



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

prhp Ref: PRHP/RP/16/0248

Re : Property at 124 Dee Village, Millburn Street, Aberdeen, AB11 6SY ("the Property")

The Parties:-

ARNAUD MINETTI and CLEMENT MINETTI, both residing at 124 Dee Village, Millburn Street, Aberdeen, AB11 6SY ("the Tenants")

GRAEME MALCOLM DAVID SHARP, c/o CDM Lettings, 86 Great Western Road, Aberdeen, AB10 6QF (represented by Mr Chris Minchin of CDM Lettings) ("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 both the Landlord and the Tenants at the hearing, determined that the Landlord had failed to comply with the duty imposed by Section 14 (1)(b) of the Act.

Background

1. By application received 19 July 2016 the Tenants 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 Tenants stated that the Tenants 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 Property is wind and watertight and in all other respects reasonably fit for human habitation
3. By letter dated 8 August 2016 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 Tenants.
5. Following service of the Notice of Referral the Tenants made no further material written representations to the Committee other than their original application. The Landlord's Representative provided a report dated 31 August 2016 from a surveyor within the employ of the factor of the Property. This set out the potential issues in the larger building of which the Property formed part.
6. The Private Rented Housing Committee inspected the Property on the morning of 13 September 2016. The Committee comprised Mr E K Miller (Chairman and Legal Member) and Mr A Anderson (Surveyor Member). Mr Arnaud Minetti of the Tenants was present

accompanied by his partner, Ms Luiza Guimaraes. The Landlord was not present but his representative, Mr Minchin was present along with Mrs Jacqueline Moir and Mr Adam Wallace, both of the Factors, Atholls.

7. It was dry, bright and sunny on the morning of the inspection. Weather conditions over the proceeding weeks had been generally warm and dry. The subject property is a first floor flat in a two storey and attic building. The building was converted to residential accommodation around 2007. There are four flats entered off a communal staircase. A further attic flat above the subjects appeared to be accessed from another stairwell. The walls are constructed of granite and the roof is slated. The flat comprises entrance hall, lounge with kitchen on open plan, bedroom, en-suite shower room, master bedroom, and bathroom.
8. Following the inspection of the Property the Private Rented Housing Committee held a hearing at The Credo Centre, John Street, Aberdeen and heard from both the Tenant and the Landlord's Representative. The Landlord was again represented by Mr Minchin and accompanied by Mrs Moir and Mr Wallis from the Factors. Mr Arnaud Minetti from the Tenants was present and was again accompanied by his partner, Ms Guimaraes.
9. The Tenants submitted that they have viewed the Property in October 2015 and had subsequently taken a tenancy of it. Upon taking entry they had highlighted to the Landlord's representative that there was an area of damaged paintwork in an arch over the lounge window. They were advised by the Landlord's representative that the cause of the damage had been rectified and that in due course this would be painted. Painting work never occurred. In addition to the issue at the lounge window the Tenants discovered, not long after moving in that black mould began to build up around the windows in the ensuite bathroom and the main bedroom. They submitted that they had cleaned this off twice but it came back quickly, particularly in the winter. They made sure they had ventilated the property.

A dehumidifier had been provided and whilst this had helped a little over the summer they were concerned with the onset of winter again that the issues would re-arise. They submitted that the damp and mould within the Property had caused problems with Ms Guimaraes' health. The Tenants accepted that there was an issue with the larger building that would mean there was no point in repainting the area around the lounge window until such time as the root cause had been identified and rectified. They submitted, however, that works such as fungicidal paint and cleaning could take place in the bedroom and ensuite bathroom to mitigate the general effects of the mould.

10. The Landlord's representative submitted that it was accepted that there was an ongoing problem in relation to the block. It appeared that pointing work had been carried out at the time of redevelopment that had used the wrong type of mortar and that this did not allow the granite stonework in the larger building to breathe. This was causing problems within a number of the flats within the development. It was accepted by the Landlord that works to the larger building required to take place that would address the damp penetration in the Lounge. He highlighted that this was not a matter entirely within the control of the Landlord as it was communal works that were required to the exterior of the larger building.

