



Determination by Private Rented Housing Committee

Statement of Decision of the Private Rented Housing Committee issued under

Section 24(1) of the Housing (Scotland) Act 2006

Ref prhp/rp/15/0272

In respect of an application dated 30 September 2015 and lodged in terms of Section 22(1) of the Housing (Scotland) Act 2006 ("the Act") by Mrs Amanda McGeachie residing at that time at 2 Watercut, Kilwinning, KA13 7PX on behalf of herself and Mr James McGeachie the then Tenants of the Property aftermentioned against Mr and Mrs Duncan Stanners ("the Landlords") residing at Mossie Mains Farm, West Kilbride Road, Dalry, KA24 5HJ which application was abandoned by the Tenants by virtue of their vacating the Property and which application was continued by the President of the Private Rented Housing Panel in terms of Schedule 2, Paragraph 7(2) of the Act.

Re: 2 Watercut, Kilwinning, KA13 7PX ("the Property")

Committee Members

Karen Moore (Chairperson)

Mike Links (Surveyor Member)

Background

1. By application dated 30 September 2015 ("the Application"), the Mrs Amanda McGeachie applied to the Private Rented Housing Panel for a determination that the Landlord had failed to comply with the duty imposed on him by Section 14 (1) (b) of the Housing (Scotland) Act 2006 in respect that the Property does not meet the Repairing Standard in respect of Sections 13 (1) (c), (e) and (f) of the Act.
2. The President of the Private Rented Housing Panel, having considered the Application and having determined to continue the Application in terms of Schedule 2, Paragraph 7 (2) of the Act , intimated to the Landlords by Notice of Referral dated 19 November 2015, a decision under Section 23 (1) of the Act to refer the Application to a Private Rented Housing Committee, and, in terms of Schedule 2, Paragraph 1 of the Act fixed an Inspection and Hearing for 6 January 2016 at 10.00 a.m. and 11.00 a.m., respectively.
3. The Committee, in preparation for the Inspection and Hearing, determined that further information is necessary for the determination of the application and issued the following Direction in terms of Regulation 11(d)(ii) of the Private Rented Housing Panel (Tenant and Third Party

Applications) (Scotland) Regulations 2015 (“the Regulations”) to be complied with on or before 5 January 2016 :-

*“Mr Duncan Stanners, being one of the Landlords named in the Application, must write to the Committee to explain and confirm (i) the link in title between him and Mary Williamson McPhee who is named as the registered proprietor of the Property in terms of Land Certificate numbered AYR46417 (ii) that he has authority to act on behalf of the said Mary Williamson McPhee, (iii) to provide the full name of Mrs Stanners being the other Landlord named in the Application and (iv) to explain and confirm the link in title between the said Mrs Stanners and the said Mary Williamson McPhee and that the said Mrs Stanners has authority to act on behalf of the said Mary Williamson McPhee*

*Reason for Direction 1*

*It is necessary that the Committee are satisfied as to the identity of the Landlords.”*

#### Written Representations

4. Mr. Stanners of the Landlords submitted written representations to the Committee comprising email correspondence between him and Mrs. McGeachie dated between 10 September 2015 and 5 October 2015 indicating that the problems with the oil fired boiler and lack of hot water and heating were caused by insufficient oil in the system which allowed water to ingress into the system. Mr. Stanners lodged letters of support from a previous tenant stating that she had had no problems with either the Property or the Landlords in their role as landlords, from a neighbouring business owner stating that the Tenants had left an accumulation of rubbish at the property and from a heating engineer confirming that he had carried out works on the heating system. Mr. Stanners also lodged photographs showing various household items and items of rubbish outside the Property and photographs showing damage to the inside of the Property.

#### Inspection and Hearing.

5. The Inspection took place on 6 January 2016 at 10.00 a.m at the Property. Mr. Stanners of the Landlords was present at the Inspection.

6. The Committee inspected the hall, the kitchen, a living room in the Property and an external boiler room and the items of which the Tenants complained specifically in the Application, namely, the boiler and the hot water and heating systems. The Committee tested the radiators for warmth and ran a hot water tap. The Committee took digital photographs at the Inspection which photographs form the Schedule annexed and executed as relative hereto.

7. The Application contained no detail of the matters complained of in terms of 13 (1) (e) of the Act in respect of any furnishings provided by the landlord under the tenancy.

8. Following the Inspection, a Hearing was held at the Annfield House Hotel, Irvine on 6 January 2016 at 11.00 a.m at the Property. Mr. Stanners of the Landlords was present at the Inspection.

9. At the Hearing, the Mr. Stanners submitted to the Committee that, in his opinion, the matters complained of by the Tenant had arisen as a result of other matters between him and the Tenant relating to the Tenants' misuse of the Property and the Tenants' failure to pay rent, all in breach of the tenancy agreement and that he had undertaken the works necessary to address the complaints raised in the Application.

