



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

**prhp Ref: PRHP/RP/14/0027**

**Property at 28 Prior Road, Forfar, DD8 3DQ**

**The Parties**

Cara Brown & Andrew Davies, formerly residing at 28 Prior Road, Forfar, DD8 3DQ ("the tenant")

Ms Gail McKay, residing at 87 Redcraig Road, East Calder, West Lothian EH53 0QX ("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 has not failed to comply with the duty imposed by Section 14 (1)(b) of the Act.**

**Background**

1. By application dated 30/10/2013 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 Tenants stated that the Tenants 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 watertight in all the respects, and reasonably fit for human habitation in terms of section 13(1)(a) of the act.

The installations in the house for the supply of water, gas & electricity and for space heating are in a reasonable state of repair and in proper working order, in terms of section 13(1)(c) of the act

The fixtures, fittings & appliances provided by the landlord under the tenancy are in a reasonable state of repair and in proper working order, in terms of section 13(1)(d) of the act

3. By letter dated 17<sup>th</sup> March 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 was made up of three members;

Paul Doyle	Chairperson
Geraldine Wooley	Surveyor Member
Susan Shone	Housing Member

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. The landlord a detailed submission (extending to 12 typewritten pages) together with copies of each of the documents referred to in the detailed submission.

6 The Private Rented Housing Committee inspected the property during the morning of 9<sup>th</sup> June 2014. The landlord was present and was accompanied by the letting agent (Wardhaugh Property Management, East Main Street, Forfar) The tenant has removed from the property and was neither present nor represented.

7 Following the inspection of the property, the Private Rented Housing Committee held a hearing at Douglas Community Centre, Dundee. The landlord was present and unrepresented. The tenant was neither present nor represented.

8 The tenants' position is that the property is affected by mould and damp throughout; that the front and back doors are defective; that the space heating provided by landlord does not work, and that the electrical circuit serving the house is not safe.

9 The landlord's position is that she has responded promptly to concerns intimated to her by the tenants and that the tenants neglected the property during their tenancy. The tenants terminated the tenancy on 27 November 2013 and the landlord spent between 27 November 2013 and mid-February 2014 repairing the damage caused to the tenancy by the tenants before re-letting the property.

### **Summary of Issues**

10. The issues to be determined are

- (a) whether the house is wind and watertight and in all other aspects, reasonably fit for human habitation in terms of Section 13(1)(a) of the 2006 Act,
- (b) whether the installations in the house for the supply of water, gas & electricity and for space heating are in a reasonable state of repair and in proper working order, in terms of section 13(1)(c) of the act
- (c) whether the fixtures, fittings & appliances provided by the landlord under the tenancy are in a reasonable state of repair and in proper working order, in terms of section 13(1)(d) of the act

## Findings in Fact

11 The Committee finds the following facts to be established

(a) On 28 February 2013, the landlord agreed to let to the tenant the property that is the subject matter of this application. A short assured tenancy was entered into between the parties. The landlord's obligations contained in the lease signed by the parties are consistent with the landlord's duty to repair and maintain the property in terms of Section 13 and 14 of the 2006 Act.

(b) Clause 12 of the lease creates obligations on the tenant to *inter alia* keep the property ventilated and heated to prevent the build-up of condensation.

(c) The property forms a stone built, end terraced cottage with a drive to the side and a small garden to the rear. There are doors to the front (providing access from the street) and to the side at the rear of the property. On the ground floor, there is a hallway, a bathroom, a living room and a kitchen. Upstairs is dominated by one open planned bedroom.

(d) The tenants moved into this property on signing the lease in February 2013. In October 2013, there was an e-mail exchange between the father of Cara Brown (one of the tenants) and Wardhaugh Property Management, a letting agency employed by the landlord. On 27 November 2013, the tenants vacated the property, having refused to pay rental in October and November 2013. The tenants lodged their application to the Private Rented Housing Panel on 30 October 2013. On 3 March 2014, the president of the Private Rented Housing Panel determined that this application should not be abandoned (because of the tenant's lawful termination of the lease) but that the application should continue to be determined in the interests of the public.

(e) Throughout December 2013 and January 2014, the landlord carried out certain works and redecoration of the property before re-letting the property to a new tenant on 20 February 2014. Before the tenants moved into the property (in January 2013) the landlord installed a new immersion thermostat. On 27 February 2013 (the day the tenants moved into the property) the landlord completed a portable appliance test. On 6 October 2013 (before the tenants moved out of the property) the landlord supplied and installed a new hot water cylinder with immersion thermostat.

