



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

prhp Ref: PRHP/IV3/55/10

Re: 17B Telford Road, Inverness, IV3 8HZ("the Property")

The Parties:-

Michael Kulawik and Barbara Zajac residing at 17b Telford Road, Inverness, IV3 8HZ ("the Tenants")

Gaile Dowie c/o Simply Let Limited, 13 Lovat Road, Inverness represented by Mr John Gell and Mrs Kathleen Gell, Directors of Simply Let Limited ("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 by both the Landlord and the Tenants 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 11 March 2010 the Tenants 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 Tenants stated that the Tenants considered that the Landlord had failed to comply with his duty to ensure that the Property meets the repairing standard and in particular that the Landlord had failed to ensure that:-
 - (a) the Property is wind and watertight in all other respects reasonably fit for human habitation; and
 - (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.
3. By letter dated 26 March 2010 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 Tenants.
5. Following service of the Notice of Referral the Tenants (by letter dated 7 April 2010), made written representations to the Committee along with their original application. The Landlord's (by letter dated 9 April 2010), made written representations to the Committee.
6. The Private Rented Housing Committee (comprising Mr E K Miller, Chairman and Legal Member; Mr A Anderson, Surveyor Member; and Mrs L Robertson, Housing Member accompanied by the Clerk, Mr R Shea) inspected the Property on the morning of 7 June

2010. The Tenants were present during the inspection. The Landlord's agent Mr John Gell was 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 Tenants and the Landlord's agents. The Landlord was represented by her agent Mr John Gell of Simply Let Limited. The Tenants represented themselves.
8. The Tenants submitted that generally they were happy with the Property. However, an issue had arisen in relation to the heating within the bathroom. During the first winter of the Tenants' occupation (08/09) the only source of heat in the bathroom was a towel rail which had a power rating of 150 watts. This had been raised with the Landlord's agents but nothing further had been done. The issue had raised its head again in the winter of 09/10 due to the continuing cold spells of weather. In January 2010 a wall mounted bathroom fan heater had been installed by the Landlord. In the Tenants' submission this was not adequate. At its higher setting it only worked for approximately 10 minutes before overheating and switching off. On its lower power setting it made no material impact on raising the temperature. The Tenants submitted that when taking into account the fact that (a) there was a large window in the bathroom (b) there were three external walls to the bathroom and (c) that there was no heated room directly outside the internal bathroom door, but rather a small area with the door that led to the rear of the Property that it was inevitable the bathroom would not be capable of being heated properly unless a sufficient form of heating was installed. The Tenants put before the Committee two sets of internet calculations from plumbnation.co.uk and homesupply.co.uk which showed that a heater providing 850 to 900 watts would be required. The towel heater only provided 150 watts. The Tenants submission was that the simplest method of resolving the issue would be to extend the central heating system out to the bathroom or to install an electric panel heater with sufficient wattage.
9. The Landlord's agents submitted that the Landlord accepted that a resolution required to be found here. It was acknowledged that the towel heater only gave off 150 watts and that the fact that the fan heater kept cutting out after a comparatively short period of time was an issue. The Landlord's agents were keen however to work with the Tenants to resolve the issue. The Landlord had, upon the referral being made to PRHP, taken the view that they would do nothing further at the present time. Ideally, the Landlord's agents requested, the PRHP would do nothing further meantime and allow the Landlord's agents to resolve the issue between his client and the Tenants (the Committee advised that this was not a realistic option. The Tenants had given notification of their intention to refer matters to the PRHP and there had been sufficient time for any resolution of the issues. It was not within the powers or remit of the PRHP to sit back once matters had reached this stage.) The Landlord's agents submitted that they were looking at various options. The most expensive option was to extend the central heating to the bathroom but this would require taking up the concrete floor and would cost around £680. Other options such as looking at a new fan heater or electric panel heater could also be explored as these may well be more cost effective.

Summary of the issues

10. The issue to be determined was whether the current heaters for heating the bathroom within the Property were in a reasonable state of repair and in proper working order.