The representative acknowledged that the Tenants had been told that the root cause of the damage in the lounge had been fixed upon taking entry. He submitted this was because that was what he had understood had happened from the previous Factors. He accepted, however, that that was not the case and that the root cause still needed to be rectified.

In relation to the mould in the ensuite bathroom and the bedroom the Landlord's representative submitted that this may be caused by lifestyle living of the Tenants. More ventilation should occur to minimise this. The Landlord's representative did accept, however, that the problem may be being exacerbated by higher background levels of humidity caused by the defect within the larger building.

The Factors advised that they had taken over responsibility for the building in March 2016. They had been in contact with all owners within the block within which the Property was situated. They were aware that five properties still seemed to be affected. The Factors had been in touch with Barratts, who were the original developer, with a view to seeing whether repair works would be done by Barratts or possibly via NHBC. The Factors had had a building contractor and one of their own RICS surveyors inspect the Property. They were of the view that there was an ongoing building defect that needed to be rectified. The report from the Surveyor from Atholls indicated that damp penetration was occurring around the window in the lounge. In the bedroom and ensuite bathroom the report indicated that whilst some of this may be due to condensation caused by lifestyle living, elements of it may be because of the overall building defect.

The Factors' intention was to press Barratts/NHBC for progress, although the various owners may also need to deal with the issue depending on the result of discussions with Barratts/NHBC. The Factors and the Landlord's representative assured the Committee that they were committed to moving matters forward but that it was not a simple issue that could be rectified by the Landlord acting in isolation, it needed to be taken forward for the larger building.

Summary of the issues

11. The issues to be determined are:

- a. Whether the Property was properly wind and watertight and free from water/damp penetration; and
- b. Whether the mould in the ensuite bathroom and main bedroom rendered the property not reasonably fit for human habitation and were caused by a defect in the building, by condensation caused by lifestyle living of the Tenants or a combination of the two factors.

Findings of fact

12. The Committee found the following facts to be established:-

- The Property was not properly wind and watertight and free from damp penetration. Water/damp was penetrating into the Property and was damaging the area around the lounge window.
- The Committee was of the view that whilst some condensation was inevitably caused by lifestyle living, there were higher levels of humidity within the Property caused by the building defect This was either causing or exacerbating the mould build up in the ensuite bathroom and the main bedroom and that this was affecting the health of at least one of the occupants.

Reasons for the decision

13. The Committee based its decision primarily on the evidence obtained during the course of the inspection.

The Committee first inspected the lounge and the area around the main window. It was clear that water penetration had been occurring as the plasterboard was badly stained and damaged. The weather had been generally dry recently but, despite this, above average moisture readings (between 15 and 20%) were obtained. This was particularly prevalent at the left hand side of the window. Externally, efflorescence (salt staining) was seen at the underside of the arched masonry. Externally, the pointing to the walls was found to be weathered and missing on places. Some areas which had clearly been re-pointed in recent times, had fissures and appeared to be poorly adhered to stonework. The colour of the mortar was variable in places. Further areas of efflorescence were

noted. It could be seen that the masonry to the rear of the pediment facing Crown Street had been protected with lead flashings.

The second bedroom suffered from no evidence of water penetration, damp or mould.

In the ensuite bathroom there was evidence of mould build up to the plasterboard close to the window and to the window frame. There was an extractor fan which was linked to the light and on a timer. The fan appeared to be in proper working order and relatively powerful. It was apparent that condensation was an issue and causing the mould.

In the main bedroom there was a musty odour. Again, there was sign of mould build up to the plasterboard close to the window and to the window frame. The tenant highlighted a small area of discoloured wall lining at a low level in the corner of the bedroom. The location and type of staining was consistent with condensation. When tested, this area showed normal moisture content.

On balance, the Committee was satisfied that the mould build-up in the ensuite and the main bedroom was not caused purely by normal lifestyle living of the Tenants.

The Committee noted the terms of the report from Alistair Walker, FRICS of Atholls which stated *"the water entering the building has caused a significant increase in the relative humidity within the flat leading to the condensation evident within the bedroom and the bathroom"*.

