



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 57 Melgum Road, Tarland, Aboyne, Aberdeenshire AB34 4ZL
(hereinafter referred to as the "house")

PRHP REFERENCE – PRHP/AB34/88/13

The Parties

Mr. Iain Duncan and Mrs. Moira Duncan, residing together formerly at the house and now at 13 Canmore Place, Kincardine O'Neil, Aboyne AB34 5BG (the "Tenants")

Mr. Peter Cameron and Mrs. Hilda Cameron residing together at Lornevale, 3 Melgum Road, Tarland, Aboyne AB34 4ZL (the "Landlords")

DECISION

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

Background

1. By application dated 19 April 2013 and received on 30 April 2013 the Tenants applied to the Private Rented Housing Panel (hereinafter referred to as "PRHP") for a determination of whether the Landlords had failed to comply with the duty 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 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. Section 13(1) provides as follows:- "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 standard of repair referred to in Section 13(1)(b) 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 Landlords 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)(a), (b), (c) and (d) of the Act. The Tenants' complaint of disrepair within the application related to the following aspects of the house:-
 - 2.1. Windows in the house were not sealed properly, giving rise to draughts;
 - 2.2. The hot water pressure in the shower was inadequate;
 - 2.3. The oil-fired boiler emitted the smell of oil;
 - 2.4. The house suffered from a fly infestation in July 2011;

- 2.5. The rainwater guttering was coming away from the associated drainage downpipe, resulting in the wall of the house becoming saturated;
- 2.6. The external harling was either cracked or missing;
- 2.7. The external sheds suffered from dampness;
- 2.8. The seals on the freezer within the house displayed signs of mould;
- 2.9. Dampness was apparent in the upstairs rear bedroom and in the downstairs bedroom;
- 2.10. The chimney serving the fireplace in the lounge needed to be swept;
- 2.11. Radiator thermostats were in need of attention;
- 2.12. The plunger on the external oil tank which supplied oil to the boiler in the kitchen was sticking.

The Tenants included with their application copies of correspondence sent to the Landlords, including a letter dated 4 February 2013 which also indicated that the upstairs hall radiator needed constant bleeding as it was cold to the touch, when the heating system was in operation. The Tenants' application also made reference to accompanying reports from a clerk of works at Aberdeenshire Council. These reports were in fact forms used by that council for the purposes of assessing the eligibility and level of priority of applicants for the purposes of being allocated a council house tenancy.

3. The Tenants submitted evidence of the complaints of disrepair having been intimated to the Landlords by recorded delivery post. A copy of the lease agreement was submitted as a production.
4. Subsequent to lodging their application with the PRHP, the Tenants intimated to the PRHP that they vacated the house on 24 May 2013. As a result the President of the PRHP then issued a decision pursuant to Schedule 2 Paragraph 7(2) of the Act dated 3 June 2013 that, having received confirmation from the Tenants that the tenancy had been terminated, the Tenants were to be treated as having withdrawn their application but that, given the nature of the complaints within the application, the President considered that the application should be determined on public interest grounds. The President therefore decided to continue to refer the case to a Private Rented Housing Committee for determination.

5. By letter dated 11 June 2013 the President of the PRHP intimated a decision to refer the application under Section 23(1) of the Act to a Private Rented Housing Committee (the "Committee").

The Committee comprised the following members:

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

6. The Landlords made written representations to the PRHP by way of an email dated 13 June 2013. In the email, the Landlords indicated that they disagreed with the Tenants' position on the various alleged items of disrepair. In particular:-
 - 6.1. That neither the Tenants nor the previous tenants of the house had ever complained of draughts around the windows.
 - 6.2. That the water pressure in the shower appeared to be caused by a replacement showerhead which the Tenants had fitted. Following the Tenants having vacated the house, the Landlords had fitted a new showerhead and the water pressure was found to be satisfactory.
 - 6.3. That the oil-fired boiler had been serviced on 24 June 2011 and 25 February 2013 and was believed to be in good working order.
 - 6.4. That the complaint of a fly infestation had been investigated at the time and that in the Landlords' opinion the presence of flies was a consequence of the Tenants' poor food hygiene practices.
 - 6.5. That the Landlords had found no signs of dampness in either bedroom.
 - 6.6. That the chimney had been swept prior to the Tenants' tenancy commencing.
7. The Committee inspected the house on the morning of 12 August 2013. One of the Landlords, Mr. Peter Cameron ("Mr. Cameron") was present at the inspection. The house has been re-let, but the new tenants were content to give the Committee free access to the house for the purposes of undertaking the inspection.
8. Following the said inspection the Committee held a hearing at the Hills of Banchory Community Learning Centre, Firbrae, Banchory, which Mr. Cameron attended, accompanied by a friend, Mr. George Wilson.

