



**Statement of decision
Of a Private Rented Housing Committee
Under Section 24 (1) of the Housing (Scotland) Act 2006**

prhp Ref: AB11/68/08

Re : Property at Top floor right, 18 Howburn Place, Aberdeen, AB11 6XX
("the Property")

Title No: - ABN70058

The Parties:-

Ms Connie Kolb, residing at Top floor right, 18 Howburn Place,
Aberdeen, AB11 6XX ("the Tenant")

Mrs Pauline Riddell or King, who was represented by her agents
Stronachs LLP, having a place of business at 34 Albyn Place, Aberdeen,
AB10 1FW.
("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 or on behalf of the parties at the hearing, determined that the Landlord had not failed to comply with the duty imposed by Section 14 (1)(b) of the Act.

1. By application received on 4th September 2008 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 her duty to ensure that the house meets the repairing standard and in particular that the Landlord had failed to ensure that:-
 - The house is wind and watertight and in all other respects reasonably fit for human habitation;
 - Any fixtures, fittings and appliances provided by the landlord under the tenancy are in a reasonable state of repair and in proper working order;

- Any furnishings provided by the landlord under the tenancy are capable of being used safely for the purpose for which they are designed.

The tenant complained specifically of:-

- A lack of adequate ventilation in the kitchen;
 - The kitchen window could not be readily accessed by a person of average weight and height;
 - Cooking in the flat produced thick smoke which left a sticky film and foul odours;
 - These factors had caused damage to the furniture within the property;
 - The cooker was in poor condition and the uneven kitchen floor impacted upon the safe operation of the opening of the cooker door;
 - The cable of the electric lounge fire was frayed;
 - Light bulbs in two bedside lamps exceeded the recommended wattage;
 - Flakes of chrome were peeling off the hot water tap in the bathroom;
 - Protruding screw heads on the bathtub panel posed a risk of injury;
 - A backflow of old standing water from the pipe flowed into the bath while it was being used for showering purposes;
 - The bedroom window was damaged and could not properly be opened and closed.
3. By letter dated 2nd October 2008 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 Tenants.
 5. Following service of the Notice of Referral the Tenant made no further formal written representation to the Committee, but the Committee was provided with copies of a considerable volume of correspondence passing between the tenant and the landlord's agents. By letter dated 14th October 2008 the Landlord's agents made written representations to the Committee on the landlord's behalf.
 6. The Landlord served Notice to Quit upon the Tenant and the tenancy came to an end on 24th October 2008. In terms of schedule 2(7)(1) of the Housing (Scotland) Act 2006, a tenant is deemed to have withdrawn the application if the tenancy concerned is lawfully terminated. However, in terms of schedule 2(7)3) the Committee may continue to determine the application despite such a withdrawal. In view of the multitude of potentially serious complaints made by the Tenant, coupled with the

possibility that the flat may be re-let in the same condition, the Committee decided to proceed to determine the application in this case.

7. The Private Rented Housing Committee inspected the Property on the morning of 5th December 2008. The Tenant was not present during the inspection but a representative from the Landlord's agents attended the inspection.
8. There was no hearing as neither party had requested a hearing. The Landlord's position is as set out in the detailed written representations sent under cover of letter from Stronachs dated 14th October 2008.
9. The Committee noted that the battery operated smoke detector installed in the property had been positioned in the hallway near to the entrance of the kitchen. Instead of being located on the ceiling, it had been positioned under a boxed off area near the kitchen doorway. The Tenant complained that she had to de-activate this smoke detector during cooking in order to avoid activating it during the cooking process. The Committee considered that this issue fell within section 13(1)(f) of the Housing (Scotland) Act 2006. In terms of schedule 2(4) of the Housing (Scotland) Act 2006 the Committee must consult the chief officer of the fire and rescue authority for the area in which the house concerned is situated. The Committee duly adjourned consideration of this case to allow the consultation process to take place.
10. The Committee duly consulted with the Chief Fire Officer of Highlands and Islands Fire and Rescue Service. The Service subsequently responded but declined to carry out an inspection of the premises. The Committee thereafter resumed consideration of the case.
11. At the time of the Committee's inspection of the property on 5th December 2008, the Committee found the property to be in a reasonably good state of repair. The cooker within the property was in a reasonable state of repair and in proper working order, and the oven door could be opened and closed safely without any difficulty. There was no evidence of the residue of thick smoke or a sticky film covering surfaces. The furnishings provided by the landlord appeared to be generally capable of being used safely for the purpose for which they were designed, except in relation to the specific instances set out in paragraph 12 below. There was no evidence of chrome flakes peeling off the hot water tap in the bathroom and no screw heads protruded from the bath panel. The Committee tested the water running into the bath but found no evidence of a backflow of old water flowing into the bath. The bedroom window could be opened and closed without difficulty. The Committee was satisfied that, by the date of the inspection, these aspects of the case did not give rise to any breach of the duty to ensure that the property meets the repairing standard
12. The Committee noted, however, that there were some issues of concern. These were found to be as follows:-

- The kitchen window could not be readily accessed by a person of average weight and height;
- This resulted in a lack of adequate ventilation in the kitchen;
- This in turn resulted in an unpleasant odour as cooking smells were not expelled;
- The cable of the electric lounge fire was frayed;
- Light bulbs in two bedside lamps exceeded the recommended wattage;
- The smoke detector in the property was not correctly located on the ceiling.

13. In view of the passage of time which had elapsed since the initial inspection, the Committee decided that a further inspection was required to establish the up-to-date condition of the property before any Order was imposed.

14. The surveyor member of the Private Rented Housing Committee re-inspected the property on the morning of 16th July 2009 in order to ascertain the condition of the property. A representative from the landlord's agent, Ms Liane Munro was present during this re-inspection. As the former tenancy had come to an end, the former tenant is no longer a party to these proceedings and therefore was not invited to be present.

15. At the re- inspection, it was noted that:-

- A new mains powered smoke alarm had been fitted to the ceiling within the entrance hallway of the property;
- An extractor fan had been fitted to the kitchen window with an accessible pull cord switch;
- No unpleasant odour could be detected;
- The cable on the electric fire had been refitted thus restoring the fire to a reasonable state of repair and proper working order;
- The 60 watt bulbs in the bedside lamps had been replaced by 40 watt bulbs.

16. The Committee accordingly determined that the landlord had complied with the duty imposed by section 14(1)(b) of the Housing (Scotland) Act 2006

17. 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 any 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.... **I R Montgomery** Date... *7th September 2009*

(Mrs I. R. Montgomery, Chairperson and solicitor)
Private Rented Housing Panel
140 West Campbell Street
Glasgow,
G2 4TZ