



**PRIVATE RENTED HOUSING COMMITTEE
STATEMENT OF REASONS**

PROPERTY:

63A East Commerce Street, Lossiemouth, Morayshire, IV31 6QQ

INSPECTION & HEARING

17th May, 2010

STATEMENT OF REASONS

INTRODUCTION

1. This is an application dated 9th February, 2010 ('the application') made under section 22(1) of the Housing (Scotland) Act 2006 ('the Act') by Miss Susan Fields ('the tenant') regarding the property known as and forming 63A East Commerce Street, Lossiemouth, Morayshire, IV31 6QQ ('the property'). The landlord of the property is Mr and Mrs Stephen Parker ('the landlord') of 3 Lesmurdie House, Elgin, Morayshire, IV30 4JF.
2. In the application the tenant contends that the landlord has failed to comply with the duty imposed on them by section 14(1)(b) of the Act as the property fails to meet the repairing standard as set out in section 13(1) of the Act.
3. The tenant ceased occupation of the property and their tenancy expired prior to the hearing. In terms of section 7(1) of schedule 3 of the Act the tenancy is considered to have been withdrawn. Notwithstanding this, the Committee can continue to determine the application in terms of section 3(b)(i) of the Act. The Committee proceeded to make such a determination.
4. The Committee comprised

Chairman	Mr. S Walker
Surveyor	Mr M Andrew
Housing Member	Mr M Scott

The Committee was assisted by the Clerk to Committee, Mr. Robert Shea.

THE DOCUMENTATION

5. The Committee considered all the documents referred to it by the parties. In particular, the application; the tenancy agreement; the exchange correspondence between the parties and the written representations from both the tenant and landlord.

THE INSPECTION

6. The inspection took place on 17th May, 2010. Only the landlord's agent, Mr Michael McDonald of DM Hall, attended the inspection.
7. Mr Robert Shea, Clerk to Committee, introduced the Committee to the landlord's agent and the Committee proceeded to inspect the property.

DESCRIPTION OF THE PROPERTY

8. The property is terraced first floor and attic maisonette flat which was probably constructed during the 19th century. The property comprises of an internal flat entrance door, sitting room/Kitchen with electric convector heater and double glazed UPVC window, spare bedroom with UPVC double glazed window with 4 missing receiving spacers and convector heater, internal bathroom, internal hallway with two mains interlinked smoke alarms en route to master attic bedroom with velux window. On the outside of the property the roof appeared to be in a good state of repair as did the external structure of the building.

THE HEARING

9. The hearing took place at Lossiemouth Community Centre on 17th May, 2010. Only the landlord's agent attended the hearing. The tenant's complaint that the landlord had failed to meet the repairing standard is detailed in section 4 of the application where she itemises 17 grounds of complaint. These can be summarised as follows;-

1. Inadequate insulation of roof and flooring over access lane
2. Insufficient electric heating
3. Excessive damp/condensation problems & poor ventilation
4. Drafts from gap in living room window
5. Drafts from bottom of living room front door
6. Vent under kitchen units
7. Inadequate bathroom extractor fan
8. No heating in spare bedroom
9. Fire alarms on two levels not interlinked
10. No provision of lighting in access lane
11. TV aerial does not work
12. Shower door is faulty
13. Ripped vinyl in kitchen
14. Damage to paintwork
15. Poor drainage in access lane
16. Cooker extractor fan not effective
17. Front door to flat is inadequate

THE ACT

10. Section 14(1)(b) of the Act provides;-

“14 Landlord's duty to repair and maintain

(1) The landlord in a tenancy must ensure that the house meets the repairing standard—

(a) at the start of the tenancy, and

(b) at all times during the tenancy.”

11. Section 13 of the Act provides;

“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

(f) the house has satisfactory provision for detecting fires and for giving warning in the event of fire or suspected fire.”

FINDINGS OF FACT & REASONS

12. The complaint before the Committee as per the tenant's application and our determinations in relation to this are as follows;-

(a) Inadequate insulation of roof and flooring over access lane

The Committee was unable to fully inspect the insulation in the roof and floor as it was impossible to access. It was possible to have limited access under the floor in the kitchen and there appeared to insulation present. As it is the tenant's burden to prove their case, on the balance of probabilities, there is insufficient evidence before the Committee to determine that there was inadequate insulation of roof and flooring over access lane. Accordingly, the Committee dismisses this complaint.

