



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

Statement of Reasons for Decision of the Private Rented Housing Committee

(Hereinafter referred to as "the Committee")

Under Section 24(1) of the Housing (Scotland) Act 2006

Case Reference Number: PRHP/RP/15/0209

Re : 50 Glenburn Road, North Berwick, East Lothian EH39 4DH ("the Property")

Title : ELN9422

The Parties:-

**Tracy Grantham, 50 Glenburn Road, North Berwick, East Lothian EH39 4DH
("the Tenant")**

**Mrs Sabir Eroglu, 119 Gilberstoun, Edinburgh EH15 2RA ("the Landlord")
represented by her agent Abdullah Eroglu, 119 Gilberstoun, Edinburgh EH15
2RA**

The Committee comprised:-

Mr David Bartos	- Chairperson
Mr Richard Burnett	- Surveyor member
Mr Tom Keenan	- 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 Property, determined that the Landlord had complied with the duty imposed by Section 14 (1)(b) of the Housing (Scotland) Act 2006.

Background:-

1. By application received on or about 21 July 2015, the Tenant applied to the Private Rented Housing Panel ("PRHP") for a determination that the Landlord had failed to comply with the duty to ensure that the Property met the repairing standard in section 13 of the Housing (Scotland) Act 2006.
2. In her application the Tenant complained that the Landlord had failed to meet the repairing standard in the following respects:
 - (1) there was a leaking boiler;

- (2) on the outside of the Property there was a leaking pipe causing structural damage
- (3) a smoke detector to be fitted;
- (4) a bannister required to be fitted;
- (5) carpets were old, worn and soiled.

The application related to the matters which had been raised on behalf of all of the Tenant at the Property by her then representative Natasha Miller of Shelter in her letter to the Landlord dated 22 June 2015.

3. In addition by e-mail dated 22 July 2015 the Tenant's representative applied to add to the application a complaint of the absence of hot water and heating for the Property since Thursday 16 July 2015.
4. The President of the Private Rented Housing Panel decided under section 23 of the 2006 Act to refer the application to a Private Rented Housing Committee. An inspection of the Property and hearing at North Berwick Community Centre, North Berwick EH39 4PN was fixed for 16 September 2015 at 10.00 a.m. and 11.00 a.m. respectively. The parties were invited to make written submissions to the Panel's office by 26 August 2015.
5. This was all intimated to the Tenant, her then representative and to the Landlord by letters of the Panel's Clerk dated 5 August 2015 and entitled "Notice of Referral, Inspection and Hearing". The Committee comprised the persons stated above. The letter of intimation to the Landlord included a copy of the Tenant's application to the Panel. On or shortly after 12 August 2015 the Committee issued a direction to the parties to produce to it a copy of the letter of 22 June 2015 to the Landlord and also directed the Landlord to confirm whether he accepted that such a written communication had been sent. The Tenant's representative produced a copy of the letter. There was no response from the Landlord.
6. Following intimation of the Notice of Referral, Inspection and Hearing the Tenant's representative intimated by means of written submissions attached to an e-mail to the Panel dated 26 August 2015 that while the Landlord had repaired the boiler, leaking pipe, and fitted a smoke detector, and had advised that a bannister would be fitted in the week commencing 31 August 2015, the Tenant still wished the inspection to take place to have the quality and extent of the work inspected.
7. By e-mail to the Panel dated 27 August 2015 one of the Landlord's agents Yalcin attached a number of documents which are listed under "Evidence" below. He also stated the boiler leak had been fixed "months" ago, that the outside leak had been fixed, that carpets and a bannister had been ordered and would be fitted on 31 August 2015.

The Inspection

8. The Committee inspected the Property on 16 September 2015 at 10.00 a.m. The Tenant was present together with her partner Johnpaul Bennett. Neither the Landlord nor her agent was present.
9. The weather was dry and sunny. The inspection revealed that the Property is a flat on the first floor of a four flat block of former council housing built between the two world wars. It is reached by an internal staircase from the front door which faces the street. The Committee carefully inspected the matters which were the subject of complaint.

