



**Statement of Decision of the Private Rented Housing Committee
Housing (Scotland) Act 2006, Sections 26 & 27**

PRHP Ref: PRHP/RT/16/0185

Title No.: ABN81383

**Property at Drumlovat, Longside, AB42 4YE
("the House")**

The Parties:-

**ABERDEENSHIRE COUNCIL, Gordon House, Blackhall Road, Inverurie, AB51 3WQ
("the Third Party Applicant")**

**MS GRAINNE CURTIS residing at Drumlovat, Longside, AB42 4YE
("the Tenant")**

**MR LEON MARK BINGHAM and MRS ZENA BINGHAM, 51 Aldene Road, Sheffield,
S6 4BR
("the Landlords")**

Background

1. On 2 August 2016, the Private Rented Housing Committee ("the Committee") issued a Determination which decided that the Landlords had failed to comply with the duty imposed by Section 14(1) of the Housing (Scotland) Act 2006 ("the Act"). On the same date, the Committee issued a Repairing Standard Enforcement Order ("RSEO") in respect of the House. The RSEO made by the Committee required the Landlord:-
 - (a) To install sufficient smoke alarms and heat detectors that are mains wired and interlinked and otherwise comply with the requirements of the relevant fire legislation;
 - (b) To repair or replace the patio doors leading from the kitchen to the driveway to ensure that the doors are in a reasonable state of repair and in proper working order, are watertight and capable of being opened, closed and locked properly;
 - (c) To repair or replace the shower pump in the cupboard in the hall to ensure that it is in a reasonable state of repair and in proper working order;
 - (d) To repair or replace the ceiling lights in the kitchen to ensure that they are in a reasonable state of repair and in proper working order;
 - (e) To repair or replace the garage door to ensure that it is in a reasonable state of repair and in proper working order and to ensure that it opens and closes properly;

- (f) To replace the missing balustrades on the right side of the decking and to each side of the wooden stair leading to the decking from the garden to ensure that the decking is in a reasonable state of repair and in proper working order;
 - (g) To install sufficient supports to properly support the oil tank at each end and in the middle thereof and to undertake such additional works as are necessary for the oil tank and the supporting structure to comply with relevant legislation and, if necessary, to replace the oil tank;
 - (h) To carry out such works as are necessary to clear the drains in the driveway to ensure that the driveway gully is in a reasonable state of repair and in proper working order;
 - (i) To repair or replace the fence panel behind the previously fallen tree in the garden to ensure that the fence panel is in a reasonable state of repair and in proper working order;
 - (j) To repair or replace the lawnmower to ensure that it is in a reasonable state of repair and in proper working order;
 - (k) To install a carbon monoxide detector in the living room to comply with the requirements of the relevant legislation; and
 - (l) To produce a clear Electrical Installation Condition Report from a suitably qualified electrician confirming that the electrical systems and portable appliances supplied by the Landlords within the House are in proper working order and comply with the relevant regulations with no items marked as category 1 or category 2. The Landlords are to exhibit such clear Electrical Installation Condition Report to the Committee.
2. The Committee had ordered in the RSEO that the works specified were to be carried out and completed within a period of 8 weeks.
 3. By email dated 26 September 2016 the Tenant advised the Committee that she had vacated the House.
 4. A re-inspection of the House was organised to take place on 13 October 2016. By email dated 4 October 2016 the Landlords made a request to postpone the re-inspection due to access not being available. The postponement request was granted by the Committee.
 5. A further re-inspection of the House was organised to take place on 27 October 2016. The Surveyor Member of the Committee attended at the House. No access was given to the Surveyor Member. The Landlord did not provide access, despite having been notified of the re-inspection by letter. At the time of the re-inspection the Surveyor Member had viewed the House from the exterior and through the windows insofar as he was able. The balustrades serving the decking had been repaired and a different form of upright support had been installed. The horizontal handrail on the right hand side of the decking had been repaired but was broken and unstable. It did not appear that any other works had been carried out as required by the RSEO.

6. A further re-inspection of the House was organised to take place on 29 November 2016. By emails dated 24 November 2016 the Landlords acknowledged the forthcoming inspection and that access was required by the Committee. The Committee was advised that it could collect the keys from a third party in order to obtain access. The Committee (comprising Miss G Buchanan, Chairperson and Legal Member, and Mr M Andrew, Surveyor Member) duly collected the keys and attended at the House on 29 November 2016. Other than works to the decking, no other works had been carried out as required by the RSEO.
7. Following the re-inspection of the House the Committee held a hearing at Palace Hotel, Prince Street, Peterhead, AB42 1PL. The Landlords were not present or represented. The Landlords made no representations.
8. The Committee then considered matters. The Committee was satisfied from the inspection that no works had been carried out to the House. No reasonable excuse had been offered by the Landlords for their failure to carry out the works.
9. The Committee then considered what steps to take. In terms of Section 26(1) of the Act, it was for the Committee to decide whether a Landlord had complied with an RSEO made by the Committee. In terms of sub-section (2), where the Committee decides that a Landlord has failed to comply with an RSEO, the Committee must (a) serve notice of the failure on the local authority; and (b) decide whether to make a Rent Relief Order ("RRO").
10. The Committee accepted that it was clear that, substantially, no works had been undertaken and that the Landlords had failed, without reasonable excuse, to comply with the RSEO. Accordingly, the Committee was obliged to serve notice of the failure on the local authority and resolved to do so.
11. The Committee then considered whether or not to make an RRO. Given that the tenancy had terminated, there was no current tenancy on which to place an RRO. It was a criminal offence to re-let the House whilst the RSEO was in place and accordingly there was no benefit in serving an RRO on the House.
12. The Committee also considered the terms of Section 28 of the Act. Sub-section (1) specifies that a Landlord who, without reasonable excuse, fails to comply with an RSEO commits an offence. There was no explanation from the Landlords as to their failure to carry out the works. Accordingly, in the circumstances, the Committee was of the view that Section 28(1) had been breached and therefore also resolved to report the matter to the Police for consideration for prosecution.

Decision

13. The Committee determined that in terms of the Act, the Landlord had failed to comply with the RSEO. The Committee determined to serve a Notice of Failure to Comply with the RSEO on the relevant local authority and to report the matter to the Police for consideration for prosecution. The Committee determined not to grant an RRO.
14. The decision of the Committee was unanimous.

Right of Appeal

15. A landlord, tenant or third party applicant aggrieved by the decision of the Committee, to be known with effect from 1 December 2016 as The First-tier Tribunal for Scotland (Housing and Property Chamber), may appeal to the Upper Tribunal for Scotland 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.

G Buchanan

Signed...
Chairperson



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Date 29 November 2016