

Repairing Standard Enforcement Order

By the Private Rented Housing Committee

Case Reference Number: PRHP/RP/13/0099

Re: - Property at 35 Cambridge Avenue, Edinburgh EH6 5AW ("**the property**")

The Parties:-

Ms Liz Balfour, formerly residing at 35 Cambridge Avenue, Edinburgh EH6 5AW ("**the tenant**")

And

Northwood Edinburgh Limited, 3-5 Dean Park Street, Edinburgh ("**the landlord**")

And

Mrs Helena Adie, c/o Mark Adie, 5 Varco Square, Exeter EX2 5ND ("**the head landlord**")

Repairing Standard Enforcement Order Against:

Northwood Edinburgh Limited, 3-5 Dean Park Street, Edinburgh

And

Mrs Helena Adie, c/o Mark Adie, 5 Varco Square, Exeter EX2 5ND

Whereas in terms of its decision dated 31 January 2014 the Private Rented Housing Committee determined that the landlord and the head landlord had failed to comply with the duty imposed by Section 14 (1) (b) of the Act, and in particular that the

landlord and head landlord have failed to ensure that the house meets the repairing standard in that:

- the property is wind and watertight and in all other respects reasonably fit for human habitation
- 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 Private Rented Housing Committee now requires the landlord and head landlord to carry out such work as is necessary for the purpose of ensuring that the property meets the repairing standard and that any damage caused by the carrying out of any work in terms of this order is made good before the date specified in this order.

The order

In particular the Private Rented Housing Committee requires the landlord and head landlord to:

1. Carry out any further repairs which may prove necessary to ensure that all signs of dampness in the front bedroom are eradicated and that the roof of the property is wind and watertight.
2. Replace the cooker hood in the kitchen with a cooker hood which is in a reasonable state of repair and in proper working order.
3. Repair or replace the toilet seat as necessary in order to secure that it is no longer loose.
4. To repair or replace the damaged area of linoleum in the kitchen in order to ensure that the linoleum is in a reasonable state of repair and in proper working order.

The Private Rented Housing Committee orders that the works specified in this order must be carried out and completed within the period of three months from the date of service of this notice.

Rights of Appeal

1. A landlord or tenant aggrieved by the decision of the committee may appeal to the sheriff by summary application within 21 days of being notified of that decision.

2. The appropriate respondent in such appeal proceedings is the other party to the proceedings and not the panel or the committee which made the decision.

Effects of Section 63

3. Where such an appeal is made, the effect of the decision and of any Order made in consequence of it is suspended until the appeal is abandoned or finally determined. Where the appeal is abandoned or finally determined by confirming the decision, the decision and the Order made in consequence of it are to be treated as having effect from the day on which the appeal is abandoned or so determined.

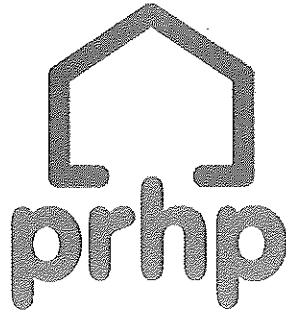
IN WITNESS WHEREOF these presents typewritten on this and the preceding page are signed by Sarah Frances O'Neill, Chairperson of the Private Rented Housing Committee, at Glasgow on the day of 31st January Two Thousand and Fourteen before this witness Gemma Wardlow of Europa Building, 450 Argyle Street, Glasgow, G2 8LH -

S O'Neill

Chairperson

G Wardlow

Witness



Determination by Private Rented Housing Committee

Statement of Decision of the Private Rented Housing Committee

(Hereinafter referred to as "the committee")

Under Section 24(1) of the Housing (Scotland) Act 2006 ("the Act")

Case Reference Number: PRHP/RP/13/0099

Re: - Property at 35 Cambridge Avenue, Edinburgh EH6 5AW ("**the property**")

The Parties:-

Ms Liz Balfour, formerly residing at 35 Cambridge Avenue, Edinburgh EH6 5AW ("**the tenant**")

And

Northwood Edinburgh Limited, 3-5 Dean Park Street, Edinburgh ("**the landlord**")

And

Mrs Helena Adie, c/o Mark Adie, 5 Varco Square, Exeter EX2 5ND ("**the head landlord**")

The Committee comprised:-

Sarah O'Neill - Chairperson

Donald Marshall - Surveyor member

Christine Anderson - Housing member

Decision

The committee, having made such enquiries as is fit for determining whether the landlord and head landlord have complied with the duty imposed by Section 14 (1)

(b) of the Housing (Scotland) Act 2006 ("the Act") in relation to the property, and taking account of all the available evidence, determines that the landlord and the head landlord have failed to comply with the duty imposed by Section 14 (1) (b) of the Act. The committee's decision is unanimous.

