



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

prhp Ref:PRHP/RP/16/0069

Re : Property at 44/3 Double Hedges Park, Edinburgh EH16 6YN (“the Property/the house”)

The Parties:-

Ms Louise Campbell, residing at 44/3 Double Hedges Park, Edinburgh EH16 6YN (“the Tenant”) and

Mr Christopher Lane, residing at 27 Mortonhall Park Avenue, Edinburgh EH17 8BP (“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, and taking account of the evidence led on behalf of the Tenant 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 received on 18 February 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 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,
 - (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,
 - (e) any furnishings provided by the Landlord under the tenancy are capable of being used for the purpose for which they are designed,
 - (f) the house has satisfactory provision for detecting fires and for giving warning in the event of a fire or suspected fire, and
 - (g) 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 24 February 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 Committee comprised George Clark (chairman) and Susan Napier (surveyor member).
5. 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.
6. Following service of the Notice of Referral, the Tenant (by letter dated 1 April 2016), made written representations to the Committee. The Landlord made no written representations to the Committee.
7. The Private Rented Housing Committee inspected the Property on the morning of 25 April 2016. The Tenant was present during the inspection and was accompanied by her representative, Ms Anna Mencil, a Housing Advisor with Edinburgh Housing Advice Partnership. The Landlord was not present or represented during the inspection.
8. A file of photographs, taken at the inspection, is attached to and forms part of this Statement of Decision.
9. Following the inspection of the Property the Private Rented Housing Committee held a hearing at George House, 126 George Street, Edinburgh EH2 4HH and heard from the Tenant's representative, Ms Mencil. The Tenant was not present at the hearing. The Landlord was not present or represented at the hearing.
10. The Tenant, in her application, submitted as follows:- the gas boiler in the Property had not been working for over a year and there was no heating and no hot water, the windows in the living room were not windproof and had gaps and were leaking, there was no extractor fan in the bathroom, there was mould and dampness in the bathroom, there was no working fire alarm and no working carbon monoxide detector. These complaints were repeated in the written representation to the Committee of 1 April 2016, with which the Tenant's representative enclosed a number of photographs. At the hearing, the Tenant's representative expanded on the grounds of complaint. She told the Committee that she understood the gas boiler had not been working for at least 2 years and it had not been serviced since the tenancy began in 2005. The Tenant lived in the Property with her son and, whilst there was an electric shower in the Property, she otherwise had to heat water in a pan or kettle for use for dishwashing and cleaning. One electric, oil-filled, heater, was the only means of heating the Property, which had a living room and two bedrooms. The extractor fan in the bathroom had not been working for 2 years. The Landlord had replaced the living room window in around 2007, but the replacement had gaps and the Tenant had to plug the gaps with paper to prevent draughts and to stop rainwater coming in. The only smoke detector was in the hallway and was mains-wired, but the Tenant had removed the battery and switched it off, as it kept sounding. The carbon monoxide detector had been put up on the kitchen wall 5-6 years ago and the Tenant did not know if it was working properly. The Tenant had told the Landlord about the defects over a long period, but he had made no effort to fix them.
11. The Landlord made no written submissions to the Committee.

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 which commenced on 4 December 2005.
 - The Property comprises a two-bedroom flat on the first floor above the ground floor of a custom-built block of flats erected by Broseley Estates Limited in the early 1980s. The accommodation comprises a living room, two bedrooms, kitchen and bathroom.
 - The gas boiler in the Property is not functioning.
 - The Committee has not seen a Gas Safety Certificate in respect of the Property.
 - There are significant gaps between the window and the window frame at the top and side of the left hand section of the living room window and the fixed central pane is misted and “blown”, so has failed.
 - There is significant black mould growth on the ceiling of the bathroom.
 - There is a smoke detector in the hallway, which appears to be mains-wired. The Committee did not test the detector. There is no smoke detector in the living room and no heat detector in the kitchen.
 - There is a carbon monoxide detector attached to the wall of the kitchen. The Committee did not test it.
 - The Tenant’s representative brought these defects to the attention of the Landlord in a letter dated 20 January 2016.

