



REPAIRING STANDARD ENFORCEMENT ORDER

BY THE

PRIVATE RENTED HOUSING COMMITTEE

PRHP Ref: prhp/KA19/109/11

PROPERTY

S.V.G.C.A Cottage, Culzean Castle Country Park, Maybole, Ayrshire, KA19 8JX erected on ALL and Whole that plot or area of ground extending to eleven poles and seventeen square yards or thereby, bounded on the north-west by a pathway from Culzean Home Farm to Culzean Castle and to the south-west by the hall and four houses known as New Stables, forming part of the Culzean Policy Grounds, part of the lands and Barony of Culzean, in the Parish of Kirkoswald and County of Ayr, all as more particularly described in the Feu Charter by the National Trust for Scotland for Places of Historic Interest or Natural Beauty in favour of the Scottish Garden City Housing Society Limited dated Twenty ninth January and recorded in the general Register of Sasines for the County of Ayr on Sixteenth February, both months in the year Nineteen hundred and fifty three; Together with the dwellinghouse and whole other buildings and erections thereon, the heritable fittings and fixtures therein and thereon, free ish and entry therefrom and thereto, and the parts, privileges and pertinents effeiring thereto.

PARTIES

Mr. Krisham Moodley, S.V.G.C.A Cottage, Culzean Castle Country Park, Maybole, Ayrshire, KA19 8JX

Tenant

and

The Scottish Veterans' Garden City Association (Inc), having their registered office at New Haig House, Logie Green Road, Edinburgh, EH7 4HQ

Landlord

REPAIRING STANDARD ENFORCEMENT ORDER ('RSEO')

1. **WHEREAS** in terms of their decision dated ** the Private Rented Housing Committee ('the Committee') determined that the landlord has failed to comply with the duty imposed by section 14(1)(b) of the Housing (Scotland) Act 2006 ('the Act') and in particular the property fails to meet the repairing standard as set out in section 13(1) of the Act.
2. The Committee now requires the landlord carry out such work as is required to ensure the property meets the repairing standard and that any damage caused as a consequence of carrying out of any works in terms of this Order are also made good before the expiry of the Completion Date.

THE ORDER

3. In particular, and without prejudice to the foregoing generality, the Committee **HEREBY ORDERS** the landlord to carry out the following repairs ('the Works');-
 1. To commission such specialist reports as may be necessary to determine the necessary balance between the heating, ventilation and insulation of the property and to carry out such work as identified by said reports as is necessary to eliminate the dampness/ condensation evident in the window wall and in the cupboard recess of the main bedroom of the property.
4. The Committee **HEREBY FURTHER ORDERS** that the Works specified in this Order must be carried out and completed before the expiry of the Completion Date of three months from the date of service of this Order.

RIGHT OF APPEAL

5. A landlord or tenant has the right to appeal this decision to the Sheriff by summary application within 21 days of being notified of that decision.

EFFECT OF APPEAL

6. In terms of section 63 of the Act, where such an appeal is made, the effect of the decision and of any order is suspended until the appeal is abandoned or finally determined by confirming the decision, and where the appeal is abandoned or finally determined by confirming the decision, the decision and any order will be treated as having effect from the day on which the appeal is abandoned or so determined.

IN WITNESS WHEREOF these presents typewritten consisting of this and the preceding two pages are subscribed by me, David M Preston, Chairman of the Private Rented Housing Committee, at *Cassock* on the *23* day of *August* two thousand and eleven before this witness,

D Preston

Chairman

R Shea

Witness



PRIVATE RENTED HOUSING COMMITTEE
STATEMENT OF DECISION UNDER SECTION 24(1) OF THE HOUSING (SCOTLAND)
ACT 2006

prhp Ref: prhp/ka19/109/11

PROPERTY:

**S.V.G.C.A Cottage, Culzean Castle Country Park, Maybole, Ayrshire, KA19 8JX
(hereinafter referred to as "the Property")**

INSPECTION & HEARING

16 August, 2011

The Parties:-

Mr. Krisham Moodley, S.V.G.C.A Cottage, Culzean Castle Country Park, Maybole, Ayrshire, KA19 8JX (represented by Mr John Mullholland, Ayr Housing Aid Centre, his agent (hereinafter referred to as "the Tenant")

The Scottish Veterans' Garden City Association (Inc), having their registered office at New Haig House, Logie Green Road, Edinburgh, EH7 4HQ (represented by Mr Peter Minshall, their Chief Executive Officer) (hereinafter referred to as "the Landlord(s))"

Decision

The Committee, having made such enquiries as is 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 Tenant at the hearing as well as their written representations, determined that the Landlord had failed to comply with the duty imposed by Section 14 (1)(b) of the Housing (Scotland) Act 2006 (hereinafter referred to as "the Act").

