



DETERMINATION BY PRIVATE RENTED HOUSING COMMITTEE

**STATEMENT OF DECISION OF THE PRIVATE RENTED HOUSING COMMITTEE
UNDER SECTION 24(1)
OF THE HOUSING (SCOTLAND) ACT 2006**

In connection with

Property at 31 Albany Street, Dunfermline, KY12 0QZ (“the House”)

Mrs Jeannie Henderson and Mr Andrew Henderson, residing at the House (“the Tenants”)

Mr Michael Rhodes, 17 The Castings, Dunfermline, KY12 9AU (“the Landlord”)

PRHP REFERENCE PRHP/RP/15/0186

DECISION

The Committee having made such enquiries as are fit for the purposes of determining whether the Landlord has complied with the duty imposed by section 14(1)(b) of the Housing Scotland Act 2006 (“the Act”) in relation to the House, and having taken account of the evidence led at the hearing and of the written documentation attached to the application and submitted by the parties, has made the following decision:

It has determined that the Landlords have not failed to comply with the duty imposed by section 14(1)(b) of the Act.

The decision was unanimous.

Background

By application dated 12 June 2015 (the “Application”) the Tenants applied to the Private Rented Housing Panel (“PRHP”) for a determination of whether the Landlord had failed to comply with the duties imposed by section 14(1)(b) of the Act.

The Application stated that the Tenant considered that the Landlords had failed to comply with the duty to ensure that the House meets the repairing standard and in

particular that the Landlords had failed to ensure compliance with the following paragraphs of section 13(1) of the Act:

- “(a) the house is wind and water tight 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) any fixtures, fittings and appliances provided by the landlord under the tenancy are in a reasonable state of repair and in proper working order; and*
- (e) any furnishings provided by the landlord under the tenancy are capable of being used safely for the purpose for which they are designed.”*

By letter dated 28 July 2015, the President of the PRHP intimated a decision to refer the application under section 23(1) of the Act to a Private Rented Housing Committee (“the Committee”) to conduct an inspection and a hearing.

The letter of 28 July 2015 contained a Minute of Referral dated 3 July 2015 in which the President noted that no further information was required in order to make a determination on the application. The letter also stipulated that the Application consisted of the original application form; the letters of notification sent to the Landlord; copy correspondence passed between parties *prior to* the decision of the President to refer the application to the Committee and any other paperwork so provided.

The Committee comprised the following members:

Maurice O'Carroll, Chairperson
Mike Links, Surveyor Member

The Committee inspected the House at 10.00am on 16 September 2015. The Tenants were present at the inspection as were the Landlord and his wife, Mrs Sinead Rhodes.

Following the inspection, the Committee held a hearing at the Vine Conference Centre, 131 Garvock Hill, Dunfermline. The Tenants were again both present at the hearing as were the Landlord and his wife. The Committee considered the Application (as defined above), the evidence before the hearing and the written and oral representations from both parties.

Submissions and evidence at the Hearing

At the outset of the hearing, the Chairman stated that he was aware of the fact that small claims proceedings had been raised by the Tenants against the Landlord in Dunfermline Sheriff Court. He stated that he was unaware of the detail in relation to those separate proceedings, nor did he want to be provided with any

information in relation to them as those proceedings could play no part in the Committee's present determination in terms of s 14(1)(b) of the Act.

Having stated that, the Chairman made clear the scope of the Committee's jurisdiction as follows: It operates in terms of the 2006 Act and is entrusted by the President of the PRHP to determine whether the House meets the Repairing Standard as defined in section 13 of the Act only. It is not concerned with any matters of contract between the parties, such as any alleged property misdescription or similar, or with any issues relating to compensation. These are matters which fall within the jurisdiction of the sheriff court.

In terms of evidence led, both Tenants stated that the main concerns that they had with the House was in relation to the garden and outhouse. They had understood that the outhouse was to be repaired and equipped with windows and doors so that an electricity supply could be provided and they could move the washing machine and gardening equipment into it. As it stood, it could only be used as a bin store.