Reasons for the decision

14. The Committee was very concerned that the Tenant and her son had been living without heating and hot water for a period of 2 years, as the boiler, which had not been serviced since at least 2005 had not been working. The Landlord had also failed to provide the Tenant with a Gas Safety Certificate and, given the evidence provided on behalf of the Tenant that the boiler has not been serviced since the tenancy began in 2005, concluded that the Landlord has failed in his legal obligation to obtain a Gas Safety Certificate. The living room window was not wind and water tight, as there were evident gaps between the window and the window frame, along the top and side of the left hand opening. In addition, the double glazing seal in the central section has failed. The black mould growth in the bathroom was caused by the inability of the Tenant to ventilate the room, because the extractor fan was not working. The Committee could not determine whether the carbon monoxide detector in the kitchen was working. The Committee accepted that the Tenant had removed the battery and switched off the smoke detector in the hallway and ordinarily would not have concluded that it failed to meet the repairing standard, but the Committee determined that, in order to comply with the revised Domestic Technical Handbook and the Scottish Government’s statutory guidance on the requirements for smoke alarms, a further smoke detector was required in the living room and a heat detector in the kitchen, and all three devices required to be interlinked. Accordingly, the repairing standard was not met. In the view of the Committee, the Landlord’s failings resulted in clear risks to the health and safety of the Tenant and her son and it was appropriate to make a Repairing Standard Enforcement Order. The Committee also observed at the inspection that a number of screws were missing from the hinges of the entrance door of the Property. The Tenant’s representative referred the Committee to her letter to the Landlord of 20 January 2016 and told the Committee that she understood that the Landlord had tried to remove the door and had filled the keyhole with expanding foam, which the Tenant’s son had subsequently removed to enable the door to be locked and unlocked. The Committee noted that the issue of the entrance door did not form part of the application, so could not be included in any Repairing Standard Enforcement Order, but the Committee recommends that the Landlord carries out such work as is required to replace the missing hinge screws, so that the entrance door can be safely used, locked and unlocked.

Decision

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

Right of Appeal

- 17. **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

- 18. 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 25 April 2016
Chairperson



Repairing Standard Enforcement Order

Ordered by the Private Rented Housing Committee

prhp Ref:PRHP/RP/16/0069

Re : Property at 44/3 Double Hedges Park, Edinburgh EH16 6YN ("the Property")

Land Certificate No: MID12270

The Parties:-

Ms Louise Campbell, residing at 44/3 Double Hedges Park, Edinburgh EH16 6YN ("the Tenant") and

Mr Christopher Lane, residing at 27 Mortonhall Park Avenue, Edinburgh EH17 8BP ("the Landlord")

NOTICE TO CHRISTOPHER LANE ("the Landlord")

Whereas in terms of their decision dated 25 April 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,
- (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,
- (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) any furnishings provided by the landlord under the tenancy are capable of being used for the purpose for which they are designed,
- (e) the Property has satisfactory provision for detecting fires and for giving warning in the event of fire or suspected fire, and
- (f) the Property has satisfactory provision for giving warning if carbon monoxide is present in a concentration that is hazardous to health.

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 instruct a Gas Safe Engineer to carry out such repairs as are necessary to make the boiler function properly for the provision of heating and hot water.
2. to exhibit to the Committee a current Gas Safety Certificate in respect of the Property, covering the boiler, the gas cooker and the carbon monoxide detector located on the wall of the kitchen.
3. to overhaul the windows in the living room of the Property to ensure they open and close properly and are draught-proof and to replace the fixed centre pane of the window with a new double glazed pane.
4. to carry out such repairs as are necessary to ensure the extractor fan in the bathroom of the Property is in proper working order.
5. to carry out such fungicidal treatment work as is necessary to remove the black mould in the bathroom of the Property and thereafter to redecorate the affected areas.
6. to install in the Property interlinked, mains-wired smoke detectors and in the hallway and living room and a heat alarm in the kitchen, all of which comply with the revised Domestic

Technical Handbook and the Scottish Government's guidance on the requirements for smoke alarms.

7. To provide evidence to the Committee that the carbon monoxide detector in the Property complies with the Scottish Government Guidance for the Provision of Carbon Monoxide Alarms in Private Rented Housing, which came into effect on 1 December 2015 or to replace it with one that does so comply.

The Private Rented Housing Committee order that the works specified in this Order must be carried out and completed within the period of 4 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 25 April 2016, before this witness, Valerie Elizabeth Jane Clark, Droman House, 5 School Brae, Lasswade, Midlothian.

V Clark

witness

G Clark

chairman