



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

prhp Ref: PRHP/RP/15/0081

Re: Property at Mill of Dess Farmhouse, Aboyne, Aberdeenshire AB34 5BE ("the Property")

The Parties:-

Scott Mannion and Mrs Cecile Mannion, both residing at Mill of Dess Farmhouse, Aboyne, Aberdeenshire AB34 5BE ("the Tenant"); and

E W Pepper Limited, incorporated under the Companies Acts and having its registered office at Orchard House, Bury Lane Farm, A10 Melbourn, Royston, Hertfordshire SG8 6DF (represented by its agents Strutt & Parker LLP, St Nicholas House, 68 Station Road, Banchory AB31 5YJ) ("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's representatives 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 26 February 2015, 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 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, and
 - (c) any fixtures, fittings and appliances provided by the Landlord under the tenancy are in a reasonable state of repair and in proper working order.
3. The Tenant advised the Private Rented Housing Panel that the tenancy had been lawfully terminated and that the Tenant had vacated the Property on 1 April 2015. The President of the Private Rented Housing Panel intimated to the Parties on 20 April 2015 that, as the alleged defects would, if established, raise health and safety concerns for any future tenants of the Property, she considered that the application should continue to be determined and intimation to that effect was sent to the Parties on 20 April 2015.

4. On 20 April 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.
5. 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.
6. Following service of the Notice of Referral, no further written representations were received from the Tenant. The Landlord's Agent made written representations stating that various items had been rectified and that, in their opinion, the inspection and hearing were no longer necessary.
7. The Private Rented Housing Committee inspected the Property on the morning of 3 September 2015. The Tenant, having vacated the Property, was not present during the inspection, but the Committee members were admitted to the Property by the new tenant, Tarryn Summers who, with her partner, Ian Stewart, had moved into the Property on the previous day. The Landlord's representatives, Dan Newcombe and Rachel Tilley, of Strutt and Parker LLP, were present during the inspection.
8. A file of photographs, taken at the inspection, is attached to and forms part of this Statement of Decision.
9. The Committee comprised George Clark (chairman), Angus Anderson (surveyor member) and Michael Scott (housing member).
10. The Committee's Findings at the inspection were as follows:-
11. Mill of Dess Farmhouse is a detached, one storey and attic house, built upwards of 100 years ago and extended to the side approximately 25 years ago. The walls are mainly solid stone, harled, with the extension constructed in harled blockwork. The roof is pitched and slated. The accommodation comprises:
Ground floor - rear entrance hall, shower room, utility room, kitchen with dining area, dining room, front entrance hall, lounge and bedroom. First floor: landing, three bedrooms and bathroom. Space heating is via an oil fired boiler which serves water filled radiators throughout. Hot water is from an electric immersion heater and the central heating boiler.
12. It was dry during the inspection, which was preceded by a period of mixed weather. The house was occupied, the new tenant having moved in the previous day, but the heating was not turned on.
13. The Committee first inspected the front door. There was no staining to indicate any water ingress at the door threshold. Externally, it could be seen that there was a metal water rain deflector. A very small amount of decay was affecting the external door post and there were very slight cracks to the timber joints of the front door.
14. The Committee then inspected the first floor airing cupboard door catch. The door was opened and closed and the door catch operated as it should.

15. The taps and toilet within the first floor bathroom were inspected, followed by the ground floor shower room fittings. No leaks were present to any of the taps. The toilet flushes operated normally. Overall, the sanitary fittings appeared relatively modern and were found to be in good order.
16. The rear door area was inspected. The floor covering to this area had been recently replaced. It could be seen that there was a modern anodised aluminium rain deflector present. It appeared to be suitable for an outside door and in reasonable order. The door was found to be in good order. This door is afforded some protection from the elements on account of the rear porch structure. No staining was observed to indicate any previous water ingress.
17. The kitchen lights were switched on and off, with no obvious flickering or other visual defect.
18. Verbal enquiry was made of the occupant in terms of whether the heating worked and was effective in heating the house. She replied that the heating was used the previous evening and it seemed effective in heating the house and hot water. The committee inspected the oil storage tank, visible pipework and the visible parts of the central heating boiler, with the casing door opened. The plastic storage tank appeared relatively modern and is of the double skinned, banded type. There was no visible indication or smell of kerosene leakage. At the boiler, it could be seen that the condensate pipe had been altered recently, to route through the side of the casing and a new section of copper pipe was visible between the fire valve and the interior of the boiler.
19. Following the inspection of the Property the Private Rented Housing Committee held a hearing at Banchory Business Centre and heard from the Landlord's agents, Strutt and Parker LLP, represented by Dan Newcombe and Rachel Tilley. The Tenant, having vacated the Property, was not present or represented at the hearing.
20. The Tenant submitted as follows:- The old, faulty, boiler had been replaced incorrectly with a boiler which was two sizes smaller than the one it replaced. This caused the oil and electricity bills to increase by 150-200%. The boiler had also been incorrectly fitted and, as a result, had not been commissioned and was not covered by a warranty. The bath, sink and laundry taps were all dripping, the door latch in the water tank room door was broken, the toilet was not flushing properly and blocked all the time, the front door was still leaking, a joiner having commented to the Tenant that the rain stop was too small, and the kitchen lights were beginning to fail.
21. The Tenant contended that the central heating boiler had been fitted by an unaccredited engineer. The Tenant submitted to the Committee a report by Richard Watt, Plumbing and Central Heating Engineer, dated 13 February 2014 (assumed by the Committee to be a mistake in the year), which noted that inside the boiler casing, where the heating pipes were made of copper, the person installing the boiler had used plastic pipes with push-fit joints. The installer had also bored a hole through the base of the boiler and terminated the plastic pipe under the boiler. The condensate from the boiler was leaking between the boiler and the concrete base, causing corrosion to the boiler base. The fire valve was only 150mm in distance from the boiler, so did not comply with O.F.T.E.C Regulations and the

