



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/15/0303

Land Register Title No: GLA42536

Re: Flat4/2, 34 Springhill Gardens, Glasgow G41 2EY ("the property")

The Parties:-

Miss Elisabeth Norberg, formerly residing at the property ("the tenant")

Mrs Jill Slaven and Mr Colin Slaven, 38 Meadside Road, Kilbarchan, Johnstone PA10 2LB ("the landlords")

Committee Members – Sarah O'Neill (Chairperson); Ian Mowatt (Surveyor Member)

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 ("the Act") in relation to the property, and taking account of all the available evidence, determines that the landlords have complied with the duty imposed on them by Section 14 (1) (b) of the Act. The committee's decision is unanimous.

Background

1. By application dated 6 November 2015, the tenant applied to the Private Rented Housing Panel ("the panel") for a determination that the landlords had failed to comply with their duties under Section 14(1) of the Act.
2. In her application, the tenant stated that she believed the landlords had failed to comply with their duty to ensure that the property met the repairing standard as set out in sections 13(1) (a) and (b) of the Act. Her application stated that the landlords had failed to ensure that:
 - the house 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) are in a reasonable state of repair and in proper working order.
3. The tenant complained in her application form and in her notification emails to the landlords' agent that since moving into the property in July 2015, she had been experiencing several severe leaks in her bathroom and bedroom, the latter through the window recess. She stated that despite several inspections where the roof was found to be in a bad state and in immediate need of repair, the landlords had failed to convince the property factor to carry out the necessary repairs, due to a lack of funding.
4. On 11 January 2016, the President of the panel issued a minute of decision stating that she considered that in terms of section 23 (3) of the Act there was no longer a reasonable prospect of the dispute being resolved between the parties at a later date; that she had considered the application paperwork submitted by the tenant, comprising documents received between 6 November 2015 and 5 January 2016; and intimating her decision to refer the application to a panel committee for determination.
5. The President of the panel wrote to the parties on 18 January 2016, notifying them under and in terms of the 2006 Act of her decision to refer the application under Section 22(1) of the Act to a private rented housing committee and that an inspection and a hearing would take place on 3 March 2016. Written representations were requested by 6 February 2016.
6. On 19 January 2016, an email was received from the tenant advising that she intended to move out of the property on 10 February, and stating that the leaks remained as before. On 20 January, an email was received from Mrs Jill Slaven, one of the joint landlords, confirming that the tenant had given notice that she intended to leave the property, and was leaving because the roof was

leaking. She stated in the email that she was unclear as to the extent of the damage caused by the leak, and that she had been unaware that there had been a problem with roof until November 2015, as the letting agent had not informed her of this. Her email also stated that the property factor had advised her that substantial roof repairs were required; that she had paid her share of the cost; that she had been in touch with the property factor every week or so to discuss progress; that the property factor had told her that there was nothing more she could do until the remaining 3 of the 10 owners had paid their shares; and that the matter had been referred on to Glasgow City Council to deal with these 'missing shares'. A further email was received from Mrs Slaven on 25 January, attaching various emails between the letting agent and herself regarding the leak.

7. On 28 January 2016, the committee issued a minute of continuation to a determination under Schedule 2 Paragraph 7(3) of the Act. This stated that, having received confirmation from the tenant that the tenancy had been lawfully terminated, the tenant was to be treated as having withdrawn her application in terms of Schedule 2 paragraph 7 (1) of the Act. It then stated that the committee considered that the application should be determined on public interest grounds, due to the nature of the alleged repairs and the potential effects on any future tenants/occupiers if those allegations were substantiated.
8. Written representations were received from the landlords on 4 February. On 22 February, in her email response to a request from the committee for confirmation as to when she expected the repairs to be carried out, Mrs Slaven advised that she hoped the work would be done in the next couple of months. She stated that there was no evidence of water currently coming into the property, and that temporary repairs had been done.
9. On 1 March, the committee issued a direction to the landlords, stating that in the circumstances, it considered that it was appropriate to postpone the inspection and hearing, to allow more time for the works to be done. A new date of 2 June 2016 was subsequently fixed for the inspection and hearing.
10. On 26 May, an email was received from Mrs Slaven advising that the property factor had instructed the roof works, and that she was awaiting a progress report from the property factor to confirm whether the work had been completed. She attached two letters from the property factor, dated 23 October 2015 and 21 January 2016, which set out respectively the original and amended specification of works to be undertaken by the roofing contractor. On 27 May, a further email was received from Ms Slaven, forwarding an email from the property factor confirming that the work was due to be completed by the end of that day.

The inspection

11. The committee inspected the property on the morning of 2 June 2016. The weather conditions at the time of the committee's inspection were warm and dry. Mrs Slaven was present at the property during the inspection. Photographs were taken during the inspection and are attached as a schedule to this decision.

The property

12. The property is a top (fourth) floor sandstone tenement flat, estimated to be in the region of 105-110 years old. The property comprises: hallway, open plan living room /kitchen, bedroom and bathroom.

The hearing

13. Following the inspection, the committee held a hearing at Wellington House, 134-136 Wellington Street, Glasgow G2 2XL. The landlords were not present or represented at the hearing. Mrs Slaven told the committee at its inspection that she was unable to attend the hearing. The committee therefore made its decision on the basis of its inspection and all the written evidence before it.

