

Determination by the Private Rented Housing Committee

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

ref: PRHP/DG13/68/11

Re: Property at 73 Henry Street, Langholm DG13 0AR ("the Property")

Title No: DMF18802

The Parties:-

Catherine Morrison, Harbour View, Morven Hill, Oban per McJerrow and Stevenson, Solicitors, Lockerbie ("the Landlord")

Alan Currie, 73 Henry Street, Langholm ("the Tenant")

Decision

The Committee, having made such enquiry as it sees fit for the purposes of determining whether the Landlord has complied with the duty imposed by Section 14(1)(b) of the said Act in relation to the property concerned, and having taken account of the evidence led by both the Landlord's agent and the Tenant at the Hearing determines that the Landlord has complied with the duty imposed by Section 14(1)(b) of the Act.

Background

- 1. By application dated 19th March 2011 the Tenant applied to the Private Rented Housing Panel for a determination as to 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 he considered the Landlord had failed to comply with the duty to ensure the house meets the repairing standard and brought forward the following alleged breaches:-**
 - (a) The guttering, down pipes and chimney are in a poor state of repair.**

(b) The pointing of the exterior walls requires maintenance.

(c) The garden fence is broken.

The Tenant also complained of, but did not wish to refer to the Committee, the state of the soundproofing, the lack of central heating and the shabbiness of the kitchen within the property.

3. The Private Rented Housing Committee served a Notice of Referral dated the 9th May 2011 under and in terms of Schedule 2, Paragraph 1 of the Act on both the Landlord and the Tenant.
4. The Private Rented Housing Committee inspected the property on the morning of the 12th of July 2011. Both the Tenant (Mr. Currie) and the Landlord's agent (Ms. Raymond) were in attendance. The Committee comprised Mrs. Anne McCamley (Chairman), Mr. Donald Marshall (Surveyor), Mr. John Blackwood (Housing Member).
5. Following the inspection of the property the Private Rented Housing Committee held a Hearing at the Eskdale Hotel in Langholm. The Tenant and the Landlord's agent made submissions to the Committee.
6. The Tenant submitted the poor state of the guttering and rone pipes created a safety issue as well as being a nuisance to his neighbour. When it rains the guttering overflows and rainwater splashes onto the pavement.
The chimney is decaying inside and there are bricks in the flue. Mr. Currie has the chimney swept regularly once a year. His chimney sweep reported the foregoing to him. Mr. Currie confirms that the fire lights properly and draws nicely.
Mr. Currie feels that if the boundary fence between his back garden and the Council owned common ground were to fall down it could create a problem. The Council is declining to take any action.
Mr. Currie feels the property requires to be re-pointed externally.

Mr. Currie very fairly confirmed his enjoyment of the tenancy was not affected by this perceived disrepair. His concerns revolve around public safety issues and annoyance to neighbours.

He told the Committee that his property sometimes smells damp however there are no damp patches. He is not troubled by water ingress as a result of the guttering. His fire lights and draws appropriately. While the fence may be shabby it fulfils its function as a boundary fence.

7. Ms. Raymond for the Landlord pointed out that the reference property was a lower ground flat and the downstairs tenant was not directly affected by any fault in the guttering or down pipes or indeed by any of the areas of disrepair identified in the Application to the Committee. She explained the Landlord was anxious to enter into a dialogue with the Tenant however the Tenant had declined mediation in his application to the Private Rented Housing Panel.

Findings of Fact

8. Having inspected the property and taken account of the oral and written evidence and thereafter being guided by the Committee's professional Surveyor Member, the Committee finds the following facts to be established:-

(a) The reference property is a ground floor flat. The tenant's complaints relate to common parts.

(b) The guttering and down pipes require some repair and maintenance however their disrepair does not adversely affect the Tenant's use of the property. Similarly there are aspects of the exterior of the building which would benefit from re-pointing, however again the Tenant is not adversely affected by this lack of maintenance. As regards the chimney the Tenant confirms he is able to light a fire and that the fire draws properly. Accordingly he is not adversely affected by any problems with the chimneys.

While the garden fence is shabby we are satisfied that it is in a reasonable state of repair.

(c) As this is a flatted property Section 15(2) of the Act applies and the Landlord is not required to carry out any work to common parts unless any part of the reference property or anything in the property which the Tenant is entitled to use is adversely affected by the disrepair of the common parts or the failure to keep said common parts in proper working order. The Tenant confirmed on three separate occasions that he was not adversely affected by the perceived disrepair.

Decision

9. The Committee accordingly determines that the Landlord has complied with the duty imposed by Section 14(1)(b) of the Act.
10. The decision of the Committee is unanimous.
11. The Committee has noted the areas of disrepair to the aforementioned common parts. While accepting the Landlord has complied with the duties imposed by Section 14(1)(b) of the Act the Committee nonetheless highlight these areas of disrepair to the Landlord.

Right of Appeal

12. **A Landlord or Tenant aggrieved by the decision of the Private Rented Housing Committee may apply to the Sheriff by summary application within 21 days of being notified of that decision.**

Effect of Section 63

13. 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.

A McCamley

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12th July 2011