manufacturers' instructions and, as the tank was only 5-6 metres away from the boiler, the fuel line should have been run along the building wall, not underground. The engineer concluded that, as it did not comply with O.F.T.E.C Regulations in this respect either, the boiler could not have been commissioned by an O.F.T.E.C engineer. The report also indicated that, taking the floor area of the Property, the boiler size would have to be larger than the one installed, to heat the water and the rooms to the temperatures recommended by the Building Research Establishment.

22. The Tenant also provided the Committee with the results of an on-line boiler sizing calculation carried by the Tenant on the website of the Institute of Domestic Heating and Environmental Engineers (IDHEE) and an e-mail from Grant Engineering (UK) Limited dated 19 December 2014, which confirmed that the company had no record of one of its products being registered at the Property, so the boiler would not be covered by the company's warranty.
23. The Landlord submitted as follows:- The Tenant claimed to be using a huge amount of oil since the replacement of the boiler, but, despite having been asked to do so, had never produced evidence to quantify any such increase in usage. The Tenant was also at home all day and the Tenant's son was being home-schooled and this factor would be expected to result in greater usage of a central heating system than would be the case in a family where the parents went out to work and the children went to school. The Tenant had, however, produced no evidence of usage, such as bills for supplies of kerosene, which would support the argument that the cost of heating the Property was much higher than had been the case with the old boiler and had based the complaint on "dipping" the oil tank in order to assess how much oil was being used. As a result, the Landlord had only had anecdotal information and no detailed records which could have been passed on to contractors to allow them to assess whether there was any merit in the complaint. North East Boilers had inspected the boiler on 17 December 2014 and they had confirmed that the specification for the new boiler was acceptable. An Invoice from E. Simpson and an Annual Boiler Service Log report in respect of the commissioning of the boiler, dated 11 August 2015, were exhibited to the Committee. The report had been prepared by Messrs W & M Stuart, of Alford, who were OFTEC accredited and Gas Safe heating and boiler service engineers. They had also been the company which carried out some rectification works to re-route the condensate pipe from the boiler. The fire valve had not been altered, but the engineers had been content with it in its present position.
24. The Landlord's representatives also exhibited to the Committee and Electrical Installation Condition report dated 27 August 2015, which described the general condition of the installation as "Good" and did not make any adverse observations, and an up to date Portable Appliance Test (PAT Test) Certificate.
25. The Landlord's representatives told the Committee that all of the other items included in the application had been checked and no remedial work had been required.

Summary of the issues

26. 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

27. The Committee finds the following facts to be established:-
 - The tenancy is a Short Assured Tenancy, which has been lawfully terminated and the Tenant vacated the Property on 1 April 2015.
 - The oil central heating boiler at the Property was installed by E Simpson, a SNIPEF accredited and Gas Safe engineer, around September 2014. The boiler was formally commissioned by W&M Stuart, Heating and Boiler Services, on the

instructions of E. Simpson, on 11 August 2015 and an Annual Service Log report relative to the commissioning of the boiler, was issued on the same day. That report indicated that the boiler efficiency was 91%.

- There have been recent alterations to the condensate pipe at the central heating boiler.
- There is no evidence of any water dripping from the bath, sink or laundry taps in the Property.
- The door latch in the water tank room (first floor airing cupboard) is functioning properly.
- The toilets appear to be flushing properly.
- There is a very small amount of decay affecting the external door post and very slight cracks to the timber joints at the front door, but there is no staining to indicate any water ingress at the door threshold and there is in place a metal water rain deflector.
- There is no evidence of flickering or other visual defect in the kitchen lighting.

Reasons for the decision

28. The Committee accepted the argument put forward by the Landlord's representatives that the Tenant had not produced any evidence to demonstrate excessive oil consumption following the installation of the new boiler. In particular, the Tenant had not provided any invoices for oil bought, which might have allowed the Committee to compare consumption before and after the boiler was changed. There was no evidence of any leakage of kerosene from the storage tank and the Committee had seen evidence that the boiler had been commissioned by a suitably qualified contractor. The Committee noted that this work, including the rerouting of the condensate pipe and the commissioning of the new boiler, had been carried out recently (and after the Tenant had vacated the Property), but could not find that the boiler did not now meet the repairing standard. The Committee also found no evidence to substantiate the complaints in the application regarding the bath sink and laundry taps, the door latch in the water tank room (first floor airing cupboard), the toilet, front door or kitchen lighting, so was not able to determine that the Property failed to meet the repairing standard.

