



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

Ref PRHP/RT/16/0138

Property at 1 Dornock Mill, Dornock, Annan, DG12 6TJ being the subjects registered in the Land Register of Scotland under Title Number DMF12080 ('the Property')

Dumfries and Galloway Council, Municipal Chambers, Buccleuch Street, Dumfries, DG1 2AD ('the Third Party Applicant')

Hope- Vere Anderson and Ms Erika Anderson residing at Barbeth, New Abbey, Dumfries, DG2 8DB ('the Landlords')

Miss Jade Boyle residing at 1 Dornock Mill, Dornock, Annan, DG12 6TJ ('the Tenant')

The Committee members are Jacqui Taylor (Chairperson) and George Campbell (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) in relation to the Property, determined that the Landlords have failed to comply with the duty imposed by Section 14 (1)(b) of the Act.

Background

- 1. The Third Party Applicant applied to the Private Rented Housing Panel for a determination of whether the Landlords have failed to comply with the duties imposed by Section 14 (1)(b) of the Housing (Scotland) Act 2006 ("the Act").**
- 2. The application stated that they considered that the Landlords have failed to comply with their duty to ensure that the Property meets the repairing standard. They advised that the Property was not wind and watertight and in all other respects reasonably fit for human habitation; the structure and exterior of the Property (including drains, gutters and external pipes) are not in a reasonable state of repair and in proper working order; 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; any fixtures, fittings and appliances provided by the Landlords under the tenancy are not in a reasonable state of repair and proper working order; any furnishings provided by the Landlords under the tenancy are not capable of being used safely for the purpose for which they are designed; the Property does not have satisfactory provision for detecting fires and for giving warning in the event of fire or suspected fire and the Property does not have satisfactory provision for giving warning if carbon monoxide is present in a concentration that is hazardous to health.**

In particular the application stated:-

- 2.1 There is evidence of condensation dampness throughout the Property and penetrating dampness through exterior walls.
- 2.2 Groundwater seeps through the flooring.
- 2.3 A number of room vents have been installed but are ineffective.
- 2.4 The gas central heating system has an intermittent fault and goes out.
- 2.5 A single detector has been in the hall but is not there now and there are no other smoke or heat detection within the Property.

The application also stated that the Tenant of the Property is Miss Jade Boyle, residing at 1 Dornock Mill, Dornock, Annan, DG12 6TJ ('The Tenant')

3. The President of the Private Rented Housing Panel, having considered the application, comprising documents received between 6th April 2016 and 14th April 2016, referred the application under Section 22 (1) of the Act to a Private Rented Housing Committee.
4. The Committee members were Jacqui Taylor (Chairperson) and George Campbell (Surveyor Member).
5. The President of The Private Rented Housing Committee served Notice of Referral under and in terms of Schedule 2, Paragraph 1 of the Act upon both the Landlords, Dumfries and Galloway Council and, for information purposes, on the Tenant.

6. The Landlords submitted written representations as follows:

'The Tenant gave notice in January and was supposed to vacate the Property in February. As there are no mattresses in the bed frames the Tenant is not living in the Property but has not removed contents and has not handed back the keys and is pretending to live in the flat. The Tenant does not answer emails, texts or phone calls. The Tenant has the keys and has changed the locks and the Landlord does not have access to do repairs, the neighbours stated she has not lived there since February. The Tenant has paid no rent for the past 5 months. The smoke detectors and heat detectors have been upgraded in the other two flats owned by this Landlord but could not gain access to complete the work in flat 1 as the Tenant will not answer calls or return requests to meet the landlord for access to carry out work. The exterior rendering has deteriorated due to rain penetrating at gutter level. This was repaired at guttering and roof level in December 2015 and weather has not been conducive to carry our repairs to rendering. The Tenant has not been cooperative regarding access or keys for the flat not to mention have not vacated when intended on February 15th 2016 and have made no effort to pay past due rent over the last 5 months. They are only using the flat for a mail drop for a variety of purposes not least using it as a lever to gain points on the Housing List. I am told the mail is collected once a week when they stop by the flat. ...'

7. The Committee attended at the Property on 2nd August 2016. The Property was unoccupied. Hope-Vere Anderson, one of the Landlords, and Robert Rome of Dumfries and Galloway Council were present at the inspection. The Property is a ground floor flat in a three storey block of six flats. The building is a converted mill which had been renovated in the 1970's. The weather was dry.

The Committee inspected the alleged defects and found:-

7.1 Evidence of condensation dampness throughout the Property and penetrating dampness through exterior walls.

The surveyor member of the Committee took damp meter readings of the walls in the Property. The readings were normal, with the exception of the back wall of the kitchen cupboard, which indicated some condensation dampness.