Background

1. By application dated 19 May 2011 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 watertight and in all other 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 installations in the house for the supply of water, gas and electricity and for sanitation, space heating and heating water are in a reasonable state of repair and in proper working order.
3. By letter dated 17 June 2011 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 the following members:

Mr. David M Preston, Legal Member
Mr. Robert Buchan, Surveyor Member
Mr. Scott Campbell, 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 Tenants. Following service of the Notice of Referral the Tenants (by letter dated 8 June 2011), submitted copy correspondence between him and the Landlord between 2009 and 2011 to the Committee. The Landlord (by letters dated 20 June and with further copies of correspondence to the tenant sent to the PRHP on 27, 28 June and 20 July 2011), made written representations to the Committee.
5. On 5 August 2011 the Committee made the following Direction to the parties in terms of Regulation 14 of the Private Rented Housing Panel (Applications and Determinations) (Scotland) Regulations 2007:

"Each party will lodge with the Private Rented Housing Panel, 3rd Floor, 140, West Campbell Street, Glasgow G4 4TZ ("PRHP") all written and documentary evidence, which that party wishes the Committee to consider at the hearing fixed for 16 August 2011 and will serve a copy of the written and documentary evidence so lodged on the other party. The written or documentary evidence must be lodged or served as directed no later than 12 August 2011. Such evidence should include (One) report obtained by the landlord following on a joint investigation by the surveyors and contractors conducted on 16 March 2011 and (Two) report obtained by the landlords following inspection of the property by Stirling Fleming on 13 October 2010, and any other reports or correspondence to which the party wishes to refer. The Committee will not consider any written evidence which is not lodged or served in accordance with this Direction unless satisfied that there are good reasons to do so."

In response to that Direction, both parties lodged written evidence with the PRHP.

The Landlord had applied to the PRHP for a postponement of the hearing fixed for 16 August, but the Committee saw no benefit or prejudice to either party in such a postponement and refused that application.

6. The Private Rented Housing Committee inspected the Property on the morning of 16 August 2011. The Tenant and his wife, Mrs Moodley and his agent Mr Mulholland were present, as was Mr. Minshall and Major William Shaw, the Landlord's local agent.
7. Following the inspection of the Property the Private Rented Housing Committee held a hearing at the Maybole Town Hall. The Committee considered the written evidence submitted, and heard evidence and submissions from both the Tenant's and the Landlord's agents, and from the Tenant and Major Shaw.
8. The written and documentary evidence submitted by the Tenant in response to the Direction comprised:
 1. Copy letter from South Ayrshire Council dated 20 June 2008
 2. Information regarding cedar shakes and shingles
 3. Installation and Maintenance manual in respect of Drimaster Ventilation Unit
 4. Series of photographs

9. The written and documentary evidence submitted by the Landlord in response to the Direction comprised:
1. Schedule of SVGCA Culzean Cottage Repairs from September 2010 to July 2011.
 2. (a) Copy extract from PRHP/KA19/42/08 Determination dated 3-12-08 and (b) Letter from Dr G Paton dated 13 June 2011.
 3. Rentokil letter dated 13 June 2011.
 4. Stirling Fleming Report dated 22 October 2010.
 5. Joint Report by Stirling Fleming and Rentokil dated 20 April 2011.
 6. Letter from National Trust for Scotland dated 26 March 1975.
 7. Email from WH Colt dated 10 August 2011.
 8. Installation Guidance for Drimaster Ventilation system.
 9. email from Graham & Sibbald dated 27 September 2009.
 10. Certificate of Completion PRHP/KA19/42/08.
 11. Letter from the Tenant dated 17 March 2010.
10. At the outset, Mr Mulholland advised the Committee that neither he nor his client had received copies of the productions lodged by the Landlord in response to the Direction. Mr Minshall apologised for his oversight in not sending copies to the Tenant. The Committee agreed to adjourn to enable Mr Mulholland and the Tenant to consider the Landlord's productions over lunch.
11. When the Committee re-convened, Mr Mulholland made submissions on behalf of the Tenant in respect of the specific grounds detailed in the application in respect of which he considered the Landlord had failed to meet the Repairing Standard. Initially he confirmed that the Tenant was not insisting on item 7 and accepted that the snagging works following on the previous PRHC Determination had been completed to his satisfaction. He submitted that the Landlord had failed to meet the Repairing Standard in respect of elements a), b) and c) as specified in the application in the following respects:
- a. The front door was not wind and watertight despite the work which had been carried out by the Landlord. He submitted that the door was beyond repair and that it required to be replaced. He accepted that the Landlord had carried out work to the door, including water testing, but despite that the door continued to leak.
 - b. He highlighted the dampness and condensation in the main bedroom which had been pointed out during the inspection. This issue is one which had been raised with the Landlord on a number of occasions as detailed in the productions. He submitted that the situation was complex and required careful consideration of the reasonable balance between ventilation, heating and insulation in the property. He referred to the letter from Mr. Minshall of 19 July and agreed with the observation that the present systems were now competing with each other. He referred to paragraph 12.16 of the report from Stirling Fleming, which concluded that the current heating installation is inflexible and probably expensive to run. He accepted that the heating system had been found to be adequate at the previous hearing but submitted that in view of the complexity referred to of which the heating system formed part, it followed that the system was inadequate and that he was referring to the efficiency of the system in relation to the house as opposed to the adequacy of the system, which had been referred to previously.
 - c. In relation to the ventilation system, he accepted that the installation of the Drimaster had been with the intention of resolving the poor ventilation. However, he referred to the installation manual, which stipulated that it