The Evidence

10. The evidence before the Committee consisted of:-
 - The application form
 - Copy letter from the Tenant's representative to the Landlord dated 22 June 2015
 - Copy e-mail from the Tenant's representative to the Landlord dated 16 July 2015
 - Copy e-mails from the Tenant's representative to the PRHP dated 16 July and 22 July both 2015
 - Copy Form of Authority from the Tenant and her co-tenant in favour of Shelter dated 8 June 2015
 - Copy lease between the Tenant and the Landlord dated 12 July 2013
 - Copy fitting order from Carpet Right for 50 Glenburn Road together with printed till receipt
 - Copy e-mail from Yalcin Eroglu to the PRHP dated 27 August 2015
 - E-mail from Jamie Storey to Yalcin Eroglu enclosing copy invoice from JS Electrical Services addressed to Abbas dated 26 August 2015
 - Registers Direct copy of Land Register title number ELN9422 dated 3 August 2015

The Hearing

11. At the conclusion of the inspection the Committee held the hearing within North Berwick Community Centre, North Berwick at the time and date fixed for it. The Tenant attended accompanied by Mr Bennett. She indicated that she was no longer represented by Natasha Miller of Shelter, Ms Miller having left her previous post with Shelter. The Landlord did not attend. She was represented by her husband Abdullah Eroglu. He was accompanied by his daughter Ceylan Eroglu.
12. At the outset of the hearing it was indicated to the Committee that Mr Eroglu had difficulties in expressing himself in English, his native language being Turkish. His daughter Ms Eroglu, explained that she would be happy

to translate for him. It was explained to Mr Eroglu that the Committee could arrange an interpreter to assist him if he wished. He indicated that he did not wish to take up this option. The Committee obtained his confirmation that he was happy to proceed on the basis of his daughter translating for him. During the hearing the Committee allowed time for Ms Eroglu to translate for her father evidence, submissions and questions given in English.

13. At the beginning of the hearing Mr Eroglu confirmed that the Landlord was his wife, despite the lease describing the landlord as "Mr Sabir Eroglu".
14. The Tenant gave evidence in relation to each head of complaint. Much of this evidence was directed not so much to whether the statutory repairing standard was met as to how the complaint had arisen and how the Landlord had gone about carrying out the repairs to ensure that the standard was met. These other matters are not material to the task of the Committee which is restricted to the issue of whether the repairing standard has been met in respect of the complaints actually made.
15. With regard to the boiler she confirmed that the boiler had ceased to work resulting in a lack of hot water in mid-July. This had resulted in her turning to Shelter for assistance. This had now been remedied. Jill Kynoch, Staff Nurse of the local health visiting team gave evidence. She confirmed that the concern had been the lack of hot water for a period of time and she had advised the Tenant to get in touch with the Housing Department.
16. Mr Bennett gave evidence that a new combi boiler had been installed. Originally the combi boiler had had an electric cable with a plug that required to be plugged into an electric socket in the wall adjacent to the boiler. This did not work well. The cable had been replaced with one to a switch in place of the socket. To function the boiler required to be switched on and off at this switch. Mr Bennett indicated that a further representative from A1 Boiler Care had come out about a fortnight before but he had indicated that the boiler could not be serviced because the timer did not work. The Tenant in her evidence said that she had contacted the Landlord's son Yalcin about the problem with the "thermostat".
17. Mr Eroglu said that he had not been made aware of any problem with the timer or thermostat by the boiler personnel he had hired.
18. With regard to the carpets the Tenant said that her complaint related to all of the carpets on the first floor of the house. At the inspection Mr Bennett had indicated that only the hall and living room carpets had been in issue but that was not the case. While these had been replaced by the Landlord she was still seeking carpets for the two bedrooms on the first floor. Ms Kynoch said that the hall and especially the living room carpets had been in a very poor condition and had been very dirty and badly stained.