There were a number of cracks to the external render at the front of the Property which would lead to penetrating dampness entering the Property during periods of driving rain.

7.2 Groundwater seeps through the flooring.

Several sections of the laminate flooring in the living room had been lifted exposing the solid floor below. The laminate flooring and the solid floor below were both dry at the inspection.

7.3 A number of room vents have been installed but are ineffective.

Air vents had been installed in the living room and front bedroom. The vents allow air to circulate behind the walls but they were not ducted.

7.4 Gas central heating has an intermittent fault and goes out.

The central heating system had not been turned on at the inspection.

7.5 A single detector has been in the hall but is not there now and no other smoke or heat detection within the Property.

Hardwired and inter connected smoke alarms had recently been installed in the living room and hall. Also a heat detector and carbon monoxide detector had recently been installed in the kitchen.

Photographs were taken during the inspection and are attached as a Schedule to this report.

8. Following the inspection of the Property the Private Rented Housing Committee held a hearing at Annan Community Centre, St John's Road, Annan, DG12 6AP. Hope-Vere Anderson, one of the Landlords, Robert Rome and Kirsty McCrindle of Dumfries and Galloway Council attended the hearing.

In respect of the matters in the application they advised as follows:

8.1 There is evidence of condensation dampness throughout the Property and penetrating dampness through exterior walls.

The parties accepted that there was no evidence of dampness in the Property at the inspection. Robert Rome explained that when he visited the Property on 25th January the Tenant was still living in the Property and there was condensation on the windows and walls which were damp to touch. He also advised that the last clause of the lease which was for the original period 7th September 2012 to 6th March 2013 states:

'I have viewed and agree to accept this flat 'as is', in respect of the condition that the flat has areas of dampness on its internal walls, which I have seen, acknowledged and agreed to accept occupancy on this basis.'

8.2 Groundwater seeps through the flooring.

Kirsty McCrindle explained that she is Dumfries and Galloway Homeless Persons Officer. When the Tenant first approached her in January 2016 the Tenant showed her a video of the living room floor as the Tenant walked on it. She could see water came up through the laminate flooring.

Hope- Vere Anderson agreed that there was a problem with water coming up through the flooring in the living room. He didn't know the source of the water. He suspects that water is travelling down through the rendering and then entering the Property. He has taken advice of builders and surveyors who have advised that the Property needs to be re-rendered and a larger overhanging projection installed to the roof. He confirmed that he has been aware of long standing problems with water penetration to the Property and does not intend to relet the Property until it is resolved.

8.3 A number of room vents have been installed but are ineffective.

Hope- Vere Anderson explained that the internal ventilators had been installed last year to improve ventilation. There are no moving parts to the ventilators which work correctly.

8.4 Gas central heating has an intermittent fault and goes out.

The Landlords had provided the Committee with a copy of the Gas Safety Certificate prior to the hearing and inspection. The Certificate is dated 13th January 2016 and confirms that the baxi boiler is safe to use.

Robert Rome advised the Committee that at the time of his inspection on 25th January 2016 the central heating system was not working correctly.

8.5 A single detector has been in the hall but is not there now and no other smoke or heat detection within the Property.

Hope- Vere Anderson explained that the smoke detectors, heat detector and carbon monoxide alarm had been recently installed.

Robert Rome advised the Committee that they had not been installed at the time of his inspection on 25th January 2016.

9. Summary of the issues

The issues to be determined are:-

9.1 The Property is not wind and watertight and in all other respects reasonably fit for human habitation and the structure and exterior of the house (including drains, gutters and external pipes) are not in a reasonable state of repair and in proper working order (Sections 13(1)(a) and (b) of The Housing (Scotland) Act 2006).

Whether the evidence of both Hope-Vere Anderson and Kirsty McCrindle of the dampness in the Property results in the Property not being wind and water tight and in all other respects reasonably fit for human habitation.

9.2 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 in proper working order (Section 13(1)(c) of The Housing (Scotland) Act 2006).

Whether the gas central heating system is in a reasonable state of repair and proper working order.

9.3 That the fixtures, fittings and appliances provided by the Landlord under the tenancy were not in a reasonable state of repair and in proper working order (Section 13(1)(d) of The Housing (Scotland) Act 2006).

Whether the internal ventilators are in a reasonable state of repair and proper working order.

9.4 That the Property does not have satisfactory provision for detecting fires and for giving warning in the event of fire or suspected fire and the Property does not have satisfactory provision for giving warning if carbon monoxide is present in a concentration that is hazardous to health (Section 13(1)(f) and (g) of The Housing (Scotland) Act 2006).