Background

1. By application dated 20 September 2013, the tenant applied to the Private Rented Housing Panel ("the panel") for a determination that the head landlord had failed to comply with her duties under Section 14(1) of the Act.
2. In her application, the tenant stated that she considered that the head landlord had failed to comply with her duty to ensure that the property met the repairing standard as set out in sections 13(1) (a) (b) (c) and (d) of the Act. Her application stated that the head landlord had failed to ensure that:
 - the property is wind and watertight and in all other respects reasonably fit for human habitation
 - the structure and exterior of the house (including drains, gutters and external pipes) is in a reasonable state of repair and in proper working order
 - 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
 - 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. The tenant stated in her application that the following work required to be carried out at the property:
 1. Re-attach gate
 2. Repaint fascia at rear
 3. Seal and varnish door sill
 4. Seal exterior pipework
 5. Remove grass at gutter
 6. Repair cooker hood
 7. Repair/replace dishwasher
 8. Repair floor, replace lino
 9. Replace seal at sink
 10. Tighten toilet seat
 11. Repair roof which is now leaking
 12. Deliver and install fire blanket
 13. Install carbon monoxide detector
4. She stated in her application that she had gone round the property with a representative of the landlord soon after moving in, and had prepared a detailed 'snagging list', which she had given to the representative. She stated that she had also sent a copy to the landlord's office. She stated

that no action had subsequently been taken by the landlord, and that the property continued to deteriorate. She submitted with her application a copy of the 'snagging list' referred to, which she stated had been handed to the landlord's representative on 19 June 2013 and posted to the landlord the following day.

5. The tenant also submitted with her application a copy of the short assured tenancy agreement between the landlord and Mr Robert O'Donnell and herself as joint tenants and Form AT5 dated 22 May 2013. She later submitted to the panel a copy of a letter to the landlord dated 23 September 2013 (and posted by recorded delivery on 2 October 2013), attaching her 'snagging list' and advising that she had made an application to the panel.
6. The tenant had named the head landlord in her application to the panel, addressed as c/o Northwood Edinburgh Limited. The tenant was clearly under the impression that her contract was with the head landlord, and that Northwood Edinburgh Limited was acting on the head landlord's behalf as her agent. In fact, Northwood Edinburgh Limited was itself named as landlord in the short assured tenancy agreement. There was also in existence a further tenancy agreement relating to the property dated 17 May 2013 between Mrs Helena Adie, the owner of the property (signed on her behalf by her son Mark Adie), in which she was named as the landlord, and Northwood Edinburgh Limited, which was named as the tenant.
7. On 11 November 2013, the panel office wrote to the tenant advising that the landlord had notified the panel that she had vacated the property. The tenant confirmed this by email dated 12 November. On 12 November, the President of the panel issued a minute of continuation stating that, following her confirmation that the tenancy had been lawfully terminated, the tenant was to be treated as having withdrawn her application to the panel. The minute stated that, having considered whether the application should be determined or whether it should be abandoned in terms of Schedule 2 Paragraph 7(2) of the Act, the President considered that the application should be determined on public interest grounds due to the nature of the alleged repairs required. These raised health/safety concerns for any future tenant/occupants and issues as to whether the house is safe. The President therefore decided to continue to refer the case to a private rented housing committee for determination.
8. By letter dated 15 November 2013, the President of the panel wrote to the landlord (in its capacity as agent for the head landlord) advising of her decision to refer the application under Section 22(1) of the Act to a private rented housing committee, and attaching the minute of continuation. Written representations were requested by 29 November 2013. Written representations were received from the landlord on 26 November 2013.

9. By letter dated 19 December 2013, the panel served a notification under and in terms of the 2006 Act upon the landlord, indicating that an inspection and a hearing would take place on 16 January 2014.
10. The committee inspected the property on the morning of 16 January 2014. Hugh Logan, partner and Stuart Miller, office manager, both from Northwood Edinburgh limited were present. The current tenant was also present at the property.

The property

11. The property is a two-storey house of stone and slate construction in general, and built pre-war, comprising a living room, kitchen and hallway downstairs, and a bathroom and two bedrooms upstairs, with front and rear garden.

