



Repairing Standard Enforcement Order

Ordered by the Private Rented Housing Committee

Re : The property Woodside, 16 Cloch Road, Gourrock, Inverclyde, PA19 1AD being the subjects registered in the Land Register of Scotland under Title Number REN119877 ('the Property')

Alison Burns ('the Applicant')

James McCormick residing at Flat 3 Green Oak Way, Little Sisters of the Poor Holy Rosary Residence, 44 Union Street, Greenock, PA16 8DP and Anne O'Donnell residing at 55 Whiting Road, Wemyss Bay ('the Landlords')

NOTICE TO

James McCormick residing at Flat 3 Green Oak Way, Little Sisters of the Poor Holy Rosary Residence, 44 Union street, Greenock, PA16 8DP and Anne O'Donnell residing at 55 Whiting Road, Wemyss Bay

Whereas in terms of their decision dated 19th March 2012, the Private Rented Housing Committee determined that the Landlords have failed to comply with the duty imposed by Section 14 (1)(b) of the Housing (Scotland) Act 2006 and in particular the Landlords have failed to ensure that the Property was wind and water tight and in all other respects reasonably fit for human habitation.

The Private Rented Housing Committee now requires the Landlords to carry out such work as is necessary for the purposes of ensuring that the Property 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 Landlords to:-

Eradicate the dampness in the kitchen, two rear bedrooms, living room and front bedroom and carry out necessary redecoration.

The Private Rented Housing Committee order that these works must be carried out and completed By 30th September 2012.

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.

Signed. **J Taylor**
Chairperson
E Shedden

..... Date 19th March 2012

witness: ELIZABETH GIFFEN SHEDDEN, 65, High Street, Irvine



Determination by Private Rented Housing Committee

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

Re : The property Woodside, 16 Cloch Road, Gourock, Inverclyde, PA19 1AD being the subjects registered in the Land Register of Scotland under Title Number REN119877 ('the Property')

Alison Burns ('the Applicant')

James McCormick residing at Flat 3 Green Oak Way, Little Sisters of the Poor Holy Rosary Residence, 44 Union Street, Greenock, PA16 8DP and Anne O'Donnell residing at 55 Whiting Road, Wemyss Bay ('the Landlords')

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) of the Housing (Scotland) Act 2006 ("the Act") in relation to the Property, determined that the Landlords have failed to comply with the duty imposed by Section 14 (1)(b) of the Act.

Background

1. By application dated 10th November 2011 the Tenant applied to the Private Rented Housing Panel for a determination of whether the Landlords 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 she considered that the Landlords had failed to comply with the duty on them to ensure that the Property meets the repairing standard and in particular that the Landlords had failed to ensure that the house is wind and watertight and in all other respects reasonably fit for human habitation.

In particular she advised:

'Environmental Services have advised I contact you for help. We have had problems with the Landlord from March 2011 to the present time. From March 2011 to May 2011 water flooding to the kitchen and back bedroom. From August 2011 to present- water, fungi, dampness in another back bedroom, living room, front bedroom. We are still having serious problems getting the work done.

We need to stop water coming in to our rooms. Walls have been measured for moisture by Environmental Services. Roofers come when it suits them. The Landlord has not been in the house since 18/8/2011. We have serious dampness problems, which have affected members of our family.'

3. The President of the Private Rented Housing Panel after considering the application determined 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 Landlords agent and the Tenant.

Following service of the Notice of Referral the Tenant confirmed that she had vacated the property. The Committee considered whether or not to treat the application as withdrawn in terms of Schedule 2 Paragraph 7(1) of the Housing (Scotland) Act 2006 and on 9th February 2012 issued a Minute of Continuation confirming that they had decided to continue to determine the application.

