



## Determination by Private Rented Housing Committee

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/15/0214

**Re : Property at 43/2 Mitchell Street, Leith, Edinburgh EH6 7BD ("the Property")**

**Title No: MID22715**

**The Parties:-**

**Gregory Baker, 43/2 Mitchell Street, Leith, Edinburgh EH6 7BD ("The Tenant")**

**James Shaw, c/o Arden Property Management, 43 Morningside Road, Edinburgh EH10 4DR (represented by his agents Arden Property Management, 43 Morningside Road, Edinburgh EH10 4DR) ("the Landlord")**

**The Committee comprised:-**

Mr David Bartos                      - Chairperson  
Mr Richard S. Burnett              - Surveyor member

**Background:-**

1. By application received on 29 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 his application the Tenant complained that the Landlord had failed to meet the repairing standard in the following respects:
  - (1) the floor of the walk-in cupboard in the Property was visibly stained and smelled strongly of urine and was therefore not in a reasonable state of repair (section 13 (1)(d) of the 2006 Act);
  - (2) the duvet provided by the Landlord under the tenancy smelled strongly of urine and was not capable of being used safely for the

purpose for which it had been designed (section 13 (1) (e) of the 2006 Act).

3. The Tenant had raised the flooring issue in a letter of 17 July 2015 to the Landlord's agents and had raised the duvet issue and the flooring issue again in a letter dated 21 July 2015 to the Landlord's agents. Both letters had been sent by recorded delivery on their dates of writing.
4. In his application form the Tenant had indicated that he was prepared to attend mediation with the Landlord to resolve the issues. However after the mediation meeting had been fixed for 15 September 2015, on 4 September 2015 the Tenant changed his mind and indicated that he was no longer prepared to have the dispute mediated.
5. Following this 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. That decision was intimated to the Tenant and to the Landlord's agents by letter of the Panel's Clerk dated 16 September 2015. The Committee comprised the Chairman Mr David Bartos and the Surveyor Member Mr Richard Burnett. The intimation to the Landlord's agents included a copy of the Tenant's application to the Panel.
5. The letters of 16 September 2015 notified the parties of an inspection by the Committee of the Property and a hearing at George House, 126 George Street, Edinburgh EH2 4NH at 10 a.m. and 12.00 hrs respectively on 2 November 2015. The said letters gave parties an opportunity to make written representations to the PRHP by 7 October 2015. There were no written representations made to the PRHP by either party.

### **The Inspection**

6. The Committee inspected the Property on 2 November 2015 at 10.00 a.m. The Tenant was present. There was no appearance by or on behalf of the Landlord. The inspection revealed that the Property is part of a modern flatted development in Leith. The weather at the time of the inspection was dry.
7. Upon opening of the door to the walk-in cupboard there was a stale smell emanating from the cupboard. There was an immersion heater at the rear of the cupboard and a rack of shelving to the front. On the shelving there was a duvet with a cover on it. The Committee saw and smelled the floor boards of the walk-in cupboard. The smell decreased closer to the floor and further away from the duvet.

### **The Evidence**

8. The evidence before the Committee consisted of:-
  - The application form
  - Copy Short Assured Tenancy Agreement dated 30 June 2015

- Extract of title from the Land Register numbered MID22715
- Copy letters from the Tenant to the Landlord care of his agents dated 17 July and 21 July both 2015
- Copies of correspondence between the Tenant and PRHP
- The oral evidence of the Tenant at the hearing

### The Hearing

9. At the conclusion of the inspection the Committee held a hearing at the venue and time previously fixed. Neither the Landlord, nor any agent of the Landlord appeared at the hearing. The Tenant attended, gave evidence and made submissions.
10. With regard to the floor of the walk-in cupboard the Tenant said that he thought that the cupboard room had smelled badly at the inspection although the smell had subsided since his complaint. It had previously "just knocked him out" when the door to the cupboard was opened. When it was put to him that the Committee had smelled the floor-boards during the inspection and not found any smell emanating from them, he accepted their conclusion. He explained that he had not got down to smell the floor.
11. With regard to the duvet, he had nothing to add to what the Committee had seen during their inspection. On being questioned by the Committee on whether the duvet had been provided as part of the tenancy, the Tenant referred to his copy of the inventory which he had returned to the Landlord's agents by 9 July after taking entry to the Property. Under this the duvet was included as an item under the tenancy but there was no mention of any duvet cover or contour sheet. He accepted that he had not indicated to the Landlord's agents any difficulty with the duvet in the inventory he had returned. He explained that this was due to him having his own bedding and having left the duvet untouched on a shelf in the bedroom. Only when he removed the duvet from the bedroom to the cupboard did he notice the smell and complained. This was after he had returned the inventory and was after he had written the first letter of complaint to the Landlord's agents.
12. He accepted that nothing had been done to the duvet in the first two or three weeks of the tenancy before he had moved it to the cupboard. He thought that it was unreasonable for him to have to store it uncleaned. He himself had made no attempt to clean it. It must have been smelly at the start of the tenancy.
13. The Tenant submitted that he was relying on a breach of the part of the repairing standard which required furnishings provided by a landlord under a tenancy to be capable of being used safely for the purposes for which they had been designed. He accepted, however that the duvet was safe in that it was "not going to kill" him when being used. However he submitted that due to its smell he was not going to get "a good night's sleep" with it.

