



DETERMINATION BY PRIVATE RENTED HOUSING COMMITTEE

STATEMENT OF DECISION OF THE PRIVATE RENTED HOUSING COMMITTEE UNDER SECTION 24(1) OF THE HOUSING (SCOTLAND) ACT 2006

In connection with

Property at, 49A Cleghorn Street, Dundee, DD2 2PF ("the property")

Miss Samantha Eagan, 49A Cleghorn Street, Dundee, DD2 2PF ("the tenant")

Iain MacKay and Norah Rojas or Sinclair Properties, c/o Martin and co. 10 Whitehall Crescent, Dundee, DD1 4AY ("the landlord")

Reference number: PRHP/RP/15/0232

Decision

Having made such enquiries as is fit for the purposes 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 into account the evidence led from the tenant and the landlord at the hearing and the documentation submitted to the Private Rented Housing Panel ("PRHP") by the parties, the Private Rented Housing Committee ("the committee") determine that there has been no failure on the part of the landlord to comply with the duty imposed by Section 14 (1) (b) of the Act.

Relevant Statutory Provisions

Section 13: The repairing standard

(1) A house meets the repairing standard if—

- (a) the house is wind and water tight and in all other respects reasonably fit for human habitation,
- (b) 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,
- (c) 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,
- (d) any fixtures, fittings and appliances provided by the landlord under the tenancy are in a reasonable state of repair and in proper working order,
- (e) any furnishings provided by the landlord under the tenancy are capable of being used safely for the purpose for which they are designed, and

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

Section 14: Landlord's duty to repair and maintain

(1) The landlord in a tenancy must ensure that the house meets the repairing standard—

(a) at the start of the tenancy, and

(b) at all times during the tenancy.

Background

1. By application dated 23rd July 2015 ("the application") the tenant applied to PRHP seeking a determination of whether or not the landlord had failed to comply with the duties imposed by Section 14 (1) (b) of the Act.
2. In the application the tenant stated that the landlord had failed to comply with section 13 (1) (a) (c) and (d) of the Act ("the repairing standard").
3. In the application, at section 4, the tenant specified how she considered the landlord to have failed to meet the repairing standard:

"Door sealant not in place on front door, window seals damaged, windows fail to stay open. Draft and dampness throughout property. Storage heaters not working. Extractor fan in toilet not working as it should water drips back through fan, sewage comes through bath and kitchen sink plugholes which we have been informed by neighbours to be a recurring problem which our landlord failed to let us know....We have consistently contacted our landlord in regards to the maintenance issues of which we were promised on moving in to be addressed and repaired in a timely manner but 3 months on they have yet to do so, with exception of flooding/leaking of pipes and unsealing of windows, which ultimately lead to them being broken and some unable to stay open, and seals damaged. Due to the drafts and dampness mould has built up around the property on clothes, furniture, and doors."
4. In the application, at section 5, the tenant specified the nature of the work which she considers requires to be done, as:

"Proper door sealants to be put in place, windows repaired and in working order. Storage heaters repaired, extractor fan repaired/replaced."
5. In support of the application, the tenant submitted copies of a tenant information pack dated 22nd May 2015, copy tenancy agreement and copy emails dated, which she had sent to the landlord's letting agents, Martin and co. Dundee ("the landlord's letting

agents”) and their replies dated, 25th May 2015, 12th, 15th, 17th June and 13th, 28th August and 2nd and 18th September 2015. Photographs of the interior of the property were attached to an email to the Private Rented Housing Panel (“PRHP”) dated, 28th August 2015. The title deeds of the property were made available to the committee. The title identified the owner of the property as Iain MacKay Sinclair and Norah Rojas or Sinclair.

6. By notice of referral, dated 11th September 2015, the President of PRHP, following her consideration of the application in terms of Section 23 (1) of the Act, referred the application to a Private Rented Housing Committee.
7. By email of 18th September 2015 to the PRHP, an email was sent on behalf of the tenant by Jamie Brannan, a resident at the property. The email advised that the tenant and Jamie Brannan were intending to vacate the property. The email stated that,

“As of today we have come to a deal with Martin & co that it is of a satisfactory end to the current situation we have found ourselves in with them, and once we have received written confirmation from them of this deal we will be seeking to drop the case we have against them.

