.
6. The Tenant made no written representations to the Committee after 20th September 2010, being the date of service of the Notice of referral.
7. The Committee attended at the Property on 24th November 2010. The Tenant and the Landlord's representatives from Lomond Letting were present. The Committee inspected the alleged defects and found as follows:-
 - (a) The hot water, heating and rear door lock had been repaired. The Tenant confirmed to the Committee that they were working properly.
 - (b) The down stairs smoke alarm was not working.
 - (c) The window frame in the upper bedroom had not been properly secured and sealed.

- (d) The fireplace had been partly sealed with sealant and the Tenant had placed masking tape over some of the unsealed bricks. The tape seemed to catch any insects the entered the property through the remaining gaps in the fireplace.
- (e) There was a minor drip leak at the shower control valve.
- (f) There was evidence of a small amount of mould to the grout around the bathroom tiles.
- (g) The Tenant advised that the washing machine only worked on the 30 degree cycle, which takes over two hours to complete. The appliance was not tested at inspection.
- (h) There was a stair handrail attached to the wall. However on the opposite side of the stair case the banister had been removed and decorative lights had been installed.
- (i) The foundations of a garage were in the garden of the property and an old inspection pit was still there, it had been partially in filled and covered with fibre board. The fibre board was sodden, very slippery and sagged over the pit, offering minimal support.
- (j) The electrical socket in the rear bedroom was not working. The socket in the kitchen had been repaired and the Tenant reported that she heard 'crackling' sounds when the lounge sockets were used.
- (k) The gas safety certificate was in date at the date of the application but had since lapsed.
- (l) The Committee filled the kitchen sink with water and saw that the sink drained away properly. However, they observed that the waste pipes under the sink were temporarily supported by a plastic box. They did not detect a stench from the sink.
- (m) The Tenant advised that the gap in the patio doors had been repaired on 28th August 2010. The Committee confirmed that they were in proper working order.

8. Following the inspection of the Property the Private Rented Housing Committee held a hearing at Balloch Castle, Balloch Country Park. The Tenant did not attend the hearing. The Landlord did not attend but was represented at the hearing by Renee Anderson and Craig Johnston of Lomond Letting Limited.

The landlord's agents submitted as follows:-

Smoke Alarm

The smoke alarm in the property was a hardwired smoke alarm that was in proper working order at the commencement of the tenancy. They had arranged for tradesmen to carry out the repair. However due to access difficulties the repair had not yet been carried out.

Window Frame

The window frame had not been repaired due to access difficulties. They would arrange for the repair to be carried out as soon as access was made available.

Fireplace

The Landlord's tradesman had already sealed the fireplace. The Tenant had been advised to contact the Landlord's agents if there was any further intrusion of insects. They explained that at the beginning of the tenancy the Landlord had provided electrical pest repellents, which the Tenant was not using. As far as they were concerned the fire place was in a reasonable state of repair and proper working order.

Leak to the Shower

The shower fitting was obsolete. They explained that the shower is in working order and the leak is only a small leak.

Grouting at the Shower

They explained that there was only a small area of mould, which did not warrant a repair by the Landlord's handyman.

Washing Machine

They explained that the washing machine was in proper working order at the commencement of the tenancy. They accepted that it may only work on one setting and would be happy to arrange for their contractor to inspect it.

Banister

There is a handrail on the right-hand side of the stairs. The left-hand banister had been removed before the commencement of the tenancy.

Inspection Pit

The inspection pit was present in the garden at the commencement of the tenancy.

Electrical sockets

Their electrical contractor had been asked to inspect the sockets. However due to access difficulties the inspection had not been carried out.

Gas Safety Certificate

The landlord had instructed NAR plumbing to inspect but access had not been made available.

Sink Pipes

The Landlord's handyman had been scheduled to inspect but access had been denied.

Summary of the issues

9. The Tenant confirmed at the inspection that the hot water, heating, backdoor lock and gap at the patio doors had been satisfactorily repaired.

The issues to be determined are:-

- Whether the window frame in the back bedroom, the pipes at the kitchen sink and the inspection pit are in an unreasonable state of repair and not in proper working order (Section 13(1)(b) of The Housing (Scotland) Act 2006).
- Whether the condition of the fire place, the shower, the grout around the bathroom tiles, the washing machine were in a reasonable state of repair and in proper working order (Section 13(1)(d) of The Housing (Scotland) Act 2006).
- Whether the condition of the electrical sockets were in a reasonable state of repair and proper working order (Section 13(1)(c) of The Housing (Scotland) Act 2006).
- Whether the absence of a stair banister on one side of the staircase renders the property not in a reasonable state of repair and proper working order.
- Whether the smoke alarm was a satisfactory provision for detecting fires and for giving warning in the event of fire or suspected fire (section 13(1)(f) of The Housing (Scotland) Act 2006).
- Whether an updated gas safety certificate was required.
- Whether the access difficulties, advised by the Landlord's representatives, was sufficient good cause to excuse the Landlord from not complying with the requirement to ensure that the property meets the repairing standard.