(f) The front door to the property opens and closes without difficulty. It has a working mortice lock. The door fits the doorframe properly. There are working and effective draft seals around the front door. The stone work to the front of the house adjacent to the door requires re-pointing. There are signs of damp on the stone work on either side of the door. Damp meter readings in the mid to high range can be found immediately adjacent to interior (hall) walls adjacent to the door up to a height of 1 metre and extending to a maximum of 50 centimetres into the hallway of the property. Such damp meter readings



Indicate problems that are typical in a house of the age and construction of this property.

(g) There is no mould in the property. The only part of the property which shows signs of damp is the wall immediately adjacent to the front door. Further use of the damp meter on other walls in the property indicated that the remainder of the property is dry. The hallway of the property is clean and properly decorated. Heating (in the entrance hallway) is provided by one wall mounted electrical convector heater which is in good working order. The hallway provides access to the bathroom and the living room.

(h) The bathroom is to the rear of the property. It has a frosted glass window to the outside. The window is properly fitted. It opens and closes, and provides adequate ventilation for the bathroom. The bathroom has never had an extractor fan. The bathroom contains a three piece sanitary suite with a shower over the bath. A small cupboard within the bathroom houses the water heater. The water heater functions properly. It does not have a leak. An earlier water heater, removed during the tenants' occupation of the property, leaked. Water damaged caused to the cupboard surround by that leak has been repaired and redecorated.

(i) The back door of the property opens and closes properly. The door is sealed with working draft excluders. The door has a mortice lock which operates. Neither front nor back door allows wind or water to enter the property.

(j) The windows serving the ground floor of the property are sealed double glazed units. They are properly fitted. They open and close. At the time of inspection, there were neither signs of drafts nor water ingress at the windows. Each of the windows properly fit the window aperture of the building.

(k) The windows to the upstairs bedroom are Velux double glazed units. They are properly fitted. Their surrounds are sealed. They do not allow wind or water to penetrate the building.

(l) The kitchen, dining room area and the bedroom each have electric storage heaters fixed to the walls. Each of the electric storage heaters is operated by standard controls (on/off & timed thermostat). Each of the electric storage heaters is in proper working condition.

(m) The property's electrical circuit is approximately 20 years old. It was inspected on 7 March 2011 and found to operate safely. It was re-inspected on 16<sup>th</sup> October 2014 and found to operate safely.

(n) To the rear of the property, there is a small area of garden ground. On the right hand side, there are two brick built sheds. The sheds have openings for doors and windows. There are no window frames or window panes serving either of the sheds. One of the sheds has a door which stands open. Neither of the sheds were secure storage areas when the tenants viewed the property. Neither of the sheds were secure storage areas when the tenants



moved into the property. Although not secure, both of the sheds are usable. The walls and roof of each of the sheds is intact. Neither of the sheds is dangerous.

(o) With the exception of the small area around the front door, there is no evidence that the property is affected by rising or penetrating damp. At the date of inspection, the property was not troubled with condensation. For part of the period of the tenant's occupancy of the property, there was condensation caused by poor ventilation.

### **Reasons for Decision**

12 (a) The inspection of this property took place during the morning on 9 June 2014. The tenant was neither present nor represented. The landlord was present and was accompanied by the letting agent. The letting agent provided access to the property. The landlord allowed committee members access to each room in the property to carry out the inspection.

(b) Committee members inspected each of the rooms of this property. The surveyor member took damp meter readings from the floors and interior walls of the property. The only part of the property where meter readings registered any sign of damp was immediately adjacent to the front door at a low level. There was no evidence of mould staining anywhere in the property; no unusual damp meter readings were recorded on interior walls more than 50 centimetres away from the front door.

(c) The damp meter readings and the observations of the committee led the committee to the conclusion that there was no evidence of severe rising or penetrating damp affecting this property. Taking account of all of the evidence placed before us (and on the balance of probabilities) it is most likely that the mould staining complained of by the tenant and photographed by the tenant was caused by condensation.

