



**Decision of Private Rented Housing Committee
under Section 24 (1) of the Housing (Scotland) Act 2006**

Statement of Reasons for Decision of the Private Rented Housing Committee

(Hereinafter referred to as "the Committee")

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

PRHP Reference : PRHP/RP/14/0294

Re: Property at 63/11 Bread Street, Edinburgh EH3 9AH ("the Property")

The Parties :

Alvaro Carrasco, 12/6 Moncrieff Terrace, Edinburgh EH9 1NA ("the Applicant")

Jamie McKenzie Davidson, 'Eldermount' 110 Church Street, Tranent, East Lothian EH33 1BZ ("the Landlord")

The Committee comprised:-

Mr David Bartos	- Chairperson
Mr Donald Marshall	- Surveyor member
Mrs Irene Kitson	- Housing member

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 Property concerned, and taking account of the evidence before it, determined that the Landlord had not complied with the duty imposed by Section 14 (1)(b) of the Housing (Scotland) Act 2006.

Background:-

1. By application received on 19 December 2014, the Applicant applied to the Private Rented Housing Panel ("PRHP") for a determination that the Landlord had failed to comply with the duty to ensure that the Property met the repairing standard in section 13 of the Housing (Scotland) Act 2006.
2. In his application the Applicant complained that the Landlord had failed to meet the repairing standard in the following respects:
 - (1) the "radiator" in the living room did not work;

- (2) there were holes in the kitchen area and the flat which allowed the entry of mice.

The complaint in respect of the holes and mice had been raised in an e-mail from the Applicant to the Landlord dated 9 June 2014, and in another e-mail dated 28 November 2014. The latter e-mail also complained about the heating in the living room.

3. The President of the Private Rented Housing Panel decided under section 23 of the 2006 Act to refer the application to a Private Rented Housing Committee. That decision was intimated to the Applicant and to the Landlord by letters of the Panel's Clerk dated 10 March 2015 and entitled "Notice of Referral, Inspection and Hearing". The intimation of the Notice of Referral to the Landlord included a copy of the Applicant's application to the Panel.
5. The date and time of the inspection of the Property and the date, time and place of the hearing was intimated to the Landlord. An inspection of the Property and a hearing at the PRHP office at George House, 126 George Street, Edinburgh EH2 4HH were fixed for 5 May 2015 at 10.30 a.m. and 11.30 a.m. respectively.
6. On 29 April 2015 the Panel received an e-mail from the Applicant indicating that he had moved out of the property a month previously and that he wished to cancel the application. By letter to the Landlord dated 30 April 2015 the Panel asked the Landlord to confirm whether the lease had been terminated and to confirm that the Committee would be allowed access for the inspection. Given that the Landlord had not communicated with the Panel at all by that date the letter was served by sheriff officer on him. By e-mail to the Applicant of the same date the Panel asked him to confirm whether his co-tenant had also vacated the Property and whether the lease had come to an end. By e-mail of 1 May 2015 he confirmed that she too had moved out of the Property.

The Inspection and Hearings

7. On 1 May 2015 the Landlord telephoned the Panel and informed them that he would provide access to the Property at the time fixed for the inspection. On 5 May the Committee attended at the Property to carry out the inspection. The Landlord arrived to inform the Committee that he had no keys to gain access to the Property. He claimed that the tenants had not returned the keys to him despite moving out and another set of keys was held by workmen. The Applicant was not present. In these circumstances an inspection was not possible.
8. Nevertheless the hearing went ahead as fixed. The Landlord attended the hearing. There was no appearance by the Applicant. Rather surprisingly he began his submission by asking for whom the Committee acted. He was informed that the Committee was an impartial tribunal deciding the application that had been made to the Panel. The Landlord told the

Committee that no notice to quit had been served by him. He said that he had not received any notice that the tenants had moved out. His electrician had informed him that the Property was empty. As far as he was concerned the lease was still in force.

