



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

prhp Ref: PRHP/RP/15/0189

Re : Property at 29/1 West Pilton Gardens, Edinburgh EH4 4EF ("the Property")

The Parties:-

Imad Eldeen Abdalla Mohamed Eltayip, 29/1 West Pilton Gardens, Edinburgh EH4 4EF

(the Tenant") and

Akbar All, 10 Prestonfield Avenue, Edinburgh EH16 5EF (represented by his agents Orchard and Shipman Letfirst, Sugar Bond, 2 Anderson Place, Edinburgh EH6 5NP ("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 the Landlord and the Tenant at the hearing, 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 18 June 2015, received on 23 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 house is wind and water tight and in all other respects reasonably fit for human habitation.
3. By letter dated 6 August 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 Tenant made no further written representation in relation to the issues stated in his original application dated 18 June 2015. The Landlord's agents (by letter dated 24 August 2015), made written representations to the Committee.
6. The Private Rented Housing Committee inspected the Property on the morning of 25 September 2015. The Tenant and the Landlord's agents, represented by Craig Wonnacott, were present during the inspection. A file of photographs, taken at the

inspection by the surveyor member of the Committee is attached to and forms part of this Statement of Decision.

7. The Committee comprised George Clark (chairman), Carol Jones (surveyor member) and Ann MacDonald (housing member).
8. Following the inspection of the Property the Private Rented Housing Committee held a hearing at George House, 126 George Street, Edinburgh and heard from both the Tenant and the Landlord. The Landlord was accompanied by Craig Wonnacott of Orchard and Shipman Letfirst. The Tenant was assisted at the hearing by an interpreter, Subhi Hashwa.
9. The Tenant, in his application, submitted as follows:- There was dampness in the flat when they moved in on 12 December 2014. At first it had just been in the cupboard in the living room, but there had been a build-up of extensive mould in all of the rooms. He had repeatedly complained about this to the Landlord and, after prompting by Citizens Advice, the Landlord had visited the Property on 21 May and 11 June. The Landlord had told the Tenant to wash the walls with bleach, but had taken no further action until about 10 days before the inspection, when a cleaning company had cleaned the walls affected by black mould. The Tenant had also, on three or four occasions, tried to clean it with water and chlorine products, but it just returned. The Tenant was of the view that the mould was secondary to the dampness throughout the Property and the Landlord had done nothing to address that problem.
10. At the hearing, the Tenant told the Committee that there are 8 people living in the Property, two adults and six children, whose ages are 17, 13, 9, 7, 5 and two months. He said that the windows in the Property are opened every day and are cleaned once a week and that the heating is used regularly. He had not been able to open the trickle vents at the top of the windows and had not wanted to force them, in case they broke. The Tenant denied that the radiators are used for drying clothes. He takes a weekly load to the dry cleaners. When reminded by the Landlord that there is a communal drying green to the rear of the Property, the Tenant said that he was not prepared to use it as it is smelly and dirty and clothes dried there do not smell nice afterwards. The extractor fan in the kitchen of the Property is switched on when they are cooking or using the kitchen.
11. The Tenant told the Committee that, when the Landlord had visited the Property, he had advised the Tenant that the whole area had dampness issues. He had been served with a Notice to Quit, but was intending to stay on as he and his family had nowhere else to go.
12. The Landlord, in his written representations, submitted as follows:- He had been a property landlord for 15 years and had built up a portfolio of 11 properties. He treated his properties and his tenants with the utmost care and attention. He had owned the Property for nearly three years and had never had any issues with this flat before the Tenant moved in. He had attended the Property on two occasions and his first impression when he entered was that it was very hot and sticky. He had told the Tenant's wife that it was too hot and that she needed to open the windows as the walls were sweating. On his visits, he noticed that the tenant had put clothes on top of all the radiators and on top of doors. After months of trying to explain how to look after the Property, the Landlord had decided to sell the Property, so had given the Tenant a Notice to Quit. That had been before the Private Rented Housing Panel had become involved. The Landlord added that he was a black cab taxi driver and, when he had a fare in the area, he would drive past the Property. Every time he had done that, the windows had been closed. He had arranged an independent damp report and the contractors to whom he had spoken had all said that the remedial work should be carried out when the Property is vacant, especially if there are young children living there. The Landlord was of the view that the Property was overcrowded and that the Tenant had not kept it properly ventilated, in contravention of the lease. The Tenant had been politely reminded countless times to comply. There was evidence of the condition of the Property at the start of the lease, namely an Inventory with photographs, signed by the Tenant as a true representation of

the Property on 12 December 2014, which the Landlord attached to his written representations