It appeared to the Committee, therefore, to be the case that whilst, inevitably, there would be some moisture created by normal lifestyle living of the Tenants, the general high levels of humidity caused by the building defect were enough to increase normal condensation levels to the extent that mould was beginning to form. The Tenants appeared to be aware of the need to ventilate and indicated to the Committee that they had been doing so. On balance therefore the Committee was of the view that the Landlords would require to carry out further works in the interim to try and alleviate the position pending the resolution of the larger building defect.

The Committee was of the view that it would be appropriate for the Landlord to have the windows in the ensuite bathroom and main bedroom cleaned properly to remove any current sites of mould. The application of a fungicidal paint would then hopefully encourage less mould growth. The Committee was of the view that the Tenants would, however, need to be cognisant of the fact that there were and would continue to be generally high levels of humidity in the flat at the present time. Accordingly they needed to make every effort to ensure the flat was ventilated and to minimise the impact of their own everyday living. Extended use of the fan after showering, wiping down shower walls and windows to remove moisture and generally ventilating the flat would assist in the control of the problem pending the repair to the larger building.

The Committee considered at length the timeline to impose on the Landlord. It appeared to the Committee that there were two sets of works that were required, one of which was within the control of the Landlord now and the other was dependant on progress by the Factor with Barratts/NHBC. In relation to the works to the ensuite bathroom and bedroom these could be carried out by the Landlord forthwith and the Committee fully expected them to do this as soon as practicable.

In relation to the larger repair required to the building to render it properly wind and watertight, this would require to be taken forward by the Factor in conjunction with the other owners and in discussions with Barratts/NHBC.

Overall, the Committee decided to impose a timescale of 3 months. The Committee would expect the bathroom/bedroom works to be done well within this timescale. At the expiry of the three month period the Committee would review the position in relation to the rest of the larger works. It may well be that at that stage the Committee would issue a variation

to allow further time to the Landlord's representative and the Factors to allow them to progress matters with Barratts if discussions were still ongoing.

Annexed to this decision are photographs taken during the inspection of the Property for information purposes.

Decision

- 14. The Committee accordingly determined that the Landlord had failed to comply with the duty imposed by Section 14 (1)(b) of the Act.
- 15. The Committee proceeded to make a Repairing Standard Enforcement Order as required by section 24(1).
- 16. The decision of the Committee was unanimous.

Right of Appeal

- 17. **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

- 18. 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
Chairperson

Ewan Miller

.. Date 26/9/16



Schedule of Photographs
124 Dee Village, Millburn Street, Aberdeen AB11 6SY
Case Reference Number PRHP/RP/16/0248
Date: 13/09/2016



Figure 1Front Elevation - Crown Street



Figure 2 Rear Elevation



Figure 3 Lounge/kitchen window to Crown Street elevation



Figure 4 Meter reading (18%) and staining left hand side (LHS) lounge window



Figure 5 Further meter reading (20%) LHS lounge window, low level.



