

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

ref: PRHP/EH6/134/12

Re: Property at 40/2 Buchanan Street, Edinburgh EH6 8RF ("the Property")

The Parties:-

Dawn McEwan, 16 Suffolk Road, Edinburgh per her Agents Alba Residential Limited, 21/23 Church Hill Place, Edinburgh EH10 4BE ("the Landlord")

Pawel Nowak and Maja Zaniewska formerly 40/2 Buchanan Street, Edinburgh ("the Tenants")

Decision

The Committee, having made such enquiry as it sees fit for the purposes of determining whether the Landlord has complied with the duty imposed by Section 14(1)(b) of the said Act in relation to the property concerned, and having taken account of the whole oral and written evidence submitted by both the Landlord and the former Tenants determines that the Landlord has complied with the duty imposed by Section 14(1)(b) of the Act.

Background

- 1. By application dated 19th July 2012 the Tenants applied to the Private Rented Housing Panel for a determination as to 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 they considered the Landlord had failed to comply with the duty to ensure the property meets the repairing standard and brought forward the following alleged breach:-**
 - (a) There is dampness throughout the property to the extent that the Tenants shoes and clothing have been damaged by mould and there are adverse implications for the health of any residents.**

3. The Private Rented Housing Committee served a Notice of Referral dated 26th July 2012 under and in terms of Schedule 2, Paragraph 1 of the Act on both the Landlord's Agent and the Tenants.
4. The Tenants were not invited to either the inspection or the Hearing as the tenancy lawfully ended on the 29th August 2012. The Committee continued to consider the application in the public interest as the disrepair complained of has both health and safety implications for future tenants.
5. The Private Rented Housing Committee comprising Mrs. Anne McCamley (Chairman), Mr. Ian Mowatt (Surveyor) and Mrs. Susan Brown (Housing Member) inspected the property on the morning of the 13th of September 2012. Both the Landlord's sister, Ms. Kimberley Toolan, and Callum MacGregor, of Alba Residential the Letting Agency were in attendance.
6. Following the inspection of the property the Private Rented Housing Committee held a Hearing at Thistle House, Haymarket Terrace, Edinburgh. The Landlord's sister Ms. Toolan made oral submissions to the Committee.
7. In their written submissions the Tenants indicated the property suffered from severe dampness throughout. They claimed the walls were 'running with water'. The Tenants stated they opened the windows every day and kept the central heating on but nothing resolved the problem.
8. In written submissions the Landlord and her Agent explained there had been a leak at the bedroom window which had been rectified and after the repair work had been carried out a humidifier had been placed in the property. It was taken out two weeks later when the property had dried off to the satisfaction of the Landlord.
9. In her oral evidence at the Hearing, Ms. Toolan explained it was the Landlord's position any dampness in the property was as a result of condensation probably brought about by Tenant misuse of the property. She indicated that from February through to August the Tenants used £70 worth of gas. Accordingly in

her opinion, the central heating system was not being used to proper effect and the property was not kept sufficiently well fired to prevent dampness problems.

10. Having inspected the property and taken account of the oral and written evidence and thereafter being guided by the Committee's professional Surveyor Member, the Committee finds the following facts to be established:-

(a) During the course of the inspection dampness readings were taken throughout the property. These readings were recorded on an electronic moisture meter and were all found to be within an acceptable range with the exception of readings round a kitchen cupboard. This is within a small contained area of an internal wall. A small damp patch was also detected at the front door. The Landlord's sister explained the dampness in the kitchen had been identified as rising damp by Apex Property Consultants and they were to carry out repair work as soon as practicable. She further explained the Landlord had no intention of letting the property until the work had been completed.

It has to be noted these were not areas of dampness complained of by the Tenants in their application.

Having considered the whole evidence after weighing up the written and oral evidence and applying the balance of probabilities and our own expertise the Committee determines that the Landlord has complied with the duty imposed by Section 14(1)(b) of the Act. The extensive dampness problem which formed the basis of the application to this Committee had been eradicated by the date of inspection. This was confirmed by the electronic moisture meter readings. Although there are small contained areas of rising damp we are not prepared to find the Landlord in breach of her duty to comply because of this. We have so determined because the Landlord has confirmed to us that repairs will be effected before the accommodation is re-let. The Committee has no reason to doubt that assurance and relies on its truthfulness. Further, these areas did not form part of the application to Committee. On inspection today the Committee could find no evidence of the extensive generalised dampness complained of by the former tenants and in any event, and on balance, is prepared to accept that had there

been any condensation dampness such dampness was most likely as a result of
Tenant failure to adequately heat the property over the winter months.

8. The decision of the Committee is unanimous.

A McCamley

Signed
Chairman

Date *13th September 2012.*