



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

prhp Ref: PRHP/DG3/4/12

Re : Property at 3 Closeburn Mains, Thornhill Dumfriesshire ("the Property")

**The Parties:-**

Michael Riddle, formerly residing at 3 Closeburn Mains, Thornhill, Dumfriesshire, DG3 5HH ("the Tenant")

Idyllic Properties Ltd, a company incorporated under the companies Acts (company number 03088733) and having a place of business at Dunree House, King Street, Newton Stewart, Wigtonshire DG8 6DL ("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 not failed to comply with the duty imposed by Section 14 (1)(b) of the Act.

**Background**

1. By application dated 1<sup>st</sup> January 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 reasonably fit for human habitation.

(b) The structure and exterior of the house (including gutters, external drains and pipes) are in a reasonable state of repair and are in a proper working order.

(c) The installations in the house for the supply of water, gas and electricity, sanitation, space heating and heating water are in a reasonable state of repair and in proper working order.

3. By letter dated 3<sup>rd</sup> February 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. The committee comprised

Paul Doyle, Legal Member  
Mike Links, Surveyor Member  
Tom Keenan, Housing Member.

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 his original application dated 1<sup>st</sup> January 2012 . The Landlord by letter dated 14/02/2012, made written representations to the Committee.
6. The Private Rented Housing Committee inspected the Property on the morning of 11<sup>th</sup> May 2012. The Tenant was neither present nor represented. Mr A N Dale, director of the Landlord company attended on behalf of the Landlords.
7. Following the inspection of the Property the Private Rented Housing Committee held a hearing at Dumfries. Neither party was present, nor were they represented. The case file revealed that the time & place of the hearing had been properly & timeously intimated to both parties. We resolved to conduct the hearing in the absence of the parties.
8. The Tenant submitted that he had been without a bathroom for 10 months; that the water supply is faulty and has been interrupted for three months whilst it was frozen. The Tenant claims that during the same three months the property was without heating. The Tenant complained that he had not been allowed access to the electricity meter, and that the property had been plagued with an infestation of both rats and flies - creating a health risk. The Tenant complained that there were no gutters servicing the property; that there was no drainage to the property; that there was no insulation and there had been a gas leak. In addition, the Tenant complained that the chimney stack leaks smoke, that the exterior of the property was defective because of poor render and that there were defects in the windows to the property. The Tenant also alleged that the Lanlord was not registered.

9. The Landlord submitted that the Tenant's application was an entire fabrication. There was a brief period when the Tenant was without a bathtub, but that was because renovations were being carried out to the property. The Landlord concedes that there was a time when there was a frozen water supply, but explains that the property is a rural property and, in December 2010, the external temperatures dropped as low as minus 20 degrees centigrade so that many rural properties were troubled with frozen water supplies. The Landlord took action as soon as possible and installed a heating mechanism to the supply pipe. It is the Landlord's position that oil fired central heating serves the property and that the Tenant had chosen not use the heating. As a result, not only was the property cold but the system became damaged because of the very cold winter in 2010. It is the Landlord's position that the infestation of rats and flies was caused by the Tenants' neglect of the property and his poor standard of hygiene. In all other respects, it is the Landlord's position that the property complies with the repairing standard set out in the Housing Scotland Act 2006 ("the 2006 act") The Landlord explains that during the periods when the Appellant was necessarily without a bath tub and when nature intervened to interrupt the supply of water, the Tenant was offered a 50% reduction in rent.

#### **Summary of the issues**

10. The issues to be determined are:

- (a) Whether the house is wind and water tight in terms of section 13 (1) (a) of the 2006 act
- (b) Whether the structure and exterior of the house (particularly the gutters) are in a reasonable state of repair and in proper working order, in terms of section 13 (1) (b) of the 2006 act
- (c) Whether the installations in the house for the supply of water, gas and electricity, for sanitation, space heating and heating water are in a reasonable state of repair and in proper working order in terms of section 13 (1) (c) of the 2006 act

#### **Findings of fact**

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

- (a) On 14<sup>th</sup> November 2010 the Landlord agreed to let to the Tenant the property which is the subject matter of this application. A lease was entered into by the parties, & a short assured tenancy (in terms of section 32 of the Housing (Scotland) Act 1998) was created. The Landlord's obligations contained in that lease are consistent with the Landlord's duty to repair and maintain the property in terms of sections 13 and 14 of the 2006 act.

