



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

prhp Ref: PRHP/IV30/167/12

Re: Property at Wallfield Cottage, Lochills, Elgin, Moray, IV30 8LP ("the Property")

The Parties:-

MR DAVID RICHARDS formerly residing at Wallfield Cottage, Lochills, Elgin, Moray, IV30 8LP ("the Tenant")

ALBERT GEORGE LAING and HAMISH LAING both of Wallfield Farm, Urquhart, by Elgin (represented by their agent Mrs Donna Skelly of Messrs Grigor & Young, Solicitors, Elgin ("the Landlords"))

Decision

The Committee, having made such enquiries as it saw fit for the purposes of determining whether the Landlords has complied with the duty imposed by Section 14 (1)(b) in relation to the house concerned, and taking account of the evidence led at the hearing, determined that the Landlords had not failed to comply with the duty imposed by Section 14 (1)(b) of the Act.

Background

1. By application dated 14 September 2012 the Tenant applied to the Private Rented Housing Panel for a determination of whether the Landlords had failed to comply with the duties imposed by Section 14 (1)(b) of the Housing (Scotland) Act 2006 ("the Act").
2. The application by the Tenant stated that the Tenant considered that the Landlords had failed to comply with his duty to ensure that the house meets the repairing standard and in particular that the Landlords had failed to ensure that:-
 - (a) The Property is wind and watertight and in all other respects reasonably fit for human habitation;
 - (b) The structure of and exterior of the Property (including drains, gutters and external pipes) are in a reasonable state of repair and in proper working order;
3. By letter dated 15 October 2012 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 Landlords and the Tenant.
5. Following service of the Notice of Referral the Tenant made no further written representation to the Committee other than their original application. The Landlords agent (by letter dated 7 November 2012), made written representations to the Committee.

6. The Private Rented Housing Committee inspected the Property on the morning 7 February 2013. The Tenant was not present nor represented. The Landlords were present and represented by Mrs Skelly during the inspection.
7. Following the inspection of the Property the Private Rented Housing Committee held a hearing at Elgin Community Centre, Elgin and heard from the Landlords' representatives. The Landlords were not present but were represented by Mrs Skelly. The Tenant was neither present nor represented.
8. There were no submissions from the Tenant other than the original application.
9. The Landlords' agents submitted that they believed that the Property did comply with the repairing standard. Upon the Tenant leaving the Property there had been some evidence of mould within the Property. However the Landlords were of the view that this was caused by condensation and a failure on the part of the Tenant to properly ventilate the Property. The Tenant had not opened the windows at the Property very often and often run a tumble dryer in the Property. The Property had been redecorated since the termination of the tenancy. Whilst there were some defects in the external harling, the Landlords intended to carry out the appropriate repairs.

Summary of the issues

10. The issues to be determined are:-
 - (1) Whether there was dampness in the internal walls of the two bedrooms.
 - (2) Whether the lack of harling on the rear wall meant the Property was not properly wind and watertight and failed to meet the repairing standard.
 - (3) Whether there was cracked harling on the gable wall and whether this caused a failure to meet the repairing standard.
 - (4) Whether the ground at the rear of the Property was saturated and rendered the Property not properly wind and watertight.
 - (5) Whether any redecoration was required following eradication of any damp within the Property.

Findings of fact

11. The Committee found the following facts to be established:-
 - There was no dampness within the internal walls of the Property.
 - Whilst there was a lack of harling on the rear wall of the Property, this did not amount to a breach of the repairing standard.
 - Whilst there was cracked harling on the gable wall of the Property this was not a breach of the repairing standard.
 - The ground at the rear of the cottage was not saturated and did not appear to be a breach of the repairing standard.
 - The Property had been redecorated and there was no breach of the repairing standard.

Reasons for the decision

12. The Committee based its decision primarily on the evidence obtained during the course of its inspection.

The Committee inspected the two bedrooms at the Property. Damp meter readings were taken across various points. There were one or two very small areas of minor damp penetration, consistent with the age and type of Property. The Committee were satisfied that there were no damp issues within the bedrooms.

The Committee inspected the rear wall of the Property. Whilst there was very little harling left on this, the wall itself was sound and there was no evidence of damp penetration into the Property and accordingly the Committee were satisfied this did not breach the repairing standard.

The Committee inspected the gable wall. The harling was cracked and in generally poor condition. It would benefit from being replaced. However, again, there did not appear to be any damp penetration into the Property and accordingly there was no breach of the repairing standard.

The Committee inspected the ground to the rear of the cottage. Whilst the ground level was slightly high, again, there appeared to be no damp penetration into the Property. The ground was comparatively dry despite recent heavy rainfall in the area. Accordingly the Committee were satisfied there was no issue here.

Overall the Committee were satisfied that the Property was properly wind and watertight and free of damp. The Committee noted that the Landlord had carried out redecoration throughout the Property since the Tenant's departure and accordingly no redecoration was required.

The Committee did note that there was only a battery powered smoke alarm whereas the relevant fire regulations now required a hardwired smoke alarm to be installed. The Committee would encourage the Landlords to address this prior to re-letting the Property, to ensure he was compliant with the relevant fire regulations.

Decision

13. The Committee accordingly determined that the Landlords had not failed to comply with the duty imposed by Section 14 (1)(b) of the Act.
14. The decision of the Committee was unanimous.

Right of Appeal

15. **A Landlords 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

16. 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.

Signed **E Miller** Date..... *22 / 2 / 13*

Chairperson