

Determination by The Private Rented Housing Committee

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

Property at 23 William Black Place, South Queensferry, Edinburgh.
Land Register Title number: WLN5251

The Parties:-

Mr and Mrs A Carberry, 23 William Black Place, South Queensferry, Edinburgh ("the Tenants")

Ms J McWilliam, 18 Ravelston House Road, Edinburgh ("the Landlord")

Background

1. By application dated 19 November 2009, the Tenants applied to the Private Rented Housing Panel for a determination as to 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 they considered that the Landlord had failed to comply with the duty to ensure that the house was wind and watertight and in all other respects reasonably fit for human habitation, that the structure and exterior of the house (including drains, gutters and external pipes) were in a reasonable state of repair and in proper working order, that the installations in the house for the supply of water, gas and electricity and for sanitation, space heating and heating water were in a reasonable state of repair and in proper working order and that any fixtures, fittings and appliances provided by the Landlord under the tenancy were in a reasonable state of repair and in proper working order.
3. The Private Rented Housing Committee served Notice of Referral in terms of Schedule 2 paragraph 1 of the Act upon both the Landlord and the Tenants.
4. Following service of the notice of referral, both the Landlord and the Tenants made written representations.
5. The Private Rented Housing Committee inspected the property on 18 February 2010. The Tenants and the Landlord were present during the inspection. Following the inspection of the property, the Private Rented Housing Committee held a hearing at Rosebury Hall, High Street, South Queensferry and heard representations from the Tenants and the Landlord.

Representations by the Tenants

6. The Tenants explained that new patio doors had been installed 18 months ago as the handle on the old doors had not worked. The new doors had not been fitted properly. The Tenants stated that the doors were draughty, banged around in the wind and had condensation and there was no drainage for the condensation to get out. The Tenants however confirmed that there was no water coming in from outside the property. The glaziers had been back 6 or 7 times to alter the doors after they were fitted.

7. The Tenants stated that the washing machine provided by the Landlord had broken a couple of years ago and water had flooded out onto the kitchen floor and they had had to take up the carpet tiles. The Tenants stated that they asked the Landlord to buy 4mm thick tiles or 2mm thick board and 2mm thick tiles, the Landlord only bought 2mm carpet tiles. The Tenants indicated that they had said that they would fit the tiles but then were concerned with regard to poison in the glue. The Tenants had put down the board but the tiles were still in the bedroom. The Tenants explained that they had replaced the washing machine with one of their own.
8. The Tenants stated that the taps on the bathroom sink had no tops on them and it had been like this for 2 ½ years.
9. In connection with the front door, the Tenants stated that the snib was broken and that they had to put toilet paper in the keyhole as there was a draft and there was also a draught coming under the door as there was a gap under the door. The Tenants stated that they had tried different draught excluders and these did not work.
10. In connection with the toilet, the Tenants stated that every time a stool was in the toilet it did not flush away and came back up. Dynorod had been out on numerous occasions and said that it was the cistern. The Tenants stated they had to plunge the toilet 2 or 3 times a day.
9. The Tenants also stated that there was dampness in the bedrooms and the lounge and that the radiators, although they were hot, did not properly heat the rooms. The Tenants stated that there was a bad condensation problem and they had to wipe the windows a lot of times during the day.
10. In connection with the kitchen window there was also a problem of rain coming through the air vent which maybe coming from the upstairs flat.
11. The Tenants stated that the old cooker had not been working and that the Landlord replaced the cooker with a new cooker. The Tenants stated that there was a problem with this cooker as it was not good for a family and got very hot and they could not open the windows because the rain would come in. The Tenants also stated that they were concerned with regard to the fact that the cooker was plugged into a 13 amp socket and not into a proper cooker point. The Tenants confirmed that the hob was separate from the cooker.

Representations by the Landlord

12. The Landlord explained that when the property was let to the Tenants there was a fully fitted kitchen in the house. The Tenants had firstly complained about the fridge freezer and this had been replaced. They then complained about the patio doors as the handle was broken but she had to replace the whole unit. The Landlord stated that Liberton Glazing did the job and that the doors had been fitted properly by them and they had come back 6 times but stated that there was not problem with the doors. The Landlord stated that the patio doors maybe slightly out of alignment but this was only 1 ½ mm and the glazier had stated that this had occurred because the Tenants daughter had swung on the handles of the doors.
13. In connection with the front door the Landlord stated that she had been advised by Let Wise that a draught excluder was all that was required. There was one now in place.
14. In connection with the washing machine, the Landlord advised that the Tenants had not informed her that it was broken and they had chosen to replace it.
15. In connection with the cooker, the Tenants stated that the old one was broken but there was only one element that was not working. The Landlord provided a new

cooker but then the Tenants stated that they were not happy with this. The Landlord explained that she had bought the cooker from Curry's and had it fitted. Curry's electrician had said that it was alright to wire the cooker into the normal electrical socket.

16. In connection with the taps, the Landlord indicated that she did not know why the Tenants took the tops of the taps off.
17. The Landlord explained that an electrician had recently replaced the fuse board and everything had been renewed in connection with the wiring.
18. In connection with the carpet tiles, the Landlord stated that the Tenants indicated that they would lay them and she had bought and provided the tiles.
19. In connection with the water ingress to the window in the kitchen the Landlord stated that she understood that the neighbour above had indicated that the problem was coming from there.
20. The Landlord stated that she was happy to carry out any work that the Committee thought was required but that she did not see what was wrong with the things that the Tenants were complaining about.
21. In response to a question from the Committee, the Landlord confirmed that the furnishings provided with the Tenancy were carpets and kitchen appliances.

