

Statement of Decision of the Private Rented Housing Committee

Under Section 24(1) of the Housing

(Scotland) Act 2006

PRHP Ref: PRHP/G44/59/10

Re:- Property at Flat Ground/Right, 21 Kings Park Road, Glasgow, G44 4TT ("the property")

Land Register Title No. GLA33040

The Parties:-

**Alastair McKee residing at Flat Ground/Right, 21 Kings Park Road, Glasgow, G44 4TT
("the tenant")**

and

**Catriona MacLeod, residing at 3 Seagate, Prestwick, KA9 1AY and Seumas MacLeod residing
at 420 Clarkston Road, Muirend, Glasgow
("the landlords")**

The Committee comprised:-

Mr James Bauld	- Chairperson
Mr George Campbell	- Surveyor member
Mr Christopher Harvey	- Housing member

Decision:-

The Committee unanimously decided that the landlords had failed to comply with the duties imposed by Section 14(1)(b) of the Housing (Scotland) Act 2006 ("the 2006 Act"). The Committee accordingly proceeded to make a Repairing Standard Enforcement Order (RSEO) as required by Section 24(2) of the 2006 Act.

Background

1. By application dated 18th March 2010, the tenant applied to the Private Rented Housing Panel ("PRHP") for a determination that the landlords had failed to comply with the duties imposed by Section 14(1)(b) of the 2006 Act.
2. The application made by the tenant stated that the tenant considered that the landlords had failed to comply with their duty to ensure that the house met the repairing standard and, in particular the landlords had failed to ensure that :-
 - a. the house was wind and water tight and in all respects reasonably fit for human habitation
 - b. the structure and exterior of the house was in a reasonable state of repair
 - c. the installations in the house for the supply of water, gas and electricity and for sanitation, space heating and heating water were in a reasonable state of repair and proper working order
 - d. that any fixtures, fittings and appliances provided by the landlords were in a reasonable state of repair and in proper working order; and
 - e. that the house did not have satisfactory provision for detecting fires and for giving warning in the event of fire or suspected fire.

The tenant subsequently provided further written representation to the Committee dated 1st April 2010.

3. By letter dated 25th March 2010, the President of the Private Rented Housing Panel intimated a decision to refer the application under Section 22(1) of the 2006 Act to a Private Rented Housing Committee ("the Committee")
4. The Private Rented Housing Committee served Notice of Referral under and in terms of the 2006 Act upon both the landlords and the tenant.
5. Following service of the Notice of Referral, the tenant, made further written representations to the Committee. Those written representations were dated 1st April 2010.
6. The Committee inspected the property on the morning of 17th June 2010. The tenant and the landlords were both present during the inspection. The tenant was also assisted during the inspection by his representatives Ms Flora McNeill and Ms Sara McNeill.
7. Following the inspection of the property, the Committee held a hearing at the offices of the Private Rented Housing Panel. At that hearing the tenant attended along with his two representatives. The landlords were also present at the hearing.

Summary of Issues

8. The issues complained of by the tenant in the application before the Committee and left to be determined by the Committee at the time of the inspection and hearing can be summarised as follows:-
 - There was no working smoke alarm within the property
 - The oven within the kitchen area was not working
 - The sink within the kitchen area was draining slowly and was prone to blocking

- The windows within the property were not water tight and were in a substantial state of disrepair
- There were damp patches on the wall in the hall
- The bathroom floor was damp
- The cistern in the bathroom was constantly running and overflowing
- The extractor fan within the kitchen area was not working

