



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

prhp Ref: PRHP/IV25/21/07

Re: Property at Balnapolaig, Dornoch, Sutherland, IV25 3HY ("the Property")

The Parties:-

Mr and Mrs Andrew Kennard, residing at Balnapolaig Farmhouse, Dornoch, Sutherland ("the Tenants")

Mr Ian Robichaud, care of Linda Robichaud, 58 Moray Park Avenue, Culloden, Inverness, IV2 7LS ("the Landlord")

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) 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 9 November 2007 the Tenants applied to the Private Rented Housing Panel for a determination as to 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 systematically to comply with his duty to ensure that the Property met the repairing standard and, without prejudice to the foregoing generality, that the Landlord had failed to ensure:-
 - (a) that the Property was adequately served by drainage and sewerage facilities;
 - (b) that the Property was properly wind and watertight;
 - (c) that the Property was free of damp;
 - (d) there was a proper heating system in the Property;
 - (e) the fireplaces within the Property were functioning properly.
3. By letter dated 9 February 2009 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 made no further written representations to the Committee other than their original application dated 9 November 2007. The Landlord made no written representations to the Committee.
6. The Private Rented Housing Committee (consisting of Mr E K Miller, Chairman and Legal Member; Mr Mark Andrew, Surveyor Member; and Mrs Linda Robertson, Housing Member accompanied by Mr Robert Shea, Clerk to the Committee) inspected the Property on the morning of 1 May 2009. Both the Tenants and the Landlord were present during the inspection.
7. Following the inspection of the Property the Private Rented Housing Committee held a hearing at the West End Community Centre, Firthhill, Ainess and heard from both the Tenants and the Landlord. Both parties represented themselves.
8. The Tenants made the following submissions:-

The Tenants took the view that the sewage system at the Property was inadequate. There had been a number of occasions in recent years, although not since the end of 2008, when the sewage system had backed up and this caused an overflow of sewage within the lean-to extension at the rear of the Property. A new septic tank had been installed in connection with a development of a steading adjacent to the Property but the pipe leading from the Property had not been upgraded. The Tenants also submitted that the area of ground underneath the kitchen window, which was uneven, had not been properly re-laid following previous works and thus failed to meet the repairing standard.

The Tenants submitted there was a rising water table within the vicinity and the rear garden often became flooded as a result. They highlighted problems with the rear downpipe of the lean-to extension. The drain that this ran into overflowed any time it rained and caused the back garden to be flooded.

The Tenants highlighted the state of the windows within the Property. The Tenants submitted a number of these did not open and they were in very poor condition. There were a number of holes around the frames. The Tenants also drew the Committee's attention to the external door and the surrounding frame and threshold which were, they submitted, in poor order. They also drew attention to an internal door, leading from the lean-to extension through to the Property proper, the frame of which was coming away from the wall.

The Tenants highlighted the wall adjacent to the gate at the rear of the Property, which had not been properly completed.

Internally, the Tenants submitted there was damp within the Property in various places.

In relation to the kitchen the Tenants acknowledged that since the submission of their application, work had been carried out by the Landlord with the installation of a new boiler but drew attention to the fact that the kitchen had not yet been properly reinstated. In relation to the external part of the boiler, they drew attention to the lack of harling behind the metal casing of the boiler.

The Tenants complained of an unevenness of the floorboards within the Property and, in particular, in relation to the northwest back bedroom.

In the dining room the Tenants complained of staining on the walls caused by the chimney not being properly lined. In the dining room there was also significant bowing above the lintel to the side window.

In the lounge, the Tenants again complained of damp and that the chimney was not lined.

The Tenants submitted that the design of the roof, which was unusual in nature, led to excess weight being carried by the structure of the Property and that this could lead to structural instability and further cracks developing

The Tenants submitted that in various areas of the Property where work had been carried out the Landlord and their workmen had failed to properly complete work to a good standard, tidy up rubble behind walls and remove an old water tank

9. The Landlord submitted as follows:-

The Landlord acknowledged that the Property required some work. The Landlord highlighted the fact that since the application had been made a proper central heating boiler had been installed and new radiators were now in place in each room within the Property. The Landlord felt that this dealt adequately with a number of the claims made by the Tenants and that there was not now an issue with damp in relation to the Property.

The Landlord acknowledged that there were still works to be completed to enable the Property to meet the repairing standard. The Landlord indicated that he intended to line the two chimneys, renovate the windows, completely replace the guttering at the Property and install new soakaways. The Landlord intended to complete any repairs to the harling that were still required and whitewash the remainder of the building (which was only partially done at the time of the Committee's inspection). The Landlord intended to fix both the external rear door and the internal door. The Landlord acknowledged he required to finish off the kitchen and to paint this. The Landlord accepted that there was a broken floorboard in one of the upstairs bedrooms and a broken roof truss in the attic which he intended to replace. The Landlord intended to make a new path at the Property and to repair the wall at the rear gate. The Landlord acknowledged that there was no smoke alarm downstairs within the Property and that he intended to deal with this.

