



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

prhp Ref: PRHP/DD3/43/09

Re : Property at 16 Helmsdale Drive, Kirkton, Dundee ("the Property")

The Parties: MISS JACQUELINE FITCHIE formerly residing at 16 Helmsdale Drive, Kirkton, Dundee and now at 10 Gleneagles Road, Dundee, DD2 3GL ("the Tenant")

and

MR AND MRS DAVID CULLOCH, 6 Balkemback Cottage, Tealing, by Dundee ("the Landlords")

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 both the Landlord and the Tenant 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 May 2009 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 their duty to ensure that the Property meets the repairing standard and in particular that the Landlords had failed to ensure that:-
 - (a) the house is wind and watertight 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; and
 - (d) that the house has satisfactory provision for detecting fires and for giving warning in the event of fire or suspected fire.
3. By letter dated 8 July 2009 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 representations to the Committee other than their original application dated 14 May 2009. The Landlord (by letter dated 14 July 2009) made written representations to the Committee.
6. The Private Rented Housing Committee (comprising of Mr E K Miller, Chairman and Legal Member; Mr D Godfrey, Surveyor Member; and Mr J Wolstencroft, Housing Member accompanied by the Clerk, Mr Robert Shea) inspected the Property on the morning of 1 September 2009. The Tenant was not present during the inspection having now left the Property. The Landlords were present during the inspection.
7. Following the inspection of the Property the Private Rented Housing Committee held a hearing at The Apex Hotel, Dundee and heard from the Landlords. The Landlords were not represented. The Tenant was neither present nor represented.
8. The Committee considered the submissions of the Tenant as per their original application to the Private Rented Housing Panel, there being no other submissions to consider from the Tenant.
9. The Landlord submitted as follows:-
 - (i) The Tenant was a relative of the Landlords and they had specifically bought this property to allow her to rent it so that she could get a fresh start in life. The Landlords alleged that the Tenant had a drug problem and that they had been trying to help her. When they challenged her regarding the condition of the Property, there had been a breakdown in the relationship between them and this had culminated in the Tenant lodging a complaint to the PRHP. The Landlords acknowledged that the Property was not in the best of condition however a lot of the damage had been caused by the Tenant and her children. They had tried their best to deal with the majority of the complaints made by the Tenant and although they accepted there were still one or two jobs to do finances were preventing them from dealing with it when they would like i.e. replacement of some of the windows in the property.

Summary of the issues

10. It was clear to the Committee that whilst some work had been carried out to the Property over recent months there were issues still to be resolved. The issues to be determined are as listed by the Tenant in her application and correspondence and are as follows:-
 - (a) whether the gas boiler in the Property is in proper working order;
 - (b) whether there is a proper supply of hot water and heating at the Property;
 - (c) whether the window in the kitchen is nailed down and is unable to be opened properly;
 - (d) whether the shower is capable of being used properly without it tripping;
 - (e) whether the toilet is in proper working order;
 - (f) whether the guttering outside the front of the building needs repaired or replaced;
 - (g) whether the plumbing outside the Property was faulty as alleged by the Tenant;
 - (h) whether there was a proper extractor fan in the kitchen and whether it was in proper working order;

- (i) whether there was a proper flow of water from the bathroom taps in the Property and whether they were leaking;
- (j) whether the heater in the hallway under the stairs was in proper working order and attached to the wall;
- (k) whether the window in the living room of the Property were wind and watertight.
- (l) whether there was proper working smoke alarms in the Property fitted to the standard of the relevant regulations

Findings of fact

11. The Committee finds the following facts to be established:-

- (a) The gas boiler appeared to be in proper working order and there was heat within the radiators throughout the Property.
- (b) The Gas Safety Certificate provided by the Landlord did have certain errors.
- (c) There was a proper supply of hot water and heating within the Property.
- (d) The window in the kitchen was not nailed down and was in proper working order.
- (e) There were three working smoke alarms in the Property that had recently been installed by the Landlord. However only one of them was mains wired and they were not interlinked.
- (f) The shower was in proper working order.
- (g) The toilet appeared to be in proper working order and was not blocked or smelling.
- (h) The guttering outside the front of the property had a slight drop in it at the left hand side and possibly a very small leak.
- (i) The outside plumbing did not appear to have any fault.
- (j) There was a proper working extractor fan in the kitchen.
- (k) The water flow from the bathroom taps was acceptable.
- (l) The heater in the hallway was in working order and affixed to the wall
- (m) The facing of the living room window was missing and was not properly wind and watertight.