The Hearing

9. The Committee members had noted during the inspection that there were several issues of a apparent disrepair within the property. Accordingly, at the hearing the Committee proceeded by commencing to question the landlords with regard to the matters which had been apparent to the members of the Committee during the inspection.
10. The members of the Committee had noted during the inspection that there was no smoke alarm present within the property. The landlords agreed there was none. However the landlords indicated that a smoke alarm had been fitted in the property about two years ago and that they had only become aware that the smoke alarm was missing when they were present in the property during the inspection. They did acknowledge that they had received the papers from the Committee which indicated that the smoke alarm was missing.
11. The landlords were then questioned with regard to their inspections of the property. They indicated that they last carried out an inspection about two years ago. They indicated that in the interim period they had not felt welcome within the property and that they were surprised during their viewing of how far the property had deteriorated. They indicated that they had only become aware that the oven was not working when they received the paperwork from the PRHP. They accepted that it was not working.
12. With regard to the condition of the windows within the property the landlords accepted that they had deteriorated quite badly since the last time they had inspected them. They indicated that if they had known of the problems they would have taken steps to deal with matters. The window within the rear bedroom was a UPVC double glazed unit which had been installed by the landlords prior to the property being leased to the current tenant. That lease commenced in 2003.
13. The landlords also accepted that they only became aware of the problem with dampness in the hall and the bathroom when they received the papers from the Private Rented Housing Panel. They were also not aware of the cistern constantly running and overflowing until they had inspected it today. They stated that the cistern that was currently within the bathroom had been installed just over two years ago. They accepted that the extractor fan in the kitchen was not working. They indicated that they had been aware of the problem with the sink drain blocking but they had taken steps to remedy that and had understood that the problem may be with a common drain further down the pipe network.
14. The tenant was then questioned with regard to the condition of the property. The tenant accepted that he had removed the smoke alarm because he had not been aware of how to fix it when the battery expired. With regard to the oven the tenant indicated that there had been a bang at one point during the night and that after that the oven did not work. He was unable to report either of these matters to the landlords as he had no way of contacting them and had no telephone number. His representative produced letters which had been sent to the landlord via recorded delivery which had been returned marked "not called for".
15. The tenant indicated that the windows in the front room had never been decorated since he took the lease of the flat. His representatives indicated that they were aware of a clause

within the tenancy agreement which indicated that the tenant could only carry out redecoration if he had the written permission of the landlords. He had attempted to write to the landlords to seek that permission but had not been able to gain same. The tenant accepted that the cistern within the bathroom was replaced about two years ago but stated that it was constantly running and constantly overflowing.

16. The tenant also indicated that there had been a ceiling collapse in the common close which he had understood had been caused by a water leak. He indicated that his bathroom floor was constantly sodden and he believed this was caused by the overflow from the cistern.
17. Each party was invited to add any further comments or to question the other. Neither wished to do so.

Findings of Fact

18. Having considered all the evidence the Committee finds the following facts to be established:-

- a) The subjects of let comprise a ground floor flat in a four storey tenement building. The building is red sandstone and has a pitched tiled roof. The flat consists of a hall, living room with kitchen recess with window to the front of the property, one bedroom with window towards the rear of the property and a bathroom with a window to the front of the property. The window in the bedroom is a UPVC double glazed unit. The remaining windows are wooden framed single glazed windows.
- b) There was no working smoke alarm within the property.
- c) The oven within the property was not in a reasonable state of repair or in proper working order.
- d) The extractor fan within the kitchen was not in a reasonable state of repair or in proper working order.
- e) The window in the living room was in a substantial state of disrepair. The wooden frame internally was substantially affected by rot. The mastic sealing on the outside was also worn and required to be renewed. The window was not water tight.
- f) The window within the bath room of the property was also substantially affected by rot and again the exterior mastic sealing required to be replaced. This window was not water tight.
- g) The window in the bedroom of the property was a UPVC double glazed unit. The exterior mastic sealing was substantially missing and the window was not water tight.
- h) The cistern within the bathroom was constantly running and water was overflowing from the cistern. The Committee could not determine where the overflowing water was going. On the exterior of the building, water was constantly flowing from an exterior air vent situated in the wall underneath the bathroom window.
- i) The floor of the bathroom around the WC was sodden and substantially affected by dampness.
- j) The wall in the hall was substantially affected by dampness. There were also other areas of the property affected by dampness which were confirmed by protimeter readings.

