Statement of decision of the Private Rented Housing Committee under Section 24 (1) of the Housing

(Scotland) Act 2006

Reference Number: PRHP/RP/15/0180

Re: Property at Flat 1/1, 28 March Street, Glasgow, G41 2PX all as more particularly described in and registered in Land Certificate GLA186979 (hereinafter referred to as "the property").

The Parties:-

Miss Frances Doogan ("the Tenant")

Mr Ian Hart MBE, Low Craigton Farm, Milngavie, G62 7HF ("the Landlord")

Decision

The Committee, having made such enquiries as it saw fit for the purpose 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 concerned and, taking account of the evidence submitted by both the Landlord and the Tenant, determined that the Landlord has complied with the duty imposed by Section 14 (1) (b) of the Act.

The Committee consisted of:-

Patricia Anne Pryce	-	Chairperson
Robert Buchan	-	Surveyor Member
Brenda Higgins	-	Housing Member

Background

1. By application comprising of all documents received in the period 11 June to 5 August, both 2015, from the Tenant, the Tenant applied to the Private Rented Housing Panel (PRHP) for a determination as to whether the Landlord had failed to comply with the duties imposed by Section 14 (1) (b) of 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 property meets the repairing standard and the Tenant brought forward the following breaches:-

That the property has no central heating.

That the property has no bath or shower facilities.

That the property has no mains hot water.

That until recently the electrics were in a poor state.

That the walls required attention as it was damp.

That the Landlord has provided an electric instantaneous water heater for hot water in the past few months.

The Tenant considers that the Landlord is in breach of his duties under the Housing (Scotland) Act 2006 in relation to the repairing standard and in particular the Landlord has failed to ensure:-

(i) The structure and exterior of the house (including drains, gutters and external pipes) are in a reasonable state of repair and in proper working order.

(ii) The installations in the house for the supply of water, gas and electricity and for sanitation, space heating and heating water are in a reasonable state of repair and in proper working order.

(iii) Any fixtures, fittings and appliances provided by the Landlord under the tenancy are in a reasonable state of repair and in proper working order.

(iv) The house has satisfactory provision for detecting fires and for giving warning in the event of fire or of suspected fire.

3. By Minute of Continuation to a Determination dated 7 August 2015, being a decision under Schedule 2, Paragraph 7(2) of the Housing (Scotland) Act 2006, the President decided that the application should be determined on safety grounds due to the nature of the complaint relating to a fire detection device which did not appear to comply with the statutory guidance to which the repairing standard refers.

4. By Minute dated 7 August 2015 the President of the Private Rented Housing Panel intimated a decision to refer the application under Section 23(1) of the Act to a Private Rented Housing Committee.

5. The Committee issued a Direction dated 8 September 2015 in terms of Schedule 2 Paragraphs 2(1) and 3(1)(b) of the Housing (Scotland) Act 2006 and Regulation 14 of the Private Rented Housing Panel (Applications and Determinations)(Scotland) Regulations 2007 to the parties that the Landlord required to provide to the Committee an up to

date electrical installation condition report that the said installation meets BS 7671 and an in service inspection and test report on all electrical appliances and equipment, including all smoke detection devices, from a competent suitably qualified and registered electrician. The Landlord complied with this Direction.

The Inspection

6. On 30 September 2015, the Committee attended at the property for the purposes of inspection of the property. The Tenant was not present but her sister and representative, Miss Mary Doogan, was present along with another sister of the Tenant. The Landlord did not attend the inspection but his representative, Mr Alan Gifford of Messrs Hacking and Paterson, Property Managers, did attend at the property for the inspection.

At the inspection on 30 September 2015, the Committee noted the following points:-

(a) The property comprises a first floor two apartment flatted dwelling house within a traditional blonde sandstone tenement building approximately 125 years of age.

(b) The property comprises a hallway, an open plan living/kitchen, a bedroom, a W.C. and a shower-room.

(c) There was no central or fixed heating installed at the property.