The hearing

12. Following the inspection, the committee held a hearing at Thistle House, 91 Haymarket Terrace, Edinburgh EH12 5HD. Mr Logan and Mr Miller were present at the hearing and gave evidence on behalf of both the landlord and head landlord. They stated that, in their view, the tenant had made the application because she felt that the landlord had failed to support her in relation to a dispute with her neighbour over the erection of a fence between the two properties. They had declined to become involved in the dispute, as they did not consider this to be appropriate, and had suggested the tenant talked to the neighbour and attempted to resolve the dispute.
13. The landlord felt that most of the issues raised by the tenant were minor, and that some did not fall within the repairing standard. The tenant had chosen to move out of the property before the tenancy ended, and they had allowed her to do this. They also stated that they had been unaware of the 'snagging list' prepared by the tenant until she sent it to them in an email on 18 September, just before the tenant made the application to the panel. They had not therefore had the opportunity to address the issue raised before the application was sent. The member of staff to whom the tenant said she had given the list on 19 June 2013 had since left the company, and they had been unable to establish whether that employee had indeed received the list.
14. They confirmed that the head landlord, Mrs Adie, was aware of the tenant's application. They had a contract with her on an annual basis. She is elderly and lives in a care home, and the landlord generally deals with her son, who has power of attorney and acts as her representative. The landlord has had responsibility for the property since April 2012. They advised that the head landlord has limited funds, and that fixing the roof has therefore been her priority over any other repairs issues.

Summary of the issues

15. The issue to be determined was whether the property meets the repairing standard as set out in Section 13 of the Act, and whether the landlord and head landlord have complied with the duty imposed by section 14 (1) (b).

Findings in fact and reasons for decision

16. The committee made the following findings in fact:

- In May 2013, the tenant entered into a lease with the landlord for the rent of the house. The tenant continued in occupation of the house from that date until November 2013, when she moved out, terminating the lease. This was a short assured tenancy in terms of the Housing (Scotland) Act 1998. The provisions set out in Chapter 4 of the Act therefore apply.
- The landlord entered into a tenancy agreement relating to the property on 17 May 2013 between Mrs Helena Adie, the head landlord. Mrs Adie is the owner of the property, and the landlord also acts on her behalf as her agent. A 'landlord' is defined in section 194 of the Act as: *'any person who lets a house under a tenancy, and includes the landlord's successors in title.'* The tenancy agreement between the landlord and the head landlord is not excluded from the repairing standard duty under section 12 of the Act.
- Therefore, the provisions set out in Chapter 4 of the Act apply. Accordingly, both the landlord and the head landlord have a duty to repair and maintain the property under section 14 (1) (b) of the Act.

The complaints before the committee as set out in the tenant's application and the committee's determinations in relation to these are set out below.

1. Re-attach gate

The tenant's application and 'snagging list' indicated that the hinge had worn away on the front gate, and required to be re-attached. The committee observed at the inspection that the previously worn bolt had been replaced, and that the gate had been re-attached and was now in reasonable working order.

2. Repaint fascia at rear

The committee observed that paint was flaking off on the rear fascia. The committee was of the view that this was a cosmetic issue, and was not a matter for the repairing standard.

3. Seal and varnish door sill

The tenant's application did not specify which door sill was referred to, but following the inspection, the committee concluded that this was a reference to the sill beneath the glass doors at the rear of property facing onto the garden. The committee observed that the sill was constructed of hardwood and was not varnished. It was unclear whether the door sill was sealed, but the committee concluded that this was a cosmetic issue and was not a matter for the repairing standard.

4. Seal exterior pipework

Again, the tenant's application did not specify what pipework was referred to. The committee concluded on the basis of the wording of the tenant's 'snagging list' that this was a reference to the exterior pipework from the boiler at the rear of the property. There was no evidence from the inspection of any problems with the pipework, and the committee concluded that there was no repairing standard issue to be considered.

5. Remove grass at gutter

The committee concluded that this was a reference to the gutter at the front of the roof. The landlord advised that the grass had been removed, and that the gutter had been cleared several times recently by tradespeople working on the roof. The committee observed that the gutter appeared to be clear from obstructions.

6. Repair cooker hood

The tenant's 'snagging list' stated that the cooker hood in the kitchen was damaged, that the light bulbs were uncovered and that the hood would not pull down. At the inspection, the committee observed that the cooker hood did not appear to be working properly. It would not pull down, and was coming away at one side. The bulbs were exposed, and were not the correct type of bulbs. The landlord conceded that the hood needed to be replaced, as it could not be repaired. The committee determines that the cooker hood is an appliance provided by the landlord under the tenancy and that it is not in a reasonable state of repair and in proper working order.

7. Repair/replace dishwasher

At the inspection, the committee observed that the dishwasher in the kitchen was an old model which had a large crack on the front. The damage, however, appeared to be cosmetic. Both the landlord and the current tenant, who was at the property during the inspection, stated that it worked satisfactorily. The committee determines that the dishwasher is in a reasonable state of repair and in proper working order.

8. Repair floor, replace lino

Although the tenant's application was not clear, the committee concluded that this related to the floor and linoleum in the kitchen. The committee observed that there was a split in the linoleum close to the kitchen entrance, and that the floor underneath appeared to be uneven. The landlord stated at the hearing that they considered that such a small split in the linoleum was not sufficient to merit replacing

the linoleum throughout the entire kitchen. They also said that the split occurred where there was a dip in the floor, and that they did not consider it to be dangerous.

