



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 223 Main Street, Auchinleck, KA18 2BA being the subjects registered in the Land Register of Scotland under title number AYR 74823("the Property")

The Parties:-

Ms Ashley Green residing at 223 Main Street, Auchinleck, KA18 2BA (The Tenant')

Mr James Alan Hynd and Mrs Kaye Janette Hynd residing at 28 St Andrews Road, Ardrossan ('The Landlord')

Decision

The Committee, having made such enquiries as it saw fit for the purposes of determining whether the Landlords have complied with the duty imposed by Section 14 (1)(b) of The Housing (Scotland) Act 2006 in relation to the Property, determined that the Landlord has complied with the said duty.

Background

1. By application dated 6th February 2014 the Tenant applied to the Private Rented Housing Panel for a determination of whether the Landlord has 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 referred to copy letters from Messrs D W Shaw (her solicitors) dated 10th and 29th January 2014, photographs and an electrician's report. The import of the copy letters stated that the landlord had failed to comply with the duty to ensure that the Property meets the repairing standard. The application contended that the Property is not wind and watertight and in all respects reasonably fit for human habitation; that 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; 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 fixtures, fittings and appliances provided by the landlord under the tenancy are not in a reasonable state of repair and in proper working order.
In particular the application stated that:-
 - 2.1 The roof is leaking over the rear downstairs bedroom and leaking into an electrical socket.
 - 2.2 An electric shower which is fitted and a washing machine and fridge provided by the landlord cannot be used.
 - 2.3 There is a crack in the kitchen ceiling.
 - 2.4 There is no key for the back door of the property.
 - 2.5 The tenant has not been reimbursed for the fitting of window locks.
 - 2.6 There are no window locks to the downstairs windows.

- 2.7 The handle of the kitchen window is broken.
- 2.8 The back garden has glass and rubbish which requires to be cleared and the tenant is unable to use the garden because of safety concerns.
- 2.9 There is no handle for the living room door.
- 2.10 The tenant seeks reimbursement for outlay she has made on carpet underlay
- 2.11 There is water damage to an upstairs bedroom ceiling.
- 2.12 The central heating boiler requires servicing.
- 2.13 The kitchen sink is leaking.
- 2.14 A bath panel requires to be fitted.
- 2.15 The report from Millar Electrics Limited dated 31st January 2014 had two categories of work – "Recommended" and "Further Recommended." Under the Recommended category it stated- "Hallway pendant-corroded and crumbling, unsafe". Under the Further Recommended category it stated- "We think all sockets are unsafe, the flat will fail any NICEIC electrical condition report as not up to standard (red protection, earthing, etc all unsafe). Is a mix of various additions and circuits."

- 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. The Committee members are **Martin McAllister (Chairperson), Mike Links (Surveyor Member) and Jim Riach (Housing Member)**.
- 4. The Private Rented Housing Committee served a Notice of Referral under and in terms of Schedule 2, Paragraph 1 of the Act upon both the Landlord and the Tenant, dated 12th February 2014.
- 5. The Landlord made written representations dated 5th March 2014 and also sent various copy documents- a Gas Safety Certificate dated 3rd March 2014, Green Deal Consultants Permission Form dated 26th November 2013, Deposit Summary form, Stewart's Property Services Ltd receipt dated 21st December 2013 and quotation from Davidson Electrical dated 25th March 2014.
- 6. The Committee attended at the Property on 23rd April 2014. The Tenant was not present and the Landlord, who was present, indicated that the Tenant was no longer in the Property and Yvonne McFarlane who was in the property with her family confirmed that she was the new tenant. The Committee inspected the alleged defects and found as follows:-

6.1 The Property is not wind and watertight and in all respects reasonably fit for human habitation.

There had been a leak in the front bedroom but this had been repaired, replastered and the plaster appeared to be in the process of drying out. High dampness readings were found in areas that had been repaired. A crack in the kitchen ceiling had been repaired and plastered. No water damage to the upstairs ceiling could be detected. The garden area contained a little rubbish. The committee saw no evidence of the Property not being wind and watertight.

6.2 The installations in the house 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 in proper working order.

The gas boiler was operational and effective. The electric shower in the upstairs bathroom was operational. The pendant light in the hallway was not corroded and appeared to be a replacement.

6.3 The fixtures, fittings and appliances provided by the landlord under the tenancy are not in a reasonable state of repair and in proper working order.

The fridge/freezer and washing machine are functioning effectively. A small leak was detected under the sink. Window locks were noted to the windows but no keys. One of two handles in the kitchen window was broken. There is a handle on the living room door. The Property has two working mains wired smoke detectors. The back door of the property leads on to a common close shared with a neighbour. There is a door from Main Street which leads into the close and there is a key for the door. There is a door leading from the end of the close to the completely enclosed rear garden area . There is no key for this door. There is no lock on the back door of the Property but there are two bolts fitted to the inside of the door. The door and door frame are such that it would be difficult to fit a lock without replacement of the door and/or the door frame.

7. Following the inspection of the Property the Private Rented Housing Committee held a hearing at Barrhill Community Education Centre, Bank Avenue, Cumnock, KA18 1 PQ

The Tenant and Mr and Mrs Hynd attended the hearing. The Tenant was accompanied by her mother. The Tenant indicated that she had given up the tenancy at the end of March 2014 but that she had not stayed overnight in the Property since the end of January 2014 because of concerns she had around safety issues.

