



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

prhp Ref: PRHP/RP/15/0144

Re : Property at 10 Clashrodne y Avenue, Cove Bay, Aberdeen AB12 3TU ("the Property")

The Parties:-

LIONEL IAN RICHARD and FERNANDA MANHAES BERNARDES, both residing sometime at 10 Clashrodne y Avenue, Cove Bay, Aberdeen AB12 3TU ("the Tenant")

NEIL GEORGE SHARP and MRS JULIE SHARP, residing sometime at Moss-Side, Charleston, Nigg, Aberdeen (represented by their agent, **Gavin Bain & Company, Solicitors**, 432 Union Street, Aberdeen AB10 1TR) ("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, 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 29 April 2015, received on 30 April 2015, the Tenant 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 Tenant stated that the Tenant 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) the house is wind and water tight and otherwise fit for human habitation,
 - (b) the structure and exterior of the house (including drains, gutters and external pipes) are in a reasonable state of repair and in proper working order,
 - (c) 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, and
 - (d) any fixtures, fittings and appliances provided by the Landlord under the tenancy are in a reasonable state of repair and in proper working order,
3. By letter dated 20 May 2015 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 Tenant made no further written representations to the Committee other than the original application dated 29 April 2015. The Landlord's representative (by letter dated 23 June 2015), made written representations to the Committee. These comprised copies of various e-mails between the Landlord's agent and the Tenant and of e-mails between the Landlord's agent and two firms of contractors, included in which were reports and estimates in respect of the Property.
6. The Tenant confirmed to the Committee by e-mail dated 26 May 2015 that the Property would be vacated on 12 June 2015. The Committee determined, however, that it should continue to determine the application, as the alleged defects, if established, could have serious health and safety implications for future tenants or occupiers of the Property.
7. The Private Rented Housing Committee inspected the Property on the morning of 16 July 2015. The Tenant, having vacated the Property, was not present or represented during the inspection. The Landlord's agent, Mr Gavin Bain was present during the inspection.
8. The Committee comprised George Clark (chairman), Colin Hepburn (surveyor member) and Linda Robertson (housing member).
9. Following the inspection of the Property the Private Rented Housing Committee held a hearing at The Credo Centre, 14-20 John Street, Aberdeen. Neither the Landlord nor the Tenant was present or represented at the hearing.
10. The Tenant submitted as follows:- the thermostats in the showers were not working, so the temperature of the water could not be regulated, the bathroom sink was leaking, so could not be used, the wardrobe door in one of the bedrooms had become detached from its fitting and its frame was broken, the regulator valve on the radiator in the kitchen was broken, so the radiator could not be used, there were problems with the electric lighting, in that the external rear light was not working and a number of bulbs were not working, the extractor vent in the bathroom did not start when the light was switched on, the sealant at the bottom of the shower screen was falling apart, the silicon sealant around the bath and around the wash hand basins in the shower room and bathroom needed to be replaced, there was a burning smell when the dishwasher was in use, the main water valve did not close, the rear door to the garage was damaged and the door lock was loose, the key of the padlock on the door of the garden shed was missing and the padlock itself was completely rusted.
11. The Landlord's agent submitted as follows:- it was accepted that the firm's leasing manageress, no longer with the firm, had promised that certain items of remedial work would be carried out as soon as conveniently possible. Subsequent to taking occupation of the Property, the Tenant had been in regular contact with the firm, requesting works to be carried out. Certain of these works were investigated and carried out, but it was admitted that certain other works were either not attended to or not attended to expeditiously. The agents had experienced significant problems in obtaining access to the Property, as the Tenant was unwilling to give access to any tradesmen without being physically present. The Tenant had vacated the Property on 12 June 2015, and by that time, the Landlord's agent was endeavouring to have the necessary works carried out but agreement could not be reached on access. The Landlord's agent submitted with the written representations the receipts for the works that had been carried out, namely replacement of light bulbs and external floodlights and weatherproofing of junction boxes, repairs to lighting throughout the Property, replacement of four PIR fittings in the back yard and the replacement of a Danfoss TRV head on one of the radiators. The e-mails from contractors, attached to the Landlord's written representations, also indicated that the toilet was not leaking, the bath and shower silicon sealant required to be upgraded, the shower temperature selector was not working and the Motorised Valve of the central heating system was not working and should be replaced. The e-mails included price quotations for replacing the Motorised Valve, the shower cartridge and the shower screen. The Landlord's agent had also offered early termination of the lease to the Tenant

and the sum of £1000 by way of compensation for increased heating bills and the disturbance the Tenant had had with repairs.

Summary of the issues

12. The issues to be determined were whether the Property met the repairing standard as laid down in Section 13 of the Act and whether the Landlord had complied with the duties imposed on landlords by Section 14(1)(b) of the Act.

Findings of fact

13. The Committee finds the following facts to be established:-
- The tenancy is a Short Assured Tenancy.
 - The tenancy has been lawfully terminated and the Tenant has vacated the Property.
 - The Property is a semi-detached house with an attic room, built approximately 30 years ago. The accommodation comprises living room, two double bedrooms (one with en-suite bathroom), kitchen with dining area, shower room and small attic room.
 - The central heating system was not switched on at the time of the inspection, so the Committee could not establish whether the water temperature could be regulated, whether the thermostats in the showers were working or whether the radiator in the kitchen could be used. The Committee did, however, note that all of the radiators had thermostatic valves attached.
 - The Committee did not test the dishwasher.
 - The extractor vent in the bathroom does not automatically start when the light is switched on.
 - There is no evidence that any of the electric lights are not working.
 - There is no evidence of water leaking from the toilet.
 - The silicon sealant around the bath is showing signs of deterioration.
 - There is a small area of missing mastic sealant around the wash hand basin in the bathroom and evidence of past water leakage resulting in minor swelling of the door of the base unit beneath.
 - The mirror door of the fitted wardrobe in the bedroom which has the en-suite bathroom has become detached.
 - The rear door of the garage is not lockfast.
 - The garden shed is locked with a padlock, which has become rusted.
 - There is no smoke detector in the living room and no heat detector in the kitchen.