(b) November 2010 and December 2010 were months marred by extreme weather. Dumfriesshire was affected by some of the lowest temperatures recorded in Scotland, with very heavy snowfall. It was not often that the temperature rose above freezing. It was not uncommon for the temperature to drop to between minus 15 and minus 20 degrees centigrade during the hours of darkness.

(c) The property is an isolated property, sitting on a low hill, just above the village of Closeburn in Dumfriesshire. The property is accessed by a farm track approximately one mile long, and forms part of a larger Georgian farm steading.

(d) Soon after taking entry to the property, the Tenant agreed with the Landlord that the bathroom should be refurbished. In the course of refurbishment it was discovered that a roof truss above the bath required to be replaced. The bathtub was removed for a short period of time whilst that work was carried out.

(e) At the date of inspection, the bathroom in the property has a three piece sanitary suite (which includes a bath tub), which is properly installed and properly plumbed.

(f) In or about December 2010 the water supply to the property froze because of the extreme weather conditions. The Landlord installed a heating mechanism to the water supply pipe as soon as reasonably practicable. At the date of inspection there was an adequate supply of water to the property.

(g) The property benefits from modern oil fired central heating. In the living room on the ground floor of the property, a wood burning stove has been fitted. The chimney servicing the wood burning stove has been cleaned and lined.

(h) The electricity meter is located in an adjacent building forming part of the larger farm steading complex. The Tenant did not require access to the electricity meter.

(i) There is no evidence of vermin infestation within the property, nor in and around the larger farm steading of which the property forms part.

(j) The exterior of the property is served by guttering. To the rear of the property there is one small section of wall where no gutter is attached to the junction between the wall and the roof, however the absence of one section of plastic guttering does not create a difficulty with drainage, nor with the carrying away of rain water, nor does it allow water ingress to the property.

(k) During the course of the tenancy, the Landlord provided the Tenant (at his request) with a log burning stove. Unknown to the Landlord, the Tenant made his own alterations to the log burning stove in an attempt to

create a frugal way of heating the property. The Tenant's alterations have damaged the Landlords log burning stove.

(l) The property has the benefit of sash and case windows. One of the window frames (in an upstairs bedroom of the property) is starting to show early signs of rot in one small area. However the windows are in a reasonable state of repair and in proper working order.

(m) The property fulfils the requirements of section 13 of the Housing (Scotland) Act 2006 in all respects.

### **Reasons for the decision**

12.(a) The inspection of this property took place on the morning of 11<sup>th</sup> May 2012. Mr Dale is director of the landlord company and was present at the inspection. He provided us with a written submission dated 11<sup>th</sup> May 2012, together with photographs of the condition the property when he recovered possession of the property from the Tenant. The Tenant was neither present nor represented. Committee members inspected the property and then met again in Dumfries for the hearing in this case. Before leaving the property Mr Dale expressed a reluctance to come to the hearing because of competing demands on his time.

(b) The Tenant, in his application, provides a list of complaints about the property. In a letter dated 14<sup>th</sup> February 2012 the Landlord lists the Tenant's complaints and sets out a written response. What is clear in this case is that there has been a disagreement between the Landlord and Tenant which has brought the tenancy agreement to an end. A Notice to Quit was served on the Tenant, and it is understood that the tenant vacated the property on 31<sup>st</sup> December 2011 leaving some damage to the property and significant arrears of rental.

