

Statement of Decision of the Private Rented Housing Committee
Under Section 24(1) of the Housing
(Scotland) Act 2006

prhp Ref: prhp/EH5/91/09

Re:- Property at 11 Crew Terrace, Edinburgh, EH5 2JX (“the property”)

Land Register Title number : - MID42325

The Parties:-

Ms Sacha Hogg residing at 11 Crewe Terrace, Edinburgh, EH5 2JX represented by her agent
Morag McNab, Housing Officer, Letwise, City of Edinburgh Council, Chesser House, 500
Gorgie Road, Edinburgh, EH11 3YJ (“the tenant”)

and

Watershed (Scotland) Limited, c/o Dunedin Property Management, First Floor, 54 Main Street,
Davidsons Mains, Edinburgh, EH4 5AA (“the landlords”)

The Committee comprised:-

Mr James Bauld - Chairman
Mr Ian Mowatt - Surveyor member
Ms Elizabeth Nicholson - Housing member

Decision:-

The Committee having made such enquiries as it saw fit for the purposes of determining whether the landlord had complied with the duty imposed by Section 14(1)(b) of the Housing (Scotland) Act 2006 (“the 2006 Act”) in relation to the property and taking account of the evidence led at the hearing unanimously determined the landlord had failed to comply with the duty imposed by Section 14(1)(b) of the 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 22nd and 26th October 2009, the tenant applied to the Private Rented Housing Panel (prhp) for a determination of whether the landlord 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 installations in the house for the supply of water, gas and electricity and sanitation, space heating and heating water were in a reasonable state of repair and in proper working order.
 - c. the fixtures fittings and appliances provided by the landlord under the tenancy were in a reasonable state of repair and in proper working order
 - d. the house had satisfactory provision for detecting fires and for giving warning in the event of fire or suspected fire.

A detailed list of defects complained of was attached to the application and was headed "part 5"

3. By letter dated 5th November 2009, 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 Schedule 2, Paragraph 1 of the 2006 Act upon both the landlords and the tenant.
5. Following service of the Notice of Referral, the tenant, by letter dated 27th November 2009 and by email of the same date, made further written representation to the Committee in addition to the original application dated 22nd and 26th October 2009. The landlords made no written representations to the Committee.
6. The Private Rented Housing Committee inspected the property on the morning of 18th January 2010. The tenant and her representative were present during the inspection. The landlords were neither present nor represented during the inspection.
7. Following the inspection of the property, the Private Rented Housing Committee held a hearing at Drylaw Neighbourhood Centre, 67 Groathill Road North, Edinburgh. At that hearing the Committee heard from the tenant's representative, Ms Morag Macnab. The landlords were neither present nor represented at the hearing.

Summary of Issues

8. The issues complained of by the tenant in the application before the Committee can be summarised as follows:-
 - The property was suffering condensation damp to walls in the front bedroom and the kitchen

- The living room window had been vandalised
- The front door had been vandalised
- The light fitting in the hall was faulty
- The WC flushing mechanism in the bathroom was faulty
- The electric oven door was unsafe
- Two of the four mirrored wardrobe doors in the rear bedroom were broken when the tenant moved into the property
- The electric shower was broken and required repair
- The smoke detector within the property was not working

During the course of the inspection and the hearing, and in terms of the written representations submitted on behalf of the tenant, it was accepted that the only matters which now remained outstanding were the issues of dampness to the walls of the front bedroom and the kitchen, the faulty hall light fitting, the faulty WC flushing mechanism, the damage to the front door and the missing wardrobe doors in the rear bedroom. It was agreed by and on behalf of the tenant that a functioning hard wired smoke detector had now been installed and that the necessary repairs to the living room window, electric oven and electric shower had all been completed.

The Hearing

9. At the hearing the Committee questioned the tenant's representative on the matters which remained outstanding. Ms Macnab indicated that the tenant wished the remainder of the repairs to be carried out. The tenant wished the WC to be repaired and for work to be carried out to remedy the dampness in the kitchen and the bedroom. Ms Macnab indicated that she had not sought any information from the Public Health Officer with regard to the cause of the dampness in the kitchen and bathroom.
10. With regard to the broken wardrobe doors within the rear bedroom, Ms Macnab indicated that the tenant wished these to be replaced. However she acknowledged that it may not be possible to find replacement mirrored doors and indicated that the tenant would accept any reasonable repair, for example by the provision of fixed wooden doors.
11. Ms Macnab indicated that the front door was not in a reasonable state of repair owing to its condition. She also submitted that the light fitting in the hall was not in a reasonable state of repair as it was not functioning and she indicated that any time the tenant replaced a light bulb, on switching the fitting on, the light bulbs immediately blew out.
12. During the inspection by the Committee, the surveyor member used a damp meter to obtain readings in both the front bedroom and the kitchen in the areas where there appeared to be black mould staining on the walls. In the bedroom, there was no evidence of active dampness. In the kitchen there was significant evidence of active dampness.

Findings of Fact

13. 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 in a block building which is approximately 75 years old. The flat consists of a hall, living room, 2 bedrooms, kitchen and bathroom.

