



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**

In connection with

**Property at 62 Donbank Terrace, Aberdeen AB24 2SD
(hereinafter referred to as the "house")**

PRHP REFERENCE – PRHP/RP/13/0029

The Parties

Mr. Gary Malcolm and Ms. Hannah Merrett, residing at the house (the "Tenants")

**Ms. Uzochuko Alor, residing at 1 Craigevar Gardens, Aberdeen AB10 7GD (the
"Landlord")**

DECISION

The Committee, having made such enquiries as is 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 (hereinafter referred to as the "Act") in relation to the house concerned, and taking account of the written documentation attached to the application; the findings at an inspection of the house; and the oral representations made by the parties at a hearing determined that the Landlord had complied with the duty imposed by said Section 14(1) (b).

Background

1. By application dated 31 May 2013 and received on 4 June 2013 the Tenant applied to the Private Rented Housing Panel (hereinafter referred to as "PRHP") for a determination of whether the Landlord had failed to comply with the duties imposed by Section 14(1) (b) of the Act, which provides that the landlord in a tenancy must ensure that the house meets the repairing standard set out in the Act (a) at the start of the tenancy, and (b) at all times during the tenancy. The

repairing standard (hereinafter referred to as the "Repairing Standard") is set out in Section 13(1) of the Act. A house meets the Repairing Standard if—

- (a) the house is wind and water tight and in all other respects reasonably fit for human habitation,
- (b) 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,
- (c) 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,
- (d) any fixtures, fittings and appliances provided by the landlord under the tenancy are in a reasonable state of repair and in proper working order,
- (e) any furnishings provided by the landlord under the tenancy are capable of being used safely for the purpose for which they are designed, and
- (f) the house has satisfactory provision for detecting fires and for giving warning in the event of fire or suspected fire.

Section 13 (3) of the Act makes clear that in determining whether a house meets the Repairing Standard regard is to be had to (a) the age, character and prospective life of the house, and (b) the locality in which the house is situated.

2. The application by the Tenants stated that the Tenants considered that the Landlord had failed to comply with the duty to ensure that the house meets the Repairing Standard and the Landlord had failed to ensure compliance with Section 13(1)(c) and (d) of the Act. The Tenants' complaint of disrepair within the application related to the following aspects of the house:-
 - 2.1. The radiators in the bedrooms and the hall of the house were too small for the areas which they were intended to heat and so were not fit for purpose
 - 2.2. As a result of difficulties adequately heating the house, the house suffered from the growth of mould in the bathroom and the front bedroom.
 - 2.3. The refrigerator in the kitchen did not function properly.
3. The Tenants submitted a copy of an email to the Landlord's letting agents, James and George Collie in Aberdeen ("Collies") dated 11 April 2013 giving notification of required works. A copy of the lease agreement was submitted as a production.

4. By letter dated 24 June 2013 the President of the Private Rented Housing Panel intimated a decision to refer the application under Section 23(1) of the Act to a Private Rented Housing Committee.

The Committee comprised the following members:

Mr. Derek Hogg, Legal Member
Mr. Mark Andrew, Surveyor Member
Mrs. Linda Robertson, Housing Member

5. The Private Rented Housing Committee served Notice of Referral under and in terms of Schedule 2 Paragraph 1 of the Act upon the Landlord. No written representations were made by or on behalf of the Landlord.
6. The Private Rented Housing Committee inspected the house on the morning of 12 July 2013. Both the Tenants and the Landlord were present.
7. Following the said inspection the Private Rented Housing Committee held a hearing at the Credo Centre, 14-20 John Street, Aberdeen. Both the Landlord and the Tenants attended. Neither the Landlord nor the Tenants were represented by third parties. The Committee considered the findings from the inspection, representations and productions and made their determination of the application.

