

**Statement of Decision of the Private Rented Housing Committee
Under Section 24(1) of the Housing
(Scotland) Act 2006**

PRHP Ref: PRHP/DD4/107/09

Re: Property at 30E Springhill Road, Dundee DD4 6HP ("the property")

Land Register Title Number: - ANG38868

The Parties:-

Mr Darren Hendry, residing formerly at Flat E 30 Springhill Road, Dundee DD4 6HP ("the tenant")

and

Mr David Fanthorpe, per his agents The Property Management Company, 19 Castle Street, Tayport, Fife DD6 9AE ("the landlord")

Decision:-

The Committee having made such enquiries as it saw fit for the purposes of determining whether the landlord had complied with the duty imposed by Section 14(1) (b) of The Housing (Scotland) Act 2006 ("the 2006 Act") in relation to the property and taking account of the evidence led at the hearing, unanimously determined that the landlord had not failed to comply with the duty imposed by Section 14(1) (b) of the 2006 Act.

Background

- 1 By application dated 2nd November 2009 the tenant applied to the Private Rented Housing Panel (PRHP) for a determination of whether the landlord had failed to comply with the duties imposed by Section 14(1) (b) of the 2006 Act.
- 2 The application made by the tenant stated that the tenant considered that the landlord had failed to comply with his duty to ensure that the house met the repairing standard and in particular the landlord had failed to ensure that:-
 - (a) the house was wind and water tight and in all respects reasonably fit for human habitation.
 - (b) that any fixtures, fittings and appliances provided by the landlord under the tenancy were in a reasonable state of repair and in proper working order.
 - (c) any furnishings provided by the landlord under the tenancy are capable of being used safely for the purpose of which they are designed.
- 3 In particular the tenant complained that:-
 - (a) a number of fittings and appliances were not up to working standard.
 - (b) some of the furnishings, such as the bed and sofa, were broken.

- (c) the windows in the living room could not close properly.
- (d) the washing machine did operate correctly.
- (e) a number of curtain rails were broken.
- (f) the door entry system was not operational.
- (g) the smoke alarms within the property were not working.

The tenant had attached to his letter a copy of the inventory of contents of the flat to which he had annotated his own comments in relation to a number of these issues.

- 4 By letter dated 27th November 2009 the President of the Private Rented Housing Panel intimated a decision to refer the application under Section 22(1) of the 2006 Act to a Private Rented Housing Committee ("the Committee").
- 5 The Private Rented Housing Committee served Notice of Referral under and in terms of Schedule 2, Paragraph 1 of the 2006 Act upon both the landlord and the tenant.
- 6 On or around 10th December 2009 the tenant vacated the property. The tenant confirmed to the PRHP that he wished to continue with the application.
- 7 The Committee inspected the property on the morning of 19th March 2010. The landlord was represented at the inspection by Mr Ray Willkie of the landlord's agents. The tenant was not present nor represented during the inspection.
- 8 Following the inspection of the property the Committee held a hearing at The Apex Hotel, Dundee. At that hearing the Committee heard from Mrs Joanna Willkie and Mr David Willkie as representatives of the landlord's agents. The tenant did not attend nor was represented at the hearing.

The Inspection

- 10 At the inspection of the property the Committee could find no evidence of any of the complaints made by the tenant in his application. The property was in generally good condition. A hardwired smoke detector had been installed in the property. The current tenant of the property was present during the inspection and confirmed that the washing machine operated correctly. The Committee did note that the handset for the door entry system was not operational. The Committee noted that this was part of a common system used by all the properties in the tenement.

The Hearing

- 11 At the hearing the Committee indicated to the landlord's agents that they had found no evidence of the matters complained of by the tenant other than the issue relating to the common door entry system. The landlord's agents confirmed they have attempted to repair the door entry system, but that the system is owned in common with other owners in the tenement. Accordingly the landlord lacked the necessary rights of access or otherwise required to carry out a full and comprehensive repair to that system. Notwithstanding this the landlord did confirm that he would continue to take reasonable steps to address any necessary repair to the door entry system with the other owners of the building.

Findings and Facts

- 12 Having considered all the evidence the Committee found that (as at the date of inspection of the property) there was no evidence of disrepair as outlined by the tenant in his application. The Committee were satisfied as at the date of their inspection the property met the Repairing Standard. In the circumstances the Committee determined to dismiss the application.
- 13 The decision of the Committee was unanimous.

Rights of Appeal

- 14 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
- 15 The appropriate respondent in such appeal proceedings is the other Party to the proceedings and not the PRHP or the Committee which made the decision

Effect of Section 63

- 16 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.
- 17 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.

C A Millar

Witness (Sign)

Name: Carol Anne Millar
Address: 7 West George Street
Glasgow G2 1BA

Occupation: Legal Secretary

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Andrew S Cowan, Chairperson
31st March 2010