9. With regard to the heads of complaint, he said that the wall behind the appliance had not been fixed. He had hired pest control specialists to carry out work to the Property. They had reported that there was a gap big enough for a mouse which they had "stuffed". He had not inspected their work. He acknowledged having received the e-mails from the Applicant. He explained that his business commitments had not allowed him to deal with matters before now. He stated that he was unaware of the "holes" in the bedroom and accepted that they had not been addressed.
10. He said that at the start of the lease there had been a white meter heater in the living room. He had installed a new electric heater in April 2015 into the same place in the living room. He produced to the Committee an invoice from "Sparks Electrical" dated 9 April 2015 for "various electrical works relating to the replacement of a radiator and a new fuse box". However he said that the "radiator" referred to was not a central heating radiator. It was the new electric heater. He claimed that he had been "let down" by tradesmen and was happy to carry out the repairs.
11. It was agreed at the hearing that a new time would require to be fixed for an inspection. This was fixed for 18 May 2015 at 10.30 a.m. and a further hearing was fixed for the same day at 11.30 a.m. at the previous venue. These dates were intimated to the parties. In order to expedite proceedings both parties agreed to waive the requirement for 10 working days' notice for the hearing.
12. The Committee inspected the Property on that date and time. The Applicant and Landlord were both present. The weather was overcast and wet. The inspection revealed that the Property is a flat on the top (or third) floor of a blonde sandstone tenement in the West Port area of central Edinburgh not far from the Grassmarket. The Committee carefully inspected the matters which were the subject of complaint. During the inspection the Applicant moved the fridge and washing machine to show the wall and flooring behind them.
13. At the end of the inspection the Landlord indicated that he would not be attending the hearing. He did indicate that he would carry out any repair works necessary to remedy the complaints and meet the repairing standard. The hearing duly took place and this time only the Applicant appeared and gave evidence.
14. The Applicant said that he and his co-tenant had moved out on 1 April 2015. Before then he had sent an e-mail to the Landlord to say that he would be leaving at the end of the lease. He could not remember the date of that e-mail. He had left the keys in the Property upon departure. He had also sent a text message to the Landlord via his mobile phone and read to

us the text as follows "Moving somewhere else to-morrow. You've breached lease regarding radiator and the deposit. You can have property much sooner than agreed." He had also sent a text to the Landlord saying "keys left on top of the chimney on kitchen table". The reference to the "chimney" was a reference to a mantelpiece. English is not the Applicant's mother language.

15. The Applicant spoke to the mice coming in at various times. Especially bad was the period in July 2014. The kitchen was full of mice faeces. Some mice he had managed to capture with a trap. After the visit of the pest control specialist there had been some improvement but then the mice had come back. The pest control had placed black square looking traps and poison and he had put in traps which were still there. One or two mice had died due to poison.
16. Opposite the fridge in the kitchen corner of the living room there had been only a removable cardboard skirting board from the beginning of the lease. The current loose chipboard skirting board had not been there then. Behind it there was a gap between the floor and the wall. He had filled it with steel wool.
17. The heater which the Committee had seen in the living room during the inspection was not the one present while he lived at the Property. He had seen it for the first time at the inspection. There had been an older heater, similar to one in the bedroom which had not worked during the period of the lease. He had not tried the recently installed heater.
18. Upon questioning from the Committee the Applicant confirmed that the only smoke alarm in the Property that he was aware of was a white plastic box which had lain loose and unfitted in the box room in the Property. He confirmed that it was the battery-operated smoke alarm seen by the Committee in the box room during the inspection.
19. The Applicant expressed concern about the action that the Landlord might take against him in respect of his deposit and the rent which he had retained in respect of the last month of the lease.
20. Following the second hearing the Applicant sent an e-mail to the Committee dated 18 May 2015 which enclosed other e-mails passing between him and the Landlord relating to the termination of the tenancy. Equally the Landlord sent an e-mail to the Committee dated 18 May 2015 setting out what he saw as the points that had been "discussed" at the inspection. In the e-mail he stated that a contractor would be appointed in the following week and that the repairs would be completed as soon as possible thereafter. In response to these e-mails the Committee issued a direction allowing the Landlord to indicate whether he continued to insist that the lease remained in force and if so his reasons in the light of the e-mails supplied by the Applicant. The direction also allowed the Applicant to comment on the Landlord's e-mail. No further communications were received from either party in response to the Direction.

