



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

PRHP Ref: PRHP/RP/14/0208

Property at: 4 Torphicen Avenue, Mid Calder, West Lothian, Edinburgh, EH53 0LA
("The Property")

The Parties

Jonathan Sneddon, formerly residing at the property ("the tenant")

and

John Hastie, c/o Mavor and Co, 16 Union Square, West Calder, West Lothian EH55 8EY ("the landlord")

Decision

The committee, having made such enquires as it saw fit for the purposes of determining whether the landlord has complied with the duty imposed by Section 14(1)(b) of the Housing (Scotland) Act 2006 in relation to the property concerned and taking account of all of the evidence available to the committee, determined that the landlord has not failed to comply with the duty imposed by Section 14(1)(b) of the 2006 Act.

Background

- 1 By application received 4th September 2014, the tenant applied to the Private Rented Housing Panel to determine whether or not the landlord had failed to comply with the duties imposed by Section 14(1)(b) of the Housing (Scotland) Act 2006 ("the 2006 Act").
- 2 The application by the tenant stated that the tenant considered that the landlord had failed to comply with his duty to ensure that the house meets the repairing standard and in particular that the landlord had failed to ensure:
 - (a) that the house is wind and water tight, and in all other respects reasonably fit for human habitation in terms of Section 13(1)(a) of the Act; and
 - (b) that the installations in the house for the supply of water, gas and electricity, and for space heating and heating water are in a reasonable state of repair and in proper working order, in terms of Section 13(1)(c) of the 2006 Act, and
- 3 The applicant vacated the property on 14 October 2014. By interlocutor dated 27 January 2015, the President of the Private Rented Housing Panel determined that the application should proceed to a hearing of the Private

Rented Housing Committee in terms of Schedule 2 Paragraph 7(2) of the Act. On 5 February 2015, the President of the Private Rented Housing Panel wrote to the landlord, intimating a decision to refer the application under Section 22(1) of the Act to a Private Rented Housing Committee. The Committee was made up of:

Paul Doyle	Chairperson
Charles Reid Thomas	Surveyor Member
Sally Wainwright	Housing Member

- 4 The Private Rented Housing Committee served notice of referral under and in terms of Schedule 2 Paragraph 1 of the 2006 Act to the landlord and the tenant.
- 5 Following service of the notice of referral, neither party made any further representations to the committee.
- 6 The Private Rented Housing Committee inspected the property at 10.00am on 9 June 2015. The tenant had removed from the property in October 2014 and was not present. The landlord arranged access to the property, which is now occupied by new tenants. The new tenants graciously allowed the committee to inspect the property.
- 7 Following the inspection of the property, the Private Rented Housing Committee held a hearing. Neither party was present, nor were they represented. The case file reveals that the landlord was timeously notified of the time, date and place of the hearing. No request was made for an adjournment. The Committee is satisfied that it is appropriate to deal with this case in the absence of the parties.
- 8 The applicant's position is that there are defects in the gas fired central heating system; that the electrical system is so old that it is dangerous; that there are faults in the windows in the front living room and rear bedroom; that the front and back doors neither close nor lock properly; that there should be an extractor fan in the bathroom; that the garage is neither wind nor watertight and that the driveway is in a state of disrepair.
- 9 The landlord's position is that there are no defects in the house but that the applicant has refused to pay the rent and has neglected the house and is making a vexatious complaint against the landlord in an attempt to enhance arguments taken against the landlord in a different forum.

Summary of Issues

- 10 The issues to be determined are:
 - (a) Is the house wind and watertight and in all other respects reasonably fit for human habitation; and

- (b) Are the installations in the house for the supply of water, gas and electricity and for sanitation, space heating and for heating water are in a reasonable state of repair and in proper working order.