The deal I am referring to is, as follows; Martin and Co, and our Landlord Nora Sinclair, have agreed to allow Samantha and myself to leave the property at 49A Cleghorn Street early, without any exit fees or any further rent to be paid to them if we drop the case against them.

8. A minute of continuation to a determination under Schedule 2 paragraph 7(2) of the Act was issued by the committee dated 27th October 2015.
9. An inspection of the property and a hearing before the committee were assigned for 5th November 2015. The committee comprised the following members:

(i) Miss Simone Sweeney, Legal member;

(ii) Mr Charles Reid-Thomas, Surveyor member and;

(iii) Ms Brenda Higgins, Housing member.

10. An inspection of the property took place at 10am on 5th November 2015. The landlord was present with a representative from the letting agents. Also in attendance was the tenant currently residing at the property.
11. Following the inspection, a hearing of evidence took place at the Kirkton Community Project, Derwent Avenue, Dundee, DD2 2PF. In attendance at the hearing was the landlord and her representative from the letting agents, Mr Ian Burness, who identified himself as a maintenance manager and the landlord, Norah Sinclair. The committee heard representations from the landlord and Mr Burness and considered these together with the application and documentation provided by the parties. At the conclusion of the parties' submissions, the committee adjourned to consider all the evidence presented to them and to make its determination.

Submissions at the hearing

(ii) Submissions of the landlord's agent

12. The chair invited Mr Burness to address the committee on the issues raised in the tenant's application.
13. Mr Burness began by responding to the complaint pertaining to the, "*door sealant not in place on front door*". He advised the committee that his firm had recently had a contractor at the property to look at the door. No issues had been identified with the sealant around the main entrance door by the contractor and no works had been undertaken on behalf of the landlord, therefore.
14. Turning to the complaint of, "*window seals damages*", Mr Burness explained that attention had recently been given to the windows at the property. That work had been completed only the week prior to the hearing. He rejected any suggestion that there continued to be any issue with the window seals.
15. With regard to the allegation that the windows failed to stay open, again, this was rejected by Mr Burness as currently being an issue. He accepted that during recent inspections the kitchen window had required to be tightened. He explained that his firm awaited a final report on the current state of the windows from their contractors. However he stated that the complaint was, "*not as serious as we thought.*" In support of his position, Mr Burness submitted that the tenant currently occupying the property had queried why the windows were the subject of an investigation as they appeared to her to be in proper working order.

16. Mr Burness rejected the tenant's complaint that there were draughts and dampness throughout the property. Rather he stated that he believed that the tenant had failed to ventilate the property adequately resulting in issues of condensation. He also alleged that he believed that the tenant had been making use of a portable gas heater in the living room which would have added to a build-up of any condensation.
17. When asked for any comment on the complaint that the storage heaters at the property were not in working order, Mr Burness accepted that issues had been identified in the past with the circuit heaters but was satisfied that all storage heaters were fully functioning now. He explained that he had experienced difficulties in the past in testing the storage heaters as they had often been turned off by the tenant when he had visited the property.
18. Also, Mr Burness rejected the complaint that, *"extractor fan in toilet not working as it should water drips back through fan."* He was unaware of any problems with the extractor fan. No issues had ever been identified with the extractor fan within the maintenance reports produced on behalf of the landlord. Mr Burness was satisfied that the extractor fan was fully operational.
19. In response to the complaint that there was sewage coming through the plugholes of the sinks at the kitchen and the bathroom, Mr Burness rejected the complaint as, *"Nonsense."* He explained that there was a report received by the letting agents in 2011 of a blockage at the sinks. The letting agents had responded to this immediately. The blockage was removed the same day. It was identified to have been 'Wet Wipes' which had been disposed of incorrectly by the neighbouring resident, above, clogging up the sewers. No reports had ever been received since.
20. Finally, the chair referred the landlord and letting agent to the complaints set out in the tenant's email of 28th August 2015. This referred to an infestation of mites within the tenancy which had been brought to the attention of the letting agents. The email read:

"On Sunday 23rd August 2015. We discovered that our cupboards, Carpet, 2 chest of drawers and everything in them were infested with small white mites. Whilst putting my clothes into bin bags I then discovered not only were clothes covered in mites but yellow patches of mould, which were also on the wall inside the cupboard as well as the floor, which I discovered after removing my drawers."

