



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

PRHP Ref: PRHP/RP/14/0140

Property at: 27 Barntongate Terrace, Edinburgh, EH4 8BT ("the property")

The Parties

Jonathan Downey and Mrs Helen Downey, spouses residing together at 27 Barntongate Terrace, Edinburgh, EH4 8BT ("the tenants")

And

Andreas Peat and Joy Claireaux, 49 Hoseasons Gardens, Edinburgh, EH4 7HA ("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) of the Housing (Scotland) Act 2006 ("the 2006 Act") in relation to the property, and taking account of the evidence led at the hearing, determined that the landlord has failed to comply with the duty imposed by Section 14(1)(b) of the 2006 Act.

Background

- 1 By application dated 5 June 2014, the tenants applied to the Private Rented Housing Panel for a determination on whether the landlord has failed to comply with the duties imposed by Section 14(1)(b) of the Housing (Scotland) Act 2006.
- 2 The application by the tenants stated that the tenants considered that the landlord 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 that the installations in the house for space heating and for heating water are in a reasonable state of repair and proper working order.
- 3 By letter dated 20 June 2014, 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. The committee members were:

Paul Doyle	Chairperson
Donald Marshall	Surveyor Member
Elizabeth Dickson	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 on both the landlord and the tenants.
- 5 Following service of the notice of referral, the tenants made further written representations dated 8 July 2014. The landlord made further written representations dated 10 July 2014.
- 6 The Private Rented Housing Committee inspected the property during the morning of 29 August 2014. The tenant was present; the landlord was neither present nor represented.
- 7 Following the inspection of the property, the Private Rented Housing Committee held a hearing at South Queensferry and Rosebery Hall, South Queensferry, shortly after 11am on 29 August 2014. The landlord was neither present nor represented. Jonathan Downie (one of the tenants) was present.
- 8 The tenants submitted that the boiler in the property broke down on 24 December 2013 and has not worked since then. It is the tenants' position that the boiler is beyond repair and the landlord has either refused or delayed to replace the boiler.
- 9 The landlord's position is that the boiler is beyond repair, but that the lease is at an end; the landlord has offered to reimburse the tenants for rental payments since the boiler broke down. It is the landlord's position that the landlord is in the Armed Forces and serving out of the country, and so cannot attend to repairs. The landlord states that he cannot afford the cost of repairs.
10. The landlord challenges the jurisdiction of the Private Rented Housing Panel, arguing "*This is a Scottish short assured tenancy that does not fall within the remit of this organisation*". To determine whether section 14(1)(b) of the 2006 Act applies to the tenancy, the committee had regard to section 12 (1) of the 2006 Act. Section 12(1) states that the chapter applies to any tenancy let for human habitation unless it is one of the tenancies listed in section 12(1) (a) through to (e). As a Scottish short assured tenancy is not listed there, then section 14(1) applies and the Private Rented Housing Panel (and the committee) have jurisdiction.

Summary of Issues

- 11 The issues to be determined are whether the installations in the house for space heating and heating water are in a reasonable state of repair and in proper working order in terms of Section 13(1)(c) of the 2006 Act.

Findings in Fact

- 12 The committee finds the following facts to be established:
 - (a) On 23 February 2013, the landlord agreed to lease to the tenants, the property at 27 Barntongate Terrace, Edinburgh,

EH4 8BT. A lease was entered into between the parties and a short assured tenancy (in terms of Section 32 of the Housing (Scotland) Act 1988) was created. The landlord's obligations contained in that lease are consistent with the landlord's duty to repair and maintain the property in terms of Sections 13 and 14 of the 2006 Act.

- (b) The property forms a main door, flatted dwelling-house, forming part of a development erected in the early 1980s. The front door opens into a central hallway which provides access to each of the rooms in the property. The property has two bedrooms, bathroom, WC, living room and kitchen. A rear door provides access to a garden area.
- (c) Mounted on the wall in the kitchen, there is a Worcester 28 SI (II) boiler. The boiler does not work. The boiler broke down on 24 December 2013 and has not worked since then. The boiler in the kitchen is the sole apparatus for providing water to the central heating system that serves the property. The boiler is intended to provide the tenants with hot water.
- (d) The tenant immediately contacted the landlord to explain that the boiler had broken down. The landlord sent a plumber who told the tenant that the boiler is beyond repair. For a short period, the tenant used a set of pliers to manipulate the controls of the boiler and provide hot water. To do so, the tenant had to stand next to the boiler and holding the pliers inside the boiler whilst monitoring the water pressure.
- (e) The landlord provided additional electric heaters to provide heat for the tenants. The tenants have to boil kettles to provide hot water for bathing.
- (f) The landlord has made enquiries about a replacement boiler and wants to take advantage of a government grant which is not presently available.
- (g) The landlord has offered a £200 reduction in rent to the tenant as an acknowledgement that there is no working installation for the provision of space heating or water heating.
- (h) The landlord sent a letter to the appellant purporting to be a notice to quit ending the tenancy within one month of 1 June 2014. That notice is defective in its terms. The landlord has not served a Form AT6 on the tenant.

