



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

prhp Ref: PRHP/FK10/107/08

Re : Property at 3 Lochbrae, Sauchie, Clackmannanshire, FK10 3HG ("the Property")

The Parties:-

Theresa McDonald residing formerly at 3 Lochbrae, Sauchie, Clackmannanshire, FK10 3HG ("the Tenant")

And

Dollar Property Company Limited, Balado House, by Kinross ("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 failed to comply with the duty imposed by Section 14 (1)(b) of the Act.

Background

1. By application dated 8 December 2008 the Tenants 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 Tenants stated that the Tenants 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) there was a working heating system within the Property;
 - (b) there was a proper supply of hot water;
 - (c) the windows in the kitchen and living room were in proper working order;
 - (d) the fridge/freezer worked properly;
 - (e) the kitchen sink drained properly;
 - (f) the Property was in proper decorative order;
 - (g) the electricity points within the Property worked correctly;
 - (h) there was a proper working smoke alarm within the Property;
 - (i) there was no dampness within the Property;
 - (j) there were no damaged asbestos floor tiles within the Property.

3. By letter dated 18 February 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 Tenant.
5. Following service of the Notice of Referral the Tenants made no further written representation to the Committee other than their original application dated 18 December 2008. The Landlord made no written representations to the Committee.
6. The Private Rented Housing Committee (consisting of Mr E K Miller, Chairman and Legal Member; Mr David Godfrey, Surveyor Member; and Mr James Riach, Housing Member, accompanied by the Clerk, Mr Robert Shea) inspected the Property on the morning of 21 May 2009. The Tenant was not present during the inspection. The Landlord was present during the inspection.
7. Following the inspection of the Property, the Private Rented Housing Committee held a hearing at Sauchie Hall, Marr Place, Alloa and heard from the Landlord, who represented himself. Neither the Tenant nor any representative appeared at the Hearing.

8. The Landlord submitted as follows:-

The Landlord acknowledged that some items had needed to be attended to within the Property but felt that he had done his best to address these.

He had had the heating checked and this was in proper working order.

He acknowledged that whilst the hot water supply was not the best and ran at a fairly low flow, there was still sufficient hot water within the Property for every day use.

He accepted that the kitchen and living room windows were difficult to open and close but it was difficult to get spare parts for the windows although he had tried to improve them.

There was a stand alone fridge/freezer that he had supplied at the Property. It had transpired that there was also a built in unit that the Landlord had been unaware of but as far as he was aware this was not used and he could easily remove this.

The kitchen sink had been slow to drain and he had provided caustic soda to the Tenant to ensure that it remained unblocked.

The Landlord had carried out some decorative works recently and the Property had been repainted.

The Landlord had had an electrician in to check the wall sockets and replace these where appropriate.

In relation to the smoke alarm, the allegation made by the Tenant that he had simply flung a battery at them was incorrect. The Landlord had gone into the Property one day after trying to arrange access for some time and was in the process of replacing the battery when the Tenant reappeared. The Landlord stated he had continued to fit the battery and then left.

In relation to the asbestos floor tiles, the Landlord had checked what works were required with the Local Authority and had simply laid new carpets over the floor where the tiles were damaged and had been advised by the Local Authority that this was sufficient.

9. It was clear to the Committee that some work had been carried out to the property over recent times. The issues to be determined by the Committee were:-

- (a) whether there was proper heating within the Property;
- (b) whether the supply of hot water to the Property was sufficient;
- (c) whether the kitchen and living room windows were properly wind and watertight and capable of opening correctly;
- (d) whether the kitchen sink drained properly;
- (e) whether the Property was in a proper decorative state;
- (f) whether the wall sockets were operative throughout the Property;
- (g) whether there was any dampness within the Property;
- (h) whether the asbestos floor tiles represented a hazard to health;
- (i) whether there was an appropriate and satisfactory provision for detecting fires and giving warning in the event of fire or suspected fire in the property.

Findings of fact

10. The Committee finds the following facts to be established:-

- The fixed radiators and stand-alone heaters at the property were in proper working order with the exception of the front bedroom radiator which was not working.
- There was an adequate if limited supply of hot water.
- The kitchen and living room windows were defective and did not open and close properly.
- The kitchen sink drained properly.
- The Property was in a reasonable decorative state throughout.
- The wall sockets at the Property worked satisfactorily.
- There was no evidence of dampness within the Property.
- The asbestos floor tiles are being properly covered by carpets.
- There was a proper working battery operated smoke alarm in the Property.

