



Statement of decision of the Private Rented Housing Committee under Section 26 (2) of the Housing (Scotland) Act 2006

prhp Ref: PRHP/RP/15/0060

Re : Property at 76c Grainger Street, Lochgelly, Fife KY5 9HY ("the Property")

The Parties:-

Tyler Kirkham 76c Grainger Street, Lochgelly, Fife KY5 9HY ("the Tenant")

Sharon Fisher, c/o RE/MAX First, 1a Whytescauseway, Kirkcaldy, Fife KY1 1XF ("the Landlord")

Decision

The Committee, having made such enquiries as it saw fit for the purposes of determining whether the Landlord had complied with the Repairing Standard Enforcement Order in respect of the Property made on 12 May 2015, determined that the Landlord had failed to comply with the Order.

Background

1. By application dated 14 February 2015, received on 17 February 2015, 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 his 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 water tight and in all other respects reasonably fit for human habitation, and
 - (b) 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.
3. By letter dated 11 March 2015, 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 Tenant.
5. The Private Rented Housing Committee inspected the Property on the morning of 12 May 2015. The Tenant was present at the inspection. The Landlord was not present or represented during the inspection. The Committee comprised George Clark (chairman), Kingsley Bruce (surveyor member) and Christine Anderson (housing member).

6. Following the inspection of the Property the Private Rented Housing Committee held a hearing at Crossgates Community Centre, Crossgates, Fife and heard from the Tenant. The Landlord was not present or represented at the hearing.
7. Following the hearing, the Committee made a Repairing Standard Enforcement Order ("the Order") in respect of the Property. The Order required the Landlord, within four weeks of the date of service of Notice of the Order:
 - (1) to exhibit to the Committee a current Electrical Inspection Condition Report in respect of the Property, to include smoke and fire detectors;
 - (2) to obtain from a suitably qualified electrical contractor a report confirming whether the present space heating arrangements are adequate for the Property and to carry out such improvements as the contractor may recommend and then redecorate as necessary; and
 - (3) to install in the Property fire and smoke detectors to ensure that it complies with the Scottish Government's revised statutory guidance and the revised Domestic Technical Handbook.
8. The surveyor member of the Committee reinspected the Property on 8 July 2015. A file of photographs, taken at the reinspection, is attached to and forms part of this Statement of decision.
9. The surveyor member reported to the Committee that a heater in the bedroom had been repositioned and the room redecorated. There were smoke detectors in the living room and hallway, but there was no heat detector in the kitchen and the surveyor member could not ascertain whether the detectors were interlinked. A new extractor fan had been fitted in the kitchen and the convector panel heater and power cable in the living room had been replaced.
10. The surveyor was of the opinion that the system of fire and smoke detection did not appear to meet current standards. In addition, the Landlord had not exhibited an Electrical Inspection Condition Report or a report from an electrician regarding the adequacy of the heating installation. Accordingly, the Landlord had not complied with the terms of the Order.
11. On 1 September 2015, the Landlord's agents, RE/MAX First e-mailed to the Committee a Domestic Electrical Installation Condition Report in respect of the Property, dated 31 July 2015. The report had been prepared by Derrick Matthews, electrician, and concluded that the installation was satisfactory. It did not, however, provide confirmation that the smoke and fire detectors were interlinked. The Landlord's agents also provided the Committee with a copy of an Energy Performance certificate in respect of the Property, dated 19 August 2010.

Summary of the issues

12. The issue to be determined was whether the Landlord had carried out the works required by the Order and whether the Landlord had complied with the Order.

Reasons for the decision

13. The Committee has not seen evidence that the fire and smoke detectors are interlinked, or that there is a heat detector in the kitchen, so is unable to determine whether the Landlord has complied with the Scottish Government's revised statutory guidance and the revised Domestic Technical handbook. The Order required the Landlord to produce a report on the standard or adequacy of the heating installation. To set this in context, one of the complaints raised by the Tenant in the application related to condensation, which was evident within the Property at the time of the original inspection. Heating was

considered by the Committee at the time of the inspection to be a contributory factor to the condensation. An Energy Performance Certificate has been provided to the Committee, but it does not fulfil the requirements of the Order, as it is intended as a measure of energy efficiency and does not provide any indication of the effectiveness or adequacy of the space heating provision.

Decision

14. The Committee accordingly determined that the Landlord had failed to comply with the Repairing Standard Enforcement Order and directed that Notice of Failure should be served on Fife Council.
15. The Committee had been advised by the Tenant that, subsequent to the date of making the Order, she had lawfully terminated the tenancy and had vacated the Property. The Committee was not, therefore, permitted to decide whether to make a Rent Relief Order in terms of section 26(3) of the Act.
16. The decision of the Committee was unanimous.

Right of Appeal

17. **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

18. 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.
19. **The Landlord's attention is also drawn to Section 28 of the Act, which states that a landlord commits an offence if the landlord enters into a tenancy or occupancy arrangement in relation to a house at any time during which a Repairing Standard Enforcement Order has effect in relation to the house.**

Signed **G. Clark**
Chairperson, ~

..... Date 22 September 2015