



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

prhp Ref: PRHP/AB24/111/09

Re: Property at 50 Merkland Road East, Aberdeen, AB24 5PZ ("the Property")

The Parties: MR NNAMDI UDE residing at 50 Merkland Road East, Aberdeen, AB24 5PZ ("the Tenant")

and

CRAIG STEWART c/o Burnett & Reid, Solicitors, 15 Golden Square, Aberdeen, AB10 1WF represented by Mrs June Spark of Burnett & Reid ("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 Tenant at the hearing, determined that the Landlords had not failed to comply with the duty imposed by Section 14 (1)(b) of the Act.

### Background

1. By application dated 27 November 2009 the Tenant applied to the Private Rented Housing Panel for a determination of whether the Landlords 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 Tenant stated that the Tenant considered that the Landlords had failed to comply with their duty to ensure that the Property 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; and
  - (b) any fixtures, fittings and appliances provided by the Landlord under the tenancy are in a reasonable state of repair and in proper working order.
3. By letter dated 11 January 2010 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 Landlords and the Tenant.
5. Following service of the Notice of Referral neither the Landlord nor the Tenant made any further written representations to the Committee other than the Tenant's original application.

6. The Private Rented Housing Committee (comprising of Mr E K Miller, Chairman and Legal Member; Mr M Andrew, Surveyor Member; and Mr M Scott, Housing Member, accompanied by the Clerk, Mr Iain Maclean) inspected the Property on the morning of 8 March 2010. The Tenant was present during the inspection as was the Landlord's agent, Mrs Spark.
7. Following the inspection of the Property the Private Rented Housing Committee held a hearing at The Inspire Conference Centre, Beach Boulevard, Aberdeen and heard from both the Tenant and the Landlord's agent.
8. The Tenant submitted as follows:-

- (i) There had been an issue in relation to the build up of mould in the bathroom. This was caused due to condensation. There had been some mould at the time the Tenant moved into the Property and this had been noted on a subsequent inventory dated 19 June 2009. The inventory had stated that the roof was to be repainted, although this was not eventually done until November by which time there was a large amount of mould on the ceiling. In an e-mail to the Tenant on 13 November 2009, Mrs Spark had indicated that whilst the ceiling would be repainted, if it happened again the Tenant would be charged. The Tenant was concerned by this as he felt this was unfair as in his view the mould was not building up as a result of anything inappropriate he was doing. He was happy that he was ventilating the property adequately. The extractor fan was triggered by the bathroom light being switched on and even once the light was switched off the fan ran for a further "20 to 25" minutes.

The Tenant also submitted that when the repainting of the bathroom had been carried out insufficient care had been taken by the painter and as a result parts of the Property had been spattered with paint, including his own personal belongings. The painter had also used items belonging to the Tenant to clean his paintbrushes.

In relation to the light fitting, the Tenant advised that one of the six bulbs had exploded and damaged its fitting. As a result there were only five left working. The Tenant also submitted that he was concerned about the possibility of an electric shock from the exposed fitting.

The Landlord submitted as follows:-

- (ii) The Landlord's agent accepted that the light fitting was broken on one of the five bulbs but advised that she had had an electrician check the fitting and there was no possibility of electrocution occurring. In relation to the issue of condensation and mould, the Landlord's agent had felt that the Tenant had thought he was being singled out by her in relation to comments about condensation. In fact the Landlord's agent had been issuing information and advice to all tenants regarding how to adequately heat and ventilate a property in order to ensure condensation was kept to a minimum. This was not directed specifically at Mr Ude. There had been a build up of condensation in the bathroom and this was exacerbated by the fact that the room had no external window to assist in venting. There was a working extractor fan that was of a normal size for a room of that area. In any event, the ceiling had been repainted in November and several coats had been applied. To date no further mould had come back.

### **Summary of the issues**

9. The issues to be determined were as listed by the Tenant in his application and correspondence and were as follows:-

- (a) whether the ventilation in the bathroom was sufficient and whether the Landlord required to carry out further steps to remove and then prevent further mould build up.
- (b) the issue of paint splatters and damage to the Tenant's property.
- (c) whether the light fitment in the lounge was in proper working order.

**Findings of fact**

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

- (a) Whilst there was condensation within the bathroom, the ceiling had been repainted and there was no evidence of any mould at the time of the inspection.
- (b) There was some evidence of paint splattering within the bathroom but this was very minor and would not cause any material inconvenience.
- (c) One part of the light fitment was not working properly.

**Reasons for the decision**

11. The Committee reached its decision based on the evidence obtained during the Committee's inspection of the Property and also from the submissions of the Landlord and Tenant at the Hearing.

The Committee inspected the bathroom. It was clear that the roof had been repainted and several months had passed since this had been done. There was no evidence of any new mould build up. There was a working extractor fan within the bathroom and the Tenant confirmed that it ran for "20 to 25" minutes after the light was switched off. Condensation and eventually some mould build up was inevitable in a small internal bathroom such as this.

The paint splatters and damage to the Tenant's property were very minor and indeed the Committee viewed these as immaterial. It was unfortunate the painter had not taken more care but this issue was really outwith the Committee's remit. The Landlord's agent may, however, wish to raise the issue with the painter to ensure that more care is taken in the future.

It was apparent that in relation to the light fitting that a bulb had exploded and damaged the fitment. The Committee were satisfied that when the lease was entered into all six parts of the light fitting were working and accordingly, although a very minor breach, the Landlord ought properly to have repaired this.

The Committee adjourned the Hearing for 5 minutes to discuss the issues in this case.

When the Committee reconvened, the Chairman indicated to both the Landlord and Tenant that the issue in relation to the mould appeared to have been dealt with. The Landlord had carried out a good repair with the repainting of the ceiling. One of the Tenant's concerns seemed to be that he might be charged for future mould build up. The Landlord's agent confirmed that provided the Tenant continued to properly heat and ventilate the Property and left the fan running that any condensation and mould that built up would be as a result of inherent issues within the bathroom rather than anything caused by a failure on the part of the Tenant. On that basis the Tenant would not be charged for rectifying mould build up. The Chairman indicated that the Committee were satisfied that whilst it was unfortunate to have occurred the paint splatters and damage to the Tenant's property were outwith the remit of the Committee. In relation to the light fitting the Chairman indicated to the Landlord's agent that the Committee felt that this ought properly to have been dealt with. The light fitting was the only issue remaining. The Chairman advised that if the Landlord's agent were prepared to confirm to the Committee that they would carry out a replacement or repair of the light fitting swiftly then

rather than the Committee issue a Repairing Standard Enforcement Order the Committee would, given the very minor nature of the works on this occasion, be prepared to adjourn matters to give the Landlord three weeks in which to carry out the works. If this was done and the Surveyor Member reinspected the Property and found that the light fitting had been repaired then a decision would be issued confirming that the Landlord had met the repairing standard and that no further action would be taken.

The Tenant was asked by the Committee whether this would be an acceptable arrangement to him. He confirmed that it was. The Landlord's agent also confirmed that this would be an acceptable arrangement to her.

The Surveyor Member carried out the reinspection of the Property on 19 March 2010 and found that the light fitting had been replaced with a satisfactory alternative.

#### **Decision**

12. The Committee accordingly determined that the Landlord had not failed to comply with the duty imposed by Section 14 (1)(b) of the Act.
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.

**E Miller**

Signed ..... Date 22 / 3 / 2010  
Chairperson