



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

prhp Ref: PRHP/KB10/78/09

Re : Property at 284 Hardgate, Aberdeen, AB10 6AD ("the Property")

The Parties:-

Jalal Ahmad residing at southmost ground floor flat, 284 Hardgate, Aberdeen, AB10 6AD ("the Tenant")

and

Lynn McKenzie Gordon c/o KWAD Property Managers Limited, 133-137 Holburn Street, Aberdeen, AB10 6BN ("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 both the Landlord and the Tenants at the hearing, determined that the Landlord had not failed to comply with the duty imposed by Section 14 (1)(b) of the Act.

Background

1. By application dated 10 September 2009 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:-
 - (a) the house is wind and watertight and in all other respects reasonably fit for human habitation; and
 - (b) any fixtures, fittings and appliances provided by the Landlord under the tenancy are in a reasonable state of repair and in proper working order.
3. By letter dated 5 October 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 Landlord and the Tenants.
5. Following service of the Notice of Referral the Tenant made a further written representation to the Committee dated 12 October 2009. The Landlord made no written representations to the Committee.

6. The Private Rented Housing Committee (comprising Mr Ewan Miller, Chairman and Legal Member; Mr A Anderson, Surveyor Member and Mr M Scott, Housing Member accompanied by the Clerk, Mr Robert Shea) inspected the Property on the morning of 23 November 2009. The Tenant was present throughout the inspection as were the Landlord's agents, Mr Kevin Davidson and Ms Marlene Leiper.
7. Following the inspection of the Property the Private Rented Housing Committee held a hearing at The Inspire Conference Centre, Beach Boulevard, Aberdeen, AB24 5HP. The Committee heard from both the Tenant and the Landlord's agents.
8. The Tenant submitted that there were a number of issues with the Property that meant it did not meet the repairing standard. The Tenant submitted that the front door had a large gap underneath it and this created two problems in that there was a strong draught entering the Property and insects were also crawling under the gap. There was a further issue in relation to the entrance to the property in that there was a single glazed pane of glass above the front door and that this had a crack in it. As a result the Property became even colder.

In relation to the kitchen the Tenant submitted that this was also not properly wind and watertight as cold draughts came into the Property from both the extractor fan and the gas ventilation flue. One wall of the kitchen was also only separated from the communal stairwell by some thin board. The Tenant was of the view that the low temperature within the Property meant that it did not meet the repairing standard. The Tenant had submitted, in his original application, that the TV aerial did not work. However Mr Anderson had managed to get this to work during the course of the inspection and it transpired that this had simply been wrongly connected up by the Tenant. The Tenant accepted that this now worked and was therefore no longer an issue.

9. The Landlord submitted that the Property did meet the repairing standard. In relation to the front door whilst there was a draught entering underneath the front door, this was very minor and did not particularly render the flat colder. The Landlord's agents took the view that the gap between the floor was insufficient to allow insects to get into the property. In relation to the crack in the pane of glass above the front door the Landlord's agents submitted this did not impact on the heating of the property. In relation to the kitchen, the Landlord's agents submitted that any draughts were minor and did not impact on the temperature of the Property materially. Whilst the wall between the kitchen and the communal stairwell may have been thin, the Landlord's agent's submission was that this was how the Property had originally been constructed and there was no real way of changing this position. The Landlord's agents produced an Energy Performance Certificate which showed the Property had a reasonable rating, given its age, character and location.
10. The issues to be determined were:-
 - (a) whether the door into the Property from the communal stairwell was properly wind and watertight;
 - (b) whether the pane of glass above the entrance to the Property from the communal stairwell was properly wind and watertight;
 - (c) whether the kitchen at the Property is properly wind and watertight and capable of being heated to a level fit for human habitation.

Two other issues had been raised. One of these was the TV aerial but as highlighted above, Mr Anderson had been able to repair this during the course of the inspection and this was accepted by both sides as no longer being an issue. The Tenant has also raised an issue regarding his mattress but this had not been done in the original application but in a later written representation. On that basis the Committee felt unable to deal with the issue of the mattress.

Findings of Fact

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

- (a) The front door to the Property was not properly wind and watertight.
- (b) The glass pane above the front door to the Property was wind and watertight.
- (c) The kitchen 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 and Tenant both written and at the Hearing.

The Committee inspected the front door to the Property. It was apparent that there was a draught coming in under the front door. Upon examination the Committee noted that the draught excluder on the external side of the door was not operating correctly. This should be pressed down against the door when brought up against the frame but the screw that would press down on the draught excluder this was missing and was rendering the door not wind and watertight.

The Committee examined the glass pane above the front door. There was a very small crack in the corner of this but given the height that this was located at, it was not particularly visible. The Committee were satisfied that notwithstanding the small crack the window was wind and watertight. The Tenant had suggested that a double glazed unit should be installed to improve the thermal efficiency of the building but taking into account the age, character and location of the Property this would not be required in the view of the Committee.

The Committee examined the kitchen. There was a small draught emanating from the extractor fan. However this would always be the case as the draught was coming from a small hole that was required to allow the cover of the extractor fan to be removed. In relation to the hole around the gas ventilation flue, this was quite large and had been finished off poorly. The Committee's view was that this could be easily rectified and would help improve matters. In relation to the wall between the kitchen and the communal stairway this was, in the view of the Committee a standard lathe and plaster wall and would likely have been there since the kitchen was built. Again, given the age, character and location of the Property this was, whilst not the most thermally efficient, a standard partition wall in a tenement of this age.

Taking account of the evidence, the Committee obtained at the inspection and from the Landlord and Tenant, the Committee were satisfied that generally the Property had met the repairing standard. There were a couple of minor matters such as the draught excluder and some insulation around the gas ventilation flue. After discussion the Landlord's agents and the Tenant rejoined the Hearing and the Committee explained to both parties their view that bar a couple of minor matters, given the age, character and location of the Property it generally met the repairing standard. In relation to the two issues mentioned, the Committee were of the view that these would require to be dealt with. However, as they were at the very minor end of the scale they were agreeable to avoiding issuing a Repairing Standard Enforcement Order at the present time if the Landlord was prepared to do these minor repair works within the next 2 weeks. The Landlord's agents agreed to this. The Tenant also confirmed that he accepted the position. The Committee accordingly directed that the Landlord carry out the following works:-

- (a) the repair of the draught excluder to the front door; and

(b) proper repair/insulation of the area around the gas ventilation flue.

In the event that confirmation was obtained that these works had been carried out to the appropriate standard, then a Decision would be issued confirming the Landlord had complied with the terms of the Act.

The Landlord's agent subsequently confirmed to the Clerk to the Committee on 7 December 2009 that the works had been done. The Clerk subsequently confirmed with the Tenant that these works had been carried out. The Tenant confirmed that they had and that they had been carried out to a satisfactory standard from the Tenant's perspective.

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.

The Decision of the Committee was unanimous.

Right of Appeal

14. 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

15. 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

Date..... 23/12/07

Chairperson