



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

Reference Number: PRHP/RP/14/0259

Re: Property at Flat 1/1, 402 Byres Road, Glasgow, G12 8AS, all as more particularly described in and registered in Land Certificate GLA114324 (hereinafter referred to as "the property").

The Parties:-

Miss Kirsty-Leigh Salmond residing at Flat 1/1, 402 Byres Road, Glasgow ("the Tenant")

And

Mr. Craig Knowles and Mrs. Sally Anne Knowles residing at Flat 2/1, 5 Princes Terrace, Dowanhill, Glasgow, G12 9JW ("the Landlords").

Decision

The Committee, having made such enquiries as it saw fit for the purpose of determining whether the Landlords have complied with the duty imposed by Section 14 (1) (b) of the Housing (Scotland) Act 2006 ("the Act") in relation to the property concerned and, taking account of the evidence submitted by both the Landlords and the Tenant, determined that the Landlords had not failed to comply with the duty imposed by Section 14 (1)(b) of the Act.

Background

1. By application dated 3rd November 2014 the Tenant applied to the Private Rented Housing Panel for a determination of whether the Landlords 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 Landlords 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 house was wind and watertight and in all other aspects reasonably fit for human habitation.

- (b) the structure and exterior of the house (including drains, gutters and external pipes) were in a reasonable state of repair and in proper working order.
3. By letter dated 27 November 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 Tenants.
 5. Following service of the Notice of Referral the Tenant's father and representative, Mr. Richard Salmond, made written representations to the Committee which were undated but received by the PRHP on 15th December 2014.
 6. Further Notice of Referral had to be made on both the Tenant and the Landlords as the original Notice of Referral had not been received by the Landlords due to a problem with the noting of the Landlords' address on the Title Deeds and the Landlord Registration system. These Notices were sent on 9th January 2015. No further written representations were received in relation to the service of these further Notices.
 7. On 9th January 2015, the Private Rented Housing Committee wrote to both the Landlords and the Tenant and the Tenant's father to advise that the Private Rented Housing Committee intended to inspect the property on 20 February 2015 at 10 am. The letter further confirmed that a Hearing had been arranged in relation to the application, which Hearing would be held in the Private Rented Housing Panel Offices, Europa Building, 450 Argyle Street, Glasgow, G2 8LH commencing at 11 am.

The Inspection

8. The Private Rented Housing Committee inspected the Property on the morning of 20th February 2015. The Tenant and the Landlord, Mr. Craig Knowles only, were present during the inspection. Mr. Richard Salmond, father and representative of the Tenant, was also in attendance along with Mr. Paul Knowles who is the son of the Landlords. At the inspection, the Committee noted the following points:-
 - a. The hole complained about which had previously been located on the wall with the fireplace in the Tenant's bedroom were now completely fixed. Steel strengthening beams had been inserted in the wall of the bedroom which was located at the gable end of the property. Thereafter, the wall had been completely re-plastered and the bedroom fully redecorated.
 - b. The Tenant's father pointed out that there was a cupboard in his daughter's bedroom within which was located a fully functioning boiler. He was concerned about this as he was of the opinion that a boiler should not be located within a bedroom. Above the boiler there were vents located from the cupboard into the bedroom together with a carbon monoxide detector.
 - c. The sani-flow system complained about in the Tenant's application had been removed and therefore there was nothing for the Committee to inspect in this regard.

The Hearing

9. Following the inspection of the Property the Private Rented Housing Committee held a hearing at Glasgow and heard from both the Tenant and her father and their Landlord, Mr. Craig Knowles. Mr. Knowles offered an apology on behalf of his wife, Mrs. Sally Anne Knowles who could not attend the hearing as she was away in Newcastle. In attendance at the hearing with the Tenant was her boyfriend, Mr. Sean McEntee, although he did not make any submissions to the committee at any time.

10. The Tenant's father, Mr. Richard Salmond, submitted that his daughter, Kirsty (the Tenant) lived in the property with four other students. He advised the committee that his daughter had taken on the tenancy of the property in July 2014. He advised that he had started to receive phone calls from his daughter who was very distressed due to the cold temperature in her room and the lack of water in the property. This started around August 2014 approximately one month after the tenancy had commenced. The Tenant advised that she required to move out of the flat for three or four weeks in August 2014 due to the lack of water and the fact that there was work going on in the flat. She confirmed that she managed to move back in to the flat for the start of the university term so she would have been back in the property for 10th September 2014.

