



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

prhp Ref: PRHP/IV2/24/09

Re : Property at 27D Ardconnel Street, Inverness, IV2 3HA ("the Property")

The Parties:-

DONALD BAIN, residing at 27D Ardconnel Street, Inverness ("the Tenant")

JOHN WEST and ANNETTE HEATHER WEST, Spouses residing together at Hillmond, Stratherrick Road, Inverness ("the Landlords")

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 both the Landlords and the Tenant at the hearing, determined that the Landlords had failed to comply with the duty imposed by Section 14 (1)(b) of the Act.

Background

1. By application dated 1 March 2009 the Tenant applied to the Private Rented Housing Panel for a determination of whether the Landlords 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 Landlords had failed to comply with their duty to ensure that the Property meets the repairing standard and in particular that the Landlords had failed to ensure that:-
 - (a) the Property is wind and watertight and in all other respects reasonably 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 Landlords under the tenancy are in a reasonable state of repair and in proper working order;
 - (e) that the Property has satisfactory provision for detecting fires and for giving warning in the event of fire or suspected fire.

3. By letter dated 6 July 2009 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 Landlords and the Tenant.
5. Following service of the Notice of Referral the Tenant's agent, Mr Norman Mackay of the Civil Legal Assistance Office in Inverness, provided further copies of previous correspondence but other than that no further written representations were made to the Committee by the Tenant other than his original application dated 1 March 2009. The Landlords made no written representations to the Committee.
6. The Private Rented Housing Committee (consisting of Mr E K Miller, Chairman and Legal Member; Mr C Hepburn, Surveyor Member and Mrs L Robertson, Housing Member accompanied by the Clerk, Mr R Shea) inspected the Property on the morning of 18 August 2009. The Tenant was present during the inspection. The Landlords were not present during the inspection.
7. Following the inspection of the Property the Private Rented Housing Committee held a hearing at The Spectrum Centre, Inverness and heard from both the Tenant and the Landlords (Mr West only was present). Neither party was represented.
8. The Tenant submitted that the Landlords consistently failed to spend the sums necessary on the maintenance of the Property and that it fell below the repairing standard. The Tenant had highlighted various issues of repair in relation to the Property at the inspection but had no material submissions to make at the Hearing itself.
9. The Landlords accepted at the Hearing that there were a number of issues of repair at the Property but they had taken steps to arrange for some redecoration works. Overall they submitted that the Property did comply with the repairing standard but had no other material submissions to make at the Hearing.

Summary of the issues

10. It was clear to the Committee that whilst some work had been carried out to the Property over recent months there were issues still to be resolved. Having had the benefit of the inspection the issues remaining to be determined by the Committee were:-
 - (a) whether the two windows in the Property were wind and water tight and otherwise in proper working order
 - (b) whether the general standard of decoration and floor coverings within the Property met the repairing standard;
 - (c) whether the fire detection system in the Property was in proper working order and met the repairing standard;
 - (d) whether the lock/bolt on the rear door of the Larger Property was working properly and provided adequate security for the Larger Property
 - (e) whether the lock on the entrance door to the Property was in proper working order;
 - (f) who was responsible for the installation of the washing machine and fridge freezer between the Landlords and Tenant;
 - (g) whether the water supply to the Property was suitable for drinking;
 - (h) whether the roof was in a proper state of repair;

- (i) whether the overall structure of the Property was sound;
- (j) whether the drains and gutters were in proper working order; and
- (k) whether the communal sanitation facilities at the rear of the Property were in proper working order and reasonably fit for human habitation.

Findings of fact

11. The Committee finds the following facts to be established:-

- (a) The Property is one of six bedsits within the larger property at 27 Ardconnell Street, Inverness ("the Larger Property"). The Larger Property is a two storey and attic stone built property located in a pleasant street. There are two bedsits on each of the ground, first and attic floors of the Larger Property. The Property is situated on the first floor of the Larger Property. Within the Larger Property there is a two storey, brick built extension. On each level of this extension is a toilet and shower room. All occupiers of the bedsits within the Larger Property have access to both levels of the extension.
- (b) The windows at the Property were not properly wind and watertight and in proper working order;
- (c) Whilst the decoration in the kitchen was done to an acceptable level, the flooring in the kitchen and both the decoration and flooring in the lounge was not sufficient to meet the repairing standard.
- (d) There was satisfactory provision for fire detection within the Property and the Larger Property.
- (e) The lock on the entrance door to the Property was not in proper working order. The lock on the rear door to the Larger Property was poor but did nonetheless meet the repairing standard.
- (f) As far as the Committee could establish the provision of drinking water at the Property was adequate.
- (g) The roof of the Larger Property (but excluding the roof of the extension) was generally in good order but did require some minor repairs to meet the repairing standard.
- (h) The overall structure of the Larger Property was acceptable and did meet the repairing standard.
- (i) The drains and gutters at the Larger Property were not in proper working order
- (j) The provision of sanitation facilities and the condition of these in the extension to the rear of the Larger Property was inadequate to meet the repairing standard.

