



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

prhp Ref: PRHP/RP/15/0164

Re: Property at 35D Barnes Avenue, Dundee, DD4 9AG ("the Property")

The Parties:-

MISS MARNIE STIRLING residing at 35D Barnes Avenue, Dundee, DD4 9AG ("the Tenant")

MR MURRAY ROBERT DICK residing at 81 West School Road, Downfield, Dundee (represented by his agent Mr Allan Smith of 9% Property Management, PO Box 10204, Dundee, DD5 9AH) ("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 both parties, 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 9 May 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 Property is wind and watertight and in all other respects reasonably fit for human habitation;
 - (b) Any fixtures, fittings and appliances provided by the Landlords under the tenancy are in a reasonable state of repair and in proper working order;
3. By letter dated 15 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 Landlord and his representative made written representations to the Committee dated 18 June 2015. They submitted extensive invoices and correspondence together with numerous pictures of the condition of the Property at the point of entry and subsequently. The Tenant also provided on 13 July 2015 extensive emails, invoices and other documentary evidence including DVD evidence. Whilst this documentation was helpful to the Committee in relation to the background to the matter, the Committee based its final decision on the information

obtained during the inspection of the Property and the condition of the Property as at that date.

6. The Private Rented Housing Committee (comprising Mr E K Miller, Chairman and Legal Member; Mr D Godfrey, Surveyor Member; and Mr D Hughes-Hallett, Housing Member) inspected the Property on the morning of 10 August 2015. The Tenant and the Landlord and his agent were present during the inspection.
7. Following the inspection of the Property the Private Rented Housing Committee held a hearing at Kirkton Community Centre, Derwent Avenue, Dundee. Unfortunately the Tenant was unable to be present at the Hearing due to illness of her child. The Landlord and his agent were present.
8. The Tenant submitted that there were a number of problems with the Property. In relation to both bedrooms at the Property, she complained that no underlay was fitted. She alleged that the carpets were frayed around the edges and hadn't been fitted properly under the skirtings. This was causing draughts within the Property to a level that the Tenant felt was unreasonable. In relation to the hall and living room, whilst underlay had been fitted before the carpets had been put down, the Tenant again complained that they were not fitted properly (particularly around the fireplace) and there were still gaps where draughts came in. The Tenant complained that the wall along Bedroom 1 was cold and not insulated. The Tenant also highlighted various defects within the carpets where she stated that damage had been caused by her Hoover. The Tenant also complained that there were issues with the gas boiler at the Property. She alleged that the pressure in the boiler dropped regularly and needed to be re-pressurised continually by her.
9. The Landlord and his agent submitted that they were of the view that the Property generally met the repairing standard. Notwithstanding this they were prepared to be guided by the Committee as to what, if any, works were required. The Landlord and his agent felt that the carpets had been laid sufficiently well. Any frayed areas and gaps were very minor around the edges. In relation to the damage allegedly caused by the Hoover, the Landlord and his agent were of the view that this had been caused by the Tenant's son. In relation to the boiler, a clear gas safety certificate had been provided. However, the Landlord and his agent did accept that there had been problems with the boiler in the past. In any event the Tenant had applied for a new gas boiler to be fitted under a government replacement scheme. The Landlord had required to make a financial contribution to this and this had been paid. A new gas boiler was therefore being installed within the next week or two.

Summary of the issues

10. The issues to be determined were:-
 - (1) Whether the carpets within the Property were in proper order and met the repairing standard and provide sufficient insulation.
 - (2) Whether the wall along Bedroom 1 met the repairing standard.
 - (3) Whether the boiler within the Property met the repairing standard.

Findings of fact

11. The Committee found the following facts to be established:-
 - As at the date of this Decision, the carpets within the Property met the repairing standard.
 - The bedroom one wall did not breach the repairing standard.

- The boiler at the Property was adequate and met the repairing standard and, in any event was to be replaced by a new boiler.

Reasons for the decision

12. The Committee based its decision on the evidence obtained during the course of the inspection. The Committee inspected the carpets in all rooms. There were a few minor areas around the edges of the rooms where the carpet was a little frayed. Generally however the carpets had been fitted properly and there was no discernible draughts. The complaint by the Tenant did not appear to be justified and the Committee did not consider that additional underlay needed to be required in those rooms without it or that additional caulking or insulation required to be done.

In relation to some damaged areas of the carpets, the Committee was unable to determine whether this had been caused by the Tenant's son (as alleged by the Landlord) or by the poor quality of it and damage by the Tenant's Hoover (as alleged by the Tenant). In any event, the Committee was satisfied that the hall carpet was in a relatively poor condition and did not meet the repairing standard. The Committee was of the view that a Repairing Standard Enforcement Order in relation to the hall carpet would be appropriate. However, prior to the issue of this Decision, the Landlord provided evidence that they had accepted that the condition of the hall carpet was poor and had taken steps to replace it. Evidence of this was provided and the Committee was satisfied that this issue had been rectified.

One or two other carpets had some damage of a more minor nature than the hall carpet but the Committee was satisfied that these other carpets still met the repairing standard.

In relation to the wall that the Tenant complained was cold, this was an external wall onto the communal close. It was not uncommon for a wall of this type to be colder as a result. The Committee did not consider the wall breached the repairing standard, taking into account the age, character and location of the Property.

In relation to the boiler, the Committee considered whether or not it met the repairing standard. A gas safety certificate had been provided. It did appear to be the case that some re-pressurising of the system may be required. However the boiler did still work and provided heat, albeit with a minor degree of inconvenience. Subsequent to the Hearing, the Committee accepted that the Landlord had already paid his share of the monies required to allow the Tenant's application to replace the boiler to go ahead. Evidence of this was provided by the Landlord. The boiler was to be replaced with a new system by a reputable contractor within a couple of weeks. On that basis the Committee did not think it appropriate to serve a Repairing Standard Enforcement Order as compliance was to be achieved.

Taking into account all of the above, the Committee was satisfied that the Property, at the date of issue of this decision, did meet the repairing standard.

Decision

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

Right of Appeal

15. 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

16. 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 ... **E. Miller**
Chairpers ...

Date..... 31/8/15