Decision

22. In connection with the washing machine, there was no evidence available to the Committee to suggest that the Landlord had been advised that the old one was not working and no evidence to suggest that the old washing machine could not have been fixed. The Committee noted that the Tenants had replaced the old washing machine with their own washing machine.
23. In connection with the cooker, there was no evidence that there was anything wrong with the cooker which the Landlord had purchased new from Currys. The Committee accordingly did not accept that the cooker was not in proper working order. There was also nothing to suggest that the loading of the cooker exceeded 3Kw (the limit for connecting to a 13 amp socket outlet) and Currys had found the wiring to be acceptable. No breach of the Repairing Standard was accordingly found.
24. In respect of the front door, it was clear from the inspection that there was a large gap at the bottom of the door and the Committee accordingly did not consider the door to be wind and water tight and consider that this is a breach of paragraph 13(1)a of the Act. The Committee did not think that it would be necessary to replace the door as an external draught excluder of weather barr type should be sufficient to make the door wind and water tight.
25. In connection with the patio doors, it was clear to the Committee from the inspection that the new doors which are in place at present are wind and water tight and in proper working order. The fitting of the doors may not be perfect but the Committee did not consider that there was anything bad enough to be a breach of the Repairing Standard.
26. In connection with the kitchen window, it appeared that water was coming in through the vents. There however appeared to be a consensus between the Landlord and the Tenants that this was probably coming from the upstairs flat. This being the case it is not within the Landlord's control to rectify the situation. The Committee noted that the middle sealed unit in the kitchen has some internal condensation in it, probably caused by the water ingress from upstairs. At present this is not bad enough so as to make the window not fit for purpose but if water ingress continues, this may get

worse. The Committee would accordingly recommend that the Landlord gets in touch with the occupier of the flat upstairs in connection with this matter. It was not clear to the Committee how much of the water problem with the kitchen window was as a result of water ingress and how much was as a result of condensation. There was clearly a significant condensation problem within the property. It was clear from the inspection that the heating was working and adequate for the property. The Tenants however appeared not to be properly ventilating the property. Cotton wool had been inserted under the windows and there was toilet roll in the key hole in the door and at the time of the inspection, none of the windows in the property were open and this was at a time when it would have been helpful to have the windows open. To avoid condensation, properties must be properly ventilated on a regular basis especially after cooking, showering or any activity involving moisture within the building. The Committee considered that the damp evidenced within the bedrooms and the lounge was mainly as a result of condensation. The Tenants usage of the property will have a large impact on this. The Committee did not consider that the Landlord was in breach of the Repairing Standard in respect of this matter.

27. In connection with the taps on the sink in the bathroom, handles are clearly missing. The Landlord has an obligation to replace the handles of the taps and to ensure that the taps on the sink are in proper working order. The Committee consider that this is a breach of paragraph 13(1)c of the Act and accordingly resolved to make an Order in respect of this.
28. In connection with the kitchen floor, as the property is let on a furnished basis to include carpets, the Landlord clearly has a responsibility to replace the carpet tiles in the kitchen. The Committee consider that it is a breach of Section 13(1)d not to do this and resolved to make an Order in respect of this.
29. In respect of the toilet, the Committee observed this being flushed on two occasions at the inspection and there did not appear to be any significant problem with in. The Committee also noted the reports lodged by the Landlord from DynoRod in respect of the toilet. The Committee did not find any breach of the Repairing Standard in respect of this matter. The Committee noted that the cistern was wobbly but this was not a matter that was raised in the original application. The Committee however would recommend that the Landlord ensure that the cistern is fixed properly to the wall.
30. The Committee accordingly determined that the Landlord has failed to comply with the duty imposed by Section 14(1)(b) of the said Act and proceeded to make an Repairing Standard Enforcement Order in relation to a number of matters as required by Section 24(2).
31. The decision of the Committee is unanimous.
32. Given the minor nature of the work to be carried out by the Landlord, the Committee considers it reasonable that the work be done within a period of four weeks of the date of this decision.

Right of Appeal

1. **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

2. 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.

J V Lea

Signed
Chairperson

..... Date: 2 March 2010

A Repairing Standard Enforcement Order

Ordered by the Private Rented Housing Committee

Re: Property at 23 William Black Place, South Queensferry, Edinburgh.

Land Register Title number: WLN5251

The Parties: Mr and Mrs A Carberry, 23 William Black Place, South Queensferry ("the Tenants")
Ms J McWilliam, 18 Ravelston House Road, Edinburgh ("the Landlord")

NOTICE TO: Ms J McWilliam, 18 Ravelston House Road, Edinburgh ("the Landlord")

Whereas in terms of their decision dated _____, The Private Rented Housing Committee having 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 comply with a duty to ensure that the house is wind and water tight and in all other respects reasonably fit for human habitation, and any fixtures and fittings and appliances provided by the Landlord under the tenancy 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 of the work in terms of this Order is made good.

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

1. Repair / replace the front door to make it wind and water tight.
2. Repair / replace the taps on the bathroom sink.
3. Fit the carpet tiles to the kitchen floor as already supplied by the Landlord.

The Private Rented Housing Committee orders that the work be done within 4 weeks of the date of service of this notice.

A landlord or a tenant aggrieved by this 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 variation is suspended until the appeal is abandoned or finally determined, and where the appeal is abandoned or finally determined by confirming the decision, the variation 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 page are executed by Judith V Lea, solicitor, Unit 3.5 The Granary Business Centre, Coal Road, Cupar, Fife, KY15 5YQ, chairperson of the Private Rented Housing Committee at Cupar on 2 March 2010 before this witness:-

R Graham

..... Witness

J V Lea

..... Chairman

Rachel Graham
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