



Determination by Private Rented Housing Committee

Statement of Decision of the Private Rented Housing Committee

(Hereinafter referred to as “the committee”)

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

Case Reference Number: PRHP/RP/15/0305

Land Register Title No: KNC1856

Re: 140F Walker Road, Aberdeen AB11 8BX (“the property”)

The Parties:-

Ms Mandy Morrison, formerly residing at the property (“the tenant”)

**RLR Properties Limited, 25 Kenneth Gardens, Stanmore, Middlesex HA7 3SA
 (“the landlord”)**

**Committee Members – Sarah O’Neill (Chairperson); Mark Andrew (Surveyor
 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) of the Housing (Scotland) Act 2006 (“the Act”) in relation to the property, and taking account of all the available evidence, determines that the landlord has complied with the duty imposed on it by Section 14 (1) (b) of the Act. The committee’s decision is unanimous.

Background

1. By application dated 2 November 2015, the tenant applied to the Private Rented Housing Panel (“the panel”) for a determination that the landlord had failed to comply with its duties under Section 14(1) of the Act.
2. In her application, which was completed and signed by her representative, Mr Hamish Mackenzie of Shelter Scotland, the tenant stated that she believed the landlord had failed to comply with its duty to ensure that the property met the repairing standard as set out in sections 13(1) (a) (b) and (c) of the Act. Her application stated that the landlord had failed to ensure that:
 - the house is wind and watertight and in all other respects reasonably fit for human habitation
 - 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
 - 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
3. The tenant made the following complaints in her application form:
 1. There is water coming in from the roof.
 2. The windows in the property no longer fit correctly into their frames.
 3. There are problems with the storage heaters, which has led to unreasonably high heating costs.
4. The tenant stated in her application that the following work required to be carried out at the property:
 - Repairs are required to roof slates and possibly also more substantive work to the roof.
 - Windows need to be replaced.
 - Work is needed to remedy the heating situation.
5. The application stated that replacement windows had been left in a communal area for over a year, with no arrangement having been made for them to be fitted. It also stated that the letting agent, Martin and Co, had tried to carry out the repairs required, but was unable to authorise repairs above £200 without the landlord’s permission, which had not been forthcoming.

6. On 28 November 2015, the President of the panel issued a minute of decision stating that she considered that in terms of section 23 (3) of the Act there was no longer a reasonable prospect of the dispute being resolved between the parties at a later date; that she had considered the application paperwork submitted by the tenant, comprising documents on 10 November 2015; and intimating her decision to refer the application to a panel committee for determination.
7. The President of the panel wrote to the parties on 14 December 2015, notifying them under and in terms of the 2006 Act of her decision to refer the application under Section 22(1) of the Act to a private rented housing committee and that an inspection and a hearing would take place on 8 February 2016. Written representations were requested by 4 January 2016. No written representations were received from either party by the deadline.
8. On 31 December, a request was received by the panel from Roger Randall, a director of RLR Properties Limited, who is based in London, to postpone the inspection and hearing to a later date when he would be in Aberdeen. The committee issued a direction to the parties on 22 January 2016, refusing this request because the committee considered that, given the nature of the repairing issues, the inspection and hearing should go ahead at the earliest opportunity. The committee pointed out that it was open to the landlord to send another representative to attend the inspection and hearing. The committee also invited the landlord to submit any further written evidence by 3 February.
9. In its direction, the committee also noted that it could only consider complaints which the tenant has notified to the landlord prior to making the application, in terms of section 22 (3) of the Housing (Scotland) Act 2006. The committee noted from the email dated 30 October 2015 sent by Martin and Co to Hamish Mackenzie, the tenant's representative that the tenant had notified the landlord's agent of her complaints with regard to the leaking roof and the windows. It was not clear from this, however, whether the tenant had notified the landlord of her complaint about the storage heaters, which was included in her application form. The tenant was therefore invited to submit any further evidence that this matter had been notified to the landlord prior to submitting her application by 3 February 2016.
10. No further written representations were received from either party in response to the direction. An email was received from Mr Randall on 29 January, advising that the tenant had left the property on 1 January 2016. On 4 February 2016, the committee issued a minute of continuation to a determination under Schedule 2 Paragraph 7(3) of the Act. This stated that, having received confirmation from the tenant that the tenancy had been

lawfully terminated, the tenant was to be treated as having withdrawn her application in terms of Schedule 2 paragraph 7 (1) of the Act. It then stated that the committee considered that the application should be determined on public interest grounds, due to the nature of the alleged repairs and the potential effects on any future tenants/occupiers if those allegations were substantiated.