Reasons for Decision

19. The Committee considered the issues of disrepair set out in the above paragraphs and reached the following conclusion:-

- The evidence of rot within the windows and the inadequate mastic sealing indicated that the property was not water tight and the Committee was satisfied that this failure constituted a clear breach of section 13 (1)(a) of the 2006 Act.
- The Committee were satisfied that the property was substantially affected by dampness as evidenced by the damp staining on the walls in the hall, the floors in the bathroom and round the windows in the property. The Committee were satisfied that this failure constituted a clear breach both of Section 13(1)(a) and 13(1)(b) of the 2006 Act in that the house was not wind and water tight and that the structure and exterior of the house was not in a reasonable state of repair.
- The Committee were satisfied that the oven and extractor fan were not working and were satisfied that this was a clear breach of Section 13(1)(b) of the 2006 Act. the oven and the extractor fan were both fixtures, fittings or appliances provided by the landlords under the tenancy and they were not in a were in a reasonable state of repair nor in proper working order.
- The Committee were satisfied that there was no provision within the property for detecting fires and for giving warning in the event of fire or suspected fire and were satisfied that this was a clear breach of Section 13(1)(f) of the 2006 Act.
- The Committee determined all of the above matters required to be attended to before the house could be said to meet the repairing standard.

20. The decision of the Committee was unanimous.

Rights of Appeal

21. A landlord or tenant aggrieved by the decision of the Committee may appeal to the Sheriff by Summary Application within 21 days of being notified of that decision
22. The appropriate respondent in such appeal proceedings is the other Party to the proceedings and not the PRHP or the Committee which made the decision

Effect of Section 63

23. Where such an appeal is made, the effect of the decision and of any Order made in consequence of it is suspended until the appeal is abandoned or finally determined.
24. Where the appeal is abandoned or finally determined by confirming the decision, the decision and the Order made in consequence of it are to be treated as having effect from the day on which the appeal is abandoned or so determined.

Signed.....



Chairperson

Date.....

6 July 2010

Signature of Witness.....



Date.....

6 July 2010

Repairing Standard Enforcement Order

Ordered by the Private Rented Housing Committee

Case reference number : PRHP/G44/59/10

Re:- Property at Flat Ground/Right, 21 Kings Park Road, Glasgow, G44 4TT ("the property")

The Parties:-

**Alastair McKee residing at Flat Ground/Right, 21 Kings Park Road, Glasgow, G44 4TT
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and

**Caitriona MacLeod, residing at 3 Seagate, Prestwick, KA9 1AY and Seumas MacLeod residing
at 420 Clarkston Road, Muirend, Glasgow
("the landlords")**

Notice to Catriona MacLeod and Seumas MacLeod

Whereas in terms of the decision dated 6th July 2010 the Private Rented Housing Committee determined that the landlord had failed to comply with the duty imposed by Section 14(1)(b) of the Housing (Scotland) Act 2006 and in particular the landlords had failed to ensure that:-

- (a) the house is wind and watertight and in all 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 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.

The Private Rented Housing Committee now requires the landlords to carry out such work as is necessary for the purpose of ensuring that the house concerned meets the repairing standard and that any damage caused by the carrying out of the works in terms of the order is made good.

In particular the Private Rented Housing Committee requires the landlords to carry out the following work


- Restore the cistern within the bathroom to proper working order
- To install a working smoke alarm within the property in accordance with current standards

- To carry out repairs to the lower walls and floors in the bathroom and hall to eradicate dampness
- To make all windows wind and water tight
- To carry out repairs to the oven to restore it to proper working order
- To carry out repairs to the kitchen sink to allow it to drain freely and to prevent it from blocking
- To carry out repairs to the extractor fan within the kitchen to restore it to proper working order

The Private Rented Housing Committee orders that the works specified in this order must be carried out within three months of the date of this Order with the exception of the requirement to install a working smoke alarm which requires to be carried out within 28 days of the date of this Order.

A landlord or tenant aggrieved by the decision of the Committee may appeal to the Sheriff by summary application within 21 days of being notified of that decision. The appropriate respondent in such appeal proceedings is the other party to the proceedings and not the PRHP or the Committee which made the decision.

Where such an appeal is made the effect of the decision or of the order is suspended until the appeal is abandoned or finally determined. Where the appeal is abandoned or finally determined by confirming the decision, the decision and the order are to be treated as having effect from the day on which the appeal is abandoned or so determined.

Signed.....
Chairperson

Date..... 6 July 2010

Signature of Witness.....

Date..... 6 July 2010