8. Summary of the issues

Sections 13(1)(a),(c) and (d) of The Housing (Scotland) Act 2006 provide that the Property must be wind and watertight and in all respects reasonably fit for human habitation, 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 and any fixtures, fittings and appliances provided by the landlord under the tenancy are in a reasonable state of repair and in proper working order.

The specific issues to be addressed are:

The matters raised in the application and detailed in 2.1 to 2.15 of this Determination.

9. Evidence

The Tenant helpfully intimated that she was not pursuing the following issues: reimbursement for carpet underlay and window locks.

The landlord produced an electrical safety certificate by Kris Hynd (no relation to the Landlord), a member of SELECT, dated 18th April 2014. The summary of the inspection report stated " Installation up to current standards."

The Tenant confirmed that she had not seen this report but took no issue with it.

The Tenant confirmed that she had had sight of the Gas Safety Certificate dated 3rd March 2014 and the Committee noted that the Certificate confirmed the safety of the boiler and the hob. The Landlord confirmed that he knew that he was required to have had a Gas Safety Certificate at the start of the tenancy but that he had not obtained one because he had been planning to replace the boiler.

The Landlord stated that there had been a leak at the property which had been caused by storm damage in December 2013 and that this had been repaired and part of a wall in the front bedroom had been replastered.

The Tenant said that she had been told by the Landlord not to use the shower, washing machine and fridge/freezer until they had been PAT tested. The Landlord explained that this was correct because he did not know that the appliances had been tested prior to his installation of them and that the shower had been subsequently tested by an electrician. The

Landlord said that both the fridge/freezer and washing machine had been tested and were working.

The Tenant said that she could not use the garden and the landlord said that this was because of safety issues until the storm damage to the outbuilding had been repaired. The concern had been that slates could have fallen from the outbuilding roof.

The Tenant said that there had been a bowing in the upstairs ceiling and the Landlord said that there was unevenness but that it was not significant.

The Landlord acknowledged that there was a leak under the sink which he had been trying to trace and that the kitchen window had a broken handle. The Landlord acknowledged that a bath panel may require to be fitted.

Both the Tenant and the Landlord accepted that there was a key for the door leading to the common close and that there was no key for either the back door of the Property or the door at the rear of the close. The Tenant said that when she was in the property she had concerns about the security of the Property.

10. Findings of fact

The Committee found

- a. There is a leak under the sink
- b. There is a broken handle to the kitchen window.
- c. There are damp patches in the replastered area of the wall in the front downstairs bedroom.

11. Reasons

The evidence of the Tenant and the Landlord was sometimes not consistent but the Committee considered that it did require to make any decision with regard to reliability and credibility because any inconsistencies were in relation to historical matters and not the condition of the Property at the date of the Hearing.

A number of the issues raised in the application by the Tenant had been resolved- the leaking roof, the water ingress to the electric socket, the crack in the bedroom ceiling and the living room door handle.

Although there is no key for the back door of the Property the Committee was satisfied that the locked door from Main Street to the common close and the existence of bolts to the back door of the property were together sufficient to provide adequate security to the Property.

There are locks for the downstairs windows but appear to be no keys. The windows are of a hopper design and, with the exception of the kitchen window, have effective handles which secure the windows.

The Committee considered that the issue if the bath panel was minor and a matter of décor.

The terms of Gas Safety Certificate reassured the Committee with regard to the boiler and the central heating system. The terms of the SELECT electrical safety certificate reassured the Committee with regard to the issue of the shower and the fact that, on inspection, it was working.

The washing machine and fridge/freezer were working.

The Committee considered that the condition of the garden was reasonable.

There are defects in the property:

The roof had been leaking as a result of storm damage but was now repaired. Although high damp readings were noted in patches of the area where replastering had been done it was probable that this is still drying out.

There is a broken handle to the kitchen window and a minor leak under the kitchen sink.

The Committee required to determine whether or not the defects found at the property amounted to a breach of Section 14 (1) (b) of the Act. It considered that on the evidence it had heard it was possible that the Property did not meet the repairing standard when the Tenant made her application to the Private Housing Rental Panel. It did not consider that the current defects in the Property brought it below the repairing standard although the Committee hoped that the Landlord would address the defects found by carrying out repairs to the kitchen sink and the kitchen window and also in ensuring that the damp patches in the bedroom wall properly dry.

Decision

The Committee accordingly determined that the Landlord has complied with the duties imposed by Section 14(1)(b), of the Act.

The decision of the Committee was unanimous.

NOTE

Subsequent to conclusion of the Hearing the Committee was made aware of a letter from an Environmental Health Officer of East Ayrshire Council dated 17th February 2014 which referred to faults in the electrical system and penetrating dampness in the front bedroom. It also referred to several missing roof slates. The Committee considered whether or not it should reconvene the Hearing but came to the view that the matters raised in the letter had been subsequently dealt with by the Landlord with the exception of the issue of the missing slates where the Committee had no knowledge of the matter. It was not known if the slates had been dealt with but no issue had been noted on inspection. The Committee determined that no cognisance should be taken of the terms of the letter especially in view of the SELECT electrical safety certificate which it had sight of.

Right of Appeal

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

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 M McAllister Date 28 April 2014
Chairperson