Photographs were attached to the email. Mr Burness confirmed he had seen these prior to the hearing. Mr Burness advised the committee that the matter was brought

to his attention and he had responded by visiting the property on Tuesday 25th August 2015. The items which were photographed were situated in the back yard of the property when he visited. He advised that there was a strong chemical smell at the property when he arrived. He described the property as having been, “*sanitised.*” His evidence was that the tenant and her partner advised him that they had extensively cleaned the inside of the property to eradicate any infestation. As a result there was no evidence of any mites or infestation when he visited the property. Neither had he identified any evidence of mould anywhere within the property. Mr Burness submitted that in the absence of anything to suggest that there could be an infestation at the property he did not contact pest control. Mr Burness expressed his view that the content of the tenant’s email of 28th August 2015 was exaggerated.

Summary of the issues

21. The issues to be determined are: whether the property meets the repairing standard set out at section 13 (1) (a) (b) (c) and (d) of the Act in terms of
- (i) 13 (1) (a): the complaints concerning the sealant around the front door; the windows failing to stay open and the seals being damaged; infestation of mites and draughts and dampness at the property;.
 - (ii) 13 (1) (b): the allegation of sewage coming through the plugholes of the sinks at the kitchen and bathroom.
 - (iii) 13 (1) (c): the allegation that the storage heaters were not working;
 - (iv) 13 (1) (d): The allegation that the extractor fan in the bathroom was not working;
 - (v) and whether the landlord has complied with the duty imposed by Section 14 (1) (b).

Findings in fact

22. The committee make the following findings in fact:
23. That the tenancy between the parties for the property is dated 22nd May 2015. The lease is a short assured tenancy in terms of the Housing (Scotland) Act 1988. The provisions of Chapter 4 of the Act apply.
24. That Martin and Co is the letting agent for the property and acts on behalf of the landlords, Iain MacKay Sinclair and Norah Rojas or Sinclair.
25. That the tenant submitted an application to the PRHP on 20th August 2015.

26. That the tenant had submitted email communications between herself and the letting agents dated, 25th May, 12th , 15th and 17th June and 8th, 10th and 28th August 2015.
27. That these emails contained details of complaints concerning, inter alia, the windows at the property, the front door not being wind and water tight, sewage from the plugholes in the kitchen and bathroom, water ingress in the bathroom and an infestation of mites throughout the tenancy.
28. That the letting agents had undertaken investigations at the property since the tenant had taken occupation of the property.
29. That the letting agents had works to be undertaken to ensure that the windows were wind and water tight and were capable of being opened and closed.
30. That the letting agents had undertaken investigations to the front door of the property and had not considered it necessary to carry out any works to the sealant around the door.
31. That the letting agents had arranged inspection of the extractor fan in the bathroom and had found it to be fully operational.
32. That, on inspection, the front door to the house was found to be well fitting.
33. That, on inspection, all windows at the property were found to be tight fitting. All windows opened and closed satisfactorily and draught strips had been fitted to the window within the kitchen.
34. That, during inspection, there was no evidence of draughts at the property.
35. That, on inspection, there was a strong smell of dampness within the property.
36. That, on inspection, there was no evidence of dampness within the property.
37. That, on inspection, there was condensation at the window of the living room.
38. That given the size and fabric of the property, unless the windows of the property are opened regularly, the property is susceptible to condensation developing.
39. That there were storage heaters in the living room, bedroom, bathroom and hallway.
40. That, on inspection, all of the storage heaters were in full working order and operational.

