



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 18A Castleblair Park, Dunfermline, Fife, KY12 9DW (“the House”)

The parties:

Mrs. Katrine Khamooshi, formerly residing at the House (“the Tenant”)

**Mr. Robert Andrew Miller, c/o Morgans Solicitors, 33 East Port, Dunfermline,
Fife, KY12 7JE (“the Landlord”)**

PRHP REFERENCE PRHP/RP/15/0210

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 subsequently submitted by the parties, has made the following decision:

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

The decision was unanimous.

Background

By application dated 21 July 2015 (the “Application”) the Tenant 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 Landlord 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 paragraph 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...”

The Tenant complained that the cupboard in the kitchen which houses the hot water tank had a hole in it which led to the exterior. This allowed wind and water to enter and was a health hazard.

By Minute of Decision dated 31 July 2015, the President of the PRHP decided to refer the Application to a Private Rented Housing Committee under section 23(1) of the Act. That decision was intimated to the parties by letters dated 5 August 2015.

The Committee comprised the following members:

Maurice O'Carroll, Chairperson
Mike Links, Surveyor Member

The Committee inspected the House at 2pm on 16 September 2015. The Tenant was not present at the inspection, having moved out of the House on 26 August 2015. As a result the Application is deemed as withdrawn. However, due to the issue raised, a Notice of Continuation dated 26 August 2015 was served on the Landlord's agent on or about 1 September 2015. At the inspection, the Landlord's letting agent, Mrs Linda Kettles, was present.

Following the inspection, the Committee held a hearing at 3pm at The Vine Conference Centre, 131 Garvock Hill, Dunfermline. Mrs Kettles appeared at the hearing on behalf of the Landlord. The Committee considered the written evidence submitted by the parties and heard representations from the Landlord's agent.

Submissions at the Hearing

At the hearing, Mrs Kettles provided a history of the Tenancy from her detailed notes. The Tenant took entry on 26 January 2015 under a six month short assured tenancy. Prior to the Tenant moving in, a roofer was called in to fix the guttering at the House and a skew was repaired. At that stage, the roofer confirmed that there was no water inside the House.

The roofer returned on 27 January 2015 and requested that the Tenant monitor the ceiling to the House for any evidence of dampness or leaks, which she confirmed she was happy to do. No such occurrence was reported by the Tenant.

In February 2015, at the Tenant's request the gutters were cleared. In addition moss was cleared and part of the roof ridge was replaced. On 26 July and again on 20 August 2015, expanding foam filler was placed in a hole which was present above the hot water tank in the kitchen. As far as Mrs Kettles was aware, the

repair had been effective and the roofer had never reported that the House was not wind and water tight.

After some disagreement about the lease termination date, the Tenant moved out of the House on 26 August 2015.

Summary of the Issues

The issue to be determined is whether (1) the House meets the repairing standard as laid down in section 13(1)(a) of the Act, namely that the House is wind and water tight and in all other respects fit for human habitation 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 on 26 January 2015, when the Tenant took entry.

The Landlord was recorded on the Lease as being Messrs Morgan on behalf of Robert Andrew Miller.

The registered owner of the House is Robert Andrew Miller as recorded in the Land Register on 17 October 1997 under Title Number FFE4850.

The lease terminated on 26 August 2015.

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

The Tenant notified the Landlord of the defects in the house which are now the subject of the Application on or around the same time as the Application was lodged with PRHP, in particular in an email dated 17 July 2015.

In giving her evidence, the Committee found Mrs Kettles to be entirely credible and reliable.

The inspection on 16 September 2015 revealed:

The House is a first floor flat in a two storey block of flats. There are 2 flats per floor and 4 flats in total within the block. The House is accessed from the rear of the block and is the left-most, gable end flat when viewed from the entrance at the rear of the block. The flat is accessed by means of a stone stairway.

The House is a two bedroom flat consisting of a kitchen within an extension to the block, with a dining area off it and an L-shaped hallway which provides access to the two bedrooms, sitting room and bathroom with shower which give onto the street.

The House appeared to be a reasonably well-tended rental property with a mains smoke detector in the hallway.

There is a large cupboard in the kitchen near the doorway to the dining area containing the hot water tank. The Committee could see clear evidence of the repair work which had been carried out as discussed at the hearing. The repair work consisted of white expanding foam having been placed in the roof area above the hot water tank.

There was a negative result from the damp meter reading. The weather conditions were bright and sunny. It was therefore not possible for the Committee to gauge whether the repair had rendered the area of repair wind tight. However, it had no reason to consider that the House was anything other than wind and water tight. It considered the repair to have been sufficient to maintain the House in a wind and water tight condition. The absence of damp meter reading underscored the success of the efforts made to keep the House wind and water tight.

Photographs relative to the above findings have been produced and are attached to this decision.

Decision of the Committee and reasons

In light of the findings above, the Committee, considering the terms of section 13(3) of the Act, determined that the Landlords 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.

During the inspection, the landlord's agent volunteered to the Committee that she was aware that prior to any new tenancy being undertaken, in addition to the smoke alarm in the hallway, there would require to be a linked smoke detector in the lounge, a heat detector in the kitchen and a carbon monoxide alarm there.

Accordingly, the Committee further considered that it was not necessary to make any non-binding recommendations to the Landlord in respect of fire safety.

No further action on the part of the Landlord in relation to the application is therefore required.

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: 26 September 2015