Findings of fact

10. The Committee finds the following facts to be established:-

- The lack of hot water, lack of heating, defective lock at the backdoor and the patio doors had been satisfactorily repaired, as confirmed by the Tenant.
- The window frame in the back bedroom, the pipes at the kitchen sink and the inspection pit are not in an unreasonable state of repair and not in proper working order (Section 13(1)(b) of The Housing (Scotland) Act 2006).
- The fire place and the grout around the bathroom tiles were in a reasonable state of repair and in proper working order (Section 13(1)(d) of The Housing (Scotland) Act 2006).
- Due to the leak at the shower valve the shower was not in a reasonable state of repair and in proper working order (Section 13(1)(d) of The Housing (Scotland) Act 2006).

- In the event that the washing machine only worked on one cycle it would not be a reasonable state of repair and in proper working order (Section 13(1)(d) of The Housing (Scotland) Act 2006).
- The condition of the electrical sockets were not in a reasonable state of repair and proper working order (Section 13(1)(c) of The Housing (Scotland) Act 2006).
- The absence of a stair banister on one side of the staircase is a matter out with the jurisdiction of the PRHP and a matter for the Building Standards department.
- The smoke alarm in the downstairs hall of the Property was not working and therefore it was not a satisfactory provision for detecting fires and for giving warning in the event of fire or suspected fire (section 13(1)(f) of The Housing (Scotland) Act 2006).
- The gas safety certificate was valid at the commencement of the tenancy but was out of date at the date of the inspection and therefore the committee could not determine if the gas appliances were in a reasonable state of repair and proper working order (Section 13(1)(c) of The Housing (Scotland) Act 2006).

Decision

11. The access difficulties advised by the Landlord's representatives do not relieve the Landlord of the duty to ensure that the property meets the Repairing Standard. The Landlord has the contractual right to gain access to the Property to carry out repairs to the Property (in terms of clause 14th of the lease) This right could be enforced through the courts, if necessary.
12. The Committee accordingly determined that the Landlord had failed to comply with the duties imposed by Sections 14 (1)(a) and 14(1)(b) of the Act due to the, as stated.
13. The Committee proceeded to make a Repairing Standard Enforcement Order as required by section 24(1).
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 **J Taylor** Date 7th December 2010
 Chairperson



Repairing Standard Enforcement Order

Ordered by the Private Rented Housing Committee

Re : 28 Dumbain Crescent, Balloch, being the subjects registered in the Land Register of Scotland under Title Number DMB 79025('the Property')

The Parties:-

Janice Gower residing at 28, Dumbain Crescent, Balloch, G83 8DW ('The Tenant')

Laura Grey residing at Flat 1/2, 66 Howard Street, Glasgow, G1 4EE ('The Landlord')

NOTICE TO The Landlord, the said Laura Grey

Whereas in terms of their decision dated 7th December 2010, the Private Rented Housing Committee determined that the Landlord has failed to comply with the duty imposed by Section 14 (1)(b) of the Housing (Scotland) Act 2006 and in particular the Landlord has failed to ensure that the property was wind and watertight and in all other respects reasonably fit for human habitation; that the structure and exterior of the property are in a reasonable state of repair and proper working order; that the installations in the property for the supply of water, gas and electricity and for sanitation, space heating and heating water are in a reasonable state of repair and proper working order; that the fixtures and fittings and appliances provided by the Landlord under the Tenancy are in a reasonable state of repair and proper working order and the house has a satisfactory provision for detecting fires and for giving warning in the event of fire or suspected fire.

The Private Rented Housing Committee now requires the Landlord to carry out such work as is necessary for the purposes of ensuring that the Property concerned meets the repairing standard and that any damage caused by the carrying out of any work in terms of this Order is made good.

In particular the Private Rented Housing Committee requires the Landlord to:-

- (1) Seal the window frame in the back bedroom to render it wind and water tight.
- (2) Repair the plumbing at the kitchen sink to render it in a reasonable state of repair and proper working order.
- (3) Repair the disused inspection pit to make it safe and in a reasonable state of repair.
- (4) Repair the shower to render it in proper working order.
- (5) Considering that the Tenant advised that the washing machine only worked on one cycle, and it was not practical for the Committee to test the appliance at the inspection, the Landlord is required either (1) to deliver evidence that the washing machine is in proper working order or (2) to repair the washing machine to render it in proper working order.
- (6) Repair the double electrical socket in the rear bedroom to render it in proper working order and inspect the sockets in the lounge to ensure that they are in proper working order and exhibit an Electrical PIR certificate.
- (7) Exhibit a valid gas safety certificate.
- (8) Repair the smoke alarm to ensure that it fully complies with current requirements. The Private Rented Housing Committee order that the works specified in this Order must be carried out and completed within the period of FOUR WEEKS from the date of service of this Notice.

A landlord or a 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.

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.... **J Taylor** Date 7th December 2010

Chairperson

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witness: ELIZABETH GIFFEN SHEDDEN, 65, High Street, Irvine