



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

prhp Ref: PRHP/RP/16/0025

Re : Property at 39 East Leven Street, Burntisland, Fife KY3 9DX ("the Property")

The Parties:-

Douglas McLauchlan, 48 Bennachie Way, Forth Ridge, Dunfermline, Fife KY11 8JA, represented by Martin & Co, Letting Agents, 93 St Clair Street, Kirkcaldy, Fife KY1 2BS ("the Landlord")

Monica Turoni, 39 East Leven Street, Burntisland, Fife KY3 9DX ("the Tenant")

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 the Landlord's agent 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 23 January 2016 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 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 and heating water are in a reasonable state of repair and in proper working order,
 - (c) any fixtures, fittings and appliances provided by the Landlord under the tenancy are in a reasonable state of repair and in proper working order,
 - (d) the house has satisfactory provision for detecting fires and for giving warning in the event of fire or suspected fire and
 - (d) the house has satisfactory provision for giving warning if carbon monoxide is present in a concentration that is hazardous to health.
3. By letter dated 15 April 2016 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 representation to the Committee other than the original application dated 23 January 2016. The Landlord's agent (by letter dated 9 May 2016), made written representations to the Committee.
6. The Private Rented Housing Committee inspected the Property on the morning of 27 May 2016. The Tenant had vacated the Property on 18 April 2016, so was not present or represented at the inspection. The Committee was admitted to the Property by a new tenant. The Landlord's agent's Lettings Manager, Myra Blaik and franchisee Nora Sinclair were present during the inspection. The Committee comprised George Clark (Chairman) and Harry Maclean (surveyor member). The Committee had determined, by Minute of Continuation dated 16 May 2016, that the inspection and hearing should take place as scheduled, notwithstanding the fact that the Tenant had vacated the Property.
7. A file of photographs, taken at the inspection, is annexed to and forms part of this Statement of Decision.
8. Following the inspection of the Property the Private Rented Housing Committee held a hearing at The New Volunteer House, 16 East Fergus Place, Kirkcaldy KY1 1XY and heard from the Landlord's agent. The Tenant, having vacated the Property, was not present or represented at the hearing.
9. The Tenant submitted as follows:- A hard-wired smoke detection system and the installation of a carbon monoxide detector were required; when it rained, water came in from the wall on the back of the boiler, turning off the heating; radiators in bedroom 1 and the living room were not working properly and the radiator at the entrance to the flat had stated failing to warm up; the floors in bedrooms 1 and 2 were not isolated from draughts; and the windows of all the rooms were not insulated and were not closing properly and there were cracks under the windows.
10. The Landlord's agent submitted as follows:- They had managed the Property since 6 January 2007, with 7 tenants having occupied it before Ms Turoni took occupation on 4 May 2015. None of the previous tenant shad complained of the Property being excessively cold or draughty. In the 10 years of managing the Property, there had only been 14 work orders and most of these related to matters such as the annual gas inspection. There was a hard-wired smoke detection system and a carbon monoxide detector. These had been installed on 23 April 2016. The only radiator which was not working properly was in the front bedroom and it was acknowledged that, despite work having been done on it in October and December 2015, further remedial work was required. The bedroom floors had good quality underlay and carpets and the Tenant had only detected draughts by lifting these. The Underlay and carpets effectively prevented draughts from beneath the floorboards. The lounge, kitchen, bathroom and hall all had laminate flooring. In a letter dated 5 December 2015, the Tenant had complained that water was dripping down from the skylight in the roof, but a common repair had subsequently been carried out to the cupola. The surrounding lath and plaster had still to be repaired and the area redecorated.

Summary of the issues

11. 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

12. The Committee finds the following facts to be established:-
- The tenancy is a Short Assured Tenancy which commenced on 4 May 2015.
 - The tenant has vacated the Property and it has subsequently been re-let.
 - The Property comprises a self-contained flatted dwellinghouse on the third-top floor of a custom-built tenement erected around 1880.
 - There are in the Property mains-wired and interlinked smoke detectors and a mains-wired carbon monoxide detector.
 - The Committee found no evidence of water penetration in the area of the boiler, although the weather was dry at the time of the inspection.
 - The present tenant confirmed to the Committee that the radiators were working satisfactorily apart from the one in the front bedroom.
 - The bedroom floors had underlay and carpets and the remaining floors on the Property were laminate. The Committee found no evidence of draughts coming through the floors.
 - The window in the front bedroom tilts, but does not close open inwards properly.
 - The window in the rear bedroom tilts and turns, but does not open inwards properly and does not close tightly.
 - The Committee was unable to reach the kitchen window to determine whether it was in proper working order.
 - There was no evidence of cracks under the windows and testing with a moisture meter did not produce any readings which would suggest significant issues of penetrating dampness around the windows.
 - The Committee noted that repair work has been carried out to the cupola above the common stair, but that lath and plaster repairs and redecoration have still to be completed. This, however, did not form part of the Tenant's application to the Private Rented Housing Panel.

Reasons for the decision

13. The Committee was of the view that remedial works to the windows were required. Defects had been found in the windows of both bedrooms and, whilst the Committee could not examine the kitchen window properly, as all the windows appeared to have been installed at the same time, the Repairing Standard Enforcement Order which the Committee proposed to make should require all the windows to be checked and such remedial work as was required to make them wind and water tight carried out. The radiator in the front bedroom was not functioning, so did not meet the repairing standard.
14. The Committee observed that, whilst it was not part of the Tenant's application, there was evidence of significant penetrating damp in the rear wall of the tenement, caused by rainwater leaking from the gutter above. The stonework to the rear is saturated in places and this is a matter that should be addressed by the owners of the flat within the tenement.

Decision

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

Right of Appeal

18. **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

19. 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 **G Clark** Date: 27 May 2016
Chairperson



Eroded joints to front elevation



Front Elevation



Leak around skylight



Rear elevation water damage



Rear gutters twisted



Repairing Standard Enforcement Order

Ordered by the Private Rented Housing Committee

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Re : Property at 39 East Leven Street, Burntisland, Fife KY3 9DX ("the Property")

Land Certificate No: FFE8369

The Parties:-

Douglas McLauchlan, 48 Bennachie Way, Forth Ridge, Dunfermline, Fife KY11 8JA, represented by Martin & Co, Letting Agents, 93 St Clair Street, Kirkcaldy, Fife KY1 2BS ("the Landlord")

Monica Turoni, 39 East Leven Street, Burntisland, Fife KY3 9DX ("the Tenant")

NOTICE TO DOUGLAS McLAUCHLAN ("the Landlord")

Whereas in terms of their decision dated 26 May 2016, 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, and
- (b) 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,

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:- to instruct a suitably experienced contractor to carry out such adjustments to the windows in the Property as are necessary to make them wind and water tight and capable of being tilted and turned to enable them to be safely cleaned from the inside and to carry out such works to the radiator in the front bedroom as are required to restore it to proper working order.

The Private Rented Housing Committee order that the works specified in this Order must be carried out and completed within the period of six 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 27 May 2016, before this witness, Valerie Elizabeth Jane Clark, Droman House, 5 School Brae, Lasswade, Midlothian.

V Clark

witness

G Clark

chairman