In relation to the aspects of the Repairing Standard as set out in section 13 of the Act, Mrs Henderson provided evidence in relation to each of them as follows:

(a) the outhouse is not wind and watertight as it has no door or windows, although there is no question that the House in which they reside is anything other than wind and watertight.

(b) there was a tree growing out of the side of the chimney to the property, although this had been removed by the time of the hearing so no longer formed part of the application.

It was not clear that the chimney was in proper working order so that it was functional and therefore would enable the open fire to be used in the winter time;

(c) the complaint in relation to this sub-section related to an absence of a water and electricity supply to the outhouse and nothing else.

(d) There was a loose earth cable in the bathroom which had now been rectified so no longer formed part of the application.

There was a dent on the inside door handle of the main door into the property from the street and handle itself rattled and appeared insecure. This had been remarked upon by many guests who had visited the House.

(e) a grate to the fireplace in the front room to the left of the House was missing. Carpet strips were missing in three locations: two upstairs in front of the bedrooms and one in the living room to the right of the House upon entry at the junction with the cupboard housing the gas central heating boiler. Mr Henderson had sought permission from the Landlord to install carpet strips at those locations but this had not been forthcoming.

Mrs Henderson, also gave evidence that the internal staircase leading to the bedrooms upstairs did not meet current building regulations. The stairs were narrower than they should be and upon testing with a spirit level, it could be

demonstrated that they were not entirely level and therefore a danger. Whilst accepting that nothing could be done about the width of the staircase, they could perhaps be replaced with a new staircase with higher step heights.

It should be noted at this point that intimation of the internal staircase issue was first made to the Landlord on 27 August 2015. It therefore did not form part of the Application as defined in the Notice of Direction dated 28 July 2015 and was therefore not considered by the Committee.

Mr Rhodes also gave evidence. He purchased the House in December 2013 and set about renovating it at that time. Mr and Mrs Henderson were the first tenants. In response to the specific sections relating to the Repairing Standard:

(a) He had great difficulty in renovating the garden as access had been blocked by the neighbouring proprietor. It still remained a work in progress. He has, at his own expense re-roofed the outhouse, although it was a common repair with the proprietor of the lower flat beneath the House. He has also replaced the common fence and re-turfed the lawn. The House itself is wind and watertight.

(b) He has several Victorian properties similar to the House. In all cases, he informs the tenants that the fireplaces are for show only and never intended to be in working order. He had never investigated whether the chimney was in working order. The surveyor member interjected at this stage to point out that the chimney had in fact been capped so that the open fires in the House could be for decorative purposes only.

A brand new central heating system has been installed in the House which provides the necessary heating. He would not wish the fireplaces to be used, even if that were possible, as that might damage the newly installed flooring and wallpaper. The grate in the front room fireplace is not needed as the fireplace is not intended to be used.

(c) It was accepted that there is no water supply to the outhouse;

(d) The handle to front door is admittedly insecure but it has always been like that and is in any event, fully functional. He did not intend replacing it because of the complex and old-fashioned mechanism contained within it. The risk of replacing something that was still working would be that in the event that a repair did not prove possible, the door would be left unsecured which would present a serious difficulty. On balance, he considered it far better to leave something which was aesthetically less than perfect but which functioned properly and ensured the security of the House.

(e) In relation to the carpet strips, the Landlord indicated that there was a danger that if carpet strips were nailed to the floors in front of the upstairs bedrooms, wiring underneath the floorboards could be damaged. A non-intrusive solution was therefore required to prevent any trip hazards on the carpets upstairs. He was aware of a method of doing so.

At the hearing itself, the Landlord undertook to install carpet strips on the upstairs landing outside the two bedrooms and also to place one in the living room at the

junction with the boiler cupboard there. He undertook to do so within 14 days of the date of the hearing, that is by 30 September 2015.

