



Determination by the Private Rented Housing Committee

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

PRHP Ref: Prhp/EH21/12/12

Title Number MID92399

**The residential dwellinghouse at
Re: 3A Moir Terrace
Musselburgh
East Lothian
EH21 8JG
("the property")**

The Parties:-

**Miss W Dumphy
formerly resident at the property
("the tenant")**

and

**Mr and Mrs Pryde
59 Braehead Place
Linlithgow
West Lothian
EH49 6EF
("the landlords")**

The Committee

**Mr Ron Handley, Chairperson
Mr Donald Marshall, Surveyor
Mr John Blackwood, Housing Member**

The Committee's Decision

The Committee, having made such enquiries as it saw fit for the purposes of determining whether the landlords had complied with the duty imposed by Section 14(1)(b) of the Housing (Scotland) Act 2006 ("the Act") in relation to the property, and taking account of the evidence before it, unanimously determined that the landlords had

complied with the duty imposed by Section 14 (1)(b) and that the Repairing Standard was met.

The Background

1. On 13 January 2012 the tenant applied to the Private Rented Housing Panel ("the PRHP") for a determination as to whether or not the landlords had failed to comply with the duties imposed by Section 14(1)(b) of the Act.
2. On 21 February 2012 the PRHP office wrote to the tenant and to the landlords confirming that the President of the PRHP had referred the application to a Committee. Both parties were asked if they wanted to submit written representations and if they wished to attend a Hearing. Written representations were subsequently received from both parties who also confirmed that they wished to attend a Hearing.
3. On 23 March 2012 the tenant contacted the PRHP office to advise that she was vacating the property on or around 24 March 2012. On 18 April 2012 the PRHP office wrote to the landlords intimating that an inspection of the property would take place on 11 May 2012 at 10.00am and a Hearing would be held after the inspection at 11.00am in Fisherrow Centre, South Street, Musselburgh. The inspection and the Hearing did not take place on that date and the inspection and the Hearing were rescheduled to 31 August 2012.
4. The inspection duly took place on 31 August 2012 at 10.0am and a Hearing took place after the inspection at 11.00 am in Fisherrow Centre, South Street, Musselburgh.

The Application

5. In her application the tenant submitted that the landlords had failed to comply with their duty to ensure that the property met the Repairing Standard (as defined in the Act) in that the landlords had failed to ensure that:-
 - (a) the property was wind and water tight and in all other respects reasonably fit for human habitation;
 - (b) the structure and exterior of the property was in a reasonable state of repair and in proper working order.

In particular the tenant submitted that:

- the gutters required to be cleaned;
- the walls in the hall required to be dried and insulated;
- the back windows required to be checked;
- redecoration was required.

The Evidence

6. The Committee had various documents before it including a copy of the tenant's application to the PRHP, the Tenancy Agreement, written submissions, the Land Register documents, copies of various letters and a file note.

The Inspection

7. The Committee inspected the property on 31 August 2012 at 10.00am. The landlords attended as did Mr Ian MacLauchlan. The tenant did not attend and was not represented.

The Hearing

8. A Hearing took place in Fisherrow Centre, South Street, Musselburgh after the inspection at 11.00 am. The landlords and Mr Ian MacLauchlan attended. Also in attendance was the clerk to the Committee. The tenant did not attend and was not represented.
9. Prior to commencing the Hearing, the chairman reminded those in attendance that the issue before the Committee was whether the Repairing Standard (as defined in the Act) had been met. The chairman also reminded those in attendance of the matters referred to by the tenant in her application form. The evidence heard by the Committee at the Hearing can be briefly summarised as follows.

Mr Pryde advised the Committee that he had replaced the front facing windows in the property.

In regards to the guttering Mrs Pryde advised the Committee that she had made efforts to reach agreement with the other owners (who were jointly liable for the guttering) to effect the necessary repairs. However this had proved to be problematic and as yet no agreement had been reached. Reference was made to various documents which were before the Committee.

Mr Pryde informed the Committee that the problem of dampness in the living room, bedroom and kitchen had been as a result of the tenant using calor gas heating and not ventilating the property properly. The tenant had been told not to heat the property in this manner but had ignored that advice. Mrs Pryde advised that the tenant had applied tape around the front door thus restricting the ventilation within the property. The Committee were reminded that the landlords had made a humidifier available to the tenant but she had not used this device. The Committee were advised that the tenant and two others had been living in the property at that time.

