

The Application stated that the Tenant considered that the Landlord had failed to comply with the duty to ensure that the House meets the repairing

By application dated 26 March 2015 (hereinafter referred to as "the Application") the Tenant applied to the Private Rented Housing Panel (hereinafter "the PRHP") for a determination of whether the Landlord had failed to comply with the duties imposed by section 14(1)(b) of the Act.

**Background**

The Committee, having made such enquiries as are 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 (hereinafter referred to as "the Act") in relation to the House, and taking account of the evidence led on behalf of the Landlord and of the written documentation attached to the application and submitted by the parties, determined that the Landlord had not failed to comply with the duty imposed by section 14(1)(b) of the Act.

**DECISION**

**PRHP REFERENCE PRHP/RP/15/0115**

Tracie Jane Callaghan, 10 Collessdene Crescent, Edinburgh EH15 2JH (hereinafter referred to as "the Landlord")

James Brown, residing formerly at the House (hereinafter referred to as "the Tenant")

Property at 1F1, 245 Portobello High St, Edinburgh EH15 2AW (hereinafter referred to as "the House")

In connection with

**STATEMENT OF DECISION OF THE PRIVATE RENTED HOUSING COMMITTEE  
UNDER SECTION 24(1)  
OF THE HOUSING (SCOTLAND) ACT 2006**

**DETERMINATION BY PRIVATE RENTED HOUSING COMMITTEE**



standard and, in particular, that the Landlord had failed to ensure compliance with the following paragraphs of section 13(1) of the Act:

- “(a) the house is wind and water tight and in all other respects reasonably fit for human habitation,....”
- “... (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...”

The Tenant complained of a number of defects in the House.

By letter of 22 April 2015, the President of the PRHP intimated a decision to refer the application under section 23(1) of the Act to a Private Rented Housing Committee (hereinafter referred to as “the Committee”).

The Committee comprised the following members:

John McHugh, Chairperson  
Ian Murning, Surveyor Member

The Committee served Notice of Referral in terms of Paragraph 1 of Schedule 2 to the Act upon the Landlord and the Tenant.

On 21 July 2015, having been informed that the tenancy had been terminated, the Committee determined to continue to determine the Application under paragraph 7(3) of Schedule 2 to the Act.

The Committee inspected the House on 21 July 2015. The Landlord's estate agent, Blair Ross, was in attendance. The Tenant was neither present nor represented.

Following the inspection, the Committee held a hearing at Leith Community Centre, New Kirkgate Centre, Edinburgh. The Committee considered the written evidence submitted by the parties. The Landlord was neither present nor represented. The Tenant was neither present nor represented.

### Submissions at the Hearing

No parties were present. An administrative error had meant that the Landlord was uncertain that the hearing and inspection were to proceed, so she was unable to attend in person. She made brief representations by telephone prior to the inspection to the effect that she had been unaware of the matters contained in the Application but that when she had been made aware of them she had addressed them promptly. The property was now in good order and was in the hands of her estate agent to achieve a sale.

## Summary of the issues

The issue to be determined is whether the House meets the repairing standard as laid down in section 13 of the Act and whether the Landlord has complied with the duty imposed by section 14(1)(b).

## Findings in Fact

The Committee confined their inspection to the items of complaint detailed within the Tenant's Application.

The Committee made the following findings in fact:

The Landlord and the Tenant entered into a Tenancy Agreement in respect of the House on 26 August 2014.

The Landlord was recorded on the Lease as Tracie Callaghan.

Tracie Jane Callaghan is the registered owner of the House.

The Tenant occupied the House from 27 August 2014 until on or around May 2015.

The provisions of Chapter 4 of Part 1 of the Act apply to the tenancy.

The Tenant notified the Landlord of the defects in the House which are now the subject of the Application by recorded delivery letter dated 3 April 2015.

The inspection on 21 July 2015 revealed:

The property is a first floor flat which is in good general condition.

The kitchen: this had recently been refurbished and a door was present; a modern, opening window was present; the cooker switch operated normally; there were no cracked tiles; there was no extractor fan; the worktop was undamaged and appeared new; the floor was uneven.

The heaters in the living room and hall were storage heaters and had been switched off so it was not possible to inspect them. There were no obvious signs that they did not operate as intended.

The bottom edge of the bathroom door had a slightly rough finish.

The bathroom appeared to have been refurbished recently. The bath was free from movement and had a fresh seal around it.

A TV aerial cable is present in the living room and there was no evidence that it was not capable of functioning as intended.

The front door appeared satisfactory although draught exclusion could be fitted to the gap at the bottom if desired. The gap was not of a significant size and the absence of draught exclusion is not a breach of the repairing standard.

The absence of a heater in the bedroom is not a breach of the repairing standard.

There was no evidence of any defect with the heaters.

None of the defects reported by the Tenant were found to exist in the bathroom other than the rough door end which was very minor and could be addressed by sanding if required. It did not constitute a breach of the repairing standard.

None of the defects reported by the Tenant were found to exist in the kitchen other than that the floor was uneven which was attributable to subsidence and not a significant issue. The absence of an extractor fan is not a breach of the repairing standard when an opening window is present.

The kitchen and bathroom appear to have been refurbished recently and are both in good condition with most of their contents appearing to be new and unused.

#### Reasons for the Decision

A schedule of photographs taken at the inspection is attached to this Decision.

The House is being offered for sale.

There is no heating in the bedroom.

There was evidence of historic decorative damage caused by water ingress in the bedroom. Re-decoration had taken place and there was no evidence of any current problems of water ingress or any defect within or close to the Velux window.

A co-axial cable for the television aerial was present in the living room.

The front door opened and closed properly. There was a small gap at the bottom of it. There was no evidence of excessive draughts.

## Decision

The Committee, considering the terms of section 13(3) of the Act, determined that the Landlord had not failed to comply with the duty imposed by section 14(1)(b) of the Act.

The decision of the Committee was unanimous.

## Right of Appeal

Section 64 of the Act provides a right of appeal to a landlord or tenant aggrieved by a decision of a private rented housing committee. An appeal may be made to the Sheriff within 21 days of the Landlord or Tenant being informed of the decision.

Where such an appeal is made, the effect of the decision and 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.

# J. McHugh

John McHugh  
Chairperson

Date: 23 July 2015





































