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- b) The kitchen within the property is suffering from dampness and there is significant black mould staining on one wall within the kitchen. The exterior of that wall forms the gable wall to the property..
 - c) There is black mould staining on one wall in the front bedroom. The Committee did not find that there was active dampness within that room. That wall forms a partition between that bedroom and a cupboard which is accessed from the hall of the property.
 - d) The flushing mechanism in the WC within the bathroom is broken and not working. It was in a state of disrepair and was not in proper working order.
 - e) The light fitting attached to the ceiling in the hall was not working. It was in a state of disrepair and was not in proper working order.
 - f) Two of the four mirrored doors were missing in the rear bedroom. Of the two doors which remained, one of the mirrors had been cracked and had significant damage. The Committee determined that the mirrored doors were not in a proper state of repair.
 - g) The front door to the property had been damaged by vandalism. There was substantial evidence of black paint having been thrown against this door. The door was unsightly but the Committee took the view that the door remained in proper working order and in a reasonable state of repair. The function of the door was not impaired by the paint which had been apparently thrown against it.

Reasons for Decision

14. The Committee considered the issues of disrepair set out above in paragraph 13 and reached the following conclusion:-
- The evidence of dampness within the kitchen 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.
 - In relation to the flushing mechanism on the WC within the bathroom, the Committee were satisfied this was not functioning. The Committee were satisfied that this repair had been notified to the landlords and that they had failed to take steps to carry out appropriate repairs. The Committee considered that this failure by the landlords to carry out repairs meant that the WC was not in a reasonable state of repair and in proper working order and this was a breach of Section 13 (1) (d) of the 2006 Act.
 - The hall light fitting was not working. Again the Committee considered this fault had been reported to the landlords and that they had failed to take steps to remedy it. The Committee considered that the landlords' failure in this regard was a breach of Section 13 (1) (d) of the 2006 Act.
 - The Committee considered that the mirrored wardrobe doors within the bedroom were not in a reasonable state of repair. The Committee considered this failure had been reported to the landlords and that the landlords had failed to take steps to remedy it. The Committee considered that this failure was a breach of Section 13 (1) (d) of the 2006 Act.
 - The Committee determined that all of the above matters required to be attended to before the house could be said to meet the repairing standard
 - The Committee considered that the front door, although clearly subject to vandalism, was in a reasonable state of repair and was in proper working order. Accordingly the Committee did not accept that the landlords were in breach of any duty in relation to this matter in terms of the 2006 Act.

- The Committee did not consider that there was active dampness within the front bedroom. Accordingly they did not consider that the evidence of mould staining in the walls within that bedroom constituted a breach of the repairing standard.

15. The decision of the Committee was unanimous

Rights of Appeal

16. 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
17. 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

18. 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.
19. 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.

J Bauld

Signed.

Date.....

1 February 2010

Chairperson

Signature of Witness **R King**

Date...1st...

February 2010

Name, address and occupation of the witness (please print):-

Robina King, Legal Secretary
7 West George Street
Glasgow, G2 1BA

Repairing Standard Enforcement Order

Ordered by the Private Rented Housing Committee

Case reference number : prhp/EH5/91/09

Re:- Property at 11 Crewe Terrace, Edinburgh, EH5 2JX

("the property")

Land Register Title number : - MID42325

The Parties:-

Ms Sacha Hogg residing at 11 Crewe Terrace, Edinburgh, EH5 2JX represented by her agent Morag McNab, Housing Officer, Letwise, City of Edinburgh Council, Chesser House, 500 Gorgie Road, Edinburgh, EH11 3YJ
("the tenant")

and

Watershed (Scotland) Limited, c/o Dunedin Property Management, First Floor, 54 Main Street, Davidsons Mains, Edinburgh, EH4 5AA
("the landlords")

Notice to Watershed (Scotland) Limited, c/o Dunedin Property Management, First Floor, 54 Main Street, Davidsons Mains, Edinburgh, EH4 5AA

Whereas in terms of the decision dated 1st February 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 fixtures, fittings and appliances provided by the landlord 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 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 work specified in the attached Schedule of Works, the terms of which form part of this order.

The Private Rented Housing Committee orders that the works specified in this order must be carried out within two months 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, **J Bauld**
Chairperson

Date... *1 February 2010*

Signature of Witness. **R King**

Date... *15 February 2010*

Name, address and occupation of the witness (please print):-

Robina King, Legal Secretary
7 West George Street
Glasgow, G2 1BA

Notice to Watershed (Scotland) Limited ("the landlords")

Schedule of work ordered by the Private Rented housing Committee

Case reference number : prhp/EH5/91/09

The Private Rented Housing Committee requires the landlords to carry out such works as are necessary to:-

- Investigate the cause of the dampness within the kitchen to the property and to carry out such works as are necessary to remove the cause of the dampness and to prevent further dampness occurring
- To replace the missing wardrobe doors within the rear bedroom and to remove the broken mirrored wardrobe door and replace same
- To repair or replace the light fitting within the hall to ensure that the light fitting is restored to a reasonable state of repair and to proper working order
- To repair or replace the flushing mechanism on the WC within the bathroom to ensure it is restored to a reasonable state of repair and to proper working order

Any damage cause by the carrying out of the work specified in the Order must also be made good in terms of the Housing (Scotland) Act 2006 Section 14 (2)(b)

A landlord who, without reasonable excuse, fails to comply with a Repairing Standard Enforcement Order commits an offence. A landlord who is guilty of an offence under this subsection is liable on summary conviction to a fine not exceeding level 3 of the standard scale (Housing (Scotland) Act 2006 Section 28 (1) and (7)).

Signed... **J Bauld** Date..... *1 February 2010*

Signature of Witness: **R King** Date: *1st February 2010*

Name, address and occupation of the witness (please print):-

Robina King, Legal Secretary
7 West George Street
Glasgow, G2 1BA