(d) Condensation is not a sign of defect in the property. It is caused by the use of the property. Condensation, damp and the associated mould can be remedied by the tenant's actions. The main factors which cause condensation in a property are an excess of moisture produced in a property which does not have enough ventilation and has cold surfaces when the outside temperature is low. If and when a condensation problem occurs, it can be remedied by careful ventilation of the property to remove moist air and ensure a through flow of warm, dry air.

(e) The committee's observations in this case led the committee to the conclusion that the tenant's complaint that damp and mould indicate that the property fails to meet the repairing standard are unfounded. There is, at the date of inspection, no sign of mould around window frames, sills, walls, ceilings or floors.

(f) The tenant complains of an inability to use the space heating in the house. Committee members inspected the storage & convector heaters throughout the property. Committee members inspected the controls, which were standard controls



and are quite simple to operate. On 16 October 2014, a suitably qualified electrician inspected the storage heaters and the electric wall mounted convector heater in the hallway of the property and found them all to be in good working condition and without defect.

(g) On 7 March 2011, the landlord obtained a periodic inspection report for the electrical installation. A copy of that report is placed before the committee. It discloses that there are no defects in the electrical installation serving the property. Although the report is dated 2011, it is valid until 2016. By directions dated 10<sup>th</sup> June and 18<sup>th</sup> August both 2014 the committee directed the landlord to exhibit a fixed appliance testing report from a qualified electrician addressing the condition of the storage heaters throughout the property and the condition of the electrical heater attached to the wall in the hallway of the property. The committee acknowledges that the landlord did not receive either of those directions because of an administrative error made by the offices of the PRHP. As soon as the error was discovered, the landlord exhibited, without delay, an electricity safety certificate dated 16<sup>th</sup> October 2014, which confirms that there are no defects in the electrical installation serving this property.

(h) The tenant complained that the front and back doors had defects and were not wind and water tight. The landlord produces invoices showing that remedial works were carried out to both front and back doors. Committee members' observations disclose that both front and back doors open and close without difficulty, that the mortice locks fitted to both doors work and that both doors have the benefit of weather strips and threshold bars, and the front door has the benefit of a rain deflector.

(i) Committee members inspected each of the windows in the property. Each window was a sealed double glazed unit. The seals are intact. Each window was closely inspected and no sign of either wind or water ingress was found. There is no defect in either the windows or the doors. The property is wind and water tight.

(j) Committee members inspected floor coverings. The tenant complains that, because of a combination of problems, there are defects to the vinyl flooring in the hallway. There was no evidence of defects to the floor in the hallway at inspection.

(k) The tenant complains about the installations, fixtures and fittings provided by the landlord, focusing on the fridge/freezer. A fridge/freezer is in the kitchen. The door of the freezer compartment was opened and closed. It was obvious that it contained food that was properly frozen. The fridge/freezer present in the kitchen at the date of inspection works properly.

(l) Despite inspection, committee members could not find a TV aerial socket.

(m) Committee members inspected the water heating cylinder and its housing, and found that a new water heating cylinder was in place and that it worked. Committee members' observations are consistent with the documentary evidence placed before the committee. Careful examination of the cupboard housing the cylinder was made by committee members to find that there is no water damage to the cupboard containing the water heating cylinder.



(n) A hearing took place in Douglas Community Centre, Dundee, shortly after 11am on 9 June 2014. The landlord attended and was not represented. There was no appearance from either tenant. The committee explained that the landlord's detailed written submission was sufficient to form the evidence of the landlord. Committee members then discussed the details of the inspection with the landlord.

(o) The committee considered every strand of evidence in this case. The weight of evidence indicates that at the date of inspection, none of the defects complained of by the tenant exist. The property does not suffer from severe rising or penetrating damp. The moisture within the property and the staining which might have existed when the tenants occupied the property (and is no longer there) was caused by condensation. As the committee noted earlier, condensation is caused by the manner in which the property is used. It was the tenant who used this property. The lease obliges the tenant to adequately heat and ventilate the property.

(p) Taking an holistic view of all of the evidence, the committee comes to the conclusion that although the property bore signs of condensation at the time the tenants occupied the property, the property (at the date of inspection) fulfils the requirements of the repairing standards set out in the 2006 Act and the landlord has fulfilled her obligations in terms of Section 14 of the 2006 Act.

### **Decision**

13 The committee accordingly determined that the landlord has complied with the duty imposed by Section 14(1)(b) of the Act.

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.....  
Chairperson

**Paul Doyle**

..... Date..... 21/10/2014