19. Mr Eroglu queried why no complaint had been made about the bedroom carpets but he was prepared to undertake to replace the bedroom carpets within 2 to 3 weeks.
20. With regard to the smoke detector and bannister the Tenant and Mr Eroglu both confirmed that it had been installed.
21. With regard to the outside pipe the Tenant gave evidence that her downstairs neighbour Morag had been complaining about water coming from the pipe rendering the outside wall of the block including the downstairs flat damp. Mr Eroglu said that every time he had been informed of the leak he had instructed a workman to fix it. The last occasion had been over a month ago.
22. On being asked to comment on the Committee's observation on inspection that the pipe was an overflow pipe that was working as it should, the Tenant accepted that the Landlord had done all that had to be done.
23. The Committee was informed by Mr Bennett that he had been informed by the visiting boiler repair workman that a gas safety certificate was required but was not in place. Mr Eroglu accepted that the certificate was not in place. He had not thought that it was necessary. He would be able to instruct its issue within 2 weeks.

Findings of Fact

24. Having considered all the evidence, including their inspection, the Committee found the following facts to be established:-
 - (a) The Property is as stated above. It comprises a hallway, lounge, kitchen, two bedrooms and a loft conversion. It has central heating with the boiler in the kitchen.
 - (b) On or about 12 July 2013 the Tenant and the Landlord entered into a lease of the Property until 12 January 2014. In terms of the lease it has continued on a month to month basis since that date.
 - (c) The boiler in the Property at the commencement of the lease ceased to work properly in July 2015 resulting in a loss of hot water for a period. After the making of the application to PRHP the Landlord replaced the boiler and the switch by means of which the boiler was activated.
 - (d) The current boiler is a Vokera boiler installed in 2015. It is in a good state of repair and works as it should. It does not leak. It requires to be switched on and off by means of a switch on the wall adjacent to it. No gas safety certificate has been obtained in respect of this boiler.

- (e) On the outside wall of block of flats at the level of the Property just below the guttering, there is an outflow pipe. It has no apparent defect and fulfils its purpose.
- (f) There are two mains connected and properly installed smoke detectors in the kitchen. These appear to comply with the building regulations on provision for detecting fires and for giving warning in the event of fire or suspected fire.
- (g) There is newly installed bannister running along and attached to the wall of the internal staircase leading from the first floor of the block down to the front door of the Property.
- (h) The lease includes the carpets within the Property. Prior to its replacement following the making of the PRHP application the carpet in the living room had been badly stained and was soiled beyond remedy by cleaning. The carpets currently in the living room and hall of the Property have been newly installed by the Landlord. They are in new condition. The carpets in the two bedrooms have mildly visible staining.

Reasons for Decision

- 25. The duty of a landlord to ensure that during a tenancy a house meets the repairing standard in section 13 of the Housing (Scotland) Act 2006 applies only where the landlord becomes aware that work requires to be carried out for the purposes of complying with the repairing standard (2006 Act, s.14(3)). In addition no application can be made to the Panel unless the tenant has notified the landlord that work requires to be carried out for the purpose of making the house meet the repairing standard (s.22(3) of the 2006 Act). This is reflected in instructions to tenants at part 4b of the application form and in Note 1 on that form.
- 26. Turning to complaint (1) the Committee found the factual position as stated above. A new boiler has been installed. It is regrettable that the Landlord was unable to deal with this matter before the making of the application to the PRHP and in particular after Shelter's letter of 22 June. Nevertheless in respect of this complaint the Property now meets the repairing standard in section 13(1)(c) of the 2006 Act. Accordingly this complaint was rejected.
- 27. While there was a complaint made at the hearing of defects in the timer or thermostat connected with the boiler this was not something raised with the Landlord in writing before hearing took place or in the application at all. The Committee did not examine this matter in their inspection. In these circumstances it would not be fair on the Landlord for the Committee to deal with this. Nevertheless, looking to the future, it would be prudent for the Landlord to investigate this matter to avoid any difficulties in the future, particularly with autumn and winter coming on.