The septic tank that served the Property had been replaced and although the Landlord acknowledged there had been issues in the past there had been no overflows in recent months. Whilst the connection to the septic tank was still dated and may require higher than average maintenance, he felt it did not require any further works. The Landlord indicated that he was not exactly sure what works he required to do to meet the repairing standard and would be happy to be guided by the Committee in this regard.

10. It was clear to the Committee that some work had been carried out to the Property over recent months and in particular the installation of a proper central heating system within the Property. The issues remaining to be determined by the Committee were:-

- (a) Whether the septic tank and sewage installation at the Property was sufficient.
- (b) Whether the area of ground beneath the kitchen window required to be made good.
- (c) Whether the drainage from the rear downpipe at the Property was sufficient.
- (d) Whether the rear door at the Property was wind and watertight and whether repair or replacement was required.
- (e) Whether the windows within the Property were wind and watertight and whether repair or replacement was required.
- (f) Whether the internal door leading from the lean-to was sufficient and whether repair or replacement was required.
- (g) Whether there was a problem with damp and water penetration within the Property.

- (h) Whether the lack of harling behind the external boiler casing in the Property was wind and watertight.
- (i) Whether the floorboards in the Property required repair or replacement.
- (j) Whether the two chimneys within the Property required to be lined.
- (k) Whether the kitchen currently met with the repairing standard.
- (l) Whether the Property had satisfactory provision for detecting fires and for giving warning in the event of fire or suspected fire.

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

- The stonework at the area of ground underneath the rear kitchen window was uneven and dangerous.
- The drain at the rear of the lean-to extension failed to function properly.
- Overall the windows throughout the Property were in very poor repair and there were varying degrees of wind and water penetration. A number of the downstairs windows also failed to open.
- The external rear door at the Property and the surrounding frame were in poor condition as was the threshold to the rear door.
- The internal door leading from the lean-to and in particular the frame was in very poor condition and was coming away from the surrounding wall.
- The rear wall adjacent to the gate had not been made good upon the installation of the gate.
- The dining room chimney was not properly lined and this was causing staining within the dining room.
- The kitchen had not yet been properly completed since the installation of the new boiler.
- The broken floorboard in the northwest back bedroom of the Property was dangerous and required replacement.
- There was no proper mains operated smoke alarm in the downstairs of the Property although there was a battery operated smoke alarm upstairs.

12. The Committee reached its decision based on the evidence obtained by the Committee at the inspection on 1 May 2009. In relation to the overflow of sewage within the Property, the tenant had acknowledged that whilst this has happened on a number of occasions in 2008, it had not occurred for 5/6 months. The Committee could see no evidence of recent overflow and on the basis that the installation of the new septic tank would help matters, the Committee were satisfied that no further works would be required to the pipes leading to this. The Committee inspected the area of ground under the rear kitchen window. This was very uneven and it was clear that this represented a trip hazard. The Committee inspected the drain at the rear of the lean-to extension and whilst this was in working order or not could only be established in the event of it raining neither party had disputed that it did not function sufficiently.

Mr Mark Andrew, the Surveyor Member, inspected the rear external door. It was clear that the hinges were beginning to fail on this and that the frame was rotten particularly at

the base. The threshold was also coming loose and was not adequate. It was clear that this was not wind and watertight.

The Committee inspected the windows at the Property. It was clear that they were in poor order and that the sills were decaying. Repairs were required to the bulk of the windows. Internally there were also a number of holes adjacent to the window frames in the upper bedrooms and overall it was clear that the windows were not properly wind and watertight.

In relation to the lack of harling behind the external boiler casing, whilst this job had been poorly finished and could potentially cause problems in the future, it did not, in the opinion of Mr Andrew, fail to meet the repairing standard.

In relation to the wall at the rear gate, this had not been properly made good upon the installation of the gate and this was clear from an inspection.

Mr Andrew took damp meter readings throughout the Property and generally found the Property to be in good order in this regard. The Committee were satisfied that the boiler that had been installed was an appropriate one for a property of that size and that damp should no longer be an issue in relation to the Property. There were still several areas, particularly within the bedrooms, of where prior mould/damp staining was evident but where damp meter readings showed there to be no ongoing problem.

It was clear on inspection that the kitchen required to be finished off properly. The tenant had indicated he wished to install the floor in the kitchen but the Landlords would require to reinstate any shelving that had been removed and generally make good and paint for the kitchen to meet the repairing standard.