41. That, on inspection, there was no water dripping from the extractor fan in the bathroom.
42. That the extractor fan was in working order.
43. That in 2012 the landlord received report of a blockage at the sinks of the property, had responded to the report and carried out the required repairs to remove the blockage; That no reports had been received until that brought by the tenant.
44. That, on inspection, there was no evidence of any sewage coming through the plugholes of the sinks in either the kitchen or the bathroom.
45. That, on inspection, there were hard wired smoke detectors fitted to the ceilings of the kitchen and the hallway.

Reasons for decision

46. That having identified, on inspection, that the front door to the property was fitting well and there was no issue with the sealant and having heard the evidence of the letting agent manager that his contractor had reported no defects requiring repairs, the committee finds no failure by the landlord to meet the repairing standard of section 13 (1) (a) of the Act.
47. The committee accepted the evidence of Mr Burness that investigations had recently been undertaken on behalf of the landlord to ensure that the windows were fully operational and repairs had been carried out where required. Further the committee accepted the evidence of Mr Burness that the current tenant had identified no issues with the windows. Taking this evidence together with the fact that, on inspection, the windows of the property were all opening and closing satisfactorily and found to be tight fitting, the committee finds no failure by the landlord to meet the repairing standard of section 13 (1) (a) of the Act.
48. Having accepted the evidence of Mr Burness and having found no evidence of draughts or dampness at the time of inspection, the committee finds no failure on the part of the landlord to meet the repairing standard of section 13 (1) (a) in this regard either.
49. Having accepted the evidence of Mr Burness that there was no evidence of mite infestation at the property two days after the report was identified by the tenant and having no evidence of any infestation at the time of inspection, the committee finds no

failure on the part of the landlord to meet the repairing standard of section 13 (1) (a) to provide a property which is fit for human habitation.

50. The committee accepted the evidence of the letting agents' Mr Burness that the only incident of a blockage at the sinks of the property was in 2011 and that all necessary action had been taken to address the problem on behalf of the landlord. It was accepted by the committee that no further reports had been received by the landlord until the complaint which formed part of this application. On the basis of this evidence and the findings of the inspection, the committee found no failure on the part of the landlord to meet the repairing standard of sections 13 (1) (b) with regard to the allegation of sewage coming through the sink.

51. That, having accepted the evidence of Mr Burness that any previous defects with the storage heaters had been addressed and having found each of the storage heaters to be fully operational and producing heat at the time of inspection, the committee found no failure on the part of the landlord to meet the repairing standard of section 13 (1) (c) in respect of the allegation that the storage heaters were not working.

52. The committee accepted the evidence of Mr Burness that the maintenance report of May 2015 had identified no issues with the extractor fan and having identified that the extractor fan was fully operational at the time of inspection, the committee finds no failure on the part of the landlord to meet the repairing standard of section 13 (1) (d) in respect of the extractor fan not working.

53. The committee observed hard wired smoke detectors fitted to the ceilings of the kitchen and hallway of the property. No tests were undertaken to identify if the smoke detector was in proper working order as this was not part of the tenant's application and there had been no prior notification of any complaint with the smoke detector to the landlord. Therefore the committee shall make no comment as to whether the smoke detector met the repairing standard of section 13 (1) (f).

Decision

- (i) The committee determined that the landlord complies with the duties imposed by sections 13 (1) (a) (b) (c) and (d) and 14 of the Act. 13 (1) (c): the allegation that the storage heaters were not working;

54.

55. The committee shall make no Repairing Standard Enforcement Order as required by Section 24 (1).

56. The decision of the committee was unanimous.

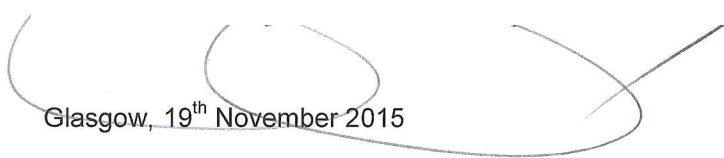
Right of Appeal

57. 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

58. 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 determined.

S. SWEENEY



Glasgow, 19th November 2015

.. Chair