Mr. Salmond advised that his daughter continued to phone him complaining about, initially the lack of water in the property then subsequently the crack down the wall in her bedroom. Mr. Salmond advised that he had continued to receive these distressing calls from his daughter for around four or five weeks. His daughter advised him that she was concerned and upset and she did not know what was going on with the Landlords so Mr. Salmond agreed to try and contact the Landlords himself. Mr. Salmond advised that he received no word from the Landlord for a period of four or five weeks.

The Tenant advised at this point that when she moved back into the property after the water problem had been fixed, there was a large hole in the wall of her bedroom which was covered in a sheet where the fireplace used to be located. As a result, her bedroom was very cold. She advised that she was concerned about the possibility of mould in her room as it was black where the fireplace had been, although she accepted when questioned that there was no obvious mould in her room.

Mr. Salmond was asked about his email letter to the Landlords of 4th November 2014 which the Tenant had produced and which formed part of the Tenant's application to the committee and which contained the main allegations against the Landlords.

Mr. Salmond advised that his daughter was so upset and that she kept phoning him in the middle of the night crying about the cold conditions in her room, that he felt obliged to try and contact the Landlords. Mr. Salmond complained that the Landlords failed to engage with him and respond to him. Mr. Salmond advised that his daughter complained to him that workmen were coming into the flat unannounced with no prior warning and coming into his daughter's bedroom. Mr. Salmond advised that his daughter told him that the Landlords were blaming her and her fellow tenants for the problems with the sani-flow system in the property.

However, the Tenant at this point advised that she or one of the other occupiers of the property had always received warning in advance of the workmen attending, albeit sometimes that was only an hour in advance of their visit. Mr. Salmond advised his daughter to stop lying and to be truthful.

When questioned, Mr. Salmond advised that there had been problems for a long time with the sani-flow system and that it had been going on for a couple of years but the Landlords were trying to blame his daughter and her fellow tenants and that he had been advised by the HMO Officer of the Council, Craig Douse, that this was the case. Mr. Salmond was also of the opinion that he could not understand why the Landlords would rent out the property which had a structural crack and was in need of repair.

Mr. Salmond also complained in terms of his email to the Landlords of 4th November 2014 that he could not understand how the Landlords could expect the Tenant to continue paying rent for the conditions in which the Landlords expected his upset and vulnerable daughter to live. He was concerned that his daughter was being exposed to spores or possibly even asbestos.

The Tenant advised that she was only offered alternative accommodation at the last minute by the Landlords just prior to the construction repairs commencing in relation to the strengthening works required as a result of the crack in the wall. She also complained that the alternative property she was offered was completely unsuitable as it was located some distance away on Dumbarton Road, Glasgow.

The Tenant confirmed that she chose instead to move in with her boyfriend, Mr. McEntee, on a temporary basis over the period during which the works were carried out. She advised that she remained out of the property from 18th November 2014 until 10th January 2015. She advised that she was left worried as she was unsure about the situation as regards rent and whether or not she would have to continue to pay rent for both the property and pay some kind of financial contribution to her boyfriend's flat.

Mr. Salmond complained that he and his daughter were not advised when the works were completed.

However, the Tenant confirmed that she had received a text from the Landlords around one week before she moved back in on the 10th January 2015.

The Tenant also confirmed that her room has been completely redecorated and that all has been well since she moved back in on 10th January.

The Tenant also confirmed that despite what her father had submitted, she and the other tenants in the property always received advance warning of the workmen coming to the property. The Tenant confirmed that someone in the property was always contacted and was always there when the workmen attended at the property.

The Tenant also submitted that she had advised the Landlords that she was happy with her room and with the property and that there had been no further issues since the sani-flow was removed and the washing facilities re-plumbed together with the structural works having been completed.

Mr. Salmond advised that his issue was the lack of communication from the Landlords overall and the previous repairs issues which had existed but had now been fixed. Mr. Salmond also submitted that he felt it was wholly inappropriate that the communication between the Landlords and the Tenant took place through the medium of text messaging. Mr. Salmond submitted that he felt matters of such importance should be dealt with by way of formal letters.

11. Mr. Knowles thereafter made oral submissions in answer to the Tenant's submissions and those of her father on her behalf. Mr. Knowles advised that the water was not off in the property for the whole of August 2014 but confirmed that he could not provide specific dates in relation to this.