(b) Insufficient electric heating

The tenant's entered into a contract of lease in respect of the property and they would have been aware of the heating which was present in the property. Insufficient heating is not a breach of the repairing standard if the heating itself

is still in a reasonable state of repair and in proper working order. There is nothing to suggest that this is not the case and accordingly the Committee dismisses this complaint.

(c) Excessive damp/condensation problems & poor ventilation

The Committee tested for the presence of damp/condensation with a damp meter. No moisture was present. In addition, the Committee observed that each room had sufficient ventilation in the form of a functioning window/velux or, in the case of the internal bathroom, a functioning extractor fan. The property is wind and water tight and in all other respects reasonably fit for human habitation and accordingly the Committee dismisses this complaint.

(d) Drafts from gap in living room window

The Committee observed there was a small gap at the top right of the window which was internal only. The property is wind and water tight and in all other respects reasonably fit for human habitation and accordingly the Committee dismisses this complaint.

(e) Drafts from bottom of living room front door

The Committee observed a gap at the bottom of the livingroom front door. This is an internal door as there is also an outside door which is communal. The landlord's agent gave the Committee an undertaking that this gap would be remedied within a reasonable period of time. Accordingly, in view of the minor contravention of the repairing standard and the fact that the agent has given an undertaking to the Committee, the Committee dismisses this complaint.

(f) Vent under kitchen units

The Committee did not observe any vent under the kitchen units. The property is wind and water tight and in all other respects reasonably fit for human habitation and accordingly the Committee dismisses this complaint.

(g) Inadequate bathroom extractor fan

The bathroom fan was functional and in a reasonable state of repair and in proper working order and accordingly the Committee dismisses this complaint.

(h) No heating in spare bedroom

As the property was leased without heating in this room, this is not a breach of the repairing standard. In any event, a new convector heater was observed on inspection. In addition, there were 4 missing receiving spacers on the window and the landlord's agents gave the Committee an undertaking that these missing receiving spacers would be remedied within a reasonable period of time. Accordingly, the Committee dismisses this complaint.

(i) Fire alarms on two levels not interlinked

The Committee observed two new mains, interlinked smoke alarms. The house has satisfactory provision for detecting fires and for giving warning in the event of fire or suspected fire. Accordingly, the Committee dismisses this complaint.

(j) No provision of lighting in access lane

As the property was leased without lighting in the access lane, this is not a breach of the repairing standard. In any event, there is a functioning outside light just above the external front door. Accordingly, the Committee dismisses this complaint.

(k) TV aerial does not work

On inspection the Committee had no method to determine whether or not the TV aerial was functioning. As it is the tenant's burden to prove their case, on the balance of probabilities, there is insufficient evidence before the Committee to determine that the TV aerial does not work. Accordingly, the Committee dismisses this complaint.

(l) Shower door is faulty

The Committee observed that the shower door was fully functional and in a reasonable state of repair and in proper working order. Accordingly, the Committee dismisses this complaint.

(m) Ripped Vinyl in kitchen

The Committee observed that there was a small rip to the vinyl, although this was under the kitchen unit which had space for a washing machine. Apart from that area, which would normally be covered by a washing machine, the vinyl was in a reasonable state of repair and in proper working order. Accordingly, the Committee dismisses this complaint.

(n) Damage to paintwork

The Committee did not observe any damage to paintwork. Accordingly, the Committee dismisses this complaint.

(o) Poor drainage in access lane

The conditions on the inspection day were dry and the Committee did not observe any poor drainage in the access lane. Accordingly, the Committee dismisses this complaint.

(p) Cooker extractor fan not effective

The cooker extractor fan was fully functional and in a reasonable state of repair and in proper working order. Accordingly, the Committee dismisses this complaint.

(q) Front door to flat is inadequate

The front door to the flat was functional and in a reasonable state of repair and in proper working order and accordingly the Committee dismisses this complaint.

SUMMARY OF DECISION

13. The Committee accordingly determines that the landlord had not failed to comply with the duty imposed by section 14(1)(b) of the Act. The Committee accordingly dismisses the application.

RIGHT OF APPEAL

14. A landlord or tenant has the right to appeal this decision to the Sheriff by summary application within 21 days of being notified of that decision.

EFFECT OF APPEAL

15. In terms of section 63 of the Act, where such an appeal is made, the effect of the decision and of any order is suspended until the appeal is abandoned or finally determined by confirming the decision, the decision and any order will be treated as having effect from the day on which the appeal is abandoned or so determined.

S P Walker

Signed 

Steven P Walker
Advocate & Barrister

Chairman
Private Rented Housing Committee

21st May, 2010