The Evidence

21. The evidence before the Committee consisted of:-

- The application form
- Copy "Tenancy Agreement" between the Landlord and the Applicant and Miss Cristina Cortes Arribas as co-tenants dated 15 and 16 April 2014
- Copy e-mails from the Applicant to the Landlord dated 9 June, 25 November and 28 November all 2014
- Copy e-mails from the Applicant to the Landlord dated 18 February 2015, with e-mail of acknowledgement from the Landlord to the Applicant dated 18 February 2015
- Copy e-mail from the Landlord to the Applicant dated 19 February 2015
- E-mail from Applicant to PRHP dated 18 May 2015 containing among other matters narrative of a text message from the Landlord
- Registers Direct copy of Land Register title MID18774
- E-mail from the Landlord to PRHP dated 18 May 2015
- The oral evidence of the Landlord
- The oral evidence of the Applicant
- Its observations on inspection of the Property

Findings of Fact

22. Having considered all the evidence, including their inspection, the Committee found the following facts to be established:-

- (a) On 15 and 16 April 2015 the Applicant and a co-tenant Cristina Cortes Arribas entered into a lease of the Property from the Landlord, He and his co-tenant took entry on that date. The lease was for a duration of 12 months. The Landlord received a notice of intention to quit by e-mail dated 18 February 2015. On or about 31 March 2015 the Applicant indicated to the Landlord by text message that he and his co-tenant were to leave the Property the next day as set out by him in his evidence. The Landlord acknowledged receipt of the text message with his own text message stating that he would come to collect the keys. He did not collect the tenants' keys. They were left for him in the Property when the Applicant and his co-tenant left the Property on 1 April 2015. The lease terminated on 16 April 2015.
- (b) The Property is a top (third) floor flat in a blonde sandstone tenement in the West Port area of central Edinburgh. From the hallway there is a box room on the right followed by a double bedroom which faces the front of the building. On the left is an entry (without a door) to the living room which faces the front of the building. At the rear of the living room, to the left of the entrance to it, there is a kitchen corner. It comprises cupboard with an immersion heater tank, a sink, and worktop with a

washing machine below it, a cooker and in the far corner, in an alcove, a refrigerator. There is laminate flooring in the living room.

- (c) Opposite the refrigerator there is a loose chipboard skirting covering the join between the flooring and the wall. It can be lifted by hand. At the join there is a gap between the flooring and wall. It has been filled with metal wool. Behind the refrigerator the skirting boards are missing. There is a gap in the flooring in which there is visible a black bin liner. There are signs of mouse droppings behind the refrigerator. Behind the cooker there is a hole in the plastered wall just below a power point. Below it there are bin liners showing from under the flooring. Behind the washing machine there are stains from mouse droppings.
- (d) In the bedroom, in the south-west corner, adjacent to the front of the building there is a gap between the floor and the skirting boards of about 1 cm. It has been filled with metal wool.
- (e) In the living room, in the south-west corner, below the bay window there is an electric heater. The heater was installed after 1 April 2015. Prior to that date there had been a heater which did not work for the duration of the lease. In February 2015 the Landlord indicated to the Applicant that work would begin by the end of the week commencing 16 February but the work was not carried out at that stage.
- (f) There was no fitted smoke alarm in the Property.
- (g) The facts spoken to by the Applicant set out in paragraphs 14 to 18 above.

Continuation with application

- 23. The Committee having received an application from the Applicant to cancel the application and having found that in any event the lease had come to an end, required to decide whether it should abandon consideration of the application or continue to determine the application (Housing (Scotland) Act 2006, sched.2 para. 7(3)).
- 24. Given the nature of the application and in particular the public health aspects of the penetration of mice into the Property, the Committee considered that the public interest required that the matters in the application should be dealt with in order to ensure that the Property meets the repairing standard set out in section 13(1) of the 2006 Act before it is capable of being let in the future. Accordingly the Committee exercised its power under paragraph 7(3)(b)(i) of schedule 2 to the 2006 Act to continue to determine the application.

Reasons for decision

- 25. The Committee had no reason to doubt the evidence of the Applicant. He spoke in a clear and helpful manner and answered questions without

prevarication or evasion. The Committee accepts his evidence as credible and reliable.