In relation to the internal stair issue, the Landlord confirmed that the conversion had been effected in the 1950's and the relevant building standards would have been those applicable at that time. As noted above, however, this issue does not form part of the Application.

Summary of the Issue

The issue to be determined is whether (1) the House meets the repairing standard as laid down in section 13(1)(a),(b),(c),(d) and (e) of the Act, and therefore (2) whether the Landlord has complied with the duty imposed by section 14 (1)(b).

Findings in Fact

The Committee made the following findings in fact:

The Landlord and the Tenant entered into a Tenancy agreement in respect of the House in terms of which the Tenants have a two year lease. It was signed by the parties on 21 April 2015, with the monthly rent set at £875. The lease itself is dated 18 May 2015.

The registered owner of the House is AMR Construction and Development Limited under Title Number FFE17173. The Landlord is a Director of that company and therefore is an agent for it.

The Tenants took possession of the House on 18 May 2015 and currently remain in occupation.

The provisions of Chapter 4 of Part I of the Act apply to the tenancy.

The Tenants notified the Landlord of the defects in the house which are now the subject of the Application on 18 June 2015. Said letter comprised a nine point list of issues, all of which were discussed in evidence.

The inspection on 16 September 2015 revealed:

The House is a stone built detached dwelling with direct main door access from the street. Beneath the House is a lower ground flat under separate ownership with access from the rear of the property.

The House is a traditional stone built bungalow. It was converted in the 1950s to include two double bedrooms within the former loft space which are accessed via a narrow staircase off the hallway on the right hand side upon entry. The upper part of the staircase leading to the bedrooms has an iron handrail to the right. The house has been recently substantially renovated to a very high standard and is in excellent decorative order throughout.

Upon entry through the main door from the street, there is a short vestibule with a linear hallway directly in front. Off the hallway to the left and the right, there is a front room with period fireplace and a lounge/TV room respectively. The front room fireplace does not have a grate in front but benefits from a large triple radiator: New radiators had been placed throughout the House in each of the main rooms as part of the renovations. Off the lounge/TV room is a large cupboard which houses the recently installed central heating boiler.

Further off the central hallway on the left hand side is a large modernised dining kitchen. Beyond it is a bathroom equipped with recently upgraded bath, overhead shower and WC unit. On the right hand side is a further bedroom, currently in use as a study. The upstairs area, accessed from the hallway on the right hand side, also includes a storage area as well as access to the two main bedrooms. It was noted that there were no carpet strips in front of either bedroom which meant that there was a small gap of approximately 2cm in the carpeting at those points.

At the end of the hallway is the exit to the rear garden area which is accessed via a short flight of stone steps. The area immediately to the rear of the House to a depth of approximately two metres of concreted area pertains to the lower flat beneath the House under separate title. There is a garden fence which divides the two garden areas owned by the respective properties. To right of the garden facing downwards is the outhouse which had been recently re-roofed and is presently used as a bin store.

Beyond the small garden fence is a much larger garden area of approximately 20 metres. The garden is presently divided into three parts. At the very bottom is a small unkempt area which was formerly occupied by two Anderson shelters. The main part of the garden is divided approximately in half with one half being recently turfed and the other half being finished in gravel.

Otherwise externally, a small amount of vegetation was seen growing near the chimney area. However, the chimney appeared to be structurally sound, as was the remainder of the exterior of the House. The chimney itself was observed to have been capped as discussed at the hearing.

The House had a hard wired smoke alarm in the upstairs area which was linked to a mains smoke alarm in the central hallway on the ground floor.

A series of photographs has been produced illustrating the above observations and is appended to this report.

Decision of the Committee and reasons

Section 194 of the Act defines "house" as being "any living accommodation which is, or which is capable of being, occupied as a separate dwelling."

In terms of that definition, the outhouse does not constitute a house for the purposes of the Act as it is not living accommodation or capable of being used as such. Neither party suggested it was so capable. Accordingly, it is not subject to the requirements of the Repairing Standard in terms of the Act.