Findings of fact

11. The Committee found that due to it cutting out frequently and after a short time span the fan heater in the bathroom could not be said to be in proper working order.

Reasons for the decision

12. The Committee based their decision on the inspection carried out at the Property on 7 June 2010. The Committee inspected the towel heater and noted that it was only 150

watts. The Committee switched on the towel heater at the start of the inspection and left this whilst carrying out an inspection of the remainder of the Property (in relation to a separate referral under the Housing (Scotland) Act 1988). After 15-20 minutes, there was only a very marginal rise in the temperature of the towel heater itself. The Committee accepted the Tenants' evidence that it took approximately an hour for the towel heater to heat up and even then it gave no great heat output. The Committee tested the fan heater that had been installed by the Landlord and whilst they noted that it did come on they accepted the Tenants' evidence that it cut out after approximately 10 minutes. The Committee were of the view that the fan heater could not be said to be in proper working order if it were to be cutting out every 10 minutes and in any event it did not appear as if it was a particularly effective method of heating the bathroom. The Committee carefully considered whether the breach of the repairing standard fell under 13(1)(a) or 13(1)(c) of the Act. After discussion the Committee were satisfied that the provision of the towel and fan heaters would not mean a breach of 13(1)(a) and that if they were in proper working order then this would, in the normal course of events, mean the bathroom was fit for human habitation. Whilst the Committee accepted that the bathroom would have been cold this winter this was due more to the exceptional weather conditions rather than a lack of insulation or an issue of repair within the Property. The overall standard of the bathroom was sufficient to render it fit for human habitation. The Committee did consider that the fan heater could not be said to be working properly if it were to be cutting out after only ten minutes when, on the evidence of the Tenants, it had only raised the temperature a couple of degrees in that period. The Committee noted that it may be the case that the fan heater was not suitable for this particular bathroom. The Committee therefore required the Landlord to carry out such checks and to take such steps as were necessary to ensure that the fan heater was in proper working order but in any event noted that a more sensible arrangement would be for the Landlord's agents to seek to agree with the Tenants about a more permanent and better solution to the heating of the bathroom.

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.

Signed ... **E Miller** Date... *28/6/2010*
Chairperson



Repairing Standard Enforcement Order

Ordered by the Private Rented Housing Committee

prhp Ref: PRHP/IV3/55/10

Re: 17B Telford Road, Inverness, IV3 8HZ ("the Property")

Title No: ALL and WHOLE the ground floor dwellinghouse known as 17 Telford Road, Inverness being the subjects described in and disposed by Disposition by Kathleen Jane Elizabeth Cowie in favour of Gaile Nicola Dowie recorded in the Division of the General Register of Sasines for the County of Angus on 2 December 1999.

The Parties:-

Gaile Dowie c/o Simply Let Limited, 13 Lovatt Road, Inverness represented by Mr John Gell and Mrs Kathleen Gell, Directors of Simply Let Limited ("the Landlord")

Michael Kulawik and Barbara Zajac residing at 17b Telford Road, Inverness, IV3 8HZ ("the Tenants")

NOTICE TO GAILE DOWIE ("the Landlord")

Whereas in terms of their decision dated 28 June 2010, 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 installation in the house for the 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

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 carry out such steps as are necessary to ensure that the fan heater installed by the Landlord is in proper working order and sufficient to provide adequate heat to the bathroom within the Property or to carry out such other alternative steps as are necessary to ensure that there is effective heating in the bathroom within the Property.

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 Ewan Kenneth Miller, Solicitor, Whitehall House, 33 Yeaman Shore, Dundee, DD1 4BJ, Chairperson of the Private Rented Housing Committee at Dundee on 28 June 2010 before this witness:-

L Johnston

_____ witness

E Miller

_____ Chairman


Lindsay Johnston
Whitehall House
33 Yeaman Shore
Dundee DD1 4BJ
Legal Secretary