



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

prhp Ref: PRHP/RP/14/0226

Re : Property at 2/2 Oxcars Court, Edinburgh EH4 4SP ("the Property")

The Parties:-

Miss Veselina Antonova, 2/2 Oxcars Court, Edinburgh EH4 4SP ("the Tenant")

Alistair Huddleston, 243 Eskhill, Penicuik EH26 8DF ("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 Landlord had not failed to comply with the duty imposed by Section 14 (1)(b) of the Act.

Background

1. By application dated 24 September 2014, the Tenant applied to the Private Rented Housing Panel for a determination of 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 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 that:-
 - (a) the structure and exterior of the house (including drains, gutters and external pipes) are in a reasonable state of repair and in proper working order,,
 - (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,
 - (c) any furnishings provided by the Landlord under the tenancy are capable of being used for the purpose for which they are designed, and
 - (d) the house has satisfactory provision for detecting fires and for giving warning in the event of a fire or suspected fire.
3. By letter dated 24 October 2014, 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 Landlord and the Tenant.
5. Following service of the Notice of Referral the Tenant, made no further written representation to the Committee other than the original application dated 24 September

2014. The Landlord (by letter dated 9 November 2014), made written representations to the Committee.

6. The Private Rented Housing Committee inspected the Property on the morning of 12 December 2014. The Tenant and the Landlord were present during the inspection. The Committee comprised George Clark (Chairman), Richard Burnett (surveyor member) and Christine Anderson (housing member).
7. Following the inspection of the Property the Private Rented Housing Committee held a hearing at Muirhouse Community Centre and heard from both the Tenant and the Landlord. Both parties represented themselves.
8. At the beginning of the hearing, the Chairman advised the parties that discussion would be limited to the matters included by the Tenant in her application. The Committee was aware from the written representations that the relationship between the parties had broken down and that it appeared the Landlord had raised proceedings to evict the Tenant and recover possession of the Property, but the Committee was not authorised to comment on such matters and it was for the parties to seek such legal advice as they thought appropriate or necessary.
9. The Tenant, in her application, and insofar as her comments relate to the matters which were raised in the application, submitted as follows:- the oven needed to be replaced as a matter of urgency, as it was in a dangerous state and the Landlord had advised against even switching it on, the microwave was not working properly, the fridge door needed to be replaced as the seal had failed, and the carpets were very old, moist, mouldy and worn away and caused a health risk. The electric shower had been replaced, but had been fitted by the Landlord himself, not by a certified electrician. The springs in the mattress were about to protrude. The Tenant had asked the Landlord to arrange for a plumber to clear the drainage from the shower, because the drains were blocked not only with hair, but with gravel. The Property did not have any provision for detecting fires. The Landlord was trying to evict the Tenant because he was not prepared to carry out the necessary repair work and, in support of this contention, she had attached to the application copies of the e-mail correspondence between the parties which had taken place over the previous two months.
10. At the hearing, the Tenant advised the Committee that the oven, which had been the subject of complaint, had been replaced by the Landlord approximately one week previously. The Landlord had also delivered a new microwave between the time of the inspection and the hearing, along with a new kettle and toaster. The mattress which had been the subject of complaint had been replaced approximately one week prior to the date of the inspection. A mains-wired smoke detector in the hall had been installed on the day prior to the inspection. The shower cabinet door had been replaced by the Landlord a few months previously and a new shower unit had been installed, but the drainage hole was raised and it drained very slowly and did not drain completely.
11. The Landlord, in his written response to the application, and insofar as his comments relate to the matters which were raised in the application, submitted as follows:- the Tenant had made a succession of unreasonable requests and demands and had repeatedly caused damage to the Property, or items therein, by her improper care or use. The fridge freezer provided at the start of the lease was large enough for a flat leased to one person. The Tenant had, however, asked if she could have a bigger one, as she had family coming for Christmas (2013) and the Landlord had loaned her a second fridge freezer, not a replacement for the one which had been provided at the start of the tenancy. It was this additional fridge freezer that was the subject of the complaint, but the Landlord was of the view that it was, in any event, maintaining the correct temperature. The Tenant had complained that the shower door had come off, but when the Landlord investigated the problem, he found that the track along which the door ran was full of hair and soap scum, through lack of proper cleaning and that, as a result the bottom wheels of the door had been broken off. Nevertheless, the Landlord had carried out a major refurbishment of the bathroom, including fitting a new shower cubicle. The drainage from

the shower had been checked and the cause of slow drainage was hair which had become trapped. The Landlord had supplied a shower sieve grate, but the Tenant did not appear to be using it. There was no requirement for the smoke detectors to be mains-wired in series, as the detector in the kitchen had been installed prior to 2007.

Summary of the issues

12. The issues to be determined were whether the Property met the repairing standard as laid down in Section 13 of the Act and whether the Landlord had complied with the duties imposed on landlords by Section 14(1)(b) of the Act.

Findings of fact

13. The Committee finds the following facts to be established:-
- The tenancy is an assured tenancy
 - The oven which was the subject of complaint is no longer in the Property, having been replaced with a new oven.
 - The microwave which was the subject of complaint has been replaced by the Landlord.
 - There are two fridge freezers in the Property. The smaller one was provided as part of the tenancy, but the larger one, which is the subject of complaint, is on loan from the Landlord. The Committee found that the smaller fridge freezer was functioning properly at the date of the inspection and that, whilst the rubber seal on the door of the larger fridge freezer was detached in places, the door could still be shut and effectively sealed.
 - The Property is heavily furnished and the ability of the Committee to inspect the carpets was limited. The Committee could, however, see that the carpets appeared to be fairly old and were stained in places, but was of the view that the staining was not such as to cause the carpets to fail the repairing standard test.
 - The shower door which was the subject of complaint is no longer there, the shower cabinet having been replaced by the Landlord.
 - The mattress which was the subject of complaint has been replaced by the Landlord.
 - There is a battery-operated smoke detector in the kitchen of the Property and a mains-wired smoke detector in the hallway.

Reasons for the decision

14. The Committee could make no findings in respect of the oven, the microwave, the mattress or the shower cabinet door, as all have recently been replaced by the Landlord. The Committee commented that it was regrettable that it had taken so long for the Landlord to deal with these matters, but was satisfied that these aspects of the application had been resolved. The Committee noted that the Landlord had provided a shower sieve grating which was designed to resolve the problem of hair becoming trapped in the shower waste system, so was not prepared to hold that the drainage system did not meet the repairing standard. The carpets, where they could be inspected, appeared to be fairly old and were stained in places, but the view of the Committee was that the staining was not such as to cause the carpets to fail to meet the repairing standard. The Landlord had submitted the front page of an Electrical Compliance Certificate dated 15 August 2013. The Certificate was not complete and pre-dated the installation of the new shower unit, but the Committee's understanding is that, whilst it might be desirable, there is no legal requirement that a shower unit be fitted by a qualified electrician. The Committee did, however, ask the Landlord to provide a complete copy of the Certificate and he undertook to do so. The Committee noted that the smoke detector in the kitchen was battery-operated and that it was not linked to the mains-wired smoke detector in the hallway, but accepted the Landlord's statement that the detector in the kitchen had been there prior to regulation changes in 2007.

Decision

- 15. The Committee accordingly determined that the Landlord had not failed to comply with the duty imposed by Section 14 (1)(b) of the Act.
- 16. The decision of the Committee was unanimous.

Right of Appeal

- 17. **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

- 18. 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 **George Clark** Date 12 December 2014
Chairperson ✓