



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

prhp Ref: PRHP/RP/14/0261

Re : Brancher, The Farm Steading, Wester Templands, Fortrose IV10 8RA

The parties:

MISS SHEENAH GOODMAN, sometime Brancher, The Farm Steading, Wester Templands, Fortrose IV10 8RA ("The Tenant") and

FRANCISCA LYNCH, The Farm Steading, Wester Templands, Fortrose IV10 8RA and **JOHN RUSSELL LYNCH**, 3350 North Key Drive, A104 North Myers, Florida 33903, United States of America, as **THE TRUSTEES OF THE LYNCH FAMILY TRUST** ("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 the Landlord 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 4 November 2014, received on 5 November 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 house is wind and water tight and otherwise fit for human habitation,
 - (b) 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,
 - (c) the installations in the house for the supply of water, gas and electricity and for sanitation, space heating and heating water are in a reasonable state of repair and in proper working order,
 - (d) any fixtures, fittings and appliances provided by the Landlord under the tenancy are in a reasonable state of repair and in proper working order,
 - (e) any furnishings provided by the Landlord under the tenancy are capable of being used for the purpose for which they are designed, and
 - (f) 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 10 June 2015, 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 4 November 2014. The Landlord made no written representations to the Committee.
6. The Private Rented Housing Committee inspected the Property on the morning of 6 August 2015. Francisca Lynch, one of the Trustees of the Landlord, was present during the inspection. The Tenant was not present or represented at the inspection. The Committee was unable to gain access to the Property and its inspection was limited to the exterior of the Property.
7. The Committee comprised George Clark (chairman), Geraldine Wooley (surveyor member) and Liz Dickson (housing member).
8. The weather at the time of the inspection was overcast, with occasional showers.
9. A file of photographs, taken by the surveyor member of the Committee at the inspection, is attached to and forms part of this Decision.
10. Following the inspection of the Property the Private Rented Housing Committee held a hearing at Black Isle Leisure Centre, Deans Road, Fortrose and heard from Francisca Lynch, one of the Trustees of the Landlord. The Tenant was not present or represented at the hearing.
11. The Tenant, in her application, submitted as follows:- externally, there were unlit access routes to the Property, which were tripping hazards; the guttering did not allow water to flow and was unevenly attached, causing flooding of the garden; the coping stones on the top of the roof were loose, as were some of the slates; the front door did not fit, with a 2cm gap at the top, and water also seeped through the bottom of the door in heavy rain and through a hole in the door which had been patched with wood; internally, various bits of skirting board were missing; the overflow pipe under the kitchen sink was missing, the drains within the sinks were not sealed correctly, so that water leaked through the plugholes; the flooring in the kitchen and the rest of the Property was uneven, with cement missing in places; the oil-fired underfloor heating had not been turned on by the Landlord; the living room windows were inadequately sealed, the glass door of the fireplace stove was broken and the chimney fitting had fallen through the wall, bringing down with it the fireboard fitted around the chimney flue; the chimney was not sealed correctly to the top of the fire; the fireplace stove was not of a capacity sufficient to heat the Property; the radiators were not securely fitted to the walls, but were held up by blocks of wood; the stairs down to the bathroom were two breeze blocks with a plank of wood on top and were not secured to the floor; the toilet cistern plumbing was broken and the toilet regularly blocked; the extractor fan in the bathroom had not been wired in and the bathroom had exposed electrics; there was a constant draught through the fitted window in the downstairs bedroom; the stair banister was not secured to the wall; the flooring upstairs was uneven and sinking; and, generally, the lack of insulation and ventilation had led to a build-up of condensation and an accumulation of mould, with the electrical consumption was very high by comparison with the neighbouring property.
12. The Landlord submitted as follows:- the Tenant was no longer living in the Property, but had refused to hand back the keys and, as a result, the Landlord was unable to grant access to the Committee. At the start of the tenancy, the stove had been in immaculate condition and the door had not been broken, as evidenced by photographs dated 6 July 2013, which the Landlord exhibited to the Committee at the hearing. When the Landlord's representative, Mr Sean Grieve, had found the door to have been broken, he had told the