13. The Landlord attached to his written representations a statement from Craig Wonnacott, Property Manager, Orchard and Shipman Letfirst. In it, Mr Wonnacott stated that he had taken over as Property Manager on 1 May 2015. An inspection of the Property had been scheduled for 19 May, but the Tenant had either not been in the Property or would not answer the door when Mr Wonnacott had attended. A subsequent appointment had been made for 21 May. The Inspection Report had noted widespread condensation and Mr Wonnacott had spoken with the Tenant about cleaning with water, tea tree oil and bleach. He had also suggested that the Property should be ventilated for several hours every day and had observed that the Tenant was not ventilating the Property. The windows were closed and there was washing drying on every radiator, adding to the condensation. The Property had felt like a sauna when entering.
14. Mr Wonnacott's advice had been to immediately stop drying clothes inside on the radiators, to open the windows in the bathroom after use, to open the windows for several hours in the morning or afternoon to provide ventilation. It was agreed that he would return periodically to check on the cleaning of the Property and the removal of the mould growing on the walls. On 1 July, he had visited the Property again and had found that very little had changed and that the Tenant had not taken his advice. The mould issue was still present and the windows were still closed. It appeared that clothes were still being dried on hot radiators inside the Property. He had again advised the Tenant of his obligation under the lease to take reasonable care of the Property and to keep it ventilated. On 24 July 2015, he had attended the flat again. The windows were closed and the curtains drawn in all the front rooms. He had written instructions for the Tenant and had advised on simple steps to reduce condensation and spread of mould. He had posted these instructions though the letter box, as nobody had answered the door, but on his way out of the building he had met the Tenant coming in and they had gone into the Property. Mr Wonnacott had noted that the Tenant had made an attempt to clean the mould from affected areas, but it was not fully cleared and the Tenant had not followed the other advice given by Mr Wonnacott regarding ventilation. He had then obtained the Landlord's authority for a full damp report to be obtained. This report had confirmed that the cause of the mould was condensation and lack of ventilation throughout the Property, as the family were not making full use of the trickle vents in all rooms and, due to the number of people occupying the Property, the levels of condensation due to baths, showers and cooking.
15. Mr Wonnacott had visited the Property again on 21 and 24 August 2015. On the first of these visits, all three windows facing the street were closed and the curtains were drawn. The outside temperature was around 20 degrees Celsius. At the time of the second visit, he had noted that two of the three windows facing the street were open, the curtains were still drawn and no other windows in the Property were open.
16. The Landlord included with his written representations a report and Quotation from SitexOrbis dated 29 July 2015. The report stated that the first bedroom was affected with mould growth which covered one entire wall and had spread to two other walls in the room. The bathroom was affected with mould growth on the ceiling, the lounge was affected with mould growth on the external wall and the second bedroom was affected with mould growth around the window sill and angles. SitexOrbis believed the mould was due to condensation and lack of ventilation throughout the Property, as the family were not making full use of the trickle vents in all rooms, and, because of the number of persons occupying the Property, the levels of condensation due to baths, showers and cooking.
17. At the hearing, the Landlord stressed that there is a communal drying green to the rear of the Property and Mr Wonnacott confirmed that the tenants of another flat in the block, also managed by him, used the drying green. It was a shared drying green, so cleaning it was a communal responsibility and it formed part of the tenanted subjects. The Landlord stated that the extractor fans in the Property are thermostatic, which should be set to "On"

at all times. The Tenant had been switching them off, in order to save electricity. This had contributed to the condensation problems. There had been no comments or notes at the time the Tenant moved in of any problem with condensation and the Landlord had personally redecorated the Property immediately before letting it out to the Tenant and there had been no issues with black mould at that time. Information and advice regarding the need to properly ventilate the Property and not to dry clothes on the radiators had been given to the Tenant on many occasions, but it had not been followed. The Property had been let out to two different families before the present tenancy and there had been no problems with mould or condensation. The number of people staying in the Property was a contributory factor. The Landlord told the Committee that he had put in cavity wall insulation, double glazing with trickle vents and a combi boiler and had done all that he could do. The problem lay with the Tenant's failure to comply with the obligation in the lease to properly ventilate the Property and there was no point in doing remedial work now, as the problem would just come back again, because the Tenant would not follow instructions on heating and ventilation. The Landlord categorically denied having told the Tenant that the whole area had dampness issues. What he had said was that the houses in the area were ex-local authority houses and that condensation was a problem, so ventilation was essential.