28. With regard to complaint (2) the Committee could identify no defect in the pipe being complained about. It could not be said that the pipe was not in a reasonable state of repair or not in proper working order. In this respect the Property met the repairing standard in section 13(1)(b) of the 2006 Act. Accordingly this complaint was rejected.
29. Complaint (3) related to the absence of a smoke detector in the Property. The findings of the Committee were as stated above. The Committee had regard to Part 2.11 (Fire - Communication) of the Technical Handbook - Domestic of the Scottish Buildings standards 2013 building regulations and the Guidance on Satisfactory Provision for Detecting and Warning of Fires issued by the Scottish Ministers on provision for detecting fires and for giving warning in the event of fire or suspected fire. The Committee concluded that the smoke detectors in the kitchen provide satisfactory provision for detecting fires and giving warning in the event of fire or suspected fire. The Property met the repairing standard in section 13(1)(f) of the 2006 Act. Accordingly this complaint was rejected albeit it is again regrettable that the Landlord had taken no action before the Tenant required to resort to the PRHP.
30. Complaint (4) related to absence of a bannister from the staircase leading do and from the front door. This has now been installed. The Committee concluded that the Property meets the repairing standard in section 13(1)(a) of the 2006 Act and rejected this complaint.
31. Complaint (5) related to the carpets. The Committee's findings in fact are stated above. Neither the application to PRHP nor the letters from Shelter specified which carpets were involved. The Landlord understood that it was the living room and hall carpets that required to be replaced. She duly replaced them. At the hearing the Tenant stated that the complaint related to all of the carpets. On being asked by the Committee whether the Landlord would have any difficulty in replacing them, Mr Eroglu stated that he would be prepared to undertake to replace them in two to three weeks.
32. This was a statement made without prejudice to the need for the Committee to consider whether the carpets currently in the Property (on the first floor of the block) were in a reasonable state of repair and in proper working order. The Committee on the basis of its inspection and the above findings of fact considered that the carpets currently in the Property did meet those requirements. Accordingly there was no breach of section 13 (1) (d) of the 2006 Act and this complaint was rejected.

Gas Safety Certificate

33. While it was not part of the application to the PRHP and therefore the Committee are not in a position to make a Repairing Standard Enforcement Order in respect of its absence, the Committee was concerned at the accepted absence of a gas safety certificate in respect of the gas powered boiler in the Property. The Landlord and Mr Eroglu are

reminded of the Landlord's duties in regulation 36 of the Gas Safety (Installation and Use) Regulations 1998 to carry out regular checks of the boiler and to supply the Tenant with a copy of the gas safety certificate within 28 days of the carrying out of the check. Regulation 36 can be obtained via the website at www.legislation.gov.uk. Failure to obtain such a certificate can not only result in a possible safety risk to a tenant remaining undetected but also give rise to an application to the PRHP.

34. Mr Eroglu indicated that he could obtain such a certificate within two weeks and the Committee would expect that this should be done with a copy being supplied to the Tenant.

Decision

35. The Committee determined that the Landlord had not failed to comply with the duty imposed by section 14 (1) (b), of the Act in relation to the alleged failures of the Property to meet the repairing standard. The decision of the Committee was unanimous.

Rights of Appeal

36. A landlord or Tenant aggrieved by this decision of the Committee may appeal to the Sheriff by summary application within 21 days of being notified of that decision.
37. Unless the lease or tenancy between the parties has been brought to an end, the appropriate respondent in such appeal proceedings is the other party to the proceedings and not the Committee which made the decision.

Effects of Section 63 of the 2006 Act

38. Where such an appeal is made, the effect of this decision and of any Order made in consequence of it is suspended until the appeal is abandoned or finally determined.
39. Where the appeal is abandoned or finally determined by confirming the decision, the decision and the Order made in consequence of it are to be treated as having effect from the day on which the appeal is abandoned or so determined.

Signed **D. Bartos**Date: 30 September 2015
David Bartos, Chairperson

Signature of Witness **J. Kane** ...Date: 30/09/15.

Name of witness: **JANET KANE**
Address: **EUROPA BUILDING, 450 ARGYLE STREET,**
Occupation of witness: **GLASGOW GA BHH.**
Panel Clerk.