



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

prhp Ref: prhp/EH27/182/12

Re : Property at 13a Humble Holdings, Kirknewton EH27 8DS ("the Property")

The Parties:-

Sean Patrick Adam and Marie Gina Adam, 13a Humble Holdings, Kirknewton EH27 8DS ("the Tenant")

Malcolm Galloway, Orchardfield Farm Cottage, Kirknewton EH27 8DX ("the Landlord")

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 1 October 2012 the Tenant 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 by the Tenant stated that the Tenant 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 water tight and otherwise 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) the house has satisfactory provision for detecting fires and for giving warning in the event of a fire or suspected fire.
3. By letter dated 1 November 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 Landlord and the Tenant.

5. Following service of the Notice of Referral the Tenant, by letter dated 3 November 2012 made written representations to the Committee. The Landlord (by letter from his solicitors dated 14 November 2012), made written representations to the Committee.
6. The Private Rented Housing Committee inspected the Property on the morning of 18 December 2012. The Committee comprised George Clark (chair), Donald Marshall (surveyor) and Christine Anderson (housing member). The Tenant was not present or represented during the inspection. The Landlord was present during the inspection.
7. Following the inspection of the Property the Private Rented Housing Committee held a hearing at the Howden Park Centre, Livingston and heard from the Landlord. The Tenant was not present or represented at the hearing.
8. The Tenant, in the application submitted as follows:- the main road leading to the Property had a number of deep potholes, the roof of the conservatory leaked, the windows of the greenhouse leaked, the water hose reels attached to the side of the house did not work, some of the ceiling lights and under-cupboard lights in the kitchen were not working, the main hallway lights were not working, the skylight window in the office was leaking, the guest room shower knob and sink taps were extremely difficult to turn on and off, the lights in the Lady of the House bathroom were not working properly and the shower in that room could only be turned on and off using two hands, the light rope cord in the storage room bathroom was broken off and the light could not be used, the door of the electrical metal box at the front of the house was broken, there was no carbon monoxide detector in the area of the central heating boiler in the utility room, there did not seem to be any way of defrosting the fridge/freezer and the freezer was blocked with ice, the water coming out of all taps apart from the kitchen sink was cloudy and did not taste pure, almost all of the doors were extremely difficult to open or close, the front garden fence was broken, the lawnmower was not working properly, the smoke alarms in the hallway were broken, the patio wooden furniture and decking were a mess and there was a serious infestation of mice.
9. The Landlord submitted as follows:- the road is owned in common and it is possible to get to and from the house without difficulty, the leak in the conservatory roof had been repaired, a loose window pane in the greenhouse had been replaced, the water hose reels had been working when the tenant moved in and had, in any event, been used by the Tenant on numerous occasions to re-fill the fish pond to the rear of the property. An electrician had recommended changing the transformer unit arrangement which controlled three of the spotlights in the kitchen, but had checked the main circuit breaker on 24 August 2012 and had reported that it was functioning properly. The Landlord had attended to a very minor leak in the skylight window in the office on 12 August 2012 and had had no subsequent complaints from the Tenant of further leakage. The electrical metal box at the front of the house was the property and responsibility of Scottish Power, and a carbon monoxide detector had been installed in the utility room on 19 October 2012. The Tenant's solicitor had advised the Landlord immediately prior to the inspection that the Tenant had, over the previous weekend, moved out and was now living in Switzerland and the solicitor had, after the inspection, handed back the keys.

Summary of the issues

10. The issues to be determined were whether the Property met the repairing standard as laid down in Section 13 of the Act and whether the Landlord had complied with the duties imposed on landlords by Section 14(1)(b) of the Act.

Findings of fact

11. The Committee finds the following facts to be established:-
 - The tenancy is a Short Assured Tenancy
 - The Tenant appears to have vacated the Property. Had the Committee been aware of this prior to the inspection, the application would have been considered

- to have been abandoned and it would not have been necessary for the inspection and hearing to go ahead.
- The main road leading to the Property is potholed in places, but navigable with care and is in a condition typical of farm access roads.
 - There is no sign of any ongoing leak in the roof of the conservatory.
 - The leaking window in the greenhouse has been repaired.
 - The Committee accepts the evidence given by the Landlord at the hearing that the water hose reels have been used by the Tenant to refill the fish pond and were working at the start of the tenancy.
 - There is adequate lighting in the kitchen.
 - The hallway lights are functioning properly, but two of the bulbs require to be replaced. That would be the responsibility of the Tenant.
 - The skylight window in the office has been repaired and shows no sign of leaking.
 - Both shower fittings and all taps in the bathrooms could be turned on and off without any difficulty.
 - The light rope cord in the storage room bathroom is not broken and the light is functioning properly.
 - The electrical metal box at the front of the house is the property and responsibility of Scottish Power.
 - A carbon monoxide detector has been fitted in the utility room.
 - The fridge/freezer can be easily defrosted by switching it off, the switch being located inside the fridge and being readily visible. The landlord, at the inspection, demonstrated this to the satisfaction of the Committee.
 - The water from all of the taps was running clear, but the Tenant would or should have been aware in any event that all drinking water in a house should be drawn directly from the mains water supply.
 - All of the doors in the Property can be easily opened and closed.
 - The front garden gates and fences are in a reasonable state of repair.
 - The Committee did not see or test the lawnmower, but would not, in any event, have included an inefficient lawnmower in any Repairing Standard Enforcement Order.
 - The Committee could not test the two smoke alarms in the property as the batteries had been removed.
 - There was no evidence, in any visible parts of the Property, of any infestation by mice.
 - The patio and outdoor furniture were in a reasonable state of repair.

Reasons for the decision

12. The Committee could not uphold any element of the repairing issues included in the application. It accepted that the list attached to the application had been prepared by the Tenant in November 2011, but the failure of the Tenant to advise the Private Rented Housing Panel that most, if not all of the matters contained in the application had been dealt with was a matter of great disappointment to the Committee and had resulted in not insignificant cost to the public purse. The Committee considered that the Landlord's solicitor's letter of 14 November 2012, a copy of which had been sent to the Tenant on 27 November should have elicited a response from the Tenant and accurately reflects the condition of the Property at the time of the inspection. The contents of that letter are summarised in paragraph 9 above and, had the Tenant accepted its terms, the subsequent inspection and hearing might have been unnecessary.

Decision

13. The Committee accordingly determined that the Landlord 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 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

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 **G Clark** Date *18 December 2012*
Chairperson