(d) There was an electric instantaneous water heater located under the sink in the kitchen which provided hot water on demand to the kitchen sink and to the wash-hand basin in the shower room.

(e) There was no cooker and there were no facilities for cooking food other than an electric cooker power point.

(f) There was a single unit in the kitchen where the sink was located. There were no other kitchen units located within the kitchen.

(g) There was no area for food preparation located in the property.

(h) There were two hardwired fire detection devices within the property – one located in the kitchen and the other located in the hallway.

(i) There was an electric shower installed in a cupboard within the bedroom.

(j) The ceiling in the hallway had been replaced after asbestos had been removed from it.

(k) The toilet was located in a small room located off the hallway where there was no extractor fan.

(l) There was no dampness apparent on the walls of the property.

The Hearing

7. The Tenant's sister and representative, Miss Mary Teresa Doogan, attended the hearing. She advised that she was representing the Tenant's interests in the present application. Mr Alan Gifford of Messrs Hacking and Paterson, Property Managers, 1 Newton Terrace, Charing Cross, Glasgow, G3 7PL, attended the hearing and advised that he was representing the interests of the Landlord at the hearing. The Landlord was not personally present at the hearing.

Miss Doogan confirmed that she was a retired midwife and that she was attending the hearing to represent the interests of her sister, Miss Frances Doogan, who is the Tenant of the property.

Miss Doogan went through the Tenant's application to the PRHP and confirmed that her sister no longer wished to insist on her complaint that there was no central heating system installed in the property. Miss Doogan confirmed that her sister did not in fact wish central heating to be installed within the property. Miss Doogan further confirmed that this part of the application was now withdrawn and that the Tenant was no longer seeking a decision from the Committee in relation to this matter.

Miss Doogan confirmed that her sister had been the Tenant of the property for around twenty years.

Miss Doogan helpfully confirmed that the Tenant was happy with the shower which had finally been installed a couple of days before the present hearing and therefore the Tenant was no longer insisting on this part of her application before the Committee. Miss Doogan confirmed that the Tenant did not wish a bath to be installed and that she was satisfied with the new shower.

In relation to the complaint within the Tenant's application as regards the lack of mains hot water, Miss Doogan confirmed that the Tenant was happy with the supply of hot water which was now provided by the instantaneous water heater located under the sink in the kitchen. Miss Doogan confirmed that the Tenant no longer wished to insist on the lack of hot water supply to the property which formed part of her original application to the PRHP.

Miss Doogan confirmed that the Tenant was now happy with the condition of the electrics within the property and that as a result the Tenant was no longer insisting on that part of her application to the PRHP.

Furthermore, Miss Doogan confirmed to the Committee that the Tenant no longer wished to insist on her complaint regarding dampness on the walls.

Miss Doogan advised that the only reason the present application had been made was that she had been trying on behalf of the Tenant to get the Landlord to carry out the necessary works to the property since 2014. She advised that she had first written to the Landlord in November 2014 care of Messrs Hacking and Paterson, having first spoken on the telephone to Miss Margaret Gray, employee and property manager of Hacking and Paterson, in advance of sending this letter. Miss Gray had advised Miss Doogan that any repairs were the responsibility of the Landlord but to send the letter care of Hacking and Paterson. Miss Doogan did not receive a response to this letter until 30 January 2015 which comprised an acknowledgement. Miss Doogan received another letter dated 5 February 2015 from the Landlord advising that he had instructed for hot water to be made available at the property.

However, when she received the letter from the Landlord dated 14 April 2015 stating that it would "not be viable to carry out the works you request" in relation to the provision of a shower, Miss Doogan felt that she had no option but to make the present application on behalf of the Tenant.

The letters received by Miss Doogan from the Landlord were written on Hacking and Paterson letter headed paper and Mr Gifford confirmed that the Landlord is employed as a consultant with Hacking and Paterson. However, Mr Gifford confirmed that it would not be the position of Hacking and Paterson that a property should be without a hot water supply or a bath or shower. He confirmed that he would not have sent a letter to a Tenant advising that it was "not viable" to install appropriate washing facilities within a property.