(c) The Tenant complains that there is no bath tub in the bathroom. The Landlord explains that because of necessary works there was a short period where the bath tub had to be disconnected and removed. At the date of our inspection, it was clear to us that the bathroom has a properly installed and plumbed three piece bathroom suite which includes a bath tub. Committee members manipulated the taps and found water ran freely into the bath, and drained away again. Inspection not only revealed the presence of a bath tub in the bathroom, but that the bath tub and its ancillary hardware was fully functioning.

(d) The Tenant complains that he was without a water supply for three months because the supply was frozen. The Landlord explains that the water supply was frozen in December 2010. It is within the knowledge of all committee members that December 2010 was a period of extreme weather conditions in Scotland where the temperature rarely, if ever, rose above freezing. The inspection disclosed that this is an isolated rural property. Our inspection also discloses that on the date of inspection there

was no problem with the water supply. Committee members turned taps on and off and, each time, water flowed freely.

(e) The Tenant complains that there is no heating in the property. Our inspection confirmed what is said by the Landlord - that the property is served by oil fired central heating. There is a dispute between the Landlord and the Tenant about the quality of the heating in December 2010. Our inspection on 11<sup>th</sup> May 2012 clearly disclosed that there is a fully functioning oil fired central heating system in the property.

(f) The Tenant complains that he does not have access to an electricity meter. The Tenant does not explain why he requires access to an electricity meter. We remind ourselves the terms of sections 13 and 14 of the Housing (Scotland) Act 2006. The Tenant's complaint in this regard does not engage the 2006 act.

(g) The Tenant complains that the property suffers from an infestation of rats and flies. By interlocutor dated 16<sup>th</sup> March 2012, it was directed that this application should proceed to a full hearing - in part because of the concerns raised in relation to rat and fly infestation and the complained lack of guttering and draining. The Landlords maintain that there may have been vermin infestation because of the Tenant's alleged poor standards of hygiene. We were shown photographs which, we are told, represent the condition of the property after the Tenant vacated the property. What is specifically relevant for our purposes is what was disclosed at inspection on 11<sup>th</sup> May 2012. At that time, after careful inspection, the committee members could find no trace whatsoever of infestation by vermin or insects. The property was not troubled by smells which would both attract vermin and insects and be a feature of infestation of vermin and insects. There was no trace of traps, poison or any paraphernalia for eradication of such infestation. There was simply no evidence whatsoever of infestation by vermin or insects.

(h) The tenant complains that there are no gutters. Our inspection disclosed that the property is served by gutters. There is one section to the rear of the property where there is no obvious gutter at the junction of the wall head and roof, but there was no evidence of a difficulty in the carrying away of rain water. Neither within nor out-with the property was there evidence of water ingress. Our observations disclosed there was adequate provision for carrying away of rainwater.

(i) The tenant complains that the chimney stack leaks smoke. It was clear from our observations that alterations had been carried out to a wood burning stove within the property, however there was nothing in our observations which indicated that the integrity and viability of the chimney servicing the property was compromised.

(j) The tenant complained of poor render and poor windows servicing the property. We specifically inspected the render and could not see that it was not in a reasonable state of repair. There was nothing remarkable

about the render. We looked at each of the windows, and in one window (in an upper bedroom) there is a small area of wood which is starting to show the signs of both wear and perhaps rot. However, the small area affected does not affect the integrity of the window. All of the windows within the property are in a reasonable state of repair.

(k) We inspected this property carefully. We took account of each one of the tenant's listed concerns and complaints about this property. After investigation, and taking account of the representations made by both Tenant and Landlord, we find that that at the date of inspection there is no substance to any of the complaints made by the Tenant. We therefore come to the conclusion that the Landlord has fulfilled his obligations in terms of section 14 of the 2006 act.

### **Decision**

13. The Committee accordingly determined that the Landlord had not failed to comply with the duty imposed by Section 14 (1)(b) of the Act.
14. The decision of the Committee was unanimous

### **Right of Appeal**

15. **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**

16. 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..... P Doyle ..... Date... 23/5/2012 .....  
Chairperson