Despite the extensive number of sections of section 13 of the Act cited by the Tenants, almost none of these were in relation to the House itself, given that they related to the garden area and the outhouse in particular. The bulk of the Application is therefore irrelevant.

In relation to remaining issues raised by the Tenants which relate to the House itself, these amount to minor niggles which do not constitute a breach of the Repairing Standard.

There was no dispute that the House itself (which is to say, the living accommodation) was wind and water tight. Nor was there any dispute that the structure of the House was in a reasonable state of repair (given the removal of the vegetation growing out of the chimney); nor that the house had adequate installation for heating, water and gas; nor that the furnishings, fixtures and fittings provided were fit for their purpose and in proper working order.

The only remaining issues related to the missing grate in the fireplace in the front room and the carpet strips as discussed above. However, the grate was not present in the House as at the date of entry and is any event not necessary for anything other than decoration as noted above. In relation to the carpet strip, the Landlord provided an undertaking to remedy that minor defect, which undertaking was accepted. That issue alone would in any event not warrant the making of a Repairing Standard Enforcement Order, standing the Committee's overall objective of providing remedies which are proportionate.

Accordingly, the Committee, considering the terms of section 13(3) of the Act, determined that the Landlord had not failed to comply with the duty imposed by section 14(1)(b) of the Act.

The Committee was therefore of the view that it was unnecessary for it to make a Repairing Standard Enforcement Order in terms of section 24(2) of the Act.

However, the Committee further considered that it was appropriate to make a non-binding recommendation to the Landlord. It therefore recommends that the Landlord install carpet strips in front of the two upstairs bedrooms and in front of the boiler cupboard in the lounge/TV area as undertaken before the Committee hearing on 16 September 2015.

The decision of the Committee was unanimous.

Right of Appeal

Section 64 of the Act provides a right of appeal to a landlord or tenant aggrieved by a decision of a private rented housing committee. An appeal may be made to the Sheriff within 21 days of the Landlord or Tenant being informed of the decision.

Where such an appeal is made, the effect of the decision and 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.