26. The Committee has difficulties with the evidence of the Landlord. He admitted that he had received the Applicant's e-mails in 2014 but claimed that he was unaware of any problem in the bedroom. He claimed that he had been unable to provide access to the Committee because the tenants had not returned the keys. Yet he was able to instruct an electrician to install the new heater after their departure, for whom he must have been able to supply the keys. He claimed that he had not received any notice that the tenants had moved out but this is contradicted by his own acknowledgement of the Applicant's e-mail in February and text message in late March.
27. The Landlord also supplied the Committee with an invoice from "Sparks Electrical" dated 9 April 2015 and numbered "001" being "job no. 001" in respect of electrical works relating to the replacement of "a radiator". It seems inherently improbable that this should have been electrician's first job of the year. No "radiator" was put in. Even leaving that aside the invoice albeit dated 9 April 2015 states that payment for the works was made on 13 April 2015 and gives as the invoice total at the foot of "£0". This appears most irregular. For these reasons the Committee is not prepared to accept the invoice tendered by the Landlord as genuine.
28. The Committee also took account of the Landlord's initial attitude to the Committee at the first hearing. In the circumstances it is not prepared to accept his evidence as reliable where it is not supported by that of the Applicant or the Committee's findings on inspection. Where the evidence of Landlord and Applicant conflict the Committee preferred the latter.
29. The Committee required to decide whether in respect of the complaints the Property failed to meet any aspect of the repairing standard in section 13 of the Act.
30. Complaint (1) related to heater in the living room not working and therefore not being in a reasonable state of repair or in proper working order (Housing (Scotland) Act 2006, s.13(1)(c)). The Committee found that while this had been the case with the original heater while the Applicant had resided in the house there was no evidence that this was still the case with the heater that had been installed in April. In these circumstances the Committee rejects this complaint. However it deprecates the delay of the Landlord in carrying out the replacement, noting that the matter was raised in November of last year and that despite an assurance that work would begin in mid February nothing was done until April.
31. Complaint (2) related to the holes in the Property leaving the structure of the Property not in a reasonable state of repair as evidenced by the entry of mice (2006 Act, s.13(1)(b)). The Committee was clearly of the view that the gaps between the flooring and the walls and the hole in the plasterwork left the structure of the Property not in a reasonable state of

repair. For this reason the Committee concluded that the Property failed to meet the repairing standard in section 13(1)(b) of the Act.

32. During its inspection the Committee also noticed that there was no smoke alarm in the Property. From a basic safety point of view this is a significant cause for concern. Apart from this it appears to be a serious breach of the repairing standard in section 13(1)(f) of the Act. The Applicant was clearly unaware of the Landlord's duty in this respect or else it is likely that he would have complained about this matter also. While the Committee could not make a formal finding on this matter or include it in the Repairing Standard Enforcement Order, the Committee draws this to the Landlord's attention.
33. It would be most prudent for the benefit of the Landlord and his future tenants for him to install an appropriate electrical mains-connected smoke alarm or alarms in accordance with the Scottish Government Guidance on smoke alarms. This Guidance is available at among other places on the Panel's website in the "How we can help" section.

Decision

34. The Committee determined that the Landlord had failed to comply with the duty imposed by section 14 (1) (b), of the 2006 Act in relation to the Property meeting the repairing standard as stated above in relation to complaint (2) in the respects set out above but not otherwise.
35. The Committee took account of the Landlord's assurance at the hearing and in the e-mail afterwards that the work would be carried out. However by the date of its decision the Committee had received no indication that the work would be carried out other than an e-mail stating that a contractor had been around and that the work was expected to be completed by the end of June. Given the past assurances regarding the carrying out of the work which have not been met, the Committee could place no material weight on this e-mail. In the circumstances the Committee therefore proceeded to make a Repairing Standard Enforcement Order. Given the Landlord's awareness of the need for the work, and its straightforward nature, the timescale of 3 weeks appeared reasonable.

Rights of Appeal

36. A landlord or Applicant aggrieved by this decision of the Committee may appeal to the Sheriff by summary application within 21 days of being notified of that decision.
37. Unless the lease or tenancy between the parties has been brought to an end, the appropriate respondent in such appeal proceedings is the other party to the proceedings and not the Committee which made the decision.

Effects of Section 63 of the 2006 Act

- 38. Where such an appeal is made, the effect of this decision and of any Order made in consequence of it is suspended until the appeal is abandoned or finally determined.
- 39. Where the appeal is abandoned or finally determined by confirming the decision, the decision and the Order made in consequence of it are to be treated as having effect from the day on which the appeal is abandoned or so determined.

D., BARTOS



Signed

.....Date: 30 June 2015.....

David Bartos, Chairperson

E. POTTER

Signature of Witness...

.....Date...30/6/15

Name of witness: Emma Potter

Address: Parliament House
Edinburgh EH1 1RF

Occupation of witness: Advocates Clerk