10. With regard to the boiler, the Mr. Stanners advised the Committee at the Hearing and pointed out to the Committee at the Inspection that he had replaced the oil fired boiler with a new biomass boiler. Mr. Stanners advised the Committee that, in any event, when the Tenants had complained about the oil fired boiler he had had it serviced and repaired by a registered Worcester Bosch heating engineer. Mr. Stanners advised the Committee that, in his opinion, the repairs were required because the Tenants or their workmen had damaged the boiler whilst attempting works on it. Mr. Stanners advised the Committee that in his opinion, if the boiler had not been working properly and if there had been no hot water or heating this was as a result of the Tenants allowing the oil reserve to run low causing water to enter the system. Mr. Stanners advised the Committee that he had sold the oil fired boiler and replaced it with a new biomass boiler.

11. With regard to the smoke alarms, Mr. Stanners advised the Committee that sufficient smoke alarms had been installed but the Tenants had removed these when they vacated the Property.

12. The Committee advised Mr. Stanners that the Committee's jurisdiction was in respect of the statutory repairing standard of the Property and that the Committee had no jurisdiction in respect of the other matter arising from the tenancy. The Committee did, however, advise Mr. Stanners of the current regulatory requirements in respect of smoke, heat and carbon monoxide detectors and appliance safety certificates.

13. In response to the Committee's questions regarding the Direction referred to in paragraph 3, Mr. Stanners confirmed that he and his wife are the owners of the Property and, on further examination of the Land Register extract, the Committee noted that the address on the Land Register print was incorrect and was in fact for an adjacent property.

#### Summary of the Issues

14. The issues to be determined by the Committee are whether or not the Property meets the Repairing Standard in respect of Sections 13 (1) (c), (e) and (f) of the Act at the date of the Inspection and Hearing. In particular whether 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, any furnishings provided by the landlord under the tenancy are capable of being used safely for the purpose for which they are designed and if the house has satisfactory provision for detecting fires and for giving warning in the event of fire or suspected fire.

#### Findings of Fact

15. Mr. and Mrs. Duncan Stanners are the owners of the Property and Mr. and Mrs. McGeachie had been the tenants of the Property in terms of a tenancy agreement between the parties dated 1 September 2012.

16. The Property is a one storey and attic detached house. There is a detached boiler house located in the rear garden. The Property appears to be of traditional brick construction, estimated to be in the region of around 30 years old or thereby. The roof is pitched and finished with tiles. A photograph of the Property is shown on the Schedule.

17. From the Inspection, the Committee found the following:

i) A new biomass boiler has been installed recently and appears to be in working order. (photograph is shown on the Schedule);

ii) There is heating and hot water in the Property;

iii) There are no hard wired smoke detectors in the Property and it appears that battery operated smoke detectors have been removed and

iv) The Property is unfurnished.

18. From the written representations, the Committee found that there was a dispute between the parties which was outwith the jurisdiction of the Committee.

19. From the written representations and Mr. Stanners' statements to them at the Hearing, the Committee accepted that the Landlords had serviced and repaired the oil fired boiler during the course of the tenancy and that battery operated smoke detectors had been installed.

#### Decision of the Committee

20. The Committee's decision was based on the Application with supporting documents, the written representations, the Inspection and on the statements made to the Committee by the Mr. Stanners at the Hearing.

21. In respect of Section 13 (1) (c), of the Act, the Committee found that, at the date of the Inspection and Hearing, the Landlords had not failed to comply with the duty imposed by Section 14 (1) (b) of the Act, the reason being that the Property 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.

22. In respect of Section 13 (1) (e) of the Act, the Committee found that, at the date of the Inspection and Hearing, the Landlords had not failed to comply with the duty imposed by Section 14 (1) (b) of the Act, the reason being that no evidence was produced to the Committee in respect of this complaint and there appears to be no furnishings provided by the Landlords as part of the tenancy.

23. In respect of Section 13 (1) (f) of the Act, the Committee found that, at the date of the Inspection and Hearing, the Landlords had not failed to comply with the duty imposed by Section 14 (1) (b) of the Act, the reason being that it appeared to the Committee that it was likely that

satisfactory provision for detecting fires and for giving warning in the event of fire or suspected fire had been installed during the tenancy and, as the Property is currently unlet and vacant, there is no requirement on the Landlords to comply with this part of the Act .

24. The decision is unanimous.

#### Right of Appeal

25. 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.

26. Where such an appeal is made, the effect of the decision and of any repairing standards enforcement 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 any repairing standards enforcement order will be treated as having effect from the day on which the appeal is abandoned or so determined.

Signed

**K Moore**

Karen Moore, Chairperson

Date *15 January 2016*

*This is the schedule of photographs referred to in the foregoing decision dated 15 January 2016*

2 Watercut Road, Kilwinning KA13 7PX **K Moore**

PRHP/RP/15/0272 6<sup>th</sup> January 2016

### Schedule of photographs



Front elevation



Rear elevation



Rear garden/outbuilding



New/old feed supply  
For central heating



New central heating plant



Location of former oil central heating boiler.