Mr. Knowles confirmed that the sani-flow system had been installed in the property since 2001 and that up until the last eighteen months, there had been very few problems with it. He confirmed that this system had been removed from the property on 10th November 2014 and that the shower and wash-hand basin had been successfully re-plumbed. When questioned about whether in retrospect the Landlords felt that they should have removed the sani-flow system before this point, Mr. Knowles did not agree. He advised that the sani-flow system in the property had been serviced in advance of the commencement of the tenancy with the Tenant by a properly qualified sani-flow engineer and that it was functioning well. However, he confirmed that this system only tended to encounter difficulties when there were female tenants within the property. Furthermore, he advised that when the sani-flow engineer finally came out to find out what the problem was that the Tenant and the other occupants of the property were encountering, the engineer confirmed that the blockages were caused by wipes of some variety and sanitary towels. Mr. Knowles was clear that there was no difficulty with the sani-flow system during the first month of the Tenant's tenancy.

In relation to the crack in the wall, Mr. Knowles confirmed that he first saw this on 14th August 2014 during a visit to the property. He was clear that this had not been apparent prior to the commencement of the Tenant's tenancy as he himself had carried out a pre-tenancy check and there was no crack visible at that time.

Mr. Knowles confirmed that there had never been an "open" wall as such within the bedroom of the Tenant as it was the plaster which was stripped away. He advised that the reason it was black was because it was soot from the old chimney. He was clear that it was not mould.

Mr. Knowles confirmed that as soon as he saw the crack on the wall on the 14th August 2014, he immediately contacted contractors that day.

Mr. Knowles confirmed that he also got the engineers for the structural repairs to confirm that there was no immediate danger to the Tenant and that there was no asbestos or rot which they did and of which he advised the Tenant.

Mr. Knowles confirmed that he uses the same workmen all the time and that he has made it clear to them that they must always treat his tenants with respect and must not enter properties without warning except in an emergency situation. Even in an emergency, Mr. Knowles advised that his workmen had been trained to always knock on the door.

In relation to the complaint by the Tenant's father that it was wholly inappropriate that contact between the Landlords and the Tenant was by text, Mr. Knowles confirmed that he used texts as this is how young people today communicated. He advised that he did formalise the position to the Tenant in writing by way of a letter dated 12th February 2015.

Mr. Knowles advised that although in terms of his titles deeds he was only due to pay 13.6% of the structural repair costs which were carried out, he ended up paying 60% of these costs to ensure that the works were carried out as soon as possible, rather than waiting to get the agreement from all of the other owners in the building.

Mr. Knowles confirmed that he saw the crack in the wall on 14th August 2014 and he had contacted an engineer on 15th August 2015. On 21st August 2015 the engineer visited and advised that as he could not see behind the cracks, the plaster would have to be stripped away to allow him to see what was going on. The wall was stripped on 24th August 2015. The engineer re-visited the property and reported on 9th September 2015. Mr. Knowles advised that he personally hand delivered a copy of this report to his neighbours on 10th September 2015. At that stage, he did not provide a copy of the report to his Tenant but confirmed that he did subsequently.

Mr. Knowles advised that he got a contractor to come out and look at the repairs which were required and this visit by the contractor took place on 21st October 2015.

Mr. Knowles was clear in his submission that, contrary to the submission of the Tenant's father, he kept the Tenant updated by text.

Mr. Knowles confirmed that on the 28th October 2015 he phoned the Tenant and left a voicemail for her on her phone. In that voicemail, Mr. Knowles confirmed that he had three suggestions for the Tenant to try and provide a temporary solution while the works continued and these were as follows:-

1. As the engineer had confirmed that the bedroom remained safe to use throughout the works, if the Tenant did not wish to remain there then she could do a temporary swap with one of her other flatmates and there would be no rent payable throughout this period.
2. The Landlords also owned a one bedroomed flat which was located about three miles from the University and this was offered to the Tenant as alternative accommodation for no cost while the works were undertaken.
3. The Landlords offered to allow the Tenant to stay at the Landlords' own home for the duration of the works for no cost. This property is located around ten minutes' walk from the University.

Mr. Knowles confirmed that he could not provide the perfect solution but he was clear that this was offered to the Tenant. Furthermore, Mr. Knowles confirmed that he texted the Tenant after leaving the voicemail and asking her to check her voicemail for these possible solutions.

Mr. Knowles was also clear that he sent a text to the Tenant on 29th October 2014 confirming that there would be no rent due from the Tenant until all of the repairs had been carried out. He advised that he told the Tenant on 31st October 2015 that the works would be proceeding. In addition, he confirmed that he sent texts to the Tenant on 12th, 13th, 14th and 15th, all November 2014 to keep her updated about the situation.