Submissions at the Hearing

8. It was pointed out by the Committee Chairperson at the start of the Hearing that the Committee was there to determine whether the house met the repairing standard in terms of the Act.
9. The Tenants emphasised the points made by them in their application that, in their view, the radiators situated in the hall and bedroom of the house, while operational, were too small to properly heat the house and that this was a factor in the presence of mould. The Tenants produced a copy of a specialist report commissioned by Collies on behalf of the Landlord from Rotwise Preservation dated 1 February 2013, which noted the presence of black spot mould in the bathroom and in the cupboard within the front bedroom. The report expressed the opinion that the mould had been caused by condensation arising from restricted heating and ventilation and suggested that the introduction of additional heating and ventilation should address the problem. When asked about the conclusions of the report the Tenants indicated that, during the working week, the house would be unoccupied until the Tenants returned home from work in the evening, at which time the house would be heated. The Tenants did not ventilate the house during the day, as in their view that would

only serve to make the house cold, particularly in winter months, and as a consequence harder to heat in the evening. The Tenants did not consider there to be any problems with the functioning of the boiler or radiators in the house, but felt that the size of the radiators made it more difficult to both heat and ventilate the house satisfactorily. One of the Tenants, Mr. Malcolm., advised that he had undertaken research on recommended radiator sizes by reference to room volumes, and provided the Committee with details of the size of radiators which, in his view, should be installed in the rooms.

10. When the Rotwise report had been sent to the Tenants by Collies, the covering letter from Collies dated 19 April 2013 indicated that this report supported an earlier report which had been obtained (which was not produced to the Committee) in concluding that the cause of the mould was condensation due to poor ventilation of the house. The Tenants, however, repeated their view that the problem was not solely due to inadequate ventilation but also to the heating and that, if it was easier to heat the house, they would be more readily able to ventilate it.
11. In relation to the refrigerator, the Committee's inspection of the house had found that a replacement fridge had been fitted, albeit in a way which prevented the integrated kitchen unit facing panel from being re-fitted, and at the Hearing, the Tenants confirmed that the fridge did function satisfactorily and that they had no further complaint regarding it being in a reasonable state of repair and proper working order.
12. The Tenants also expressed frustration and dissatisfaction with their dealings with Collies, particularly in relation to their response times and willingness to address tenant complaints. The Tenants had made a complaint about Collies' Leasing Manager to the firm's Senior Partner but that complaint had not been addressed or responded to.
13. The Landlord also indicated that communications from Collies had not been entirely satisfactory, which had led to her not being kept up to date with communications and complaints from the Tenants to Collies. In relation to the mould, the Landlord indicated that she had lived in the house for two years without experiencing any problems with mould, nor had she regarded the heating system as inadequate. She also confirmed that the Tenants who had occupied the house prior to the Tenants had not complained of these issues to her knowledge.

Summary of the issues

14. The issue to be determined is whether the house meets the repairing standard as laid down in Section 13 of the Act and whether the Landlord had complied with the duty imposed by Section 14(1) (b) of the Act.

Findings in Fact

15. With effect from 17 July 2012, the Tenants entered into a Lease with the Landlord for the let of the house. The Tenants remained in occupation of the house at the time of the inspection. The Tenants occupied the house in terms of a Short Assured Tenancy in terms of the Housing (Scotland) Act 1988. The provisions outlined in Chapter 4 of the Act apply.
16. Whilst in occupation of the house, the Tenants notified of the Landlord of the required works to the house and submitted an application to the Panel on 31 May 2013.
17. In response to complaints from the Tenants regarding the presence of mould, the Landlord' agents, Collies, commissioned the report from Rotwise Preservation, which concluded that the presence of mould had been caused by condensation arising from restricted heating and ventilation and suggested that the introduction of additional heating and ventilation should address the problem.
18. The Committee confined its inspection to the matters complained of by the Tenants in their application. The inspection by the Committee on 12 July 2013 revealed:-
 - 18.1. The house consists of a stone-built semi-detached property, originally constructed in the 1930s, with accommodation across two floors, with the upper floor accommodation being located within the pitched roof of the house.
 - 18.2. The 'built under' fridge in the kitchen had been replaced but the matching door had not been affixed to the fridge door. The Tenants confirmed that the fridge was in proper working order.
 - 18.3. There were small dark patches of mould on the bathroom ceiling above the bath consistent with condensation. The bathroom was fitted with a manually operated extractor fan and was also served by an external window.
 - 18.4. There were patches of mould in the front bedroom cupboard. These were prominent on the underside of the sloping roof section but extended throughout