Submissions at the Hearing

9. 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.
10. Mr Cameron reiterated many of the points made in the Landlords' written representations. He confirmed that the house had been in his family for decades and that he took seriously his obligations as a landlord. He also confirmed that, since the Tenants had vacated the house, he had painted the external walls of the house but had not undertaken any repairs prior to the house being re-let, and so the Committee had been able to assess the house in the condition it was in when occupied by the Tenants.

Summary of the issues

11. 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

12. With effect from 1 July 2011, the Tenants entered into a Lease with the Landlords for the let of the house. The Tenants vacated the house on 24 May 2013. The Tenants occupied the house by virtue of a short assured tenancy in terms of the Housing (Scotland) Act 1988. The provisions outlined in Chapter 4 of the Act apply.
13. Whilst in occupation of the house, the Tenants notified the Landlord of the required works to the house and submitted an application to the PRHP on 19 May 2013.
14. The Committee confined its inspection to the matters complained of by the Tenants in their application. The inspection by the Committee on 12 August 2013 revealed:-
 - 14.1. The house consists of a brick-built semi-detached property with accommodation extending over two floors, having originally been constructed by the local authority. The house is heated by an oil-fired boiler serving radiators, and the windows consist of double glazed units throughout. In the rear garden are two brick-built sheds or stores.

- 14.2. All of the windows were found to be in reasonable condition and working order. Nothing suggested that the windows were ill-fitting or caused draughts or allowed water ingress.
- 14.3. The shower was tested and was found to be in working order, with good water pressure.
- 14.4. The boiler was in operation at the time of the inspection and was found to be in working order. No smell of oil was detected.
- 14.5. The rainwater guttering and the connections between the guttering and the downpipes were in place and there were no signs of water staining or saturation on the external walls.
- 14.6. Externally, the harling was generally in acceptable condition. The only cracked or missing harling consisted of small patches around the top of the chimney stack, but the Committee did not consider this to be material from the point of view of the house meeting the Repairing Standard.
- 14.7. The external sheds or stores showed no signs of dampness.
- 14.8. There were no signs of dampness or mould in either of the bedrooms. Moisture meter readings were taken and confirmed the absence of penetrating dampness. Inspection of the loft above the first floor bedrooms and of the hatch to the eaves timbers established that there was no external ingress of water.
- 14.9. The radiators and the thermostatic controls on them all appeared to be in working order. The Tenants had complained of the radiator in the upstairs hall being cold, but during the inspection the thermostat on that radiator was turned up and the radiator quickly became hot.
- 14.10. The plunger on the external oil tank which serves the boiler was checked and, while stiff, did operate.

Reasons for the Decision

15. 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.
16. The Committee's inspection of the house suggested that the Tenants' complaints of disrepair were not at all well-founded. The house has been re-let,

and the new tenants were happy to confirm that they were happy with the state of the property and had no complaints.

17. In addition to the findings of fact set out above, for completeness the Committee considered the other points complained of by the Tenants in their application and supporting submissions:-
 - 17.1 the complaint of fly infestation was viewed by the Committee as a one off situation and not one caused by the state of repair of the house and so was not considered further (although in any event it was noted that the house was in a clean and tidy condition at the time of the inspection).
 - 17.2 The house had been let to the Tenants on an unfurnished basis, which meant that the freezer which the Tenants had complained of was their own property and not something for which the Landlords would have been responsible for in terms of the Act. Accordingly, the Committee disregarded this complaint.
 - 17.3 At the inspection, Mr Cameron confirmed that, shortly prior to the Tenants vacating the house, a chimney fire had occurred and that he had subsequently taken the view that this would have had the effect of burning any collected soot. He had not therefore had the chimney swept prior to new tenants taking occupation of the house, but he did also confirm that the new tenants had not reported any issues with the chimney.

Decision

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

The decision of the Committee was unanimous.

Right of Appeal

19. 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

20. 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

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Derek Hogg
Chairperson, 27 August 2013

