



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

prhp Ref: prhp/EH15/169/12

Re : Property at 5/2 Brighton Place, Edinburgh EH15 1LH ("the Property")

The Parties:-

Miss Elizabeth Fraser, 5/2 Brighton Place, Edinburgh EH15 1LH ("the Tenant")

Ms Sofia Jawaid Mir, formerly 26 Duddingston Crescent, Edinburgh, now 140 Portobello High Street, Edinburgh EH15 1AH, represented by her sister Aisha Mir ("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) of the Housing (Scotland) Act 2006 ("the Act") in relation to the house concerned, and taking account of the evidence led by both the Landlord and 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 dated 31 August 2012, 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,
 - (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, and
 - (e) any furnishings provided by the Landlord under the tenancy are capable of being used for the purpose for which they are designed, and
- 3 By letter dated 22 October 2012 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 31 August 2012. The Landlord (by e-mail dated 26 October 2012), made written representations to the Committee.
- 6 The Private Rented Housing Committee inspected the Property on the morning of 17 December 2012. The Tenant and the Landlord were present during the inspection. The Committee comprised George Clark (chair), Donald Marshall (surveyor) and Christine Anderson (housing member).
- 7 Following the inspection of the Property the Private Rented Housing Committee held a hearing at Thistle House, Haymarket Terrace, Edinburgh and heard from both the Tenant and the Landlord. The Landlord was accompanied by Afzal Boksh, a friend of the Landlord's family. The Tenant was accompanied by Sara Booth of EHAP.
- 8 The Tenant submitted as follows:-

She had sent a letter by Recorded delivery to the Landlord on 30 July 2012, intimating repair issues in the Property and her view that it did not meet the repairing standard. She accepted that some of the issues raised in her letter had since been dealt with, in particular the work required by a statutory repairs notice relating to the roof and the gable wall and some external and internal work to the rear extension of the Property, where she understood that the holes in the stone around the window had been filled, with plasterboard sheeting erected to replace the plaster around the window area and an old air vent had been removed. The problem which she had had with a wasps' nest on the external wall of the room had been attended to and she had not had any problem with slugs in that room in recent weeks. The problem of the light in that room flickering on and off appeared to have been dealt with. In the front bedroom, the crumbling plaster had been removed and new plasterboard sheeting put up, following the external repair work to the gable wall. A ceiling light had also been installed in that room, which, at the time of the application and for the duration of the tenancy had had no mains lighting. The Tenant had, at her own expense, fixed a lock on the door of the main bathroom. The following matters, however, remained outstanding:-

- The window in the bedroom in the rear extension of the Property was in a bad state of disrepair and the window timber was rotting, partly as a result of the guttering and downpipe on that window wall being blocked. The room was constantly cold and damp and it was not fair to expect the Tenant to have to have heating on permanently in a room let as a bedroom.
- There were no signs of insulation in the walls or roof of the rear extension.
- The mattress in the front bedroom was of poor quality and, when it was first used, a large piece of spring had come through it and cut the Tenant's son's leg.
- There were chips in the laminate floor of the front bedroom, the dining area and the lounge and there were no threshold plates in the doorways of the rooms.
- In the main bathroom, floor tiles were cracked, there was no pole or other mechanism for hanging a shower curtain, the bath was badly chipped and scratched, the shower head was leaking and the radiator had lost its chrome coating.
- In the en-suite bathroom, there was no pole or other mechanism for hanging a shower curtain, there was no lock on the door, the radiator had lost its chrome coating, the window was in a state of disrepair, the external window timbers rotting due to the effects of weather, and the shower head was cracked.
- In the bedroom served by the en-suite bathroom, the door to the hallway would not close, there were holes in the wall adjacent to the door and the mattress was in a bad state.

- In the lounge, the blinds which had been there at the start of the tenancy had had to be taken down, as they were not working, but they had not been replaced, and there were no curtain poles or fixings on which to fit curtains.
- In the kitchen, the floor tiles were badly cracked, one in particular having a large sharp section protruding from the floor, there were chips or burns in the worktop surface, the back of one of the drawers in the kitchen units had fallen off, the lower section of the fridge/freezer was over-cooling and the washing machine was faulty in that it left black marks on garments.
- The radiators throughout the Property needed to be bled and there was debris beneath the guards on the tops of the radiators, between the panels/fins of the radiators and between the radiators and the walls.
- There was a problem with the lack of sound-proofing in the partition wall between two of the bedrooms and there appeared to be no deafening in two of the bedroom ceilings.
- The Property suffered from smells emanating from the carry-out food shop below and the Tenant understood that there was no soundproofed gap between the ceiling of the premises below and the floors of the Property.