Reasons for Decision

13 (a) The inspection of this property took place at 10am on 29 August 2014. The tenants and their small children were in the property. The landlord did not appear and

was not represented. The tenants took committee members into the kitchen of the property and showed committee members the boiler attached to the outside wall of the kitchen.

(b) The surveyor member closely inspected the boiler. It was obvious that the boiler does not work and cannot be fired up. It was equally apparent to committee members that the boiler shown to committee members was the sole source of provision for space heating and heating water in the property. The landlord concedes that the boiler does not work and must be repaired in the further representations dated 10 July 2014.

(c) Committee members walked through the rear door of the property and inspected the external wall, where committee members saw the flue intended to vent the broken boiler.

(d) A hearing took place within South Queensferry and Rosebery Hall, High Street, South Queensferry just after 11am on 29 August 2014. One of the tenants, Jonathan Downie, was present. The landlord was neither present nor represented. The committee delayed starting the hearing to provide the landlord with a further opportunity to attend. In the written representations made by the landlord (dated 10 July 2014), the Private Rented Housing Panel was put on notice that that the landlord's "attorney" is "...disabled...with a wheelchair..." Committee members satisfied themselves that there was suitable access to the hearing room for wheelchair users before commencing the hearing.

(e) After committee members were introduced, Mr Downie answered questions from committee members. He confirmed that he and his family had moved into the property on 23 February 2013, that the boiler which had been shown to committee members at inspection was present and working in the property at that time and that it was the sole source of space heating and provision of hot water.

(f) Mr Downie explained that, on 24 December 2013, the boiler broke down and that it has not worked since.

(g) The committee takes account of what is said by the landlord in the documentary evidence. The landlord's position is that the landlord cannot afford to replace the boiler and has sought the assistance of government funded schemes which are not presently available. In the landlord's eyes, the tenancy is at an end so that the condition of the boiler is academic.

(h) Section 13(1)(c) of the 2006 Act requires the installations in the property for space heating and heating water to be in a reasonable state of repair and in proper working order. The committee finds that, as a matter of fact, when the tenancy started, the boiler was in working order so that the landlord has provided an installation which provided space heating and heating water. The committee finds that during the currency of the tenancy, the boiler broke down and has not since been repaired.

(i) The committee therefore reaches the conclusion that the installations in the property for space heating and heating water are not in a reasonable state of repair

and are not in proper working order. The landlord therefore fails to meet the repairing standard in terms of Section 13(1)(c) of the 2006 Act.

(j) The committee therefore makes a repairing standard enforcement order, ordaining the landlord to repair or replace the central heating boiler within this property and thereafter to obtain and deliver a gas safety certificate to the Private Rented Housing Panel, 450 Argyle St, Glasgow, G2 8LH, all to be completed within six weeks of today's date.

Decision

14 The committee accordingly determine that the landlord has failed to comply with the duty imposed by Section 14(1)(b) of the 2006 Act.

15 The committee proceeded to make a repairing standard enforcement order as required by Section 24(1) of the 2006 Act.

16 The decision of the committee was unanimous.

Right of Appeal

17. 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

18. 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.

P Doyle

Signed.....Date 25th September 2014
Chairperson



Repairing Standard Enforcement Order

Ordered by the Private Rented Housing Committee

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Property at: 27 Barntongate Terrace, Edinburgh, EH4 8BT ("the property")

The Parties

Jonathan Downey and Mrs Helen Downey, spouses residing together at 27 Barntongate Terrace, Edinburgh, EH4 8BT ("the tenants")

And

Andreas Peat and Joy Claireaux, 49 Hoseasons Gardens, Edinburgh, EH4 7HA ("the landlord")

NOTICE TO Andreas Peat and Joy Claireaux, 49 Hoseasons Gardens, Edinburgh, EH4 7HA ("**the Landlord**")

Whereas in terms of their decision dated 25th September 2014, 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 that the landlord has failed to ensure that the installations in the house for space heating and heating water are in a reasonable state of repair and in proper working order in terms of Section 13(1)(c) of the 2006 Act.

The Private Rented Housing Committee now requires the landlord to carry out such work as is necessary for the purposes of ensuring that the house 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:-

- (i) Repair or replace the central heating boiler within this property and
- (ii) Thereafter, to obtain and deliver a gas safety certificate to the Private Rented Housing Panel, 450 Argyle St, Glasgow, G2 8LH,.

The Private Rented Housing Committee order that the works specified in this Order must be carried out and completed within the period of 6 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.

In witness whereof these presents type written on this and the preceding page(s) are executed by Paul Doyle, solicitor, 24 Haddington Place, Edinburgh, chairperson of the Private Rented Housing Committee at Edinburgh on 25th September 2014 before this witness:-

...KBoettcher.....

.....Paul Doyle.....chairman

Kirsten Boettcher
Secretary
24 Haddington Place
Edinburgh