the cupboard. Damp meter readings taken revealed there to be surface mould patches caused by condensation rather than an external leak. The position of the patches were consistent with condensation. It was noted that the other bedroom, which was used as a spare bedroom, did not suffer from the problem.

- 18.5. The windows in the house consisted of double-glazed units of reasonably modern construction which appeared to be in a satisfactory condition, and which were fitted with trickle vents. At the time of inspection, these were closed.
- 18.6. The house was served by hot water radiators in each room, fuelled by a gas-fired boiler located within the kitchen. The Tenants indicated that the system, including each radiator, worked satisfactorily.
- 18.7. The Tenants reported that the fascia strip covering the frame of the double-glazed window unit of the first floor bedroom window had become detached and had fallen into the garden during 2012. Despite their explanations of this damage and reminders to Collies this had not been re-fixed until after the winter. The loss of cover would affect the thermal efficiency of the window, particularly during a cold winter such as that of 2012-2013.

Reasons for the Decision

19. In considering the Repairing Standard issue, the Committee carefully considered the written documentation and oral evidence submitted. The Committee considered the representations of the parties in relation to the Repairing Standard.
20. The Committee considered whether the heating system and radiators within the house met the standards set out in Section 13(1)(c) of the Act, which requires the installations in the house for the supply of water, gas and electricity and for sanitation, space heating and heating water to be in a reasonable state of repair and in proper working order. The Tenants' complaint was not that the heating system or radiators were not in working order and the Committee concluded that, while larger radiators may have heated the relevant areas of the house more quickly and effectively, the actual radiators in the house were adequate to heat the house and so were in a reasonable state of repair and in proper working order and met the Repairing Standard.
21. The Committee also considered whether the heating system and radiators meant that the house did not meet the provisions of Section 13(1)(a), which requires the house to be wind and water tight and in all respects reasonably fit for human habitation, and concluded that this part of the standard was met. In

essence, the Committee concluded that while a landlord who had decided to replace or renew the heating system in the house may well choose to instal larger capacity radiators, the existing heating system could not be said to fail to meet the Repairing Standard.

22. The Committee concluded that the mould found in the house was caused by condensation and that the condensation was the result of inadequate ventilation of the house, and not inadequate heating. The Committee felt that if the bathroom extractor fan had been used, coupled with either the trickle vent or the bathroom window itself being opened after baths or showers, this would serve to mitigate the build up of significant condensation and consequent mould. In relation to the mould in the front bedroom cupboard, the location of the cupboard adjacent to the external gable of the house meant that it was colder than elsewhere in the house but the Committee felt that if the door to the cupboard had been left open periodically this would serve to balance the level of heat in the bedroom and cupboard and to mitigate the build up of condensation and mould.
23. Section 16(1)(b)(i) of the Act provides that the duty imposed on the landlord by Section 14(1) does not require any work to be carried out for which the tenant is liable by virtue of the tenant's duty to use the house in a proper manner, and the Committee concluded that the Tenants were under a duty to ventilate the house properly, which they had not done to a sufficient extent.

Decision

24. The Committee determined that the Landlord had complied with the duty imposed by Section 14(1)(b) of the Act.

The decision of the Committee was unanimous.

Right of Appeal

25. 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

26. 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.

D Hogg

Derek Hogg
Chairperson, 22 August 2013 