9 The Landlord submitted as follows:-

- The issue of water penetration into the bedroom in the rear extension had been traced to a hole created by a previous tenant for a television aerial. The hole had now been filled and moisture and mould proof silicon inserted to provide a seal around the window. The window would be re-sealed and painted when the weather was warmer in the summer of 2013.
- The landlord intended to skim and redecorate the area in that room where new plasterboard sheeting had been erected. The insulating material above the window had been found to be dry, but the area beneath the window had been wet and the insulating material there had been replaced with expanding foam.
- If the bedroom in the rear extension was cold, the problem could be cured by heating it for longer periods.
- The landlord did not accept that the gutter and downpipes of the rear extension were blocked.
- The areas within the Property in which plasterboard sheeting had recently been erected would be skimmed with plaster and redecorated, but the landlord did not intend carrying out this work until the stonework behind had dried out.
- The wish of the landlord was to establish a good working relationship with the Tenant and to deal with repairing issues. There had been communication problems in the past, but the Landlord wished to move on. The Landlord would provide and fit poles for the shower curtains, fit a lock on the door of the en-suite bathroom, deal with the issues of the leaking/broken shower heads, replace the fridge/freezer and work constructively with the Tenant to address her concerns, the initial step being to agree the best method of contacting the Tenant.

Summary of the issues

- 10 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

- 11 The Committee finds the following facts to be established:-
- The tenancy is a Short Assured Tenancy
 - The Property comprises a three-bedroom first floor flat in a tenement of ground floor shops and business premises with residential flats above. One of the rooms

to the rear of the Property is located within an extension to the main building immediately off the kitchen and is used as a bedroom.

- There was a scaffolding tower erected adjacent to the gable wall of the Property and both parties confirmed that external repair works had very recently been carried out. A section of guttering on the rear extension had been replaced, but there was evidence of past and perhaps ongoing leakage from the downpipe.
- In two of the rooms, plasterboard sheeting had been erected to replace defective areas of plaster, but the affected walls had not been skimmed or redecorated.
- A light fitting had been installed in the front bedroom. The power source appeared to be a wall socket, into which a plug had been inserted, with a wall-mounted electrical cable leading from the plug to the light switch on the wall.
- There were no blinds in the lounge. Both parties accepted that there had been blinds in place when the tenancy started.
- The door in the main bedroom did not close properly and there were some holes in the plastered wall of that room, adjacent to the door.
- There was no lock on the door of the en-suite bathroom.
- The windows in the en-suite bathroom and in the bedroom in the rear extension were in a poor state of repair.
- The shower heads in both bathrooms were broken.
- There was no pole for a shower curtain in either of the bathrooms.
- There was minor wear and tear to the bath surfaces in both bathrooms.
- The mattresses were of poor quality.
- The floor tiles in the kitchen were cracked in places and one in particular was badly broken.
- There was evidence of minor damage to the kitchen worktop.
- The back of one of the drawers in the kitchen units was missing.
- The laminate flooring in a number of places in the Property was warped, raised or broken and there were no threshold plates in the doorways of rooms covering the points at which the flooring in the rooms met that in the hallway.
- There was evidence of debris behind a number of radiators.

Reasons for the decision

- 12 The Committee recognised that the Landlord expressed a clear wish to establish a good working relationship with the tenant and to attend to the concerns which the Tenant had raised in the application to the Panel. The Landlord suggested that there had been problems in obtaining access to the Property, even when appointments had been made in advance. This was contested by the Tenant. The view of the Committee was, however, that it appeared that both parties wished to resolve any issues of communication and the Committee look to the Landlord to deal swiftly with the various matters set out in the final paragraph of the Landlord's submissions set out above. In the view of the Committee, this would go a long way towards resolving the issues between the parties and the Tenant was reminded of the need to co-operate by providing access during normal contractors' hours, on reasonable notice having been given. The Committee determined, however, to make a Repairing Standard Enforcement Order in respect of a number of repairs which, at the hearing, the Landlord had stated an intention to address imminently, the view of the Committee being that this was necessary in order to protect the position of the Tenant.
- 13 The Committee felt, nevertheless, that a Repairing Standard Enforcement Order was necessary in respect of a number of the defects detailed in the Tenant's application to the Panel. The method by which the ceiling light had been installed in the front bedroom was unusual and the Committee thought it unlikely that such a method would have been used by an experienced electrical contractor. The Committee did not regard it as fair to expect the Tenant to have to put up for any extended period with unfinished and undecorated plasterboard in two of the bedrooms. The floor tiling in the kitchen constituted a tripping hazard, as did the absence of threshold plates connecting various areas of laminate flooring. The mattresses were not considered to be of the quality necessary for bedrooms