Mr. Knowles confirmed that the structural repairs commenced on 17th November and were completed on 5th December, both 2014 but that the room did not become available again to the Tenant until 10th January 2015 until the room had been completely redecorated and a new carpet lain. He confirmed that between 17th November 2014 and 10th January 2015 the room was uninhabitable.

In relation to the issue of the payment of rent, Mr. Knowles confirmed that he had only asked for the payment of rent for the first month of the tenancy, that is, for July 2014. He confirmed that the Tenant had, however, paid two months' rent by 10th January 2015 as she had been prompt with her rental payment at the beginning of August 2014. However, he was clear that he advised the Tenant from the outset of the difficulties in the flat that she would not have to pay rent for the property until the problems were sorted. He confirmed that he had sent her a text message on 29th October

2014 advising her that no rent would be due. He also confirmed this in the letter of 12th February 2015 he sent to the Tenant to re-affirm that there would be no rent due by the Tenant from the period of 4th August 2014 through to the 10th January 2015.

Mr. Knowles submitted that the Tenant is so happy with the property and with him as Landlord that she and her two friends have asked if they can remain in the property for the next academic year. The Tenant confirmed this to be accurate.

Mr. Salmond confirmed that the repairs have all been carried out satisfactorily and that the property is acceptable. However, he confirmed that his frustration was borne out of the Landlords' failure to contact him.

The Tenant denied that she had received the phone call from the Landlord offering her the three alternative accommodation solutions but when questioned she confirmed that she was aware of the alternative solutions on offer but that she decided to go and stay with her boyfriend.

Discussion on Evidence

The committee is satisfied on the evidence that when the property was let on 4th July 2014 it met the repairing standard. The committee is also satisfied on the evidence that, at the date of the hearing, the property met the repairing standard.

The committee accepts the Landlord's evidence that, although there had been previous intermittent issues with the sani-flow system, this system had been serviced by a qualified sani-flow engineer prior to the commencement of the Tenant's tenancy and that it had been in full working order at that time. The committee also accepts the evidence of the Landlord that the sani-flow engineer had advised him that the problems and blockage in the system had been caused by some form of baby wipes.

Furthermore, the committee accepts the Landlord's evidence that there crack which highlighted the structural repairs which were required to be carried out was not visible until 14th August 2014 and therefore was not visible at the commencement of the tenancy. Given that the Landlord, as soon as he became aware of this crack, quickly undertook to have it investigated and repaired without delay.

In addition, the committee had no hesitation in accepting the evidence of the Landlord that he kept the Tenant advised of developments throughout this whole process by way of text messages. The committee accepts the Landlord's evidence that he offered the Tenant three possible solutions to her accommodation concerns at the end of October 2014 and that he made it clear to the Tenant that he would not charge her rent throughout the period of repairs.

The committee had no difficulty in accepting the evidence of the Landlord. He came across as being credible and reliable. He fully acknowledged the issues which had arisen in the property and could provide a clear time line in relation to how he responded to these issues. It appeared to the committee that he did not delay in acknowledging problems when these arose within the property, nor did he delay when attempting to resolve these problems to the point where he voluntarily assumed more than his required share of costs of the communal repair costs in relation to the structural works which were undertaken.

Furthermore, the committee had no hesitation in accepting the evidence of the Landlord that he had communicated with the Tenant throughout by way of text messaging and phone calls or voice mails and that he had made it clear to the Tenant that she would not be required to pay rent for the period during which the room was uninhabitable.

The committee also accepted the evidence of Mr. Salmond that the Landlord had failed to contact him directly and timeously. However, the committee simply notes that there was no evidence presented to the committee that the Tenant had ever advised the Landlords that her father was representing in this matter and that all communication should go through her father.

However, the Tenant appeared to suggest that the Landlords had failed to keep her updated about the repairs and about whether or not she would still be required to pay rent for the property. The Tenant denied receiving a phone call from the Landlords offering her three different solutions to her temporary accommodation problem but she later accepted in evidence that she was aware of the alternatives offered to her by her Landlords. The committee did not find the evidence of the Tenant credible in relation to any of these issues and preferred the evidence of the Landlord in this regard.

Decision

12. The Committee accordingly determined that the Landlords had not failed to comply with the duty imposed by Section 14 (1)(b) of the Act.
13. The decision of the Committee was unanimous.

Right of Appeal

14. 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

15. 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 **Patricia Pryce** Date *26 February 2015*
Chairperson