Reasons for the decision

14. The Committee was of the view that, whilst the central heating had not been switched on at the time of the inspection and could not, therefore, be tested, the complaints made by the Tenant in the application were supported by the reports and estimates from contractors submitted with the Landlord's written representations. In particular, the Committee was not satisfied that the temperature of the hot water supply or of the water in the shower attachments could be regulated so as to be safe for use..
15. The Committee was of the view that it was likely that the seal at the bottom of the shower screen above the bath was defective and that the silicon sealant around the bath was also deteriorating and that one or other had caused the leakage of water that the Tenant had thought was coming from the toilet. The Committee found no evidence of water leakage at the time of the inspection, but the Tenant's complaint of water leakage was supported by the recommendations of the contractors in respect of the shower screen and the sealant.
16. The Landlord had provided evidence that work had been carried out on the electric lights in the Property and on the external floodlight to the rear and the Committee was satisfied that this element of the Tenant's application had been dealt with. The Committee was,

however, of the view that the extractor fan for the bathroom should be checked to ensure it is working properly, according to the manufacturers' specification.

17. The Committee was not able to test the dishwasher, but was of the view that it was a matter which required further investigation by a suitably qualified engineer.
18. The mirror door on the fitted wardrobe in one of the bedrooms is detached and requires to be re-hung.
19. The Tenant's application did not include reference to the means of detecting fire in the Property, but the Committee noted the absence of a smoke detector in the living room and of a heat detector in the kitchen and would recommend that the Landlord arranges for a suitably qualified engineer to carry out such work as is required to ensure the Property complies with current regulations and guidelines in relation to the provision for detecting fires and for giving warning in the event of fire or suspected fire.
20. The Committee was of the view that, for reasons of security, the rear door of the garage should be made lockfast.
21. The Committee was not prepared to make a Repairing Standard Enforcement Order in respect of the garden shed. The simple expedient of replacing the existing padlock and providing a tenant with the padlock key would resolve the problem.

Decision

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

Effect of section 63

26. 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.

G. CLARK

Signed ..
Chairperson

..... Date: 16 July 2015



Repairing Standard Enforcement Order

Ordered by the Private Rented Housing Committee

prhp Ref: PRHP/RP/15/0144

Re : Property at 10 Clashrodne Avenue, Cove Bay, Aberdeen AB12 3TU ("the Property")

Land Certificate No: KNC14988

The Parties:-

LIONEL IAN RICHARD and FERNANDA MANHAES BERNARDES, both residing sometime at 10 Clashrodne Avenue, Cove Bay, Aberdeen AB12 3TU ("the Tenant")

NEIL GEORGE SHARP and MRS JULIE SHARP, residing sometime at Moss-Side, Charleston, Nigg, Aberdeen (represented by their agent, **Gavin Bain & Company, Solicitors**, 432 Union Street, Aberdeen AB10 1TR) ("the Landlord")

NOTICE TO NEIL GEORGE SHARP AND MRS JULIE SHARP ("the Landlord")

Whereas in terms of their decision dated 2015, 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:-

- (a) the Property is wind and water tight and in all other respects fit for human habitation,
- (b) the structure and exterior of the Property (including drains, gutters and external pipes) are in a reasonable state of repair and in proper working order,
- (c) the installations in the Property 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, and
- (d) any fixtures, 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 work in terms of this Order is made good.

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

- 1) To engage suitably qualified plumbing and central heating engineers and electrical contractors to check and test the boiler, hot water tank thermostat, shower fittings and Sunic motorised valve in the Property and to carry out such works as are required to ensure that the boiler, hot water tank, central heating radiators (including the thermostatic valves), domestic hot water system and showers are in proper working order;
- 2) To exhibit an up to date Gas Safety Certificate in respect of the Property;
- 3) To inspect the shower screen, sealants and mastic and thereafter carry out such works as are necessary to ensure that water does not spill or escape when the shower is used and to renew the mastic around the wash hand basin in the en-suite bathroom;
- 4) To refit or replace the doors of the fitted wardrobe;
- 5) To ensure that the extractor fans in the Property are in proper working order, according to the manufacturers' specifications;
- 6) To engage a suitably qualified engineer to test the dishwasher and to exhibit to the Committee the engineer's report, confirming that it is in proper working order; and
- 7) To carry out such repairs as are required to ensure the rear door of the garage is secure and lockfast.

The Private Rented Housing Committee order that the works specified in this Order must be carried out and completed within the period of eight weeks 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 typewritten on this and the preceding page are executed by George Barrie Clark, solicitor, Lasswade, chairperson of the Private Rented Housing Committee at Lasswade, on 16 July 2015, before this witness, Valerie Elizabeth Jane Clark, Droman House, 5 School Brae, Lasswade, Midlothian.

V. CLARK

witness

G. CLARK

chairman