that are in daily use. The back was missing from one of the drawers in the kitchen units and the drawer will have to be repaired or replaced. The washing machine was not tested at the inspection, but the Tenant showed the Committee one item which, she stated, had been marked during the washing cycle. The Committee also considered that the fridge portion of the fridge/freezer was not functioning properly and was unlikely to be capable of economic repair. The blinds in the lounge had been there at the start of the tenancy and it was only fair that they be replaced by the landlord. The shower heads in both bathrooms were broken and, in the view of the Committee, could not be repaired. The efficiency of radiators was compromised if there was any debris under the guards or between the panels/fins and, whilst the Committee was not minded to include in the Order a requirement that the radiators be bled, this was something that the Committee recommended be done. The windows in the en-suite bathroom and the bedroom in the rear extension required to be overhauled and, although the Landlord had disputed the question of possible leakage from the downpipe leading from the gutter in the bedroom in the rear extension, the Committee was of the view that there was evidence of leakage, which might be ongoing. The Committee did not consider the minor damage to the kitchen worktop or the wear and tear to the baths to be sufficiently bad as to merit inclusion in the Order, but was of the view that the door of the en-suite bathroom should be capable of being locked from the inside. .

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.

G Clark

Signed
Chairperson

Date... 17 December 2012



Repairing Standard Enforcement Order

Ordered by the Private Rented Housing Committee

prhp Ref: prhp/EH15/169/12

Re : Property at 5/2 Brighton Place, Edinburgh EH15 1LH ("the Property")

Sasine Description: ALL and WHOLE the northmost house on the first flat above the street flat entering by the common passage and stair Number 5 Brighton Place, Edinburgh, in the County of Midlothian, being the subjects more particularly described in and disposed by Disposition by Joseph Waugh, with consents thereinmentioned, in favour of Co-operative Permanent Building Society, dated 10 and 18 and recorded in the Division of the General Register of Sasines applicable to the County of Midlothian 21, all days of July 1961.

The Parties:-

Sofia Jawaid Mir, formerly 26 Duddingston Crescent, Edinburgh and now 140 Portobello High Street, Edinburgh EH15 1AH ("the Landlord")

Miss Elizabeth Fraser, 5/2 Brighton Place, Edinburgh EH15 1LH ("the Tenant")

NOTICE TO SOFIA JAWAID MIR ("the Landlord")

Whereas in terms of their decision dated 17 December 2012, 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,
- (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 safely for the purpose for which they are designed, and
- (f) the Property has satisfactory provision for detecting fires and for giving warning in the event of fire or suspected fire,

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:-

- (a) to exhibit an electrical safety report from a SELECT registered contractor for the electrical installation in the Property, with any recommendations in the report being carried out by a suitably qualified electrical contractor;
- (b) to apply a skim of plaster to the areas of plasterboard sheeting in two of the bedrooms in the Property and thereafter redecorate to match the remainder or complement the decoration of the other walls of those rooms.
- (c) To instruct a suitably qualified contractor to check the external downpipes of the bedroom in the rear extension of the Property, to clear the same of debris and to prove to be draining freely.
- (d) To reinstate blinds in the lounge windows of the Property.
- (e) To replace the shower head attachments in both bathrooms of the Property.
- (f) To install a lock in the door of the en-suite bathroom of the Property.
- (g) To carry out such repairs or adjustments as are necessary to ensure that the door to the main bedroom of the Property closes properly.
- (h) To repair the holes in the wall of the main bedroom of the Property and to make good.
- (i) To replace the mattresses in the Property with mattresses of a quality suitable for beds which are in daily use.

- (j) To replace the cracked floor tiles in the kitchen of the Property or provide a safe new floor finish.
- (k) To repair or replace the drawer with the missing back board in the kitchen units in the Property.
- (l) To fit threshold plates in the doorway of each room in the Property, safely connecting adjoining flooring materials.
- (m) To clear of all debris the radiators throughout the Property.
- (n) To overhaul the windows in the en-suite bathroom and the bedroom in the rear extension of the Property, to ensure that they are properly sealed and that they can be easily opened and closed.
- (o) To fit a lock on the door of the en-suite bathroom.
- (p) To replace the fridge/freezer.
- (q) To replace the washing machine or to carry out, using a suitably qualified engineer, such repairs as are necessary to ensure it is in proper working order and does not leave marks on garments during the washing process.

The Private Rented Housing Committee order that the works specified in this Order must be carried out and completed within the period of 28 days 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 type written on this and the preceding page are executed by George Barrie Clark, solicitor, Edinburgh, chairperson of the Private Rented Housing Committee at Edinburgh on 17 December 2012 before this witness:-

V Clark

witness

G Clark

chairman

Valerie Elizabeth Jane Clark

7 Newbattle Terrace

Edinburgh