

## **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**

**Re : Property 3 Provost Graham Avenue, Aberdeen, AB15 8HB ('the Property')**

**The Parties:-**

**Gabor Keri and Gyorgyi Szecsko ('the Tenants')**

**David Willdigg, 41 Union Terrace, Aberdeen, AB10 1NP ('the Landlord')**

**(It was noted that the heritable proprietors of the Property are Lynne Boyd and David Willdigg in terms of the Disposition of the Property recorded in the Division of the General Register of Sasines for the County of Aberdeen on 14<sup>th</sup> November 2008))**

#### **Decision**

**The Committee, having made such enquiries as it saw fit for the purposes of determining whether the Landlords have complied with the duty imposed by Section 14 (1)(b) in relation to the Property 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 26<sup>th</sup> April 2009 the Tenants 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 Tenants stated that the Tenants considered that the Landlord had failed to comply with their duty to ensure that the house meets the repairing standard and in particular that the Landlord had failed to ensure that (1) the house is wind and watertight and in all other respects fit for human habitation (2) the structure and exterior of the house are in a reasonable state of repair and in proper working order (3) 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 and (4) the fixtures, fittings and appliances provided by the Landlord under the tenancy are capable of being used safely for the purpose for which they are designed. In particular they advised that:-
  - a. There is evidence of damp and mould in the Property.
  - b. The central heating does not work properly.
  - c. The insulation in the Property is not effective.
  - d. The washing machine does not rinse the clothes properly and
  - e. There is an odour of cigarette smoke in the hall outside the rear bedroom.
3. The President of the Private Rented Housing Panel after considering the application determined 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 Tenants.
5. Following service of the Notice of Referral:-
  1. The Tenants sent the following written representations to the Committee:-
    - a. Letter from Gabor Keri to PRHP with details of the alleged defects.
    - b. Report from Istvan Toth, surveyor dated 20<sup>th</sup> May 2009.
    - c. A copy of the lease between the parties.
  2. The Landlord sent the following written representations to the Committee:-
    - a. A copy of the letter he sent to the Tenants dated 26<sup>th</sup> April 2009.
    - b. Report from Atholls, chartered surveyors dated 5<sup>th</sup> May 2009.
    - c. Letter from the Landlord to the PRHP dated 25<sup>th</sup> May 2009.
    - d. The Energy Performance Certificate dated 21<sup>st</sup> April 2009. The energy efficiency rating of the Property is C71 and the recommendation made to improve the Property's energy performance is to install low energy lighting.
6. The Private Rented Housing Committee acknowledged that the Tenants had vacated the Property and in terms of Section 7(1) of Schedule 3 of the Act the tenancy is considered to have been withdrawn. However in terms of Section 3(b)(i) the Committee have power to continue to determine the application, despite the withdrawal. The Committee agreed that they would continue to determine the application as the original application included matters that related to the safety of the Property.
7. The Private Rented Housing Committee inspected the Property on the morning of 16<sup>th</sup> July 2009.

At the inspection they found as follows:-

  - a. There was evidence of slight mould at the top of the tiles around the bath, at one section of the skirting board in the rear bedroom and at the window frame in the attic room.
  - b. The central heating system was working. The landlords turned the system on during the inspection. The radiators started to warm up and there was hot water in taps in the kitchen. The Landlord showed the Committee the gas safety certificate for the central heating system.
  - c. The Committee looked into the rear eaves storage space and saw that insulation was present.
  - d. A washing machine and tumble drier were installed in the kitchen.
  - e. They did not detect smoke smells in the hall outside the rear bedroom. They noted that the wall between the property and the neighbouring property was a solid masonry wall constructed.
8. A hearing was held following the inspection of the Property. Mr Gabor Keri, one of the Tenants, the Landlord and Mrs Lynne Willdigg attended the hearing. They advised the Committee as follows:-

Damp and Mould

Gabor Keri advised the Committee that there was condensation in the attic room and there was mould around the window frame. There was also mould around the window in the rear bedroom and at the rear wall. Further there was mould in the bathroom. He advised that it took approximately three hours after a shower to remove the steam from the bathroom and he stated that a ventilator fan should be installed. He also advised that in his view, as the Property is built on an incline ground water gathers below the property and may be a cause of some of the dampness and mould he mentioned. He acknowledged that his family largely dried their clothes within the Property and they had not used the Tumble Drier as they believed that it did not work properly. He explained that his family occasionally used the communal drying green, when the weather permitted.