Findings in Fact

11 The Committee finds the following facts to be established:

- (a) The property is a three bedroomed detached dwelling-house with accommodation spread across two floors, with gardens to the front and rear and a driveway to the side - leading to a separate garage to the side and rear of the property. The front door opens into a small vestibule providing access to the bathroom, one bedroom, a flight of stairs to the first floor and to the living room. Access to the kitchen is gained through the living room. The kitchen is situated to the rear of the house. Upstairs, there are two bedrooms.
- (b) On 5 December 2011, the landlord and applicant entered into a short assured tenancy agreement. The obligations contained in that short assured tenancy agreement are consistent with the requirements of the repairing standards set out in the 2006 Act. The lease came to an end on 14 October 2014 when the applicant vacated the property.
- (c) The front and rear doors of the property fit the doorframes securely. There are weather seals surrounding both the front and rear doors. The rear door opens and closes without difficulty. The rear door locks and unlocks without difficulty. The front door locks and unlocks without difficulty, however, when the door is not locked, the door catch does not always engage unless care is taken to close the door and adjust the catch. When the front and rear doors are closed and locked, neither door permits a draught to enter the property.
- (d) The rear facing bedroom on the first floor has a single paned, double glazed window overlooking the rear of the property. When the applicant took entry to the property, that window was cracked. At the date of inspection, the window had been replaced. There were no cracks on the window and the double glazed seal was not compromised. The window opened and closed properly.
- (e) There are double glazed window units throughout the property. The living room of the property runs from the front to the rear. There are double glazed units at the front aspect of the living room and at the rear aspect of the living room (overlooking each of the gardens). Each of the windows in the living room has a main fixed pane above which there are two hopper windows. The hopper windows at the front and the rear window unit open and close properly. The seals around the windows are properly fitted and are intact. Neither of the window units permit a draught to enter.
- (f) In December 2013, a new 13amp fuse box with circuit breakers was fitted to the property. It is that new 13amp fuse box with circuit breakers that controls the electrical supply to the property. There are no defects with the electrical system within the property.

- (g) The property benefits from gas fired central heating. The gas fired central heating is served by an Ariston boiler. There are no defects with the gas central heating boiler.
- (h) The bathroom in this property is on the ground floor and to the side (adjacent to the front door). The bathroom has a three piece sanitary suite. The bathroom does not have an extractor fan, however the bathroom has a window that opens and closes and provides adequate ventilation for the bathroom. There are some signs of old mould staining on the upper walls and ceiling of the bathroom which has been cleaned off. The property is not damp. The bathroom is not damp. The old mould staining was caused by condensation. Condensation mould staining can be prevented by adequate ventilation and heat. There is provision for heating the bathroom and the window provides adequate ventilation for the bathroom.
- (i) The driveway to the rear of the property provides access to a detached garage. The driveway is in good order and is well maintained.
- (j) The separate garage to the rear of the property is made of brick with a corrugated metal roof. The walls and roof of the garage are intact. There is no sign of water ingress to the garage. A new garage door has been fitted to the garage. It fits properly and does not permit wind or water to enter the garage. The garage is wind and water tight.

Reasons for Decision

- 12 (a) Committee members inspected this property at 10am on 9 June 2015. The applicant removed from the property on 14 October 2014. There is another tenant in the property. The landlord was present and introduced Committee members to the new tenant of the property who allowed Committee members access to the property and allowed Committee members to carry out an inspection.
- (b) In the application form, the applicant focuses on Section 13(1)(a) and 13(1)(c) of the 2006 Act. The applicant complains that the house is not wind and water tight and that the installations for the supply of gas and electricity and for space heating and heating water are not in a reasonable state of repair nor are they in proper working order. In an e-mail dated 8 January 2014 from the applicant to the landlord's then agents (Mavor Property) the applicant sets out the specific detail of complaint and provides a "list of remedial works".
- (c) The applicant complains that the gas appliances do not work and require to be replaced, complaining that there is inadequate pressure in the system and that there are defects in the gas boiler. Committee members went to the kitchen of the property and found that there, there is a wall mounted gas central heating boiler. The central heating was on. The gas boiler was working. The radiators in the property had heated properly. There were no obvious defects with the boiler. The new tenant in the property told Committee members that the central heating worked and that the boiler timer worked.

The weight of evidence indicates that there are no defects with the gas central heating system nor, more specifically, are there any defects with the gas central heating boiler.