The inspection

11. The committee inspected the property on the morning of 8 February 2016. The weather conditions at the time of the committee's inspection were dry and bright. The landlord was not present at the property during the inspection. The committee was provided with a set of keys to the property by the letting agent, as agreed with Mr Randall. Photographs were taken during the inspection and are attached as a schedule to this decision.

The property

12. The property is a top floor flat, estimated to be in the region of 115 years old. The property comprises: hallway, living room, bedroom, kitchen and bathroom.

The hearing

13. Following the inspection, the committee held a hearing at the Credo Centre, 14-20 John Street, Aberdeen AB25 1BT. The landlord was not present or represented at the hearing. It was clear from the case file that the landlord had been given adequate and timeous notification of the time, date and place of the hearing. The committee therefore made its decision on the basis of its inspection and all the written evidence before it.

The evidence

14. The evidence before the committee consisted of:
 - The application form completed by the tenant.
 - Registers Direct copy of Land Register title KNC1856
 - Short assured tenancy agreement between the parties in respect of the property dated 21 November 2014, together with form AT5 of the same date.
 - Emails dated 1 2, 5 and 30 October 2015 between Martin and Co to Hamish Mackenzie, the tenant's representative regarding repairs notified by the tenant to the letting agent. The email of 30 October from Martin and Co set out in detail all of the repairs issues which had been brought to its attention by the

tenant, including her complaints with regard to the leaking roof and the windows.

- The committee's inspection of the property.

Summary of the issues

15. The issue to be determined was whether the property meets the repairing standard as set out in Section 13 of the Act, and whether the landlord had complied with the duty imposed on it by section 14 (1) (b).

Findings of fact

16. The committee made the following findings in fact:

- The tenant entered into a tenancy agreement with the landlord on 21 November 2014 to rent the property for one year from 2 January 2015.
- The committee in its inspection carefully checked the items which were the subject of the complaint. The committee observed the following:
 - i. The windows had been replaced with new UPVC windows throughout. These appeared to be in a reasonable state of repair and proper working order.
 - ii. There were marks on the ceilings in the bathroom, hall and kitchen. Damp readings were taken, but there was no evidence of damp. There were no obvious signs of water ingress. The marks on the ceilings appeared to be a decorative matter, rather than the result of water ingress or damp.
 - iii. There were electric heaters in the hall, living room and bedroom which appeared to have been recently installed.
 - iv. There was one battery operated smoke alarm in the property, which was in the hallway. There was no heat alarm in the kitchen.

Reasons for decision

17. Following its inspection and the hearing, the committee determined that:

- the property is wind and watertight and in all other respects reasonably fit for human habitation.
- 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

18. The complaints before the committee as set out in the tenant's application and the committee's determinations in relation to each of these are set out below.
 1. *There is water coming in from the roof.*
19. The committee did not observe any signs of water ingress during its inspection. Damp readings were taken, but there was no evidence of damp. The committee therefore determines that the property is wind and watertight and in all other respects reasonably fit for human habitation.
 2. *The windows in the property no longer fit correctly into their frames.*
20. The committee observed at its inspection that the windows had recently been replaced throughout the property. The tenant had made reference in her application to replacement windows which had been left sitting out in the communal hallway for some time, but the committee did not observe these at its inspection. It therefore appears that these replacement windows have now been fitted. The new windows appeared to be in a reasonable state of repair and proper working order, and to be wind and watertight.
 3. *There are problems with the storage heaters, which has led to unreasonably high heating costs.*
21. There was no evidence before the committee that the tenant had notified the landlord of this complaint, although the email dated 30 October 2015 sent by Martin and Co to the tenant's representative did make reference to a quotation for a heating upgrade. The tenant was invited to submit any further evidence that this matter was notified to the landlord prior to submitting her application, but no such evidence was received. The committee was therefore unable to consider this complaint, but observed that new heaters appeared to have been installed in the hall, living room and bedroom.