requires a circulation of fresh air. He referred to the location of the diffuser in the hallway and pointed out that the instructions require that it should have no obstructions within 1 m of the diffuser. The wall was much closer to the unit than 1 m and was therefore not installed in a suitable location. The issue of the effectiveness of this system had also been intimated to the landlord as evidenced in various productions. He also referred to the complaint of the Tenant that in certain wind directions chimney smoke is circulated through the ventilation system. He consequently submitted that this system was not sufficiently effective to achieve its intended purpose.

- d. Mr. Mulholland accepted that there had to be a natural flow of air in the loft but was of the view that the roof shingles had reached the end of their effective life. The Tenant had not previously been made aware that the roof had been renewed in 1975. He referred to the guidance notes lodged and explained that when it was raining the shingles flattened and sealed the roof. When they dry out they shrink and allow air to circulate. The Stirling Fleming report concludes that the condition of the shingles, which are saturated, requires a re-roofing exercise. He submitted that the lifespan of such a roof varies, depending on the prevailing environment and climate and that if the shingles are saturated the lifespan is also reduced.
- e. Mr Mulholland concluded by agreeing with the 3 issues referred to in Mr Minshall's letter of 19 July as being of importance but considered that there were additional issues as outlined in the application.

12. In response, Mr Minshall for the Landlord submitted:

- a. The front door had been extensively repaired and tested and there was no evidence of a continuing problem. It had not leaked since the last work had been carried out and, in any event it can only be said to have leaked intermittently in particular weather conditions.
- b. He contended that the dampness/condensation was entirely down to the lifestyle choices of the Tenant who maintained high levels of heating and low levels of ventilation. In support of this he referred to the various productions lodged being the extract from the PRHC determination of 3 December 2008, the Rentokil letter of 24 November 2010, the Stirling Fleming report and in particular the joint report of Rentokil and Stirling Fleming which referred to the carbide test carried out which demonstrated that there was no rising damp in the bedroom.
- c. With regard to the heating system, he contended that it was perfectly adequate. It had not been intimated to the Landlord that it was defective in any way. He submitted therefore that it was for the Committee to determine if it met the Repairing Standard, but he considered that it did.
- d. In relation to the Tenant's other contentions, from all the evidence and research carried out, the systems are all adequate and in working order. The roof had been inspected by a local contractor in 2008 and 2009 and found to be acceptable. It had been examined at that time since a new row of shingles had been required to extend the roof over the front of the property to cover the slightly extended front wall which had resulted from the insulation and rendering work which had been carried out.
- e. He referred to the letter of 26 March 1975 which confirmed that the property had been re-roofed in 1975 and to the email from Colt of 10 August 2011 which confirmed that the lifespan of the particular shingles was expected to be 50 years. He acknowledged that they were now over 35 years old and in the final 15 years, so the Landlord was aware that a replacement programme would be considered over the next 15 years. He also pointed out that at the previous PRHC hearing, the Tenant was recorded as having accepted that

the roof did not fail to meet the repairing standard and that he no longer sought an order in respect of that repair.

- f. In relation to the Drimaster, Mr Minshall advised that he had spoken to the technical manager as to its suitability. He had been advised that there were four ventilation outlets within the square diffuser, one on each side, and if a full 1m clearance for parts of the diffuser could not be achieved, it was recommended that those restricted outlets should be sealed off, so long as the remaining outlets were unobstructed and allowed a free flow of air. He had also been advised that it was not possible to filter chimney smoke out of the airflow without preventing the proper operation of the system. Drimaster had advised that the catabatic effect of the wind could result in smoke penetrating the roof space and that a replacement of the roof would not prevent this. They advised that they were aware of other installations of this unit where the same problem arose and it was therefore not unusual. In addition, he referred to the invoice from Gibson & Goold dated 25 June 2009 which confirmed that the chimney had been re-lined thus ruling out any ingress of smoke to the loft from the chimney.

Summary of issues

13. The issue to be determined was whether the property meets the repairing standard as laid down in Section 13 of the Act and whether the Landlord had complied with the duty imposed by Section 14(1)(b).