Reasons for the decision

12. The Committee reached its decision based on the evidence obtained during the Committee's inspection of the Property and also from the submissions of the Landlord, both written and at the Hearing.

The Committee inspected the gas boiler. It was apparent that a comparatively new gas boiler had been installed and this appeared to be in proper working order. It was apparent that the Landlord had been complying with their obligations in relation to gas safety. However, the Committee noted that unfortunately the latest Gas Safety Certificate presented to them appeared to inadvertently have had the incorrect property address added by the gas engineer. The gas engineer had also found some faults and, it seemed

to the Committee, had then issued the Certificate and then subsequently carried out the repairs without reissuing a "clean" Gas Safety Certificate.

Hot water was available from the taps and there was heat in all of the radiators on the day of inspection. There did not appear to be any leaks to any of the radiators or any abnormal noises from the radiator, as alleged by the Tenant.

The window in the kitchen was not nailed down and was capable of opening properly. The Landlord alleged that the Tenant had broken into the Property at one point when she was unable to gain access via the door and it was in fact the Tenant that had nailed the window down.

The Landlords had had smoke alarms installed recently. Only of these was mains wired however and they were not interlinked. The Landlord accepted that he had not met the required standards and acknowledged that he would require to deal with this.

The Committee tested the shower which provided an adequate supply of hot water and did not drip.

The toilet flushed properly and appeared to be in proper working order.

There was a minor fault in the guttering, which dropped at the left-hand edge of the front of the Property and may have also been suffering from a very small leak at the join of two parts of the guttering.

The Committee could see no evidence of any difficulties in relation to outside plumbing.

There was a proper working extractor fan in the kitchen that was tested by the Committee.

The water flow from the bathroom taps was in proper order.

The heater in the hallway was on the wall and in proper working order.

The Landlord advised that they were intending to replace the front window but had not yet got sufficient funds to do this. The facings around the window had been removed and the Landlord had not replaced these pending the replacement of the window itself.

Taking account of the evidence the Committee obtained at the inspection and from the Landlords, the Committee were satisfied that the Landlords had endeavoured to ensure that the Property met the repairing standard and had carried out numerous of the repairs that had been complained of. The Landlords, and in particular Mrs Culloch, were visibly upset by the circumstances they found themselves in. The Committee accepted the Landlord's version of events. The Committee were satisfied that the Landlords would address the remaining issues swiftly and, in the circumstances, were prepared to (a) refrain for the moment from issuing a Repairing Standard Enforcement Order and (b) continue the Hearing for a period of 2 weeks to allow the works that were still outstanding to be carried out. The Landlords were agreeable to this course of action. The Committee directed the Landlords that the following works would require to be carried out prior to a reinspection by the Surveyor Member. The works to be carried out were:-

- (a) A correctly addressed and valid Gas Safety Certificate was to be provided to the Committee;
- (b) Installation of a proper hardwired mains interlinked smoke alarm system;
- (c) The repair of the guttering to the front of the Property; and
- (d) The replacement of the facias of the lounge window pending its replacement.

In the event of the reinspection showing that these works had been carried out to the appropriate standard then a decision would be issued confirming the Landlords had complied with the terms of the Act.

The Surveyor Member carried out the reinspection of the Property on 29 September 2009 and found that items (a)-(d) as required by the Committee had been carried out to a satisfactory standard.

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.

E Miller

Signed ..
Chairperson

.. Date.. 5.10.2009