



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**

In connection with

Property at 7E Lord Gambier Wharf, Kirkcaldy KY1 2SH (hereinafter referred to as “the House”)

Clare Kavanagh, 7E Lord Gambier Wharf, Kirkcaldy KY1 2SH (hereinafter referred to as “the Tenant”)

Peter John Coulson, c/o 15 Nicol Street, Kirkcaldy KY1 1NY (hereinafter referred to as “the Landlord”)

PRHP REFERENCE PRHP/RP/15/0130

DECISION

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 Tenant at the hearing 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.

Background

By application dated 30 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.

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

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

“...(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 11 June 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
Geraldine Wooley, Surveyor Member
Sally Wainwright, Housing Member

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

The Committee inspected the House on 12 August 2015. The Tenant was in attendance. The Landlord was neither present nor represented.

Following the inspection, the Committee held a hearing at Linktown Community Action Centre, Kirkcaldy. The Committee considered the written evidence submitted by the parties and heard representations from the Tenant. The Committee also considered written submissions which had been received from the Landlord on the morning of the hearing.

Submissions at the Hearing

The Tenant indicated that she had had historic issues involving the leaking of water from the en suite shower cubicle when the shower was used. A repair in 2012 had addressed the issue satisfactorily until mid-2014 when there was a recurrence of the same problem.

After a period of non use of around six months, she had begun using the shower again in recent months and there had been no repetition of any problems.

She was however concerned that the problem may recur and ought to be addressed.

She had been disappointed by the Landlord’s initial slow response but believes that the Landlord is now taking steps to address the problem.

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 7 January 2015.

The Landlord was recorded on the Lease as Mr Peter Coulson.

Peter Coulson and his late wife are the registered owners of the House.

The Tenant has occupied the House for several years and continues in occupation.

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

The Tenant notified the Landlord of the defect in the House which is now the subject of the Application by email dated 10 February 2015.

The inspection on 12 August 2015 revealed:

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

The tiling of the en suite shower cubicle was in poor condition with gaps being evident in the grout between the tiles.

There are signs of movement of the building structure around the door frame between the en suite shower room and the bedroom.

Flat 7C is located immediately beneath the House and is of identical design.

The ceiling of the en suite shower room in Flat 7C shows evidence of historic water damage.

The tenant of Flat 7C reported historic water leaks from above. There had been no recent leaks. An identical problem had existed in Flat 7C and water had leaked to the flat beneath from the en suite shower in 7C. The tenant of Flat 7C reported that a repair had been carried out by his Landlord.

Photographs taken at the inspection by the Surveyor Member have been attached as a Schedule to this Decision.

Reasons for the Decision

There was no evidence of any current problem with the en suite shower.

The Tenant reports that there had been a problem with water leaking from the en suite shower to the flat below. The Landlord and Tenant agree that this was addressed by remedial works in 2012.

The Tenant reports that these works were initially successful. In mid 2014 the problem recurred and, as a result, she stopped using the shower for a period of six months. Although no remedial works have been carried out since then, the Tenant resumed using the shower as normal in recent months and there have been no occasions when water has leaked to the flat below.

The Tenant reports that a workman sent by the Landlord has advised her that the tiling of the shower cubicle has failed because of structural movement of the building.

The Landlord was unable to attend the inspection or hearing but made written representations by way of a letter dated 10 August 2015 received by the Committee (and the Tenant) on the day of the inspection/hearing. Although due regard was given to the content of that letter, the Committee did not find it to be of particular assistance in reaching its determination.

On the basis that the available evidence is entirely to the effect that the shower is capable of being used in the normal way and without causing any damage or difficulty to the Tenant or neighbours, there is no breach of the repairing standard.

Observations

The Landlord has made representations that remedial works will be carried out and the Tenant confirmed that a contractor was booked to call at the House for the purposes of providing a quotation.

While the current condition of the House does not constitute a breach of the repairing standard, it appears likely to the Committee that the problem of water leaking from the shower cubicle will recur and the Landlord would be

well advised to ensure that the problem is appropriately investigated and addressed.

The Committee noted the Landlord's failure to respond to the Notice of Direction dated 2 July 2015 and that no explanation for this failure was advanced.

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: 17 August 2015