5. The Committee attended at the Property on 15th March 2012. Mr O'Donnell, husband of Anne O'Donnell, one of the Landlords was present at the inspection. The Committee inspected the alleged defects. Mr Links, the surveyor member of the Committee used a damp meter to test for dampness in the various rooms of the Property identified in the Tenant's application. He explained that if the damp meter measured orange or red this confirmed the presence of dampness. The Committee found as follows:-

5.1 Water and flooding in the kitchen.

Part of the ceiling covering was swollen and there was some staining on the ceiling and internal wall between the rear bedroom and the kitchen. The damp meter reading was in the orange range confirming the presence of dampness.

5.2 Water and flooding in the back bedroom adjacent to the kitchen.

There was staining and mould on the internal wall between the bedroom and the kitchen. There was no evidence of fungi. The damp meter reading was in the red range confirming the presence of dampness.

5.3 Water, fungi and dampness in the other back bedroom.

There was staining and mould on the internal wall between the bedroom and the living room. There was no evidence of fungi. The damp meter reading was off the scale confirming the presence of dampness.

5.4 Water, fungi and dampness in the living room.

Part of the internal plaster work of the side wall of the living room had been removed exposing the bricks, which were damp to the touch. There was no evidence of fungi. The damp meter reading was off the scale confirming the presence of dampness.

5.5 Water, fungi and dampness in the front bedroom.

There was staining on the side wall of the front bedroom. The damp meter reading was off the scale confirming the presence of dampness.

6. Following the inspection of the Property the Private Rented Housing Committee held a hearing at The Gamble Halls, Shore Road, Gourrock.

Mr O'Donnell advised that he represented the Landlords. The Property had been his wife's parents family home and it is their intention to reside in the Property. However they had leased the property last year whilst his wife completed a University Course. Fairlet Property Management Residential Lettings ('Fairlet') managed the lease to the last Tenant, Alison Burns. She had vacated the Property at the end of last year and Fairlet no longer manage the Property, which has remained unoccupied since the Tenant had moved out. They do not intend to re-let the Property.

Mr O'Donnell acknowledged the dampness found in the Property at the inspection. He explained that he and his wife had instructed various tradesmen to investigate the dampness problems. They had obtained a letter from Miller Preservation dated October 2011 which advised that the dampness in the property was due to condensation. Tradesmen had recently repaired the ridge tiles on the south most section of the roof and they had also removed the chimney that had been at the rear of the Property. They intend to carry out substantial structural alterations to the Property before they move into the Property themselves. He advised that the dampness will be addressed when the roof is taken off as part of the works involved in upgrading the Property. He confirmed that he had obtained provisional planning consent for an attic conversion in February

2011. They have instructed their architects Taylor Haggarty, Greenock to prepare the building warrant application which will be lodged with the Building Standards department shortly. He would be hopeful that the works would be completed by the end of the summer.

Summary of the issues

7. The issues to be determined are whether the dampness found in the Property results in the Property not being wind and water tight and in all other respects reasonably fit for human habitation (Section 13(1)(a) of The Housing (Scotland) Act 2006).

Findings of fact

8. The committee found that the dampness in the Property was located largely at areas which were located underneath the chimneys, including the chimney at the rear which had been recently removed. Accordingly whilst they acknowledged that some of the dampness may have been due to condensation whilst the Tenant had been resident in the Property the most likely cause of the dampness was penetrating damp from the defective roof coverings and chimney flashings. Whilst the Landlords had taken some steps to eradicate the dampness there was still high levels of dampness in the Property. Therefore the Committee found that the dampness in the property does result in the Property not being wind and water tight.
9. The Committee accordingly determined that the Landlords had failed to comply with the duties imposed by Sections 14 (1)(a) of the Act, as stated.
10. The Committee considered whether it was appropriate to make a Repairing Standard Enforcement Order, as the Landlords do not intend to re-let the Property. The Committee acknowledged that they had no reason to doubt the Landlords' intentions but recognised that the Landlords may be placed in a position of having to re-let the property before they are able to reside in the Property themselves. Therefore the Committee proceeded to make a Repairing Standard Enforcement Order as required by section 24(1).
11. The decision of the Committee was unanimous.

Right of Appeal

12. 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

13. 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.

J Taylor

Signed

..... Date 19th March 2012