While accepting that the split was currently fairly small, the committee was concerned that, given its location, immediately in front of the kitchen door, it was a potential tripping hazard, and that it would continue to deteriorate if nothing was done. The committee concluded that the linoleum was a fixture or fitting provided by the landlord under the tenancy which was not in a reasonable state of repair and in proper working order. With regard to the uneven floor, the committee considered that it might be a good idea to investigate the possibility of a repair to the floor underneath. It took the view, however, that, having regard to section 13 (3) of the Act and give that only slight unevenness was evident, that the floor itself was in a reasonable state of repair and in proper working order.

9. Replace seal at sink

The tenant's application did not specify which sink this referred to, but the committee concluded that it referred to the sink in the kitchen. At the inspection, the committee observed no obvious defects or any sign or leakage. The landlord stated at the hearing that the sink had been resealed two years ago, and that it was blackened due to a lack of cleaning by the tenant, but that this was cosmetic only, and that the seal was watertight and functioning properly. The committee determined that the seal was in a reasonable state of repair and in proper working order.

10. Tighten toilet seat

The committee observed at the inspection that the toilet seat was loose. The landlord acknowledged this, but advised that they would expect the tenant to fix this. The committee determined that the toilet seat is a fixture or fitting provided by the landlord under the tenancy which is not in a reasonable state of repair and in working order.

11. Repair roof which is now leaking

The tenant had complained in written correspondence to the panel of water ingress in both bedrooms. During the inspection, some damp was still evident in a small area of the front bedroom. It was also clear from the inspection that the rhone pipe to the rear of the roof slope was old and appeared from a ground level view to be rusty and partly damaged. The landlord advised at the hearing that there had been ongoing issues with the roof since August 2012, and that they had been trying to resolve these since that time. Five different roofing companies had come out to look at the roof, and all said they were not sure what was causing the water ingress. A number of repairs had been carried out since 2012, and it had been a process of elimination trying to determine the cause. The landlord produced a file of correspondence with roofing companies, together with a summary of the issues, at the hearing, to demonstrate this.

The landlord advised that they believed that the most recent repairs may have resolved the problem, but that they could not say at present that the roof was definitely wind and watertight. They are currently waiting for the roof above the front

bedroom to dry out, following hose testing carried out on the roof. They said that there had been two very wet nights recently since the repair was done, and the roof is continuing to dry out.

The committee has considerable sympathy with the landlord and head landlord, who have clearly tried to resolve this issue, but are having difficulty in identifying the cause of the water ingress. The committee accepts that recent roof repairs have been carried out. It determines, however, that at the time of inspection, in light of the dampness readings in the front bedroom, the property was not wind and watertight and in all other respects reasonably fit for human habitation. For that reason, repairs to the roof will be included in the Repairing Standard Enforcement Order, to allow time for the roof to dry out and, in the event that this does not happen, for any other cause of water ingress to be identified.

12. Deliver and install fire blanket

13. Install carbon monoxide detector

The committee determined that, while it might be seen as good practice to provide these items, these were not requirements in terms of the repairing standard under section 13 (1) of the Act. There could accordingly be no failure to comply with the repairing standard in respect of these complaints.

In relation to the application generally, the committee notes the landlord's arguments that they were not given sufficient notice of the complaints before the tenant submitted her application. The tenant stated in her application that she had notified the landlord of the issues on 19 June 2013, but the landlord stated they had not received this notification. The committee notes, however, that the landlord was notified of the issues in a letter from the tenant dated 23 September and sent by recorded delivery on 2 October 2013. The landlord and head landlord had therefore had the opportunity to address the issues raised at least since that date, but had not done so other than in relation to the roof.

Summary of decision

17. The committee determines that the landlord and the head landlord have failed to comply with the duty imposed by Section 14 (1) (b) of the Act in respect of the complaints numbered 6,8,10 and 11 respectively which were made by the tenant.
18. The committee therefore makes a Repairing Standard Enforcement Order as required by section 24 (2) of the Act.

Rights of Appeal

1. A landlord or tenant aggrieved by the decision of the committee may appeal to the sheriff by summary application within 21 days of being notified of that decision.

2. The appropriate respondent in such appeal proceedings is the other party to the proceedings and not the panel or the committee which made the decision.

Effects of Section 63

3. Where such an appeal is made, the effect of the decision and of any Order made in consequence of it is suspended until the appeal is abandoned or finally determined. Where the appeal is abandoned or finally determined by confirming the decision, the decision and the Order made in consequence of it are to be treated as having effect from the day on which the appeal is abandoned or so determined.

Signed..... **S O'Neill**

Date..... **3/1/14**

Sarah O'Neill, Chairperson