M O'Carroll

Maurice O'Carroll
Chairperson

Date: 24 September 2015

31 Albany Street, Dunfermline KY12 0QZ

Schedule of photographs--- 16th Sept 2015



Front elevation



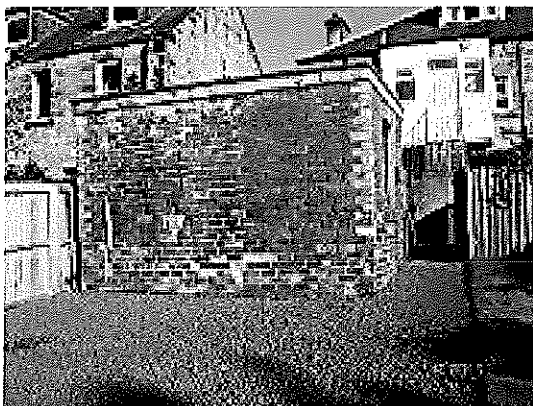
Rear elevation



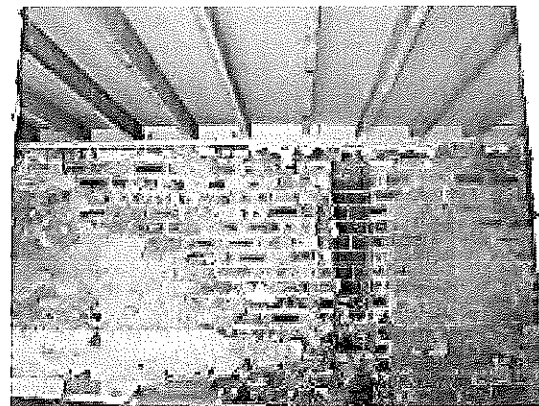
Eastmost chimney



Westmost chimney



Outbuilding



Interior of outbuilding



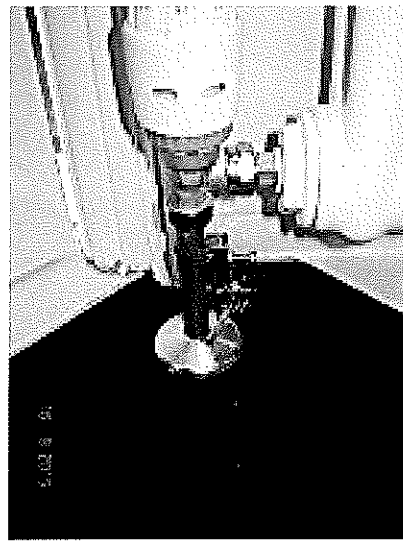
New fence/gravel area



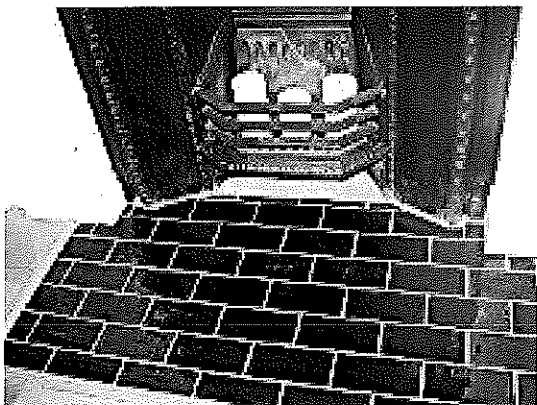
Rear garden/mature trees



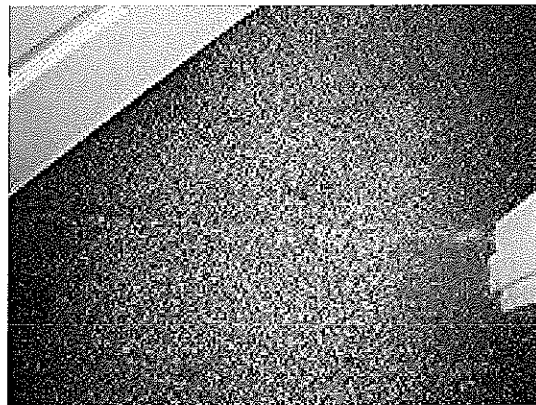
Loose front door handle



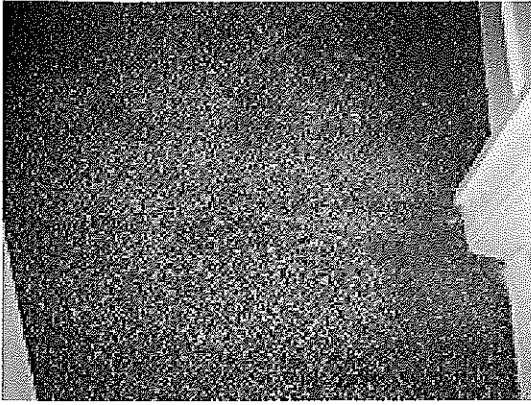
Earth wire at Bath radiator



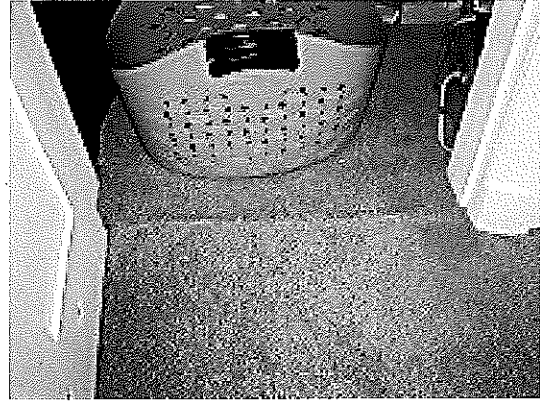
Fireplace—Living Rm



Carpet Joint-Attic



Carpet joint-Attic



Carpet joint-Rm/Boiler cpd



Outbuilding/part grassed area