In relation to the kitchen, Miss Doogan advised that there had never been any other units provided by the Landlord within the kitchen. The Tenant prepares food on make shift tables she acquires herself. Miss Doogan accepted that she had not formally notified the Landlord of works which she considered required to be carried out in the kitchen. She advised the Committee that she did not realise that the lack of notification could have consequences in terms of the present application.

Miss Doogan confirmed that the Landlord had never visited the property.

Miss Doogan advised that when the Tenant first moved into the property around twenty years ago she paid a very small rent which took account of the very poor standard of the property. Miss Doogan thought that the rent was about £120 or £140 per month. However, when the present Landlord purchased the property around nine years ago, he immediately raised the rent and the Tenant now pays around £366 per month for the property despite the fact that it had no running hot water or a shower until 2015. Until this year, Miss Doogan advised that the Tenant washed by means of heating hot water from a kettle.

Miss Doogan advised that she had not mentioned the lack of cooking facilities in the application form because she assumed that the provision of these would be a matter for the Tenant. Miss Doogan advised that she had been told by Hacking and Paterson that the provision of cooking facilities was not part of the lease and that the lease was an unfurnished lease. For this reason, Miss Gifford had purchased kitchen units and worktops at her own expense which remain in a flat packed condition within the kitchen. Miss Doogan advised that she had no reason to doubt that she was not being given the correct information by the Landlord or his agents in this regard.

Mr Gifford confirmed to the Committee that the present lease dated from 2013 did not state at all that it was unfurnished or furnished.

Miss Doogan confirmed that she had not provided further details to the Landlord's agents in response to their request to clarify the meaning of the phrase "thorough upgrading required" in their letter to her of 16 June 2015. Miss Doogan advised that she once again did not appreciate the requirement for notice of all matters to the Landlord and the potential affect this may have on the ability of the present Committee to consider matters. She confirmed that she had not provided the Landlord or his agent with notice of matters she wished to raise in terms of the condition of the kitchen.

Mr Gifford then gave evidence to the Committee. He confirmed that his full name is Alan Ruthven Gifford and that he is employed as a Director of Hacking and Paterson who are agents for the Landlord. He has been employed by them for 24 years, in the main as a property manager dealing with repairs and maintenance issues.

Mr Gifford confirmed that he was representing the interests of the Landlord at the hearing, although he confirmed that the Landlord is also employed as a consultant with Hacking and Paterson.

Mr Gifford advised that his company is the factor for the building in which the property is located but also acts as the letting agent for the two properties in the building which are owned by the Landlord. He confirmed that in terms of the tenancy agreement with the Tenant, all repairs issues should be raised with Hacking and Paterson and not direct with the Landlord as Miss Doogan had been advised.

Mr Gifford advised that he did not think that the Landlord has ever visited the property. He further advised that his company is primarily a factoring company and it has phased out its letting agency side. However, on taking over David Watson Property Management Limited in 2000, his company assumed some letting agency business.

Mr Gifford was honest in advising that it has only been in the past eighteen months that his company has acknowledged that the letting agency side of the business needed to be refined and improved. He confirmed that his company did not carry out routine inspections of the properties they let. A new system of inspection has now been implemented and they aim to inspect properties once per annum. He confirmed that in respect of the present property, no such inspection was carried out until July 2015 despite the letter intimating repairs written by Miss Doogan in November 2014.

Mr Gifford could not provide a copy of the inspection report arising out of the inspection of the property in July 2015 to the Committee at the hearing. He advised that copies of such reports are not provided to either the Landlord or the Tenant but remain in their company files.

Mr Gifford confirmed that he attended the inspection in July 2015 and advised that the details of the inspection were as recorded in his company's letter to Miss Doogan 13 July 2015.

Mr Gifford confirmed that a hot water supply was provided to the property in February of 2015.