- (d) The applicant complains that the electrical supply to the property is dangerous and is outdated. The applicant specifies that the fuse box is 40 years old. Committee members inspected the fuse box and found a modern 13amp fuse box with circuit breakers. The landlord told Committee members that that fuse box was fitted in or about December 2013. The Committee's observations were that the circuit box is of an age consistent with installation at the end of 2013. In the course of the inspection, Committee members were able to see the nature and number of electrical fittings throughout the property, all of which work properly. The only conclusion the Committee members can come to is that the installations to the house for the supply of gas and electricity and for space heating and heating water are in a reasonable state of repair and are in proper working order.
- (e) The applicant complains that the house is not wind and water tight, saying that there are defects affecting the doors and the windows in the living room and one of the bedrooms. Committee members inspected each of the doors and found that the doors open and close properly and lock and unlock properly. The only minor defect in the front door is that when the lock mechanism is not engaged, the door does not reliably catch. However, the lock mechanism works. The seals around the door are intact. The applicant's complaint that the doors do not close properly and are easy to break into is not supported by the Committee members' observations.
- (f) The applicant complains about three windows in the property, two in the living room and one in an upstairs bedroom. The applicant complains that the window in the upstairs bedroom is cracked. The landlord conceded that when the applicant moved into the property, there was a crack across that window. We have to consider the condition of the property at the date of inspection. By the time the Committee inspected this property, the window in the rear bedroom had been replaced. There is no defect with the window. It fits perfectly. The window seal is intact and the window pane is not cracked. The window opens and closes.
- (g) Committee members examined the windows in the living room of the property. There are windows overlooking the front garden and the rear garden in the living room of the property. The main part of the window is a fixed double glazed pane which is not designed to open or close. Above that fixed pane, there are two hopper windows. Committee members opened and closed the hopper windows and found that the window handles and the opening and closing mechanisms worked. On inspection, no defects were found in either of the windows in the living room.
- (h) The applicant complains about mould staining in the bathroom. The bathroom does not have an expel-air fan. It does, however, have a window. Committee members opened and closed that window. There were signs of previous mould staining. Committee members are satisfied that that mould staining is

the result of condensation from poor ventilation. The lack of ventilation which caused condensation staining in this property would easily be remedied by opening the bathroom window after the bathroom has been used to allow the bathroom to ventilate and to remove moisture from the property. Committee members were satisfied that the mould staining seen is old, that the property is properly heated and ventilated and that there were no residual concerns about mould staining.

- (i) Committee members inspected the exterior of the property. The landlord told Committee members that the driveway is comparatively new and has been replaced since the applicant left the property. The driveway that Committee members looked at and walked up and down was in good condition and there were no obvious defects in the driveway.
- (j) A new garage door has been fitted to the separate garage. The current tenant confirmed to Committee members that the garage is wind and water tight and is in good condition. Unfortunately, the new tenant has lost the key to the garage so that Committee members could not enter the garage and inspect the interior. However, Committee members were able to inspect the exterior of the garage (including the roof) and could see that the integrity of the roof and walls of the garage has not been compromised. Committee members could see that a new door is fitted to the garage, and that it fits properly. There is no sign of water or damp staining on the exterior of the garage. Committee members were told by the landlord and by the current tenant that during the currency of the applicant's tenancy, the door of the garage was broken and was "*hanging off*". The weight of evidence indicates that the garage is wind and water tight. Committee members were not able to inspect the arrangements for providing light to the garage.
- (k) Committee members held a hearing at 11am on 9 June 2015. The landlord had already advised Committee members that he would not be able to attend the hearing. Committee members consider the documentary evidence and considered their observations at the inspection and found that the property is wind and water tight so that the property fulfils the requirements of Section 13(1)(a) of the 2006 Act. Committee members came to the conclusion that there are no defects in the installations for the supply of gas and electricity and for space heating and heating water so that the property fulfils the requirements of Section 13(1)(c) of the Act. Committee members reviewed the information gathered at the inspection and compared their own observations and found that none of the sub-sections of Section 13(1) of the 2006 Act were engaged. Committee members therefore come to the conclusion that the landlord fulfils the requirements of the repairing standard and a Repairing Standard Enforcement Order is neither merited nor necessary in this case.

Decision

- 13. The committee accordingly determined that the landlord has not failed to comply with the duty imposed by Section 14(1)(b) of the Act.

14 The decision of the Committee was unanimous.

Right of Appeal

15 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

16 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.

Signed.. **P. Doyle** Date.. 10/7/2015
Chairper