



## **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 Flat 10, 79 Lancefield Quay, Glasgow, G3 8HA ("the property")

Mr Chin-ling Lancelot Luk, Flat 10, 79 Lancefield Quay, Glasgow, G3 8HA ("the tenant")

Mr Dave Walker, c/o Infiniti Properties, 137 High Street, Glasgow, G1 1PH ("the landlord")

Reference number: PRHP/RP/16/0063

#### **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

2016. A letter dated 15<sup>th</sup> December 2015 from the letting agents to the tenant was provided. The title deeds of the property were made available to the committee. The title identified the owner of the property as David Robert Norman Walker.
6. By email of 6<sup>th</sup> November 2015, the tenant had brought the issue to the attention of the letting agents. The email read, inter alia, *"The boiler in the flat stopped working...When I tried to turn on hot water/heater, the red light on the control panel lit up indicating fault."*
  7. The tenant's complaint was received by the letting agents who, by email of 9<sup>th</sup> November 2015 to the tenant, confirmed that, *"the heating engineer will be collecting the security keys from our office tomorrow morning to carry out the boiler repair tomorrow."*
  8. By minute, dated 24<sup>th</sup> February 2016, 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.
  9. By email to the PRHP dated, "1<sup>st</sup> April 2016, the tenant advised that he was vacating the property on 9<sup>th</sup> April 2016. This was confirmed by the tenant by email of 11<sup>th</sup> April 2016, which read, "I have been given two month notice to vacate and I left the property today."
  10. By Minute of continuation dated 15th April 2016 the committee continued the application.
  11. An inspection of the property and a hearing before the committee were assigned for 22<sup>nd</sup> April 2016. The committee comprised the following members:
    - (i) Miss Simone Sweeney, Legal member and;
    - (ii) Mr Andrew Taylor, Surveyor member.
  12. An inspection of the property took place at 10.45am on 22<sup>nd</sup> April 2016. The landlord was present. There was no representative from the letting agents and the tenant, having now vacated the property was absent.
  13. Following the inspection, a hearing of evidence took place at Wellington House, 134-136 Wellington Street, Glasgow, G2 2XL. The tenant appeared at the hearing. Having had it explained to him by the PRHP clerk that he could not participate in proceedings but could only observe, the tenant chose not to remain at the hearing. Only the landlord was in attendance at the hearing and the committee heard representations from him. The committee considered these together with the application and documentation provided by the parties. At the

17. The landlord submitted that he was committed to the works being repaired. In light of the fact that he was abroad, his main means of communication with the letting agents was by email. The landlord expressed his frustration at the letting agents' failure to facilitate matters quickly on his behalf. He provided dates to the committee of his attempts to progress matters. Emails had been sent by him to the letting agents on 1<sup>st</sup> and 4<sup>th</sup> December 2015. A response was received from the letting agents on 16<sup>th</sup> December 2015 advising the landlord that the letting agents had had no success in contacting the tenant. A letter had been issued to the tenant encouraging him to respond by 22<sup>nd</sup> December 2015. That letter (which the tenant had produced amongst his papers for the committee) was dated 15<sup>th</sup> December 2015 and made clear that further repairs would be necessary to make the boiler fully operational again. The tenant responded to the letting agents by email of 23<sup>rd</sup> December 2015 (A copy of that email was before the committee). By email of 23<sup>rd</sup> December 2015, the tenant denied having been responsible for the damage to the flue pipe. Given that this went against the landlord's information, he instructed the letting agents to make it known to the tenant that there was no evidence of any damage to the flue pipe prior to him residing at the property and therefore he considered the tenant wholly responsible for the cost of all necessary repairs. The landlord continued to chase the letting agents for updates (referring to emails of 12<sup>th</sup> January, 15<sup>th</sup> January, 17<sup>th</sup> February and 21<sup>st</sup> March 2016) on what efforts they had made to have the repairs carried out to the flue. It was of grave concern to the landlord that the property was without heating for two months during the winter. The letting agents continued to advise that no access had been gained to the property, that the repairs remained outstanding but that notice had been given to the tenant to vacate the property. The landlord submitted that the works were not carried out until after the tenant left the property. The repairs were completed on 12<sup>th</sup> April 2016.
18. When asked if there was anything else which the landlord wished the committee to consider in response to the tenant's application, the landlord submitted that the instruction manual for the boiler was within the property from the commencement of the tenancy. There was no reason for the tenant to have no knowledge of how to operate the heating system. In his submission there was nothing wrong with the boiler itself which caused there to be no heating or hot water at the property. Rather the damage to the flue pipe was the only issue at the property and this was the direct result of the actions of the tenant in the landlord's opinion.

