



Statement of Facts and Reasons for decision to grant a Certificate of Completion of Work under Section 60 of the Housing (Scotland) Act 2006

prhp Ref: PRHP/EH10/106/08

Re: Property at 36 Auchingane, Fairmilehead, Edinburgh, EH10 7HX ("the Property")

Sasine Description: ALL and WHOLE the property known as and forming 36 Auchingane, Fairmilehead, Edinburgh being the subjects more particularly described in and disposed by Feu Disposition by Wimpey Homes Holdings Limited in favour of Alan Kean recorded in the Division of the General Register of Sasines for the County of Midlothian on 3 April 1989.

The Parties:-

DR SEAN ADAM and MRS MARNIE GINA ADAM formerly of 36 Auchingane, Fairmilehead, Edinburgh, EH10 7HX ("the Tenants")

JULIE ANNE KEAN c/o Edinburgh Property Management, 1 Lynedoch Place, Edinburgh, EH3 7PX ("the Landlord") (represented by their agent Ross Sneddon of the said Edinburgh Property Management ("the Agent"))

Statement of Facts and Reasons to the Landlord

- (1) Mr Robert Buchan, Surveyor Member and Mr Robert Shea, Clerk to the Private Rented Housing Committee re-inspected the Property on 19 August 2009 in order to ascertain whether or not the work required by the Repairing Standard Enforcement Order ("the RSEO") previously served on the Property had been completed.
- (2) The Tenants were no longer resident in the property and a new tenant is now occupying the Property. Neither the Landlords nor the Agent appeared at the re-inspection. Fortuitously, the new tenant was present in the Property at that point and was agreeable to Mr Buchan and Mr Shea inspecting the Property.
- (3) The Committee noted that:-
 - (a) the hanging blinds at the Property had now been removed;
 - (b) the ceilings had been repaired and redecorated and the electrical certificate had already been exhibited by the Agent prior to the re-inspection;

- (c) the mirrored sliding door had been repaired;
 - (d) the rotten sills of the living room sliding door had been repaired but the new tenant, in her one night of occupation so far, complained that the rain had penetrated the interior and had badly affected the carpet. It was clear that the door was still not wind and water tight;
 - (e) the dining room door had been repaired;
 - (f) the kitchen window had been repaired;
 - (g) the toilet did not appear to have been repaired and was still not flushing properly;
 - (h) the kitchen tap had not been replaced but some sealant had been added and it now appeared to be in proper working order;
 - (i) the Agent had already exhibited a certificate relating to the repair of the burglar alarm;
 - (j) the Agent had already exhibited a certificate concerning the smoke alarms at the Property confirming that they were appropriate in number and in proper working order and compliant with the relevant regulations;
 - (k) the Agent had provided certificates relating to the work carried out on the central heating system. The valve and associated piping had been replaced and the system was working properly at the time of the re-inspection.
- (4) The Committee, upon considering Mr Buchan's Report from the re-inspection, were not satisfied that all works required by the RSEO had been satisfactorily carried out. In the circumstances of this particular case, the Committee decided to reconvene another Hearing in order to discuss matters further with the Landlord and/or the Agent.
- (5) The Committee reconvened on 22 September 2009 at 10am at Oxfangs Neighbourhood Centre, 71 Firhill Drive, Edinburgh. Present were Mr E K Miller, Chairman and Legal Member; Mr Robert Buchan, Surveyor Member; and Mr Robert Shea the Clerk to the Committee. The third member of the original committee Mrs Kitson was unable to attend. The Agent was present although the Landlord was not. The Tenants were not present.
- (6) The Committee raised a number of preliminary issues. The Committee were disappointed that at the original inspection the Agent had not turned up at the Property and the Committee had had to delay matters to allow the Agent to arrive. At the subsequent re-inspection the Agent had again not appeared and it was only because the new tenant had been present in the Property and had been willing to let the Committee enter the Property that the re-inspection had been able to go ahead. The Agent accepted that he ought to have attended the first inspection but advised that he had contacted the office of the Committee to ascertain if he needed to attend the re-inspection but had not received a reply. The Committee also noted that they had received a request from the Agent for a new tenancy to commence prior to the re-inspection date. The intention had been that the Committee would go back to the Agent upon receipt of certain documentation relating to the safety aspects of the RSEO to confirm whether or not the new tenancy would be consented to. This consent had not been forthcoming and the new tenancy had been granted without

the Committee's approval. The Committee did, however, accept that it could be argued that the wording that had been sent from the Committee's office had not made it sufficiently clear to the Agent that the Agent should have waited for consent from the Committee before proceeding with the grant of the new tenancy.