Findings in Fact

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

14.1. On 1 June 2007, the Tenant entered into a lease with the Landlord for the rent of a property at SVGCA Cottage, Culzean Castle and Country Park, Maybole. This is an assured lease under the Housing (Scotland) Act 1988. the lease continues on a month to month basis by tacit relocation. The provisions in Chapter 4 of the Act apply.

14.2. The tenant duly notified the Landlord of the required works to the property.

14.3. The property is a semi-detached cottage built around 1950 in a rural location with sea views to the front. It is surrounded by large trees in the vicinity and comprises lounge, kitchen, 2 bedrooms, bathroom and utility room. The house is not a listed building.

14.4. The inspection revealed:-

The cottage is of brick construction under a pitched and shingle tiled roof. There is double glazing and partial external insulation. The interior has electric night storage heating and hot water is provided by electric immersion heater.

Mould growth was noted along the front wall and in the cupboard of the front bedroom.

Mould was noted on the inside of a base corner unit in the kitchen.

An inspection of the roof space showed the loft to be insulated with fibreglass quilt. A "Drimaster" ventilation system has been installed with the main unit in the loft space and an outlet diffuser in the hall below.

Reasons for the decision

15. The Committee found no evidence that the condition of the front door was not wind and watertight. It accepted the evidence of the Landlord as accepted by the Tenant that extensive work had been carried out and that there had been no ingress of water for some time. The Committee observed that the chipboard flooring inside the door displayed no signs of water damage which would have been evident had there been a serious leak. The Tenant had contended that Mrs Moodley had used towels to soak up the water, but notwithstanding that, the Committee would have expected to see an indication of water damage which was not evident at the inspection.
16. In respect of the roof, the Committee did not find evidence to demonstrate that it failed to meet the repairing standard, notwithstanding its age. No evidence of dampness had been detected on the damp meter on the underside of the shingles during the inspection.
17. The Committee was presented with no evidence that the heating system was not in a reasonable state of repair and in proper working order. In fact the Tenant accepted that the failure of the system to the extent specified in the previous PRHC determination had been addressed.
18. The Committee found no evidence that the Drimaster system installed in the property was not in a reasonable state of repair and in proper working order. The installation guidance indicated that the effect of any obstruction to the discharge of air from the diffuser would not have an adverse impact on its operation and would result in draughts, which might be a separate issue. The Committee also observed that there was a smoke detector in the vicinity of the diffuser and that if an excess of chimney smoke were to pass through the system, it would operate the alarm. The Committee did, however observe that if that were to happen, the Tenant would have no way of closing the Drimaster system to stop the alarm. A suggestion was made by Major Shaw that an override switch should be provided for the Drimaster and the committee considered that this might usefully be investigated.
19. Notwithstanding the Committee's findings in respect of the individual issues identified in the application, the Committee did find that the property suffers from a serious problem in the main bedroom. The Committee concludes that overall the extent of condensation and mould in the front bedroom renders the property as not reasonably fit for human habitation. It is not the function of PRHC to diagnose the remedy for such a problem and it is for the Landlord to carry out such work as is necessary to allow the property to comply with the repairing standard. Further specialist reports may be necessary for the Landlord to determine the necessary balance between the various elements of heating, ventilation and insulation to enable the house to meet the repairing standard.
20. The Committee was not satisfied that the cause of the problems was limited to the lifestyle of the Tenants, although it did accept that the Tenant must, so far as reasonable, take steps to minimise condensation problems.
21. The Committee was satisfied that extensive research and work has been carried out jointly by the Landlord with the cooperation of the Tenant, which has brought the property to its present condition where the problem is restricted to the area of the main bedroom.

22. The Committee observed that there was evidence of mould caused by condensation in the kitchen, but was unable to conclude that this was such as to render the property as unfit for human habitation. It was noted that the Landlord was in the process of addressing the issue by having installed, as recently as the weekend prior to the inspection, an additional extractor fan in the vicinity of the recently relocated cooker. It was also noted that the cooker was now adjacent to a window which could be opened during cooking.
23. The Committee observed that it was unfortunate that in the atmosphere of cooperation between the parties, it had been found necessary to resort to the PRHP but did recognise that the situation in which the Tenant has found himself and his wife has been on-going for a long time. The Committee hopes that the parties will continue to work together to satisfactorily resolve the issues.

Decision

24. The Committee accordingly determined that the Landlord had failed to comply with the duty imposed by Section 14 (1)(b) of the Act.
25. The Committee proceeded to make a Repairing Standard Enforcement Order as required by section 24(1).
26. The decision of the Committee was unanimous.

Right of Appeal

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

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.

D Preston

R Shea

Signed
 Date..... 23 August 2011
 Chairperson