Reasons for the decision

12. The Committee reached its decision based on the evidence obtained by the Committee at the inspection on 18 August 2009.

In relation to the window in the lounge of the Property, it was clear that this did not shut properly as the TV aerial cable entered the Property through a notch that had been inaccurately cut in the window frame. As a result the window did not shut properly. The TV aerial would require to be re-sited or the entrance through the window frame properly cut to allow this. It was also noted that the handle/catch on the window was not working properly and that this would need to be fixed or replaced. In relation to the window in the

kitchen, it was noted from the external inspection that the sill was severely rotted and window was generally in poor order.

In the kitchen it was clear that some decoration work of a reasonable standard had been carried out to the walls and some tiling had taken place around the rear wall. The Committee was satisfied that the level of decoration in the kitchen was satisfactory. There was, however, no floor covering in the kitchen of the Property and this would require to be remedied. In relation to the lounge/bedroom the Committee were not satisfied that the standard of decoration met the repairing standard. There were numerous holes in the walls, extensive staining to the walls from water ingress and other unidentified substances. The floor covering in the lounge/bedroom was also of poor quality and unsatisfactory. The Tenant advised during the course of the inspection that the Landlord had made some preliminary arrangements for the redecoration of the lounge/bedroom and that some decorating materials had been delivered the previous day.

There appeared to be a full hard-wired interlinked functioning fire alarm/smoke detection system within the Property (and indeed the Larger Property) and it was noted that the Property also had a current HMO Licence. The Tenant did acknowledge at the inspection that although there had also been issues in the past in relation to the fire detection system, it had been many months since there had been any problems. The Committee view was that nothing was required from the Landlords in this regard as a result.

The lock on the Tenant's door to the Property appeared to be wholly unsatisfactory in that when the key was turned it did not turn the bolt to lock the door. This would require to be replaced or repaired to ensure it was in proper working order. The Committee also examined the rear door to the Larger Property. Whilst the lock was poor and could probably be forced with a minimum of force there was also a sliding bolt that operated correctly. Access to the rear of the Larger Property was only for tenants via the rear door and the Committee's view was that whilst this door was not secured in the strongest fashion it was adequate in the circumstances.

There was a discussion at the Hearing in relation to the fridge freezer and washing machine. The Landlords and Tenant both claimed that the fridge freezer and washing machine belonged to them, each claiming to have paid for them. The Tenant acknowledged the washing machine and fridge freezer were in proper working order. Accordingly, the Chairman had advised that the question of ownership was not one for the Committee and the parties needed to resolve this amongst themselves.

In relation to the drinking water supply the Tenant was unable to produce any evidence at the drinking water was not fit for human consumption. His view was that given the state of the rest of the Property and the Larger Property there was bound to be something wrong with it. In the circumstances the Committee felt that there were no substantive grounds for them to take action.

The Committee carried out an external visual inspection of the main roof (see later comments on the flat roof rear extension) of the Larger Property. It was clear that this had had extensive work carried out on it recently and was done to a good standard. Despite this, several tiles had become dislodged or were missing and these would require to be fixed/replaced as appropriate.

In relation to the general complaint from the tenant regarding the structure of the property, the Committee did not perceive that there were any material difficulties here. There were a few defects such as spalling stonework and minor areas of disrepair but for a building of this age and character the general structure of the Larger Property was acceptable (however see subsequent comments regarding the rear extension).

In relation to the drains and gutters, the Committee viewed these and they were generally acceptable, although it was noted that the gutter above the right-hand side of the rear

elevation had some missing brackets and was sagging as a result. These missing brackets would require to be replaced. The tenant had complained of water pooling immediately outside the rear door and the Committee noted that there was a dip there and the ground level was lower than the surrounding areas. The area was also adjacent to a downpipe and below the sagging gutter. Although it was a dry day on the date of the inspection the Committee were of the view that it was a reasonable inference to draw that as a result of these factors the area would suffer from pooling of water and would make ingress and egress from the rear door difficult in wetter weather. The Landlords would require to investigate and carry out repairs/improvements as appropriate.