Mr MacLauchlan advised the Committee that after the tenant had vacated the property in May 2012, the walls in the living room and the bedroom which had been affected by condensation had been cleaned and redecorated. The tiles in the kitchen had also been cleaned and the landlords had replaced the gas cooker. The Committee was referred to various documents which had been made available to the Committee.

Summary of the issues

10. The issue to be determined by the Committee was whether the landlords had complied with the requirements of the Act in ensuring that the property met the Repairing Standard.

Findings of fact

11. The Committee found the following facts to be established:-
 - On 6 December 2009 the tenant and the landlords entered into a Tenancy Agreement which related to the property.
 - On 13 January 2012 the tenant applied to the PRHP for a determination as to whether or not the landlords had failed to comply with the duties imposed by Section 14(1)(b) of the Act.
 - Since the date of the application to the PRHP, the landlords have replaced the front facing windows in the property.
 - The air vent grilles in the property function properly.
 - Night storage heaters are located within the property but the tenant heated the property using a calor gas heater(s) and she did not ensure that the property was properly ventilated when doing so. Consequently condensation had formed in the bedroom, living room and kitchen.
 - After the landlords became aware of the condensation they provided the tenant with a dehumidifier which she did not use.
 - There is no rising or penetrating dampness within the property.
 - Although the guttering at the front of the property requires to be cleaned, the guttering meets the Repairing Standard. The landlords are using their best endeavours to seek the agreement of the other owners (who are jointly liable for maintaining the guttering) in an effort to ensure that cleaning of the guttering is carried out.
 - The property is in good decorative order.

- The landlords have valid Energy Performance Certificate which relates to the property.

Reasons for the decision

12. As indicated, the landlords attended the inspection and the Hearing and the Committee found that they responded to questions put to them in a forthright and straightforward manner. We had no reason to have any doubts or concerns about their evidence.
13. It was clear from the inspection that the landlords had recently replaced the front facing windows within the property.
14. In regard to the issue of dampness/condensation, the Committee found no evidence of dampness within the property. It was also clear to the Committee that the property had adequate ventilation grilles. In accepting the evidence of the landlords and using the expertise, knowledge and experience of the Committee we accepted that the "dampness" referred to by the tenant was condensation which was as a consequence of using calor gas heater(s) and failing to ventilate the property adequately. We had no reason to doubt the landlords claim that the tenant had been heating the property using calor gas. We accepted that they had provided appropriate advice to the tenant regarding the heating and ventilation of the property. We also accepted that they had provided the tenant with a dehumidifier in an attempt to alleviate the problems of condensation.
15. The Committee had before it a letter of 1 June 2011 addressed to the tenant from Colin Clark, Principal Environmental Protection Officer, East Lothian Council who confirms that the presence of moisture within the property would "appear to be due to condensation, i.e. water present in the air condensing on cold surfaces." Mr Clark also confirmed that the problem was not due to either rising or penetrating damp. We accepted Mr Clark's findings which were consistent with the conclusions of the Committee.
16. The inspection was carried out on a day when it was not raining. Although there was evidence of some vegetation growing in the guttering at the front of the property, there was no evidence of dampness in the external wall or dampness in the area of ground below the guttering. Although the guttering meets the Repairing Standard it was clear the guttering requires to be cleaned. It was also clear that the landlords were using their best endeavours to ensure that the necessary cleaning works were carried out without unnecessary delay.
17. The Committee noted that the property was in good decorative order.
18. In the course of the Hearing the landlords advised that they had a valid Energy Performance Certificate for the property and they undertook to

make a copy of this document available to the Committee. They duly produced the relevant Energy Performance Certificate.

Decision

- 19. The Committee were satisfied that the landlords had complied with the duty imposed by section 14(1) (b) of the Act.
- 20. The decision of the Committee was unanimous.

Right of Appeal

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

Effect of section 63

- 22. 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. 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..... **R Handley** Date... 14 / SEPTEMBER / 2012
Chairperson