



Determination by Private Rented Housing Committee

Statement of Decision of the Private Rented Housing Committee issued under

Section 24(1) of the Housing (Scotland) Act 2006

Ref prhp/rp/15/099

In respect of an application lodged in terms of Section 22(1) of the Housing (Scotland) Act 2006 by Michael Smith and Nadia Ayoubi residing at Flat 3/2, 4 Hayburn Court, Partick, Glasgow, G11 6EA, ("the Tenants") against Graham McMillan, having an address c/o 4 Kersland Street, Hillhead, Glasgow, G12 8BL ("the Landlord") per his agents, Countrywide Residential Lettings, 4 Kersland Street, Hillhead, Glasgow, G12 8BL ("the Landlord's Agents")

Re: Flat 3/2, 4 Hayburn Court, Partick, Glasgow, G11 6EA ("the Property")

Committee Members

Karen Moore (Chairperson)

Kingsley Bruce (Surveyor Member)

Susan Brown (Housing Member)

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) of the Housing (Scotland) Act 2006 ("the Act") in relation to the Property, determined that the Landlord has complied with the duty imposed by Section 14 (1) (b) of the Act in respect that

the Property meets the Repairing Standard in respect of Sections 13 (1) (a) and 13 (1) (d) of the Act and that for the reasons set out below.

Background

1. By application dated 10 March 2015 and signed by the Michael Smith on behalf of the Tenants, ("the Application"), the Tenants applied to the Private Rented Housing Panel for a determination that the Landlord had failed to comply with the duty imposed on him by Section 14 (1) (b) of the Act in respect that the Property does not meet the Repairing Standard in respect of Sections 13 (1) (a) and (d) of the Act.
2. The president of the Private Rented Housing Panel, having considered the application, intimated to the parties by Notice of Referral dated 25 March 2015, a decision under Section 23 (1) of the Act to refer the Application to a Private Rented Housing Committee, and, in terms of Schedule 2, Paragraph 1 of the Act fixed an Inspection and Hearing for 20 May 2015 at 11.00 a.m. and 14.00 p.m., respectively.
3. In the Application, it was stated that the Tenants considered that the Landlord had failed to ensure that the Property met the Repairing Standard as set out in Section 13(1) (a) and 13 (1) (d) of the Act by failing to ensure that the Property is wind and water tight and in all other respects reasonably for for human habitation and that any fixtures and fittings provided by the Landlord under the tenancy are in a reasonable state of repair and working order.
4. In particular, the Tenants, in the Application, stated that:-
 - i) there is a significant level of mould around the windows and on the bedroom walls;
 - ii) there is a mould in the shower area;
 - iii) the bedroom windows are damaged and rotted by dampness;
 - iv) the windows in the Property require to be resealed and painted;
5. The Tenants stated that the dampness had caused Ms Ayoubi health problems and that they were unable to continue to live in the Property. The Tenants stated further that they had heated and ventilated the Property to minimise condensation.

6. By emails sent to the Committee in April 2015, the Tenants intimated to the Committee that they had vacated the Property and given up the tenancy on 2 April 2015.
7. The Committee gave consideration to the Tenants' vacating of the Property as a withdrawal of the Application and whether the Application should be determined or abandoned in terms of paragraph 7(3)(b) of Schedule 2 to the Act. It appeared to the Committee that the reason for the Tenants vacating the Property was the condition of the Property and its effect on the health of Ms Ayoubi. The Committee formed the view that as the nature of the Tenants' complaint as outlined in the Application was serious and that there was sufficient concern that the matter complained of might not have been resolved to meet the Repairing Standard as required by the Act. Accordingly the Committee continued with the proceedings in terms of paragraph 7(3) (b) of Schedule 2 to the Act.
8. By email sent to the Committee on 9 April 2015, the Landlord intimated to the Committee that he had only recently become aware of the Tenants complaints and requested that he be allowed an opportunity to investigate. The Committee treated this email as an application on behalf of the Landlord for an adjournment of the Hearing and Inspection in terms of Regulation 21 of the Regulations. The Committee were of a mind that, as the Landlord appeared to have been unaware of the extent of the matters complained of in the Application and that as he indicated a willingness to resolve these matters, an adjournment should be granted. Therefore, the Committee, on its own initiative in terms of Regulation 14, adjourned the Inspection and Hearing fixed for 20 May 2015 to allow the Landlord the opportunity to investigate the matters complained of in the Application. A fresh Inspection and Hearing were fixed for 15 June 2015 at 10.00 a.m. and 11.00 a.m. respectively.
9. By email dated 20 May 2015, the Landlord submitted written representation to the Committee stating that (i) the Landlord refuted the extent of the Tenants' claims in the Application and (ii) all necessary repairs had been carried out.
10. In his written representation, the Landlord advised the Committee that the Property has been professionally assessed and all necessary repairs have been carried out. The Landlord explained that, on becoming aware of the Application he contacted the Landlord's Agents to address the Tenants' complaints. With regard to dampness, the Landlord stated that an inspection carried out by Bromac Limited concluded that there was no water ingress or penetrating dampness and that black spot fungus in the

Property was caused by internal condensation. The Landlord advised the Committee of eleven calls made by the Tenants to the Landlord's Agents and that only one call had related to a claim of dampness. The Landlord refuted that Tenants' claims that they were unable to occupy the Property and that the property was uninhabitable. The Landlord advised the Committee that the Tenants had not fulfilled their tenancy obligations in respect of maintaining the Property. The Landlord advised the Committee that he resides in Australia and so cannot attend the Inspection and Hearing. Along with his written representation, the Landlord submitted to the Committee various property reports, invoices for works carried out and photographs which supported his position.