### **Summary of the issues**

19. The issues to be determined are;
- (i) whether the property meets the repairing standard set out at section 13 (1) of the Act in terms of (a) the boiler not working; (b) the flue pipe having been damaged and

31. That the report confirms that the engineer identified the flue to be dismantled within the loft space.
32. That the flue was no longer connected to the boiler.
33. That the damage to the flue prevented the heating system from operating effectively.
34. That a gas safety certificate, dated 19<sup>th</sup> November 2014, identified no issues with the flue pipe or the heating system.
35. That this certificate was produced following an inspection of the boiler and heating system prior to the tenant coming to reside at the property.
36. That the committee accepts the evidence of the landlord that the tenant's belongings were stored within the loft space, including a large cardboard box.
37. That the tenant does not dispute that the box was within the loft space.
38. That a photograph of the cardboard box was placed before the committee at the hearing.
39. That, on the balance of probabilities and in the absence of any alternative proposition from the tenant, that the large cardboard box and other items belonging to the tenant had been forced into the loft space and had damaged the flue pipe.
40. That remedial works were carried out to the flue pipe on 20<sup>th</sup> November 2015 but further works were required to enable the boiler to be fully operational and for these works to be completed, access to the property was required from the tenant.
41. That the letting agents attempted to contact the tenant advising that the flue pipe was damaged, that the tenant was held responsible for the damage by the landlord and that he required to provide access for further works to be completed.

48. That in the absence of the repairs the boiler was not operational and there was no heating or hot water supply at the property.
49. That the tenant submitted an application to the PRHP on 15<sup>th</sup> February 2016.
50. That the tenant left the property on 11<sup>th</sup> April 2016.
51. That the landlord's engineer completed works to the boiler at the property on 12<sup>th</sup> April 2016.
52. That, on inspection, the committee found the boiler to be fully operational and the committee was satisfied that all necessary repairs had been carried out to the flue pipe to ensure that it was in good working order and fully operational.
53. That, on inspection of hot water taps in the bathroom, the committee found the hot water system to be fully operational.
54. That, on inspection, the committee found the heating system at the property to be fully operational.
55. That the committee find no breach of the landlord in terms of section 13 (1) ( c ) of the Act.

**56. Reasons for decision**

57. At the time of the inspection of the property, the committee found the boiler to be fully operational and the hot water and heating systems to be in full working order. Having heard the submissions of the landlord and having considered the application and all the evidence before the committee from each party, in particular the findings of the engineer in his report of 23<sup>rd</sup> November 2015 and the contemporaneous photograph of the loft space from 20<sup>th</sup> November 2015, the committee concluded that the tenant's issue had been resolved. Any issue with the boiler was the result of the tenant's actions by forcing his belongings into the loft space and damaging the flue pipe linked to the boiler.
58. In the course of its inspection the committee identified smoke detectors fitted to the ceilings of the upper hallway of the property and the bedroom on the lower level. No tests were undertaken to identify if the smoke detectors were in proper working order as this formed no

part of the tenant's application and there had been no prior notification of any complaint with the smoke detectors to the landlord. However the committee observed that these smoke detectors were of an old style and should be replaced. Although the committee shall make no comment as to whether the smoke detectors met the repairing standard of section 13 (1) (f), it is recommended that the landlord provide and install smoke detection and alarm equipment in accordance with the British Standard on the design of fire detection installations for dwellings (BS5839 Part 6) in conjunction with the Scottish Government's Technical Handbook 2013 Domestic under Section 2 -Fire, Sub-section 2.11 Communication.

59. There being no evidence of any failure on the part of the landlord to satisfy the terms of the Act, the committee determines to make no Repairing Standard Enforcement order.

#### **Decision**

60. The committee determined that the landlord complies with the duties imposed by sections 13 (1) (c) and 14 of the Act.
61. The committee shall make no Repairing Standard Enforcement Order as required by Section 24 (1).
62. The decision of the committee was unanimous.

#### **Right of Appeal**

63. 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**

64. 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

.. Chair

Glasgow, 6<sup>th</sup> May 2016