### **Summary of the issues**

18. 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**

19. The Committee finds the following facts to be established:-
- The tenancy is a Short Assured Tenancy, which commenced on 12 December 2014. The Tenant has been served with a Notice to Quit, requiring him to vacate the Property on or before 12 October 2015.
  - The lease requires the Tenant to "take all reasonable steps to keep the accommodation aired and heated" and "to co-operate with other proprietors/properties in keeping the garden, back green or other communal areas clean and tidy".
  - The Tenant signed as a true representation of the Property an Inventory, with photographs attached, dated 11 December 2014. The Inventory contains a statement that all windows open properly and that the decoration in each room is good. The photographs do not include a picture of the bathroom and are not of high quality, but they show no indications of black mould on any of the walls or ceilings in the Property.
  - The Property is a former local authority ground floor flat situated in a three storey block of similar flats and located in West Pilton area of Edinburgh, around 3 miles north west of the city centre. The accommodation comprises a living room, two double bedrooms, one single bedroom, kitchen and bathroom. The living room, the largest room in the Property, is currently used as a bedroom, with one of the double bedrooms being used as the family sitting room.
  - During the inspection, the surveyor member of the Committee used a moisture meter to detect moisture in the walls of the Property. The meter was used in Search mode, to detect surface moisture and, where this was found, the probe facility of the moisture meter was used, to detect any rising or penetrating dampness in the Property.
  - There is extensive black spot mould growth on the wall separating the single bedroom situated to the rear of the flat and the common entrance passage of the block and on the ceiling of this room. Surface moisture was detected, but no evidence of rising or penetrating dampness was found.
  - There is severe black spot mould on the bathroom ceiling and loosening of the ceiling paintwork was evident. The bathroom window was open at the time of the

inspection and the extractor fan was operating. It was not possible to inspect or test the walls of the bathroom as they are all clad with PVC sheeting.

- The front bedroom of the Property (originally the sitting room) contained four single beds. There was evidence of black spot mould growth in the cupboard of the room and at the base of the window wall. There was evidence of surface moisture along the base of the window wall and in the cupboard, but no evidence of rising or penetrating dampness in the room.
- There was black spot mould growth in the corner of the window wall and on the ceiling of the living room (originally a double bedroom), but again, whilst surface moisture was detected, there was no evidence of rising or penetrating dampness.
- There was evidence of minimal black spot mould growth on the window wall of the main double bedroom to the rear of the Property. Surface moisture was detected, but there was no evidence of rising or penetrating dampness.

### **Reasons for the decision**

20. The Committee is satisfied from the written representations and documents it has seen, the evidence led at the hearing and its findings at the inspection that the problem of black mould spot growth within the Property is the result of a lack of proper heating and adequate ventilation, given the number of people living there. There are two double bedrooms and one single bedroom, which would indicate that the maximum number of occupants should be 5, but there are 8 people living in the Property, although that number does include a very young baby. The windows in the Property are double glazed and have trickle vents. The Tenant told the Committee that he had been unable to open the vents and did not want to force them, but there was no indication that he had at any time reported this to the Landlord or the letting agents, so the Landlord would have had no reason to suppose they were not working properly and no opportunity to carry out any repair works, should they have proved necessary. At the hearing, however, the Landlord told the Committee that, now that he was aware of a possible problem, he would have the trickle vents checked and, if necessary, repaired. The Committee determined that there was no evidence that the Property had not met the repairing standard at the outset of the tenancy and accepted that the Landlord and the letting agents had provided advice to the Tenant regarding the need to adequately ventilate the Property and accepted the evidence led by the Landlord, which was supported by the evidence of the letting agents, that the Tenant had not followed this advice. It was the duty of the Tenant, in terms of the lease, to take all reasonable steps to keep the Property aired and heated and the Committee decided that the Tenant had failed in that duty..

### **Decision**

21. The Committee accordingly determined that, as, in terms of Section 16(1)(a) of the Act, the duty imposed by Section 14(1) of the Act does not require any work to be carried out which the Tenant is required by the terms of the tenancy to carry out, the Landlord had not failed to comply with the duty imposed by Section 14 (1)(b) of the Act. The Committee further determined that the Tenant had not notified the Landlord that repair work might be required to the trickle vents in order to ensure that they were in a reasonable state of repair and in proper working order and that the duty imposed by Section 14(1)(b) of the Act did not apply to the trickle vents.
22. The decision of the Committee was unanimous.

Right of Appeal

23. 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

24. 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** ..... Date... 25 September 2015 .....  
Chairperson