Observations by the committee

22. The committee wishes to make the following observations on an additional matter which was not included in the tenant's application.
23. The committee observed that there is only one battery operated smoke alarm within the property, in the hallway. This does not comply with the current statutory requirements for rented properties. The repairing standard includes a requirement under section 13 (1) (e) of the 2006 Act that the house has satisfactory provision for detecting fires and for giving warning in the event of fire or suspected fire. In determining whether a property has satisfactory provision for detecting fires and for giving warning in the event of fire or suspected fire, section 13 (5) of the Act states that regard is to be had to any

building regulations and any guidance issued by the Scottish Ministers on these matters.

24. The current Scottish Government statutory guidance states that there should be at least:
- one functioning smoke alarm in the room which is frequently used by the occupants for general daytime living purposes
 - one functioning smoke alarm in every circulation space, such as hallways and landings.
 - one heat alarm in every kitchen
 - and all alarms should be interlinked

Summary of decision

25. On the basis of all the evidence before it, the committee found that at the time of its inspection the property was in a state of repair which met the repairing standard. The decision of the committee was therefore unanimous not to make a Repairing Standard Enforcement Order and to dismiss the tenant's application.

Right of Appeal

26. 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.
27. The appropriate respondent in such appeal proceedings is the other party to the proceedings and not the panel or the committee which made the decision.

Effects of Section 63 of the 2006 Act

28. 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. 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... **Sarah O'Neill** Date... 17/2/16

Sarah O'Neill, Chairperson

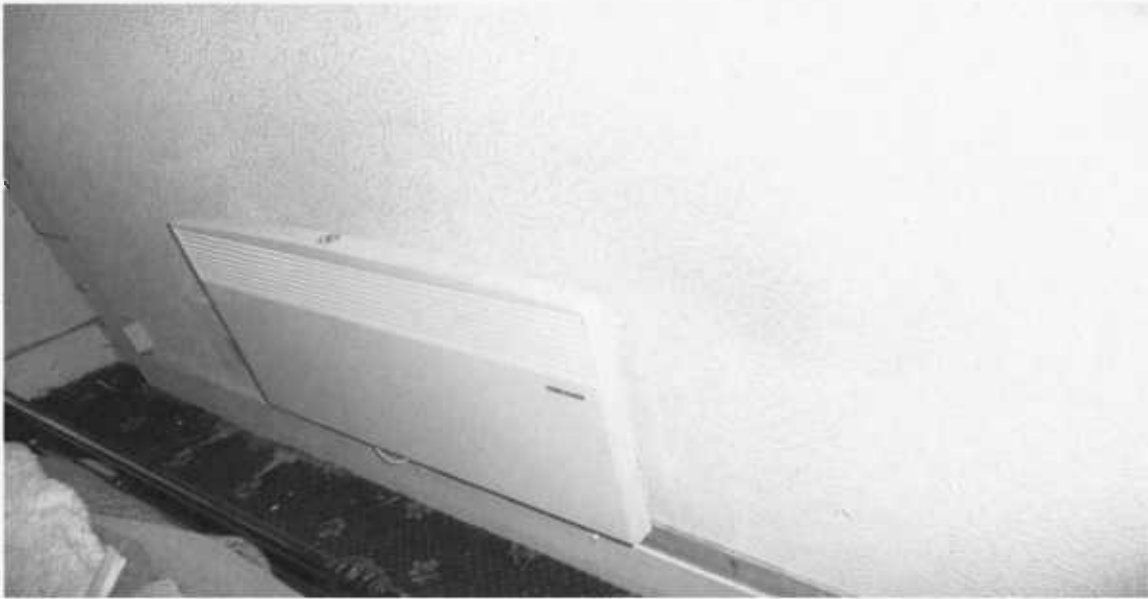
Schedule of photographs of 140F Walker Road, Aberdeen, AB11 8BX



Flat is top floor left.



Alleged damp ceiling – due to poor decoration



Replacement heater (one of 3)



Replacement window in bedroom



Replacement window in Living room



Single smoke alarm in hallway