In the dining room there was evidence of staining to the walls from the chimney (this was also visible to Mr Andrew in the roof space) and this would require to be made good. There was bowing above the dining room side window as highlighted by the Tenants and whilst this may require attention at some point it did not fail to meet the repairing standard at the present time.

It was clear, on inspection, to the Committee that there was a cracked floorboard in the northwest back bedroom with a large hole in it and that this was a danger and would require to be replaced.

The Committee noted that there was no downstairs smoke alarm or other satisfactory means of fire detection.

In relation to the lounge chimney upon inspection Mr Andrew could note no fault with this and was satisfied it met with repairing standard.

In relation to the Tenants dissatisfaction with the roof structure, Mr Andrew inspected this from within the roof space and externally and could see no evidence of water penetration. In relation to the roof trusses these were somewhat unusual in nature. There was one broken roof truss but this would not have any particular impact on the Property. Whilst some cracking externally had been highlighted by the Tenants during the inspection, this seemed historical and Mr Andrew was satisfied that whilst the roof structure was unusual it was safe and that it complied with the repairing standard.

The Tenant had made a number of complaints regarding materials being not removed from the Property whilst the Landlord was doing works and some items of work not properly finished off. Generally the Committee felt that these were trivial in nature and did not breach the repairing standards.

The Landlords had indicated that in his submission that there were works that he intended to carry out ie the lining of the lounge chimney, dealing with the bowing window in the dining room, completing minor repairs to the harling, completing the whitewash of

the Property, installing a proper path to the rear of the Property, installing a cowl over the external boiler casing, replacing all the guttering at the Property and fixing the broken roof truss. Whilst the Committee were satisfied that these were not strictly required in terms of the repairing standard the Committee did note that the Property would benefit from these additional works.

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
Chairperson

E Miller

.... Date..... 2/6/09



Repairing Standard Enforcement Order

Ordered by the Private Rented Housing Committee

prhp Ref: PRHP/IV25/21/07

Re : Property at Balnapolaig, Dornoch, Sutherland, IV25 3HY ("the Property")

Sasine Description: ALL and WHOLE that plot or area of ground together with the property known as and forming Balnapolaig Farm House erected thereon being the subjects described in Disposition by John Charles Murray to Ian Robichaud recorded in the Division of the General Register of Sasines for the County of Sutherland on 11 October 2000.

The Parties:-

Mr and Mrs Andrew Kennard, residing at Balnapolaig Farmhouse, Dornoch, Sutherland ("the Tenants")

Mr Ian Robichaud, care of Linda Robichaud, 58 Moray Park Avenue, Culloden, Inverness, IV2 7LS ("the Landlord")

NOTICE TO IAN ROBICHAUD ("the Landlord")

Whereas in terms of their decision dated 2 June 2009, 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 that the Landlord had failed to ensure that :-

- (a) the Property was wind and watertight and in all other respects reasonably fit for human habitation;
- (b) the structure and exterior of the Property (including drains, gutters and external pipes) was in a reasonable state of repair and in proper working order;
- (c) any fixtures, fittings and appliances provided by the Landlord under the tenancy are in a reasonable state of repair and in proper working order; and
- (c) the Property has satisfactory provisions for detecting fires and giving warning in the event of fire or suspected fire.

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 works as are necessary for the area of ground underneath the kitchen window to be made good and level;
- (b) to ensure that the drain at the rear of the lean-to extension functions properly and drains all water leading from the downpipe;
- (c) to repair or replace the rear external door and to repair or replace the surrounding frame and threshold and to ensure that the door is wind and watertight;
- (d) to repair or replace all external windows within the Property to ensure that they are wind and watertight and further to ensure that all windows are capable of properly opening and closing and that all holes surrounding the frames are made good;
- (e) to repair or replace the internal door leading from the lean-to extension and to repair or replace the frame surrounding the door and to ensure it is affixed properly to the surrounding wall

- (f) to properly complete the boundary wall adjacent to the rear gate and to ensure that it is in a proper state of repair;
- (g) to properly line the dining room chimney;
- (h) to properly reinstate the kitchen and carry out all finishing off and decorating works;
- (i) to replace the broken floorboard at the entrance to the northwest back bedroom;
- (j) to install a proper mains operated fire detection system.

The Private Rented Housing Committee order that the works specified in this Order must be carried out and completed within the period of 3 months 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 2 June 2009 before this witness:-

L Johnston

witness

E Miller

chairman

LINDSAY JOHNSTON name in full

Whitehall House Addresss

33 Yeaman Shore

Dundee DD1 4BJ

Legal Secretary Occupation