Tenant not to use it. He had then e-mailed the Tenant on 23 December 2014 to say that he would inspect the stove on 27 December, by a contractor, but the Tenant had said that this was insufficient notice. The Tenant had not followed the instruction from Mr Grieve not to use the stove and a fire had resulted, causing damage to the roof of the Property. The Landlord had e-mailed the Tenant on 4 February 2015, again asking her to allow Mr Grieve, to enter the Property to see the repairs that the Tenant had stated were necessary. The electricity supply to the Property was on a Standard Tariff at 15.60p per kilowatt hour and was controlled from the adjoining part of the farm steading also belonging to the Landlord. The Landlord charged the Tenant 14.07p per kilowatt hour and did not pass on any part of the standing charge of 27.41p per day, so was, in effect, subsidising the Tenant's electricity costs. The Landlord recovered payment from the Tenant by supplying electricity cards at £5 each. Mr Grieve had tried on several occasions to deliver electricity cards in return for payment and had e-mailed the Landlord on 4 November 2014 to say that the Tenant was never there when he called at the Property for that purpose. The Landlord was of the view that the Tenant was avoiding meeting Mr Grieve, as she knew he would be looking for her to pay for electricity cards. Mr Grieve had told the Landlord in his e-mail of 4 November 2014, that on one occasion, the Tenant had contacted him to say that the bathroom drain was blocked and it had been cleared later the same day, but that the Tenant had not raised any other issue with him, apart from dampness in the back bedroom. The Tenant had told the Landlord about the loose gutter, but had said that her partner, who lived with her, would repair it, and the charge for his time would help towards the arrears of rent. On 23 December 2014, the Landlord had e-mailed the Tenant to say that she had formally requested access to the Property to commence the alleged repairs. The Tenant had responded by stating that insufficient notice was given.

13. Ms Lynch, one of the Trustees of the Landlord, told the Committee that she accepted that the Property might not meet the repairing standard, but that she had been unable to gain access to assess and carry out any necessary repairs. She was unable to inspect the interior of the Property as, although the Tenant appeared to have left, she had refused to hand over the keys and the Landlord did not have a set of keys. The Landlord did not intend to carry out any works to the Property or to re-let it and the intention of Ms Lynch, when she had obtained the relevant Possession Order, was to remove the kitchens in the Property and the vacant adjoining property, so that they could no longer be let as separate dwellings and to have the two properties removed from the Council Tax register.

Summary of the issues

14. 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

15. The Committee finds the following facts to be established:-
 - The Committee has not seen the tenancy agreement.
 - The Property forms part of a former farm steading building, now converted into three units. It adjoins, on one side, another property which is currently vacant and, on the other side, the main part of the steading, which the Landlord occupies on her visits to Scotland. The Property probably dates back to the mid-19th century or earlier.
 - The Committee was unable to gain access to the interior of the Property.
 - The Tenant advised the Committee by e-mail on 17 February 2015 that she was no longer living in the Property.
 - There is no evidence of missing or loose guttering. There is evidence of a leaking and blocked gutter to the rear elevation, and damage to the gutter at the front (which may have resulted from a fire, which post-dated and therefore did not form part of the Tenant's application)
 - There is a hole in the roof, which appears to have resulted from the fire. The hole has been boarded over.

- From external inspection, the front door of the Property is not in good condition, but there is no evidence that it is not wind and water tight.
- The coping stones of the roof appear to be in reasonable order. A few slates have slipped or are missing.
- The Landlord provided e-mails substantiating her claim that her agent, Sean Grieve, had not been allowed access to the Property to establish what repairs were required. The Committee was satisfied that reasonable steps had been taken to gain access.

Reasons for the decision

16. The Committee's ability to investigate the lengthy list of defects alleged in the application was extremely limited by the inability to gain access, but the Committee accepted the Landlord's statement that she did not have a set of keys and that the only keys to the Property were held by the Tenant. The Committee's inspection was, therefore, restricted to the exterior of the Property.
17. The Committee is of the view that, as the Landlord or their representative were not afforded access to the Property by the Tenant in terms of Section 16(4) of the Act, the Landlord has not failed in the duty to comply with Section 14(1) of the Act, which states that "A landlord is not to be treated as having failed to comply with the duty imposed by Section 14(1) where the purported failure occurred only because the landlord lacked the necessary rights (of access or otherwise) despite having taken reasonable steps for the purposes of acquiring those rights."
18. The access paths to the Property were typical of those found in steading properties of similar age, namely cobbled stones which have, over time, become uneven. The Property is in a remote rural location and the Committee would not expect the pathways to be lit. The gutter was damaged but, on the front elevation, this may have been caused by the fire appeared to be intact. There was no evidence of defects in the guttering flooding the garden of the Property. The coping stones on the roof appeared to be intact. There were a few slipped and missing slates, but the Committee found no evidence that, as a result, the Property was not wind and water tight. The front door could not be opened, as no keys were available and the Committee could not, therefore, inspect it in order to determine whether it was wind and water tight. The Committee therefore, determined that it was not able to uphold the Tenant's complaints regarding the exterior of the Property and, having been unable to enter the Property, the Committee could not uphold the Tenant's complaints regarding the interior of the Property.
19. The Committee was of the view that the hole in the roof which had been caused by a fire and had been patched over was such as to cause the Property to fail to meet the repairing standard, but, as it did not form part of the Tenant's application, the Committee was unable to make a Repairing Standard Enforcement Order.

Decision

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

Right of Appeal

22. 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

23. 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.

G CLARK

Signed
Chairperson

Date 6 August 2015