The Committee inspected the two storey extension to the rear of the Larger Property that housed the sanitation facilities that were available to the Property and the other bedsits within the Larger Property. In the upper floor toilet the Committee noted that this was not properly secured to the floor and was loose. There was evidence of foul water leaking from the base of this. The floorcovering within the rear extension and the other communal areas was a material similar to "Astroturf" The Astroturf within the upper toilet area was sodden and it was clear that the water was leaking from the toilet and running under the Astroturf to the joint between the rear extension and the main building of the Larger Property. The Committee also noted that the ceiling above the toilet area was simply unfixed thin wooden planks laid overhead and these could very readily fall. The tenant advised that these often came loose and fell. Upon removing a couple of the timber planks above the toilet, Mr Hepburn noted evidence of water penetration from the roof. It proved difficult to get the "ceiling" planks to balance again and stay in place after having been moved. On the ground floor of the rear extension there was significant condensation and damp on the walls and on the day of the inspection there were at least three separate areas where leaks were dripping into the downstairs toilet and the communal corridor to the rear extension. The Committee noted that the sanitary facilities were very basic and that there was no form of heating within the rear extension. The Committee noted that the Property had no other access to any other sanitation facilities. The Committee also carried out an external visual inspection of the extension. There did not appear to be any form of guttering or downpipes to remove water from the flat roof of the rear extension. The rear extension was of a single brick construction and appeared to have no or very little insulation. The windows were of poor quality. When questioned by the Committee the tenant advised that on occasion in winter the system had frozen up and that, generally, it was very cold and unpleasant to use in the winter months. The Committee were dissatisfied with the overall condition of the rear extension and the lack of insulation or form of heating. Section 13(1)(a) of the act requires a house to be "...in all other respects reasonably fit for human habitation". The Committee were very disappointed at the condition of the rear extension and the lack of heating within the communal sanitation facilities. Works were clearly required, firstly to fix the various leaks and repair the damage caused by these and secondly, to install some form of heating within the rear extension to ensure the system did not freeze in winter months and was generally heated to a reasonable level fit for human habitation.

Decision

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

15. The decision of the Committee was unanimous.

Right of Appeal

16. 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

17. 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.

E Miller

Signed .
Chairperson

..... Date.....

25.9.2009.



Repairing Standard Enforcement Order

Ordered by the Private Rented Housing Committee

prhp Ref: PRHP/IV2/24/09

Re : Property at 27D Ardconnel Street, Inverness, IV2 3HA ("the Property")

Sasine Description: ALL and WHOLE the subjects known as and forming 27D Ardconnel Street, Inverness being part and portion of the subjects described in and disposed by Alexander Patrick Slaney in favour of John West and Annette Heather West dated 31 August and recorded in the Division of the General Register of Sasines for the County of Inverness on 14 September, both months in the year 1989

The Parties:-

JOHN WEST and ANNETTE HEATHER WEST, Spouses residing together at Hillmond, Stratherrick Road, Inverness ("the Landlords")

DONALD BAIN residing at 27D Ardconnel Street, Inverness ("the Tenant")

NOTICE TO JOHN WEST and ANNETTE HEATHER WEST ("the Landlords")

Whereas in terms of their decision dated 25 September 2009, 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 the property is:-

- (a) the property is wind and watertight and in all other respects reasonably 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 that supply 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 Landlords 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:-

- (a) to re-site the television cable entering the lounge/bedroom window of the Property to ensure that the window can open and close properly and to repair or replace the handle/catch on the said window;
- (b) to repair or replace the kitchen window to ensure that it is proper working order and properly wind and water tight;
- (c) to obtain and fit an appropriate floor covering for the kitchen floor in the Property;
- (d) to obtain and fit an appropriate replacement floor covering in the lounge/bedroom of the Property;

- (e) to fill and repair all holes in the walls of the lounge/bedroom and to decorate the walls and ceilings to an appropriate standard;
- (f) to repair or replace the lock on the entrance to the Property to ensure that it is in proper working order and locking properly;
- (g) to ensure that all loose and missing slates on the roof of the larger property of which the Property forms part are repaired, resited or replaced as appropriate;
- (h) to repair or replace the guttering at the rear of the Property to ensure that the current sag in the guttering is fixed;
- (i) to carry out such works as are necessary to ensure that there is no pooling of water outside the rear entrance door;
- (j) to carry out such works as are required to properly affix the toilet bowl in the upstairs toilet to the floor, to ensure that all leaks, be it from the sanitary ware and/or from the roof are fixed, and to make good all damage caused to the walls and ceiling of the rear extension caused by water ingress and damp penetration;
- (k) to properly install and fix a ceiling above the upstairs toilet in the rear extension.
- (l) to provide and install a suitable system of heating within the rear extension so as to reduce the risk of the system freezing in all but the most inclement of weather and to render the internal temperature within the extension capable of being increased to a level appropriate for human habitation and use.

The Private Rented Housing Committee order that the works specified in this Order must be carried out and completed within the period of 4 months 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 Ewan Kenneth Miller, Solicitor, Whitehall House, 33 Yeaman Shore, Dundee Chairperson of the Private Rented Housing Committee at Dundee on 25 September 2009.

before this witness:-

L Johnston

_____ witness

E Miller

_____ Chairman

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