



**DETERMINATION BY PRIVATE RENTED HOUSING COMMITTEE**

**STATEMENT OF DECISION OF THE PRIVATE RENTED HOUSING COMMITTEE  
UNDER SECTION 24(1)  
OF THE HOUSING (SCOTLAND) ACT 2006**

In connection with

Property at 11 (2F3) Downfield Place, Edinburgh EH11 2EJ (“the House”)

Teresa McDermott, residing at the Property (“the Tenant”)

Mr Derek Robinson, c/o Broughton Property Management, 61-63 Broughton  
Street, Edinburgh, EH1 3RJ (“the Landlord”)

**PRHP REFERENCE PRHP/RP/14/0218**

**DECISION**

The Committee having made such enquiries as are 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 (“the Act”) in relation to the House, and having taken account of the evidence led at the hearing and of the written documentation attached to the application and submitted by the parties, has made the following decision:

It has determined that the Landlords have not failed to comply with the duty imposed by section 14(1)(b) of the Act.

The decision was unanimous.

**Background**

By application dated 14 September 2014 (the “Application”) 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 Act.

The Application stated that the Tenant considered that the Landlords had failed to comply with the duty to ensure that the House meets the repairing standard and in particular that the Landlords had failed to ensure compliance with the following paragraphs of section 13(1) of the Act:

*“(a) the house is wind and water tight and in all other respects reasonably fit for human habitation...”*

The Tenant complained that the state of the House was such that it allowed smoke fumes either from the common stairwell or from the flat immediately below to enter the property and to create an unpleasant odour and cause potential damage to her health.

By letter dated 3 October 2014, the President of the PRHP intimated a decision to refer the application under section 23(1) of the Act to a Private Rented Housing Committee (hereinafter referred to as “the Committee”).

The Committee comprised the following members:

Maurice O'Carroll, Chairperson  
Christine Anderson, Housing Member  
Donald Marshall, Surveyor Member

The Committee inspected the House at 10.00am on 15 December 2014. The Tenant was present at the inspection. Neither the Landlord nor his letting agent were present at the inspection.

Following the inspection, the Committee held a hearing at George House, 126 George Street, Edinburgh. The Tenant was again present at the hearing. The Landlord did not attend the hearing nor did his letting agents. The Committee considered the written evidence submitted by the parties and heard representations from the Tenant.

### **Submissions at the Hearing**

At the hearing, the Tenant explained that she had moved into the House on or about 29 May 2014 having entered into a lease for one year, due to expire on 29 May 2015. She had carried out a viewing of the House before she entered into the lease agreement. The Tenant had noticed the smoke odour issue as soon as she had moved in because she had initially slept on the couch in the kitchen/living room, having initially forgotten to bring her bedding with her. Accordingly, she made a note of that fact on the inventory supplied by the letting agents and hand delivered it to their office the day after she moved in.

The letting agents denied having received timeous notification of any defects. Nevertheless the Tenant persisted in complaining about the odour of smoke (from cigarettes or potentially stronger substances) entering the property. In or around mid-August, the Landlord's letting agents fitted a draught excluder to the bottom of the door to the House. This, however, did not address the problem.

At the end of August 2014, at around 10pm while the Tenant was in bed, she experienced a tightening of her chest and a severe coughing fit as a result of the smoke fumes entering the property. She is a non-smoker and is not asthmatic, although she has a family history of asthma. She attended her GP two days later and was prescribed a standard anti-asthma inhaler. She has used the inhaler on approximately two occasions but does not now do so.

Following further complaints, two weeks later the letting agents carried out further works to the door of the House to include draught insulation along the sides of the door and fitted a new letter box to exclude fumes which might be emanating from the common stairwell. This has had the benefit of reducing the smell of smoke in the bedroom, although the problem relating to smoke odours has still not been eliminated. No professional surveys have been carried out.

The Tenant suspects that the persistent smoke odour must be emanating from the flat below hers and entering the House through the many gaps in the floorboards in the kitchen/living area. She is also aware of smoke smells entering the House in the summer months when she has the windows to the House open as they give onto the street in front and are directly above the main door entry to the tenement block. She was also aware of smoke smells in the shower room which is directly adjacent to the common stairwell.