Whether the recently installed smoke alarms, heat detector and carbon monoxide alarm are sufficient.

10. Findings of fact

10.1 The Property is not wind and watertight and in all other respects reasonably fit for human habitation and the structure and exterior of the house (including drains, gutters and external pipes) are not in a reasonable state of repair and in proper working order (Sections 13(1)(a) and (b) of The Housing (Scotland) Act 2006).

The Committee accepted the evidence of both Hope-Vere Anderson and Kirsty McCrindle to the effect that the penetrating damp enters the Property during periods of driving rain resulting in the Property not being wind and water tight and in all other respects reasonably fit for human habitation.

10.2 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 in proper working order (Section 13(1)(c) of The Housing (Scotland) Act 2006).

The Committee accepted the evidence of Robert Rome to the effect that the gas central heating system was not working correctly at his inspection on 25th January 2016. Hope- Vere Anderson was not able to demonstrate to the Committee at the inspection that the central heating system was working correctly and therefore the Committee determined that the space heating system is not in a reasonable state of repair and proper working order.

10.3 That the fixtures, fittings and appliances provided by the Landlord under the tenancy were not in a reasonable state of repair and in proper working order (Section 13(1)(d) of The Housing (Scotland) Act 2006).

The Committee accepted that there are no internal parts to the internal ventilators and consequently determined that they are in a reasonable state of repair and proper working order.

10.4 That the Property does not have satisfactory provision for detecting fires and for giving warning in the event of fire or suspected fire and the Property does not have satisfactory provision for giving warning if carbon monoxide is present in a concentration that is hazardous to health (Section 13(1)(f) and (g) of The Housing (Scotland) Act 2006).

The Committee acknowledged that the statutory guidance requires:

- 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.
- All alarms should be interlinked.
- One CO detector in every space containing a fixed combustion appliance.

The Committee determined that the CO alarm in the kitchen and the hardwired and interlinked smoke detectors in the hall and living room and the heat detector in the kitchen comply with the requirements.

Decision

11. The Committee accordingly determined that the Landlord had failed to comply with the duties imposed by Sections 13 (1)(a) and 13(1)(c) of the Act, as stated.

12. The Committee proceeded to make a Repairing Standard Enforcement Order as required by section 24(1).

13. The decision of the Committee was unanimous.

Right of Appeal

14. 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

15. 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.

J Taylor

Signed Date 9th August 2016
Chairperson

Photographs taken at 1 Dornock Mill, Annan DG12 6TJ on 2 August 2016 (PRHP/RT/16/0138)



01 - Front elevation (ground floor flat)



02 - Smoke detector - hall



03 - Smoke detector - living room



04 - Heat detector - kitchen



05 - Carbon monoxide alarm - kitchen



06 - External front left corner



07 - Front centre



08 - Front right



09 - Front centre



10 - Front left



Repairing Standard Enforcement Order

Ordered by the Private Rented Housing Committee

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Dumfries and Galloway Council, Municipal Chambers, Buccleuch Street, Dumfries, DG1 2AD ('the Third Party Applicant')

Hope- Vere Anderson and Ms Erika Anderson residing at Barbeth, New Abbey, Dumfries, DG2 8DB ('the Landlords')

Miss Jade Boyle residing at 1 Dornock Mill, Dornock, Annan, DG12 6TJ ('the Tenant')

The Committee members are Jacqui Taylor (Chairperson) and George Campbell (Surveyor Member).

NOTICE TO

The said Hope- Vere Anderson and Ms Erika Anderson

Whereas in terms of their decision dated 9th August 2016, the Private Rented Housing Committee determined that the Landlords have failed to comply with the duty imposed by Section 14 (1)(b) of the Housing (Scotland) Act 2006 and in particular the Landlords have failed to ensure that the Property is wind and water tight and in all other respects reasonably fit for human habitation and the installations in the Property for the supply of water, gas and electricity and for sanitation, space heating and heating water are in a reasonable state of repair and proper working order.

The Private Rented Housing Committee now requires the Landlords to carry out such work as is necessary for the purposes 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.

In particular the Private Rented Housing Committee requires the Landlords to:-

1. Instruct a competent gas central heating engineer to inspect the central heating system and carry out such repairs that are required to render it in proper working order. Following completion of the said works the Landlords are required to provide the Committee with a report from the said central heating engineer confirming that the central heating system is in proper working order.
2. Commission a report from a dampness specialist and carry out the recommended works to render the property water tight.

The Private Rented Housing Committee order that these works must be carried out and completed By 30th November 2016.

A landlord or a 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.

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.

J Taylor

Signed..... Date 9th August 2016
Chairperson

.....witness: KEIRSTEN BYRNE, 65, High Street, Irvine