



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

prhp Ref: prhp/RP/14/0128

Re : Property at 5 Maryhill, Stornoway, Isle of Lewis HS2 0DG (“the Property”)

The Parties:-

Christopher McLaren and Mrs Kaye McLaren, both residing sometime at 5 Maryhill, Stornoway, Isle of Lewis HS2 0DG (“the Tenant”); and

Mrs Lena MacLeod, 41c Colville Gardens, London W11 2BA (represented by her agent Anderson MacArthur, Solicitors, Old Bank of Scotland Buildings, Stornoway, Isle of Lewis HS1 2BG (“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, and taking account of the evidence led by the Landlord’s representatives at the hearing, determined that the Landlord had not failed to comply with the duty imposed by Section 14 (1)(b) of the Act.

Background

1. By application dated 12 May 2014, 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 the Tenant 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:-
 - (a) the house is wind and water tight and otherwise 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, and
 - (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,
3. By letter dated 18 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.
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 other than the original application dated 12 May 2014 and an e-mail dated 28 May 2014, deleting some of the items included in the application. The Landlord (by letter dated 3 July 2014, received on 7 July 2014), made written representations to the Committee.
6. The Private Rented Housing Committee inspected the Property on the morning of 13 August 2014. The Tenant was not present at the inspection. The Landlord was represented during the inspection by Maggie Mackay, Office Manager and Laura Macleod, Property Assistant, both of Anderson MacArthur, Solicitors. The Committee comprised George Clark (chairman), Mike Links (surveyor member) and Chris Harvey (housing member)
7. Following the inspection of the Property the Private Rented Housing Committee held a hearing at Bayhead Bridge Centre Trading Limited, Lamont Lane, Bayhead, Stornoway and heard from the Landlord's representatives who had been present at the inspection. The Tenant had vacated the Property prior to the date of the hearing, so was not entitled to participate in the proceedings, but Mr McLaren attended the hearing as an observer.
8. The Tenant, in the application submitted as follows:- there was a missing guard on the boiler flue, the porch roof was leaking, there was a leaking and loose rear gutter which was also choked by vegetation, the toilet cistern was taking 20-30 minutes to fill, there was mould and there were leaks in the porch, the master bedroom, the bathroom and the Tenant's son's bedroom. The oven door was damaged, the washing machine was not working and the wash hand basin and pedestal in the bathroom were loosely fitted. There were also two broken glass panes in the door leading from the porch to the hallway and a hole in the flooring in the porch at the front door, leading to draughts and cold coming in. A newly installed bathroom fan was dripping on people sitting on the toilet, the roughcast on the external walls was boss and the walls and floors were wet in the bathroom, master bedroom and upstairs bedroom. The master bedroom constantly developed mould along the skirtings and the carpet felt damp, especially near to the outside walls. The Tenant also wished to know that the electrical installation was safe, but acknowledged that he had not notified this to the Landlord as a defect requiring repair and added that the smoke alarms were battery-operated, not mains-wired. The Tenant also provided the Committee with a report prepared by an Environmental Health Officer, following upon a complaint received from the Tenant on 17 January 2014. This report highlighted issues with water ingress into the porch area from the flat roof above and possibly from a downpipe from the upper storey of the Property which drained directly on to the flat roof of the porch. The report also made reference to evidence of damp and mould on the walls of the downstairs bedroom and the upper bedroom on the right side of the Property (as viewed from outside). The opinion of the Environmental Health Officer was that this damp could be the result of water ingress via the now disused chimneys, as it was visible in the middle of each room, which corresponded with the position of the chimneys. In addition, there was mould growth in the bathroom, at ceiling height and also behind the cistern. The bathroom was located in a rear extension to the Property and the room had no mechanical ventilation. Photographs incorporated into the report showed harling coming off the exterior wall, close to ground level, the location of which corresponded to the mould growth in the bathroom.
9. Copy e-mails submitted with the application included one, dated 27 April 2014, in which the Tenant advised the landlord's agents that he felt that the issues of dampness and mould made it unhealthy for his family to continue living in the Property and gave notice of his intention to vacate the Property on 31 May 2014.
10. In an e-mail dated 28 May 2014, the Tenant asked the Committee to revise his application by removing the references to the gutter, the electrics and the smoke alarm, as these had not been intimated to the Landlord as items requiring repair.
11. The Landlord made no written representations to the Committee, but her agents, Anderson MacArthur, also trading as Hebridean Estate Agency, in written representations