When questioned about the Landlord's letter to Miss Doogan of 14 April 2015 wherein the Landlord advised that the provision of a shower was not "viable" due to the cost, Mr Gifford confirmed that this was not an appropriate response. He also accepted that the Landlord had written this response on Hacking and Paterson letter headed paper which could properly be considered to be the response of Hacking and Paterson too.

Mr Gifford accepted that, although the issues surrounding the kitchen had not been effectively included in the present application due to lack of formal notice to the Landlord by the Tenant, the kitchen was not in an acceptable condition. He accepted that work requires to be carried out in the kitchen and he provided Miss Doogan with an undertaking that he would return to her within seven days of the

date of the hearing with a plan for works to be carried out in the kitchen to bring it up to the repairing standard.

Mr Gifford accepted that it was unacceptable that in 2015 the property had remained without a hot water supply and bathing facilities – the latter until two days before the hearing – for which the Landlord was receiving a rental income of nearly £400 per month.

Discussion on the Evidence

8. The Committee noted that both parties had provided their evidence honestly and without exaggeration. The Committee is satisfied that on the evidence the Landlord has met the repairing standard in respect of matters properly raised within the present application. Miss Doogan accepted that the Tenant did not wish to insist on the grounds in her application relating to the lack of central heating, the condition of the electrics, the lack of a shower or bath, the lack of a hot water supply and the issue of dampness in the walls.

Given all of the circumstances, the Committee was satisfied that the structure and exterior of the house (including the drains, gutters and external pipes) are in a reasonable state of repair and in proper working order, that the fixtures, fittings and appliances provided by the Landlord under the tenancy agreement are in a reasonable state of repair and in proper working order and that the house does now have satisfactory provision for detecting fires and for giving warning in the event of fire or suspected fire.

Decision

9. The Committee accordingly determines that the Landlord has complied with the duty imposed by Section 14 (1) (b) of the Act.

10. The decision of the Committee was unanimous.

Reasons for Decision

11. The Committee heard from Miss Doogan who accepted that she had not given notice to the Landlord of works required in relation to the kitchen. When asked by the Landlord's agents, she accepted that she had failed to provide specification to them of works required. In short, Miss Doogan accepted that the Landlord had complied with all of the works properly included within the present application.

Observations

12. The Committee was appalled by the condition of the property when it carried out its inspection on 30 September 2015. The schedule of photographs taken by the surveyor member at the inspection is attached herewith. The Committee could not believe that, in 2015, there was a property in which, by admission of the parties at the hearing, there was no hot water supply until February 2015 and that the Tenant had been using hot water from a kettle in an attempt to wash herself. At that point in time, the property would not have reached the tolerable standard, let alone the repairing standard. It was with utter disbelief and not a little repulsion that the Committee read the terms of the letter written by the Landlord of 14 April 2015 to Miss Doogan wherein he advised that "...I have now received the costs for installing a shower unit in the ...property and regret to advise you that in view of these extensive costs, it would not be viable for me to carry out the works...". The Committee is of the opinion that the Landlord should be utterly ashamed of the contents of this letter. It is with regret that the Committee's hands were tied in relation to the present condition of the kitchen within the property. In the opinion of the Committee, the kitchen, if properly included within an application, would not presently meet the repairing standard. However, Mr Gifford provided some comfort in the undertaking he provided Miss Gifford in relation to returning to her within seven days with a plan of works in respect of the kitchen. The Committee is content that the present application and process has led to some improvement in the condition of the property.

The Committee is of the view that the Administration of the Private Rented Housing Panel should intimate a copy of this decision to the Private Landlord Registration Unit of Glasgow City Council so that the Council may take a view in terms of reviewing the registration of the Landlord given his conduct in this present case.

Right of Appeal

13. 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

14. Where such an appeal is made, the effect of the decision 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 will be treated as having effect from the day on which the appeal is abandoned or so determined.

P Pryce

Signed

Date 7th October 2015

Patricia Anne Pryce