



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

prhp Ref: PRHP/RP/16/0010

Re : Property at 1 Merkland Road, Aberdeen, AB24 3HR ("the Property")

The Parties:-

Kirsti Sippel and Ella Simola, formerly residing at 1 Merkland Road, Aberdeen, AB24 3HR ("the Applicants")

Note: The application having been withdrawn; the tenancy under which the application was made, having been lawfully terminated; and the Committee having determined to continue with the determination of the application in terms of Minute of Continuation dated 10 March 2016 under Schedule 2 Paragraph 7(3) of the Act; there was no tenant.

Fiona Clenshaw, residing at 28 Bellwood Drive, Aboyne, AB34 5QG (represented by her agent Jackie Stewart of Stonehouse Lettings, Osborne House, 27-30 Carden Place, Aberdeen, AB10 1UP) ("the Landlord(s)")

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 the Landlord 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 January 2016 the Applicants 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 stated that the Applicants 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:-
 - (a) the house is wind and watertight and in all other respects reasonably fit for human habitation; and
 - (b) 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. By letter dated 2 February 2016 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 Applicants.
5. Following service of the Notice of Referral the Applicants made written representations to the Committee. The Landlord made written representations to the Committee.

6. Following the submission of written representations the Applicants vacated the Property and the tenancy lawfully ended. Despite this the Committee decided to continue with the application for the reasons set out in the Minute of Continuation dated 10 March 2016, namely that the disrepair alleged by the former tenant was of a significant and serious nature and it was alleged that the installations for heating in the property were not in proper working order.
7. The Private Rented Housing Committee inspected the Property on the morning of 22 March 2016. The Landlord's Agent was present and allowed access to the Property.
8. Following the inspection of the Property the Private Rented Housing Committee held a hearing at Aberdeen and heard from the Landlord. The Landlords were represented by her agents, Jackie Stewart and Moira Gold of Stonehouse Lettings. The Applicants were not present.
9. The Landlord's agent submitted as follows:- With regard to the allegations of mould and damp in the bedrooms, the Landlord's agent made reference to a report instructed by the Landlord to look at the issue. The report had concluded that any mould or damp was a result of the Tenant's failure to adequately heat and ventilate the Property. The Landlord's agent confirmed that during the tenancy they had witnessed mould in the bedrooms, around the windows. On occasion they had wiped condensation from the window surrounds. The Landlord's agent confirmed that the property had been decorated after the Applicants had vacated. Reference was made to the Inventory Report dated 18 September 2015 which had been undertaken prior to the commencement of the tenancy. The Landlord's agent submitted that if there had been any issues with damp in the Property, it was likely that these would have been raised by the report author.
10. The Landlord's agent also addressed the allegations with regard to the heating in the Property. She advised that she had visited the Applicants on the 10 December 2015 and had noted that whilst the space heater in the living room was switched on, the remaining heaters in the bedrooms and the hall were not. The Applicants had been given instructions on how to use the space heaters and panel heaters within the Property. However it was the Landlord's position that they had failed to comply with the instructions and had failed to adequately heat the house. The Landlord's agent confirmed that a recent electrical installation condition report had been carried out together with portable appliance testing and that she would provide copies of the relevant certificates to the Committee. These were emailed to the Committee on 23 March 2016 and confirmed that the testing had been carried out on 18 March 2016 with no defects noted.

Summary of the issues

11. The issues to be determined are whether or not the Property meets the Repairing Standard to the extent put at issue within the application, as at the date of the Hearing.

Findings of fact

12. The Committee finds the following facts to be established:-
 - The tenancy is a short assured tenancy between the Landlord and the Applicants in respect of the Property which commenced on 21 September 2015.
 - The tenancy has now been lawfully terminated and the Applicants have vacated.
 - The Property consists of two bedrooms, a living room, internal kitchen, internal bathroom and hall.
 - The installations within the Property for heating consist of a space heater in the living room, a space heater in the hall and a panel heater in each bedroom.
 - The installations for heating within the Property are in good working order.
 - There is presently no evidence of mould in the Property.
 - There are readings to indicate damp on the left hand side of the window in the smaller bedroom

- An electrical installation condition report was carried out on 18 March 2016 and confirms the electrical installations within the Property to be in good working order.

Reasons for the decision

13. The Committee determined the application having regard to the terms of the application, the written representations, their inspection and the submissions made by the Landlord's agent at the Hearing, together with the electrical inspection report dated 18 March 2016.
14. The Committee was satisfied having regard to all of the available evidence that there was sufficient information and material upon which to reach a fair determination of the application.
15. The Committee noted during the inspection that the electric heating installations within the Property were all switched on and emanating heat. The Committee also noted the terms of the electrical inspection report produced by the Landlord. The Committee was satisfied that the installations within the Property for heating were in good working order.
16. The Committee did not find any evidence of mould within the Property at the time of the inspection. It was noted that the Property had been freshly decorated following the Tenant's departure. The Committee noted the only evidence of damp within the Property to be on the left side of the window in the smaller bedroom. However the Committee took the view that the readings were not so significant as to amount to a failure to comply with the duty to maintain the Property wind and watertight.
17. The Committee noted the Landlord's agent had witnessed condensation and mould within the Property during the tenancy and had taken steps to deal with same. In the absence of submissions from the Applicants the Committee could reasonably assume that any issues with condensation or mould were caused by a failure on the part of the Applicants to adequately operate the heaters within the Property, as had been concluded by the Landlord's expert report. The Committee accepted that the Landlord's agent had visited the Property in December 2015 and had noted that only the storage heater in the living room was being used. The Committee further accepted that the Applicants had been given instructions on the use of the heating with the Property.
18. For these reasons the Committee concluded that the Landlord has not failed to comply with the duty imposed by section 14(1)(b) of the Act. The Committee would however wish to recommend that the Landlord instruct a damp specialist to investigate the cause of the readings in the smaller bedroom.

Decision

19. The Committee accordingly determined that the Landlord had complied with the duty imposed by Section 14 (1)(b) of the Act and the Property met the Repairing Standard.
20. The decision of the Committee was unanimous.

Right of Appeal

21. **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

22. 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.

R O'Hare

Signed

Date 6 April 2016

Ruth O'Hare
Chairperson