to the Committee dated 3 July 2014, submitted as follows:- they were not employed as property managers in respect of the Property, but they had prepared the lease and had forwarded timeously to the landlord all requests from the Tenant. The Tenant had already vacated the Property and, when the Tenant had been living in the Property, repairs had been carried out. There were further repairs to be undertaken before a new tenant was put in place. They added that the Tenant had already acknowledged that a two month rent-free period had been provided by the Landlord as a gesture of goodwill and that this had been accepted by the Tenant at the time as compensation for the ongoing repairs required. On behalf of the Landlord, they submitted that the Landlord had made all efforts to ensure that the concerns of the Tenant had been dealt with timeously. The Landlord used her nephew as her local contact and as manager of the Property and she had instructed him to assess the repairs required and to instruct repairs. At present, the Tenant having vacated the Property, more intrusive repair and maintenance work was being undertaken whilst the Property was vacant and it was only after the current works had been carried out that a new tenant would be sought.

12. The written representations also made reference to the fact that there was no provision in the lease for early termination by the Tenant and to consequential issues regarding the return of the Tenant's deposit.

Summary of the issues

13. The issues to be determined were whether the Property met the repairing standard as laid down in Section 13 of the Act and whether the Landlord had complied with the duties imposed on landlords by Section 14(1)(b) of the Act.

Findings of fact

14. The Committee finds the following facts to be established:-
- The tenancy is a Short Assured Tenancy.
 - Any dispute between the parties as to the right or otherwise of the Tenant to terminate the lease early and any consequential issues regarding the refund of the Tenant's deposit, are outwith the remit of the Committee and a matter for the parties and their legal advisers.
 - The Property has undergone significant change since the photographs which formed part of the Environmental Health Officer's report were taken. At the hearing, The Landlord's representatives advised that the porch roof had been completely repaired, the porch had been repainted, the flooring replaced and the cracked panes of glass in the door leading from the porch to the hallway had been replaced. The bathroom wall had been cladded internally. The bathroom fittings had been removed to allow this work to be done and had subsequently been refitted, so were now secure. An adjustment had been carried out to ensure that the toilet cistern filled satisfactorily after flushing. A new dehumidifier fan had been installed in the bathroom. A new electricity consumer unit had been fitted, and smoke alarms had been installed. The main bedroom upstairs had been replastered with plasterboard and redecorated. Repairs had still to be carried out to the roughcast and the external paintwork had still to be done.
 - There are cracks and missing portions of cement base course at the rear left hand corner of the Property (as viewed from the street) and some defective areas of rendering on the left hand gable wall.
 - The porch roof appears to have been replaced or at least comprehensively repaired and there was no evidence of water ingress at the time of the inspection, which took place on a showery day following on two days of very heavy rainfall.
 - The porch floor has been repaired and resurfaced and there are no holes in it.
 - The glazing in the door leading from the porch to the hallway is complete.
 - The bathroom walls have been cladded with a form of laminated sheeting. There was no evidence of penetrating damp or mould growth in the bathroom at the time of the inspection.
 - The toilet cistern was tested at the inspection and it re-filled satisfactorily after flushing.

- The bathroom fittings, including the wash hand basin and pedestal, are secure.
- The extractor fan in the bathroom appears to be functioning properly.
- There did not appear to be any portion of the central heating boiler flue missing.
- There was no evidence of penetrating damp or mould growth in the main bedroom upstairs and the carpet in that room was not damp to the touch.
- The surveyor member of the Committee tested various walls throughout the Property, using a damp meter, but did not detect any abnormally high moisture readings such as to suggest an ongoing problem of penetrating damp.
- The gutters did not form part of the revised application, but the Committee noted that they appeared to be securely fitted and in working order.
- The smoke detectors did not form part of the revised application, but the Committee noted that there was a mains-wired smoke detector on each floor. These were tested at the inspection and found to be interlinked and working satisfactorily.
- There were no white goods in the Property at the time of the inspection.

Reasons for the decision

15. The Committee accepted the evidence given by the Landlord's representatives at the hearing that considerable refurbishment and repair works had been carried out to the Property in the recent past and concluded from the inspection that all of the matters included in the revised application had now been addressed, apart from the repairs to the cement base course at the rear left hand corner of the Property (viewed from the street) and the rendering on the left hand gable wall. The Committee did not think that the defects identified in this connection were such as to warrant the issue of a Repairing Standard Enforcement Order, as there is no evidence that they are causing any significant problems at the present time and the landlord's representatives have given the Committee an assurance that the landlord is attending to them.

Decision

16. The Committee accordingly determined that the Landlord had not failed to comply with the duty imposed by Section 14 (1)(b) of the Act.
17. The decision of the Committee was unanimous.

Right of Appeal

18. **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

19. 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 **G Clark** Date *13 August 2014*
 Chairperson