14. Ultimately his position came to be that the Landlord should be responsible for cleaning the duvet or removing it.
15. The Committee found the Tenant's evidence to be credible and reliable.

### **Findings of Fact**

16. Having considered all the evidence the Committee found the following facts to be established:-
  - (a) On or about 30 June 2015 the Tenant and the Landlord entered into a Short Assured Tenancy Agreement of the Property for 6 months expiring on 30 December 2015 ("the lease"). The lease included furnishings together with a record of their condition all as set out in an Inventory prepared by or on behalf of the Landlord. This Inventory included a duvet. It did not include any duvet cover or contour sheet. Clause 2. 6 of the lease provided that the Tenant was permitted a period of 7 days after receipt of the Inventory to intimate to the Landlord or his agents any dissatisfaction with the furnishings set out therein.
  - (b) The duvet mentioned in the Inventory was in the bedroom at the start of the tenancy. The Tenant returned the Inventory on or about 9 July 2015 without any complaint about the duvet. He had complained about the mattress in the bedroom by then which had been replaced. Any smell of the duvet at the start of the tenancy was not such as would have alerted the Tenant of the need to have the duvet cleaned. Between 17 and 21 July 2015 the Tenant moved the duvet from the bedroom and noticed a smell emanating from it.
  - (c) The Property contained a walk-in cupboard accessible from the hallway. It had an immersion heater at the rear. At the front it had a table upon which was the duvet that had been removed from the bedroom. At inspection the duvet had a sheet on it. There was a mild smell emanating from it. No attempt to clean the duvet had been made since the start of the tenancy.
  - (d) The cupboard had bare chipboard flooring. There was mild liquid staining on the chipboard. There was no smell emanating from the flooring. It and the duvet are shown on the attached schedule of photographs.

### **Reasons for Decision**

17. The Committee considered whether the floor in the cupboard was not in a reasonable state of repair. The mild staining and absence of any smell led the Committee to conclude that it could not be said not to be in a

reasonable state of repair. That being the case the repairing standard in section 13 (1) (d) of the 2006 Act has not been breached.

18. The Committee considered the duvet complaint. The Committee was prepared to accept that the duvet could be seen as a soft furnishing provided under the lease and therefore covered by the repairing standard under section 13 (1) (e) of the 2006 Act. However the evidence of the smell from the covered duvet was not sufficient to persuade the Committee that the duvet could not be used safely when cleaned. The smell remained undetected for over two weeks after his entry and no attempt to clean has been made. The Tenant's real complaint was over the cleaning and storage of the item. In these circumstances the repairing standard in section 13(1)(d) was not breached.

### **Decision**

19. The Committee decided that the Landlord had not failed to comply with the duty imposed by section 14 (1) (b) of the Act and refused the application.
20. The Committee observes in conclusion that it would have been better for all concerned for this matter to have been dealt with at mediation. While the Tenant explained to the Committee that he had changed his mind over mediation due to the difficulties in securing other work to furniture in the Property, nevertheless from what he said the work had been performed and there is no reason to believe that a similar outcome could not have been forthcoming at a mediation.

### **Rights of Appeal**

21. A landlord or tenant aggrieved by the decision of the Committee may appeal to the Sheriff by summary application within 21 days of being notified of that decision.
22. The appropriate respondent in such appeal proceedings is the other Party to the proceedings and not the PRHP of the Committee which made the decision.

### **Effects of Section 63**

23. Where such an appeal is made, the effect of the decision and of any Order made in consequence of it is suspended until the appeal is abandoned or finally determined.

- 24. 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.

D. BARTÓS

Signed .....Date: 5 November 2015.....

David Bartos, Chairperson

L. GALLOWAY

Signature of Witness.

Date.....5 November 2015.....

Name, address and occupation of the witness (please print):-

LUCY GALLOWAY

7 WHITEDALES

EDINBURGH

EH10 7JQ

SOLICITOR

Schedule of photographs taken during the inspection of  
43/2 Mitchell Street, Leith, Edinburgh EH6 7BD  
by Richard S. Burnett, MA FRICS, surveyor member of the  
Private Rented Housing Committee on the 2 November 2015



D. BARTOS

L. GALLOWAY