

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

Land Register Title Number: MID52335

Property at 16/1, Robert Burns Drive, Liberton, Edinburgh ("the Property")

The Parties:-

Christopher Krzywinski, Agata Korecka and Oliver Pearn ("the Tenants")

**Mr Riccardo Roberts, c/o The Property Letting Centre, 64 Newington Road, Edinburgh
("the Landlord")**

Background

1. By application dated 24 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 Private Rented Housing Committee inspected the property on 1 March 2010 and thereafter held a hearing in respect of the issues. Having heard submissions from the Landlord and the Tenants the Committee decided that there was a significant problem with damp in the property which was affecting the Tenants' use of the property.
3. The Committee considered that a number of people had been involved in investigating the problem but no one had the appropriate experience and knowledge to resolve it. The Committee considered that the heating in the property was adequate and there was no evidence of any excessive condensation. It appeared that the problem got a lot worse when there had been a sustained period of rain and the damp appeared to affect all the external walls. The history of investigation carried out so far had not resulted in a clear opinion of what was causing the problem. There seemed to be contradictory views between the Council and the timber specialists. The Committee considered that a definitive answer was required and accordingly Directed the Landlord to obtain a Building Survey Report from a Chartered Building Surveyor in order to ascertain the underlying problem. The Committee ordered that this be done within a period of 21 days from the date of issue of their Decision on 8 March 2010.
4. The Committee reconvened on 4 May 2010. The Landlord was represented by Suzanne Smith from the Property Letting Centre. Christopher Krzywinski and Agata Korecka were in attendance on behalf of the Tenants.
5. The Committee heard further submissions on behalf of the Landlord. Suzanne Smith stated that the Landlord had been unable to obtain a Building Survey Report from a Chartered Building Surveyor as he was not presently in a position to fund the requested survey. Ms Smith advised that the Landlord had spoken to a surveyor who told him he would require access to all the properties, not just the Landlord's own flat. There had previously been correspondence from the Landlord's MP asking if the Decision could be deferred until there was a full report from Edinburgh City Council on the outcome of their investigations into the problem. Ms Smith however advised the Committee that the Council had now advised that they were not prepared to do anything about the problem. Ms Smith explained that due to problems with the flat it had been necessary to issue notice to the Tenants and the Tenants were to leave the property on 16 May 2010. Ms Smith stated that the Landlord accepted that it was not possible to let the property in its present condition. She understood that the problem

was not just with the Landlord's flat but that the two flats above were also similarly affected.

6. The Tenants advised that the problem had improved now that weather was better. They however stated that they were unhappy with the position that they had found themselves in as they had been paying full rent during a period when the flat was in an unacceptable state. The Tenants enquired as to whether any compensation would be possible. The Tenants pointed out that they were still using the property in the same way and there was no longer any damp problem within the property. The Tenants indicated that they had visited the flat upstairs and it had damp in similar locations on external walls. The Tenants advised that they would be moving out on 16 May 2010.
7. Photographs of the flat above and photographs of the ties were lodged by Ms Smith.

Decision

8. The Committee had previously determined that there was a significant problem with damp in the property. The property is not wind and watertight and in all other respects reasonably fit for human habitation and the Committee accordingly find that the Landlord is in breach of Section 13(1)(a) of the Act. The Committee had requested a Building Survey Report from a Chartered Building Surveyor to ascertain what the underlying problem was. The Landlord however has failed to obtain this. In the circumstances, the Committee had no option but to make a Repairing Standard Enforcement Order requiring the Landlord to rectify the significant damp problem in the property. The Committee noted that the Tenants were to move out on 16 May but despite this the Committee still consider it appropriate to make the Order. The Committee would also point out the terms of Section 28(5) of the Act which makes it an offence for a Landlord to re-let the property while a Repairing Standard Enforcement Order is in place. The Committee had sympathy for the situation in which the Tenants found themselves in this case but unfortunately the Committee does not have any power to award compensation and this is a matter between the Landlord and the Tenants.
9. Given that there was clearly a significant damp problem the Committee considered it reasonable to allow the Landlord a period of 3 months to sort matters out.

Right of Appeal

10. **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

11. 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 Lea

Signed:

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Date: 12 May 2010

A Repairing Standard Enforcement Order

Ordered by the Private Rented Housing Committee

Re : Property at 16/1 Robert Burns Drive, Liberton, Edinburgh ("the Property"), Land Register Title Number MID52335.

The Parties:-

Christopher Krzywinski, Agata Korecka and Oliver Pearn ("the Tenants")

Mr Riccardo Roberts, c/o The Property Letting Centre, 64 Newington Road, Edinburgh ("the Landlord")

Whereas in terms of their decision dated 12 May 2010, 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 provide evidence that the house is wind and water tight and in all other respects reasonably fit for human habitation.

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. Rectify the significant problem with damp which is affecting the property.

The Private Rented Housing Committee orders that the work should be carried out within a period of 3 months from 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 12 May 2010 before this witness:-

R Graham
.. Witness

..... **J Lea** . Chairman

Rachel Graham
Unit 3.5, The Granary Business Centre
Coal Road
Cupar
Fife