Figure 6 Efflorescence LHS lounge/kitchen window



Figure 7 Front elevation - further efflorescence and missing pointing

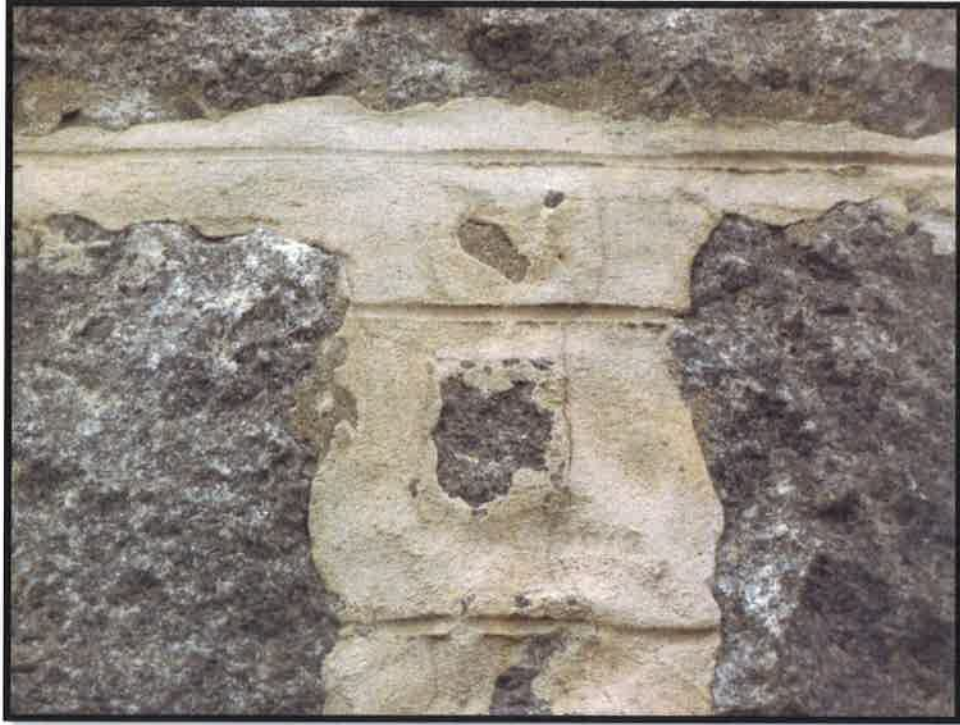


Figure 8 Gable elevation - example of re-pointing



Figure 9 Rear of Crown Street pediment



Figure 10 ~En suite shower room



Figure 11- En-suite shower room - Mould to window ingo and frame



Figure 12 Master bedroom window



Figure 7 Master bedroom - mould growth to window frame



Repairing Standard Enforcement Order

Ordered by the Private Rented Housing Committee

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Re : Property at 124 Dee Village, Millburn Street, Aberdeen, AB11 6SY ("the Property")

Title No: ABN94958

The Parties:-

ARNAUD MINETTI and CLEMENT MINETTI, both residing at 124 Dee Village, Millburn Street, Aberdeen, AB11 6SY ("the Tenants")

GRAEME MALCOLM DAVID SHARP, c/o CDM Lettings, 86 Great Western Road, Aberdeen, AB10 6QF (represented by Mr Chris Minchin of CDM Lettings) ("the Landlord")

NOTICE TO GRAEME MALCOLM DAVID SHARP ("the Landlord")

Whereas in terms of their decision dated [] September 2016, the Private Rented Housing Committee determined that the landlord has failed to comply with the duty imposed by Section 14 (1)(b) of the Housing (Scotland) Act 2006 ("The Act") and in particular that the landlord has failed to ensure that:-

- (a) The Property is wind and watertight and in all other respects reasonably fit for human habitation;

the Private Rented Housing Committee now requires the landlord to carry out such work as is necessary for the purposes of ensuring that the house concerned 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 landlord:-

- (a) To carry out such works as are necessary to the larger building of which the Property forms part in order to render it properly wind and watertight and free from water/damp penetration, followed by internal rectification works to the affected areas around the lounge window; and
- (b) To carry out appropriate works to the main bedroom and ensuite bathroom to reduce the incidence of mould build-up including, without prejudice to the foregoing generality, the cleaning of mould from the windows and the application of fungicidal solution and mould resistant paint.

The Private Rented Housing Committee order that the works specified in this Order must be carried out and completed within the period of 3 months from the date of service of this Notice.

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.

Please note that in terms of section 28(1) of the Act, a landlord who, without reasonable excuse, fails to comply with a RSEO commits an offence liable on summary conviction to a fine not exceeding level 3 on the standard scale. A landlord (and that includes any landlord's successor in title) also commits an offence if he or she enters into a tenancy or occupancy arrangement in relation to a house at any time during which a RSEO has effect in relation to the house. This is in terms of Section 28(5) of the Act.

In witness whereof these presents type written on this and the preceding page(s) are executed by Ewan Miller, solicitor, chairperson of the Private Rented Housing Committee at Dundee on 26 September 2016 before this witness:-

witness

Ewan Miller

chairman

Claire Robertson
Secretary
Thorntons Law LLP
Whitehall House
33 Yeaman Shore
Dundee
DD1 4BJ