Reasons for the decision

11. The Committee reached its decision based on the evidence obtained by the Committee at the inspection on 21 May 2009. The Committee tested the various radiators and storage heaters within the property. The only one that was not working as at the date of inspection was in the front bedroom beneath the window. The Committee ran the hot water at the property. Whilst the supply was limited the Committee considered it to be adequate for the purposes of meeting the repairing standard. The kitchen and living room windows were both very difficult to open and extremely difficult to close. The Committee did not feel these were adequate to meet the repairing standard. The Committee ran water through the kitchen sink and this drained in an appropriate fashion. The property was freshly decorated throughout. The Committee tested the various wall sockets within the property and found these to be in proper working order. As indicated the property was freshly decorated and there was no evidence of any damp to be found by the Committee. The asbestos tiles had been covered by the addition of carpets and the Committee found this to be satisfactory. In relation to the smoke alarm there was a proper working battery operated smoke alarm. The Committee considered whether this was the case at the time of the original grant of the lease and whether a mains wired smoke alarm would require to be fitted. However, given the lack of contrary evidence from the Tenant and the fact there was no suggestion that there had never been a smoke alarm present but simply that the battery had needed to be replaced, the Committee considered that the current arrangements were acceptable.

Decision

- 12. The Committee accordingly determined that the Landlord had failed to comply with the duty imposed by Section 14 (1)(b) of the Act.
- 13. The Committee proceeded to make a Repairing Standard Enforcement Order as required by section 24(1).
- 14. The decision of the Committee was unanimous.

Right of Appeal

- 15. 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

- 16. 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.

Signed
Chairperson

E Miller

..... Date..... 4/6/09



Repairing Standard Enforcement Order

Ordered by the Private Rented Housing Committee

prhp Ref: PRHP/FK10/107/08

Re : Property at 3 Lochbrae, Sauchie, Clackmannanshire, FK10 3HG ("the Property")

Title No: ALL and WHOLE the First Floor flatted dwellinghouse known as 3 Lochbrae, Sauchie and forming part of the block of flatted dwellinghouses numbered 1-11 Lochbrae, Sauchie and being the subjects registered in the Land Register of Scotland under Title Number CLK1796

The Parties:-

Theresa McDonald residing formerly at 3 Lochbrae, Sauchie, Clackmannanshire, FK10 3HG (represented by their agent John Spence c/o 49-51 High Street, Alloa) ("the Tenant")

And

Dollar Property Company Limited, Balado House, by Kinross ("the Landlord")

NOTICE TO DOLLAR PROPERTY COMPANY LIMITED ("the Landlord")

Whereas in terms of their decision dated 4 June 2009, the Private Rented Housing Committee determined that the landlord has failed to comply with the duty imposed by Section 14 (1)(b) of the Housing (Scotland) Act 2006 and in particular that the landlord has failed to ensure that the property is:-

- (a) the house is wind and watertight and in all other respects reasonably fit for human habitation;
- (b) the installations in the house for the supply of water, gas and electricity and for sanitation, space heating water are in a reasonable state of repair and in proper working order

The Private Rented Housing Committee now requires the Landlord to carry out such work as is necessary for the purposes of ensuring that the house concerned meets the repairing standard and that any damage caused by the carrying out of any work in terms of this Order is made good.

In particular the Private Rented Housing Committee requires the Landlord:-

- (a) to repair or replace the radiator affixed to the wall beneath the front bedroom window to ensure that it is in proper working order; and
- (b) to carry out such works as are necessary to repair or replace the windows in the kitchen and living room at the property to ensure that they open and shut properly and smoothly and are wind and watertight.

The Private Rented Housing Committee order that the works specified in this Order must be carried out and completed within the period of 3 months from the date of service of this Notice.

A landlord or a 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.

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.

In witness whereof these presents type written on this and the preceding page are executed by Ewan Kenneth Miller, Solicitor, Whitehall House, 33 Yeaman Shore, Dundee Chairperson of the Private Rented Housing Committee at Dundee on 4 June 2009

before this witness:-

L Johnston

_ witness

E Miller

_ Chairman

LINDSAY JOHNSTON
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Legal Secretary