Lynne Willdigg advised the Committee that she had lived in the Property herself and raised her children there. She wasn't aware of any difficulties regarding ground water and

was not aware of any of the neighbouring properties having problems with accumulation of ground water as suggested by Gabor Keri. She also advised that the Tenants dried their clothes within the Property and in her view this was the reason the mould had developed. She did not consider it necessary to install a ventilator fan in the bathroom and she was not aware of such a fan having been installed in the neighbouring properties. She advised that the Tumble Drier does work, but the timer moves on slightly. She explained that there is a shared drying green for the Property. The arrangement is that the Tenants have exclusive use of the drying area two days a week and Saturday and Sunday.

#### Central Heating

Gabor Keri advised the Committee that he considered the central heating to be a disaster. He explained that the system regularly lost pressure and was not capable of keeping the property at a constant 30 degrees. He acknowledged that the Landlord had installed a new boiler in September 2008 however he explained that the new boiler had not resolve the pressure difficulties. He explained that his surveyor had advised him that the incorrect diameter pipe had been installed.

The Landlord questioned the authority of the Tenants surveyor on this matter as he is based in Budapest. He advised that his surveyors had inspected the system and were satisfied that it complied with the regulations.

#### Insulation

Gabor Keri advised that he accepted that the insulation in the eaves of the attic complied with the building regulations requirements at the time the attic conversion was carried out. However he advised that there was unreasonable heat loss from the Property.

#### Washing Machine

Gabor Keri advised the Committee that he withdrew this matter from his application.

#### Smoke Odours

Gabor Keri explained to the Committee that the neighbours regularly smoked within their property and he smelt smoke odours in the hall outside the rear bedroom in the evening. He acknowledged that the dividing wall between the Property and the neighbouring property is a solid granite wall. Notwithstanding this fact he believed that the smoke travelled into the Property. He suggested that the cause could be determined by removing the fitted wardrobe in the rear bedroom.

Lynne Willdigg advised the Committee that she had never experienced smoke odours in the Property when she had lived there. Their surveyor had advised that the joists run from front to back, there are no chimneys and in his view it is not possible for the smoke to travel from next door into the Property.

#### **Summary of the issues**

The issues to be determined are whether the defects claimed by the Tenants were present at the time of the inspection resulting in the Landlord failing to meet the Repairing Standard. As stated the defects claimed are:-

- a. There is evidence of damp and mould in the property.
- b. The central heating does not work properly.
- c. The insulation in the property is not effective.
- e. The washing machine does not rinse the clothes properly and
- f. There is an odour of cigarette smoke in the hall outside the rear bedroom.

#### **Findings of fact and reasons for the decision.**

The Committee finds:-

- a. The slight mould they saw in the Property was insufficient to result in the Property not being wind and water tight and reasonably fit for human habitation.

- b. The central heating system appeared to be in a reasonable state of repair and proper working order. The Committee witnessed the system working and examined the Safety Certificate for the system.
- c. The obligation on the Landlords in relation to insulation of the Property is to ensure that the Property is wind tight and reasonably fit for habitation. The Committee noted that there was insulation present in the eaves of the Property and there were no recommendation within the Energy Performance Certificate to improve the insulation. Therefore the Committee were satisfied that that the level of insulation in the Property does not prevent the Property from being wind tight and reasonably fit for habitation.
- d. The Committee made no determination regarding the washing machine as the Tenants withdrew this part of their application.
- e. The Committee did not find smoke odours in the Property at the time of the inspection, although they acknowledged that the Tenant had advised that the odours existed in the early evening. The Committee agreed that the presence of smoke odours in the Property alone would not result in the Property failing to meet the Repairing Standard.

#### **Decision**

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

The decision of the Committee was unanimous.

#### **Right of Appeal**

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**

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 **J Taylor**  
Chairperson 

.....

Date: 21<sup>st</sup> July 2009