Decision

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

Right of Appeal

31. **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

32. 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 ... **G. Clark** Date... 3 September 2015
Chairpers:



Schedule of Photographs
Mill of Dess Farmhouse, Aboyne, Aberdeenshire AB34 5BE
Case Reference Number PRHP/RP/15/0081
Date: 03/09/2015



Figure 1 Front Elevation



Figure 2 Bathroom fittings

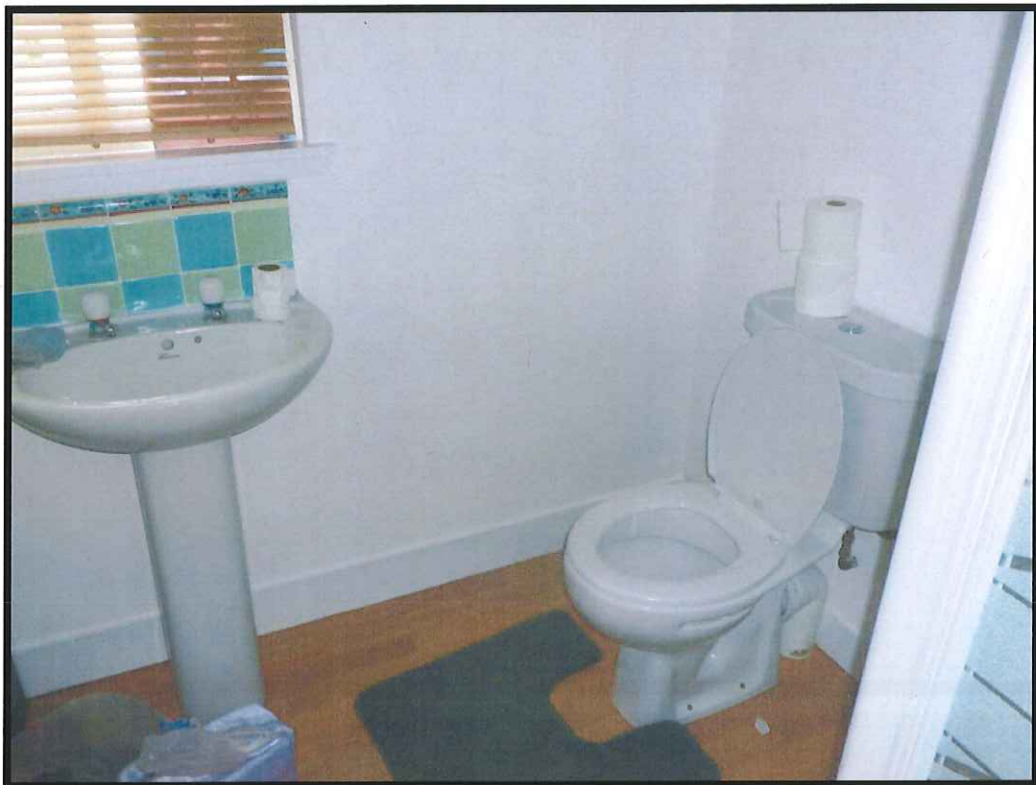


Figure 3 Shower room fittings



Figure 4 Rear (main entrance) door threshold



Figure 5 Front door exterior

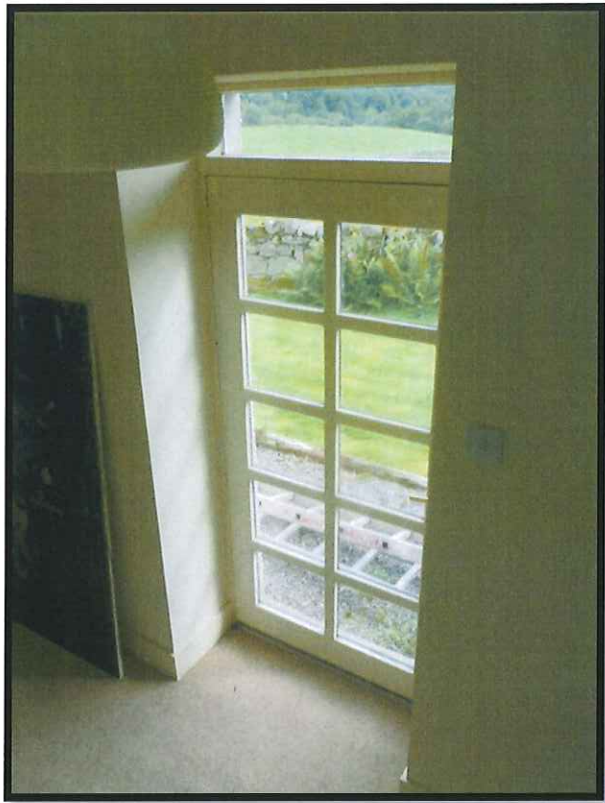


Figure 6 Front door interior



Figure 7 External boiler