Inspection and Hearing

11. An Inspection took place on 15 June 2015 at 10.00 a.m. at the Property. The Landlord was not present. A representative of the Landlord's Agents facilitated access for the Committee but did not take part in or act on behalf of the Landlord at the Inspection
12. The Committee inspected the items of which the Tenants complained specifically in the Application, namely, the mould around the windows and on the bedroom walls, the shower area and the windows in the Property.
13. Following the Inspection, a Hearing was held at the Europa Building, 450 Argyle Street, Glasgow G2 8LH on 15 June 2015 at 11.00 a.m. Neither the Landlord nor the Landlord's Agents was present. The Landlord and his wife, Mrs Valerie McMillan, took part in the Hearing by conference telephone call.
14. Prior to the Hearing the Committee sent photographs taken at the Inspection to the Landlord by email.
15. At the Hearing, Landlord expanded on his written representations and advised the Committee that the Property had been professionally surveyed and all necessary repairs had been carried out. The Landlord stated that he took his responsibilities as a landlord seriously and that, in his opinion, he had been failed by his Landlord's Agents. With regard to dampness, the Landlord drew the Committee's attention to the property reports which he had submitted as part of his written representations and advised the Committee that it appeared that any dampness in the Property was caused by condensation due to the Tenants' failure to heat and ventilate the Property properly. The Landlord advised the

Committee that he had resided in the Property for 10 years without any dampness problems.

Summary of the Issues

16. The issues to be determined by the Committee are whether or not the Property meets the Repairing Standard in respect of Section 13 (1) (a) and 13 (1) (d) of the Act at the date of the Inspection and Hearing. In particular, the whether the Property is wind and water tight and in all other respect reasonably fit for human habitation and any fixtures and fittings provided by the Landlord under the tenancy are in a reasonable state of repair and working order.

Findings of Fact

17. The Landlord, Graeme Dunbar McMillan is the owner of the Property under title number GLA12359 and the Tenants were the Tenants of the Property at the time of the Application in terms of a short assured tenancy agreement between the parties dated 2 April June 2104.

18. The Property is a flatted property on the third or top floor of a modern brick built tenement block and comprises one bedroom, one public room, kitchen and bathroom.

19. From the Inspection, the Committee found that :-

- (i) there is slight black spot mould on the bedroom wall which is the inner facing of the rear external wall ;
- (ii) there is slight black spot mould on the ceiling above the shower;
- (iii) the windows throughout the Property are free from significant defect and it appears that the windows have recently been repainted and resealed and that some of the window handles have been replaced;
- (iv) there are no signs of penetrating or rising dampness or of dampness caused by excessive condensation;
- (v) there are hardwired smoke alarms throughout the Property and
- (vi) the Landlord's fittings and fixtures complained of by the Tenants, being the shower curtain, is free from significant defect and appears to be new.

20. From the Hearing, the Committee found that the Landlord, on becoming aware of the matters raised in the Application took immediate direct action to remedy any defects in respect of which the Property might have failed to meet the Repairing Standard.

21. From the Landlord's written representations and the Hearing, the Committee found that, if there had been dampness in the Property at any point during the Tenants' occupation, although it is speculative to determine absolutely, the most likely cause of that dampness would have been condensation due to the Tenants' lifestyle and their failure to maintain the Property properly.
22. The Committee were unanimous in their view that the Landlord had acted in an exemplary way in responding to his landlord's responsibilities and to the Directions of the Committee.

Decision of the Committee and Reasons for the Decision

23. The Committee's decision was based on the Application with supporting documents, the Inspection and on the statements made to the Committee at the Hearing. In respect of Sections 13 (1) (a) and 13 (1) (d) of the Act, the Committee found that at the date of the Hearing the Landlord has not failed to comply with the duty imposed by Section 14 (1) (b) of the Act.
24. The Committee were satisfied that there was no evidence the Property failed to meet the Repairing Standard in respect of being wind and water tight and in all other respects reasonably fit for human habitation and there was no evidence that the Property failed to meet the Repairing Standard in respect of any fixtures and fittings provided by the Landlord under the tenancy are in a reasonable state of repair and working order.
25. The decision is unanimous.

Right of Appeal

26. 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.
27. Where such an appeal is made, the effect of the decision and of any repairing standards enforcement 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 any repairing standards enforcement order will be

treated as having effect from the day on which the appeal is abandoned or so determined.

Signed

K. Moore

Karen Moore, Chairperson

Date *17 June 2015*