The Tenant has sought to give notice to quit the House but has been informed that her lease does not expire until May 2015 and that she must continue to pay rent until that date. As a consequence, she is unable to afford to move out of the House until then.

### **Summary of the Issue**

The issue to be determined is whether (a) the House meets the repairing standard as laid down in section 13(1)(a) of the Act, namely that the House is wind and water tight and in all other respects fit for human habitation and therefore (b) whether the Landlord has complied with the duty imposed by section 14 (1)(b).

### **Findings in Fact**

The Committee made the following findings in fact:

The Landlord and the Tenant entered into a Tenancy agreement in respect of the House on 29 May 2014.

The Landlord was recorded on the Lease as being Mr Derek Robinson.

The registered owner of the House is Mr Derek Robinson as designated above under Title Number MID62500.

The Tenant took possession of the House from 29 May 2014 and currently remains in occupation. The lease will legally terminate on 29 May 2015 following the service of a notice to quit.

The provisions of Chapter 4 of Part I of the Act apply to the tenancy.

The Tenant notified the Landlord of the defects in the house which are now the subject of the Application on or around the same time as the Application was lodged with PRHP.

In giving her evidence, the Committee found the Tenant to be entirely credible and reliable.

The inspection on 15 December 2014 revealed:

The property is a second floor flat in a tenement block of flats. There are 4 flats per floor and 4 floors in total within the block.

The House is a one bedroom flat consisting of a kitchen/living area, an internal WC and shower room, hallway and bedroom. The external windows of the House all face the street.

In the living room, the floor consists of polished pine floorboards, typical of properties of this type in the central Edinburgh area. There was one slightly raised floorboard which was evidence of it having been raised at some time in the past.

The House appeared to be a reasonably well-tended rental property with modern appliances in the kitchen area and mains smoke detectors in both the hallway and kitchen/dining area. The shower room had a modern extractor fan fitted.

There was a distinct smell of tobacco smoke as soon as the Committee entered the common stairwell from the street outside.

Otherwise, there was nothing else of note in relation to the condition of the House.

### **Decision of the Committee and reasons**

The Committee was of the view that the House was subject to an unpleasant odour of cigarette and other smoke, particularly in the evenings. The Landlord's letting agents had taken reasonable steps to address this issue by carrying out works to the door to the House as noted above, which has achieved partial success.

The Committee noted that the floorboards in the kitchen/living area were uneven and had some gaps between them. However, it found those defects to be commensurate with the age and type of property occupied by the Tenant. It was of the opinion that the flat below must have a plaster ceiling. Above that and below the floorboards of the House, it would normally be the case that deadening (in the form of ash) would be present. Unless there were holes in the ceiling in the flat below and an absence of deadening beneath the floorboards of the House, it could not say that the condition of the floorboards was the source of the smoke

odours. There was no expert report to support that contention. The Committee therefore could not say that the condition of the House was not reasonably fit for human habitation in terms of s 13(1)(a) of the 2006 Act. There was no dispute that it was wind and water tight.

Accordingly, the Committee, considering the terms of section 13(3) of the Act, determined that the Landlords had not failed to comply with the duty imposed by section 14(1)(b) of the Act.

The Committee was therefore of the view that it was unnecessary for it to make a Repairing Standard Enforcement Order in terms of section 24(2) of the Act.

However, the Committee further considered that it was appropriate to make non-binding recommendations to the Landlord. It therefore recommends that investigations be carried out by a suitably qualified professional in an attempt to establish the cause of the continued smoke odour within the House. This may involve lifting the floorboards in the kitchen/living area in order to establish whether or not the deadening has been disturbed in the past or whether there is some other reason why smoke odours permeate the House. Such investigations might be of benefit to future tenants in addition to the present Tenant and potentially prevent a repeat of the complaints which have given rise to the present application.

Separately, the Committee recommends that the Landlord may wish to consider laying floor covering in the kitchen/dining area if indeed the state of the floorboards is the source of the continued smoke issue within the House.

The decision of the Committee was unanimous.

### **Right of Appeal**

**Section 64 of the Act provides a right of appeal to a landlord or tenant aggrieved by a decision of a private rented housing committee. An appeal may be made to the Sheriff within 21 days of the Landlord or Tenant being informed of the decision.**

Where such an appeal is made, the effect of the decision and 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.

Maurice O'Carroll  
Chairperson

Date: 16 December 2014