



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

prhp Ref: PRHP/RP/15/0169

Re : Property at 21 St Andrews Court, Room 1-29, Glasgow G1 5PA ("the Property")

THE PARTIES:

TIM GEMMEKE, sometime 21 St Andrews Court, Room 1-29, Glasgow G1 5PA (The Tenant") and

FORTIS DEVELOPMENTS LIMITED, incorporated under the Companies Acts (Company Number 08209445) and having its registered office at 298 St Mary's Road, Garston, Liverpool L19 0NQ ("The Landlord")

Committee Members -- George Clark (Chairperson); Andrew Taylor (Surveyor Member); Christopher Harvey (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) in relation to the house concerned, 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 31 May 2015, received on 2 June 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 the installations in the house for the supply of water, gas and electricity and for sanitation, space heating and heating water were in a reasonable state of repair and in proper working order. He stated in his application that the heater in his room had stopped working on 3 January 2015. He had informed the Landlord through an online fault reporting system on the same day. On 5 January, he had been provided with a preliminary heating device, which was a fan heater. Over the following months, he had asked the Landlord several times to fix the heating in the Property, but no repairs had been carried out.
3. By letter dated 17 July 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 ("the 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. The Committee issued a Notice of Direction dated 10 June 2015, requiring the Landlord to lodge with the Panel, not later than midday on 30 July 2015, an up to date written report on the heating system that serves the Property from a Registered Engineer addressing the working order, condition and safety of the heating system.
6. The Landlord did not lodge the report as directed, and advised the Panel by e-mail on 31 July 2015 that they had reached an agreement with the Tenant and had now settled the dispute. Accordingly, they would not be expecting the inspection which had been scheduled for 1 September 2015 and would not be attending the hearing.
7. Following service of the Notice of Referral the Tenant made written representations to the Committee, dated 5 August 2015, received on 6 August, in which he stated that after 30 weeks without a functioning heater, the Landlord had agreed to partially refund the rent that the Tenant had paid. The refund of £350 had been made on 30 July 2015 and the Landlord had referred to it as a gesture of goodwill. The Tenant had also asked the Landlord to confirm when the repair work would be carried out and had been told that the work would be done on 14 August, if not earlier. The Tenant stated that if the work was completed by that date he would withdraw his application. The Tenant then advised the Committee by e-mail on 24 August 2015 that he had vacated the Property. He did not indicate whether the work required to repair the heating system had been carried out. The Landlord told the Committee by e-mail dated 26 August 2015 that they had spoken to the Tenant, who had told them that he had retracted his complaint and added "Due to operational demands, we are unable to receive you and will also not be able to attend the meeting" (a reference to the hearing which had been fixed for 1 September. They expressed the hope that this would close the case.
8. The Committee considered the view expressed by the Landlord, but determined that, as the alleged defect in the Property, if established, would have health and safety implications for any future tenant of the Property, the inspection and hearing should still go ahead. The parties were advised of that decision.
9. The Private Rented Housing Committee arrived to inspect the Property on the morning of 1 September 2015. The Committee members were admitted to the building of which the Property forms part, but, after telephoning her line manager, the manager of the building advised the Committee that she was instructed not to permit the Committee access to the Property.
10. Following the attempted inspection, the Committee held a hearing at Europa Building, 450 Argyle Street, Glasgow and determined that the case should be continued to a future inspection and hearing. The parties were advised of that determination.
11. The Committee inspected the Property on 3 December 2015. The Landlord was represented at the inspection by the manager of the building. The new tenant admitted the Committee to the Property.
12. A file of photographs, taken at the inspection, is attached to and forms part of this Statement of Decision.
13. The Committee found that the "hospital style" radiator in the Property and its water supply pipe were warm to the touch and appeared to provide adequate heating for the Property. The new tenant confirmed that he had had no problem with the radiator since moving in.
14. Following the inspection of the Property the Private Rented Housing Committee held a hearing at Europa Building, 450 Argyle Street, Glasgow. The Tenant, having vacated the Property, was not present or represented at the hearing. The Landlord was present or represented at the hearing.

Summary of the issues

15. The issue to be determined was whether the Landlord had complied with the duties imposed on landlords by Section 14(1)(b) of the Act.

Findings of fact

16. The Committee finds the following facts to be established:-
- The tenancy is a Short Assured Tenancy, which commenced on 13 September 2014.
 - The Tenant vacated the property on or before 24 August 2015.
 - The Property comprises a single-room bedsit in a Victorian public building, converted approximately three years ago to form individual rooms for occupation by students.
 - The Property is heated by a single "hospital-style" radiator.
 - The radiator was functioning at the time of the inspection, was warm to the touch and appears to provide adequate heating for the Property.

Reasons for the decision

17. The Committee is satisfied that the radiator is functioning and that it provides adequate heating for the Property. Accordingly, the Committee did not make a Repairing Standard Enforcement Order. The Committee did, however, express its disappointment that the Landlord had not complied with the Notice of Direction dated 10 June 2015 and was, therefore, guilty of an offence under Schedule 2, Paragraph 3(3) of the Housing (Scotland) Act 2006. The Committee had decided not to report the matter to the police for possible prosecution only because the work to repair the radiator in the Property had been carried out. The Committee was also disappointed that the Landlord had refused access for the inspection on 1 September. This lack of co-operation emanated from the Head Office of the Landlord and had resulted in a second inspection and hearing having to take place, at considerable cost to the public purse.

Decision

18. The Committee accordingly determined that the Landlord had complied with the duties imposed on landlords by Section 14(1)(b) of the Act.
19. The decision of the Committee was unanimous.

Right of Appeal

20. 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

21. 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 Chairperson. Date 3 December 2015