The evidence

14. The evidence before the committee consisted of:
 - The application form completed by the tenant.
 - Registers Direct copy of Land Register title GLA42536
 - Short assured tenancy agreement between the parties in respect of the property dated 7 July 2015, together with form AT5 of the same date.
 - Various email correspondence between the tenant and the letting agent dated between 19 July 2015 and 3 November 2015' and between the tenant and the property factor dated between 26 September and 25 October 2015, which was submitted by the tenant with her application.
 - Photographs of the property submitted by the tenant with her application.
 - Emails to the panel from the tenant dated 19 and 25 January 2016.
 - Emails to the panel from Mrs Slaven dated 20 and 25 January; 22 February; and 26 May 2016.
 - The landlords' written representations which were received on 4 February 2016.
 - Emails to the panel dated 26 and 27 May 2016 received from Mrs Slaven, together with attachments.
 - The committee's inspection of the property.

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 landlords had complied with the duty imposed on them by section 14 (1) (b).

Findings of fact

16. The committee made the following findings in fact:

- The tenant entered into a tenancy agreement with the landlords on 7 July 2015 to rent the property for six months from 11 July 2015 until 10 January 2016.
- The tenant left the property on or around 10 February 2016.
- The property is owned jointly by the landlords Mrs Jillian Claire Slaven and Mr Colin John Slaven.
- The committee in its inspection carefully checked the items which were the subject of the complaint. The committee observed the following:
 - i. It was clear from an external inspection that the gutters at the front of the property had been replaced, as set out in the amended specification of works received from the property factors, which Mrs Slaven had submitted to the committee.
 - ii. There was evidence of a past leak above the bathroom window to the front of the property. Given the layout of the bathroom, it was not possible to reach the affected area to take dampness readings, but the area was immediately below the guttering which had been replaced.
 - iii. There was some staining to the wall in the top rear corner of the bathroom above the sink. Dampness readings were taken, but no signs of dampness were found.
 - iv. Dampness readings were taken of the wall and ceiling above the bay window in the bedroom, but no signs of dampness were found. The area was dry to the touch. Again, this area was directly below the newly replaced guttering.

Reasons for decision

17. The committee found no signs of recent water ingress in either the bathroom or the bedroom during its inspection. Dampness readings were taken, but no evidence of dampness was found in either room. The committee noted that the tenant's complaint about leaks in the bedroom areas related to the area

around the bay window, which was directly below the gutters which had recently been replaced.. While the committee was unable to closely inspect the outside of the property around the bay window, due to the height of the building, it noted that the specification of works included stripping and renewing the coverings around the bay area, and covering the bay roof. The committee therefore concluded that the likely sources of the leak had been addressed.

18. As regards the bathroom, the tenant's application did not include much detail as to the nature of the leaks she had been experiencing. The committee observed at its inspection that there was evidence of a past leak above the bathroom window to the front of the property. Given the layout of the bathroom, it was not possible to reach the affected area to take dampness readings, but the area was immediately below the guttering which had been replaced. The committee therefore concluded that the likely source of the leak had been addressed. The committee also observed some staining to the wall in the top rear corner of the bathroom above the sink. Dampness readings were taken, but no signs of dampness were found.
19. The committee therefore determines on the basis of its inspection and all of the other evidence before it 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) are in a reasonable state of repair and in proper working order.

Observations by the committee

20. The committee wishes to draw the landlord's attention to two additional matters, which were not included in the tenant's application. The repairing standard includes a requirement under section 13 (1) (e) of the 2006 Act that the house has satisfactory provision for detecting fires and for giving warning in the event of fire or suspected fire. In determining whether a property has satisfactory provision for detecting fires and for giving warning in the event of fire or suspected fire, section 13 (5) of the Act states that regard is to be had to any building regulations and any guidance issued by the Scottish Ministers on these matters.
21. The current Scottish Government statutory guidance states that there should be at least:
 - one functioning smoke alarm in the room which is frequently used by the occupants for general daytime living purposes

- one functioning smoke alarm in every circulation space, such as hallways and landings.
 - one heat alarm in every kitchen
 - and all alarms should be interlinked
22. Secondly, the committee notes that, since 1 December 2015, the repairing standard includes a requirement under section 13 (1) (f) of the 2006 Act to ensure that there is satisfactory provision for giving warning if carbon monoxide is present in a concentration that is hazardous to health. Scottish Government guidance on the provision of carbon monoxide alarms in private rented housing is available at:

<https://www.scottishlandlords.com/LinkClick.aspx?fileticket=t4YWL-asYF0%3D&tabid=432>

23. This guidance states that private landlords must ensure that a detection system is installed in all dwellings they rent to tenants where there is:
- a fixed combustion appliance (excluding an appliance used solely for cooking) in the dwelling or
 - a fixed combustion appliance in an inter-connected space, for example, an integral garage
 - a combustion appliance necessarily located in a bathroom (advice would be to locate it elsewhere) - the CO detector should be sited outside the room as close to the appliance as possible but allowing for the effect humid air might have on the detector when the bathroom door is open.
24. The guidance also states that it is expected that landlords will have regard to it immediately and ensure CO detection is installed by 1 December 2015. However, if a landlord has a scheduled annual gas safety check it is reasonable to arrange work to install CO detectors at the same time. This will mean that no more than one year from the date of the guidance, all private rented properties should have adequate CO detectors installed.

Summary of decision

25. On the basis of all the evidence before it, the committee found that at the time of its inspection the property was in a state of repair which met the repairing standard. The decision of the committee was therefore unanimous not to make a Repairing Standard Enforcement Order and to dismiss the tenant's application.

Right of Appeal

26. 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.
27. 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 of the 2006 Act

28. 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... 7/6/16

Sarah O'Neill, Chairperson