- (7) The Committee then discussed the two substantive issues with the Agent, namely the poorly functioning toilet and the leaking sliding door in the lounge. The Agent produced a report from a plumber dated 29 July 2009, which indicated that the toilet was now working correctly and advised that the new tenant had not reported any problem with the toilet. The Committee reiterated that it had not been working properly at the date of the re-inspection. The Committee accepted that it may simply be the case that this toilet, for whatever reason, was never going to flush particularly well. In relation to the sliding door, the Committee pointed out that one of the first things the new tenant had said when the Committee carried out the re-inspection was that the sliding door was leaking. This information was received unprompted by the Committee and without the new tenant having the knowledge of this being an issue with Tenants. The Agent acknowledged that this may have continued to be an issue. They had replaced the sills as directed in the RSEO and had hoped that this would have resolved the issue. They had since added sealant along the door to further ensure there was no more leakage. They advised that they had had no further complaints from the new tenant and would endeavour to ensure that if any were received they would be dealt with.
- (8) The Committee explained that it was within their power to issue a Rent Relief Order against the Property for up to 90% of the rent being paid given the failure to fully comply with the RSEO. The Agent submitted that he felt that any restriction of rent would be inappropriate. He felt that the Committee were "against him" and were failing to take account of (a) all the works that the Landlord had done that had been acceptable (b) the difficulties that the Landlord had had with the Tenants, whom the Agent alleged could be aggressive (c) the significant arrears of rent that had arisen in this matter and (d) that a number of the repairs had not been notified to the Landlord. The Committee explained firstly that their remit was comparatively narrow and they could only look at the repairs issues that had been complained of and not issues such as the non-payment of rent. Secondly, the Committee noted that they had only looked at those items that they had been satisfied had been properly listed in the Tenants application and notified to the Landlord prior to the original inspection.
- (9) Upon conclusion of the Hearing the Committee considered the position in this case. The Tenants had moved out and the new tenant had received the Property in a generally appropriate condition. The Committee noted and accepted, notwithstanding the Agents view of the Committee to the contrary, that the Agent and the Landlord had made an effort to carry out the bulk of the works following upon the serving of the RSEO. Whilst the toilet may still flush poorly the Committee were of the view that this was a minor matter, possibly a temporary one, and that there are three other toilets within the Property that do work properly. In relation to the sliding door, the Committee accepted that the Agent had taken further remedial steps and would continue to monitor the position. Overall, in relation to the Property, the Committee were satisfied that due regard was now being had to the repairing standard by both Agent and Landlord. For these reasons the Committee did not propose to grant a Rent Relief Order in this case. Further the Committee decided

that, as all material works required by the RSEO had now been satisfactorily carried out, the public interest would not be served by the matter continuing any further and accordingly the Committee decided to grant a Certificate of Completion.

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.

In witness whereof these presents type written on this and the preceding page are executed by Ewan Kenneth Miller, Solicitor, Whitehall House, 33 Yeaman Shore, Dundee Chairperson of the Private Rented Housing Committee at Dundee on 25 September 2009.

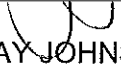
before this witness:-

L Johnston

witness

E Miller

Chairman


LINDSAY JOHNSTON
Whitehall House
33 Yeaman Shore
Dundee
DD1 4BJ
Legal Secretary



Certificate of completion of work

Issued by the Private Rented Housing Committee

Under section 60 of the Housing (Scotland) Act 2006

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The Parties:-

JULIE ANNE KEAN c/o Edinburgh Property Management, 1 Lynedoch Place, Edinburgh, EH3 7PX (represented by their agent Ross Snedden of the said Edinburgh Property Management ("the Landlord"))

DR SEAN ADAM and **MRS MARNIE GINA ADAM** formerly of 36 Auchingane, Fairmilehead, Edinburgh, EH10 7HX ("the Tenants")

CERTIFICATE OF COMPLETION

The Private Rented Housing Committee hereby certifies that the work required by the **Repairing Standard Enforcement Order** relative to the Property served on 3 July 2009 has been completed. Accordingly, the said Repairing Standard Enforcement Order relative to the property has been discharged.

A landlord or a tenant aggrieved by this decision of the Private Rented Housing Committee may appeal to the Sheriff by summary application within 21 days of being notified of that decision.

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before this witness:-

L Johnston

witness

E Miller

Chairman

LINDSAY JOHNSTON
Whitehall House
33 Yeaman Shore
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DD1 4BJ
Legal Secretary