



**Repairing Standard Enforcement Order  
Ordered by the Private Rented Housing Committee**

**PRHP REFERENCE PRHP/AB54/49/13**

**Re: Property at Shielpark, Knock, Huntly AB54 7LP being the subjects more particularly described in and disposed by the Disposition by the Trustees of Alexander George in favour of William Biddie, recorded GRS Banff 28<sup>th</sup> May 1923 (hereinafter referred to as the "house")**

**The Parties**

**Mrs. Elizabeth McLeod, residing at the house (the "Tenant")**

**Mr. Iain Murray and Mrs. Vicky Murray, care of Peterkins Solicitors, 3 The Square, Huntly, AB54 8AE (the "Landlord")**

**NOTICE TO IAIN MURRAY AND VICKY MURRAY (the "Landlord")**

Whereas in terms of their decision dated 27 June 2013, the Private Rented Housing 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 that the Landlord has failed to ensure that the house meets the repairing standard in that:-

- (1) the house is wind and watertight and in all other respects reasonably fit for human habitation;
- (2) 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;
- (3) 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; and
- (4) Any fixtures, fittings and appliances provided by the landlord under the tenancy are in a reasonable state of repair and in proper working order.

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 to:

1. carry out repairs to the lounge windows and front door to ensure that they are wind and watertight , in a reasonable state of repair and proper working order;
2. carry out works to the flat roof over the kitchen to prevent leaks and to eliminate water penetration to the head of the kitchen window,
3. replace the kitchen work tops and kitchen tap,
4. repair the bathroom floor and re-fit the bath so that this is properly sealed against the walls and properly seal the WC outlet pipe,
5. provide to the Panel a satisfactory report from a competent and qualified electrician confirming that the electrical supply to the shower is safe ,
6. seal the skirting boards in the ground floor bedroom,
7. repair, replace or remove the lounge door;
8. provide to the Panel a satisfactory periodic inspection report (PIR) by a qualified and competent electrician of the electrical installation and wiring of the house and a Portable Appliance Test (PAT) for any portable equipment provided by the Landlord (including white goods).

The Private Rented Housing Committee order that the works specified in this Order must be carried out and completed within the period of 12 weeks 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 typewritten on this and the two preceding pages are signed by Derek William Hogg, Chairperson of the Private Rented Housing Committee, at Edinburgh on the Twenty ninth day of July, Two Thousand and Thirteen in the presence of the undernoted witness:-

# D Hogg

C Strachan

WITNESS.....

CATRIONA STRACHAN

8 MELVILLE STREET

EDINBURGH



**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**

**In connection with**

**Property at Shielpark, Knock, Huntly AB54 7LP  
(hereinafter referred to as the "house")**

**PRHP REFERENCE – PRHP/AB54/49/13**

**The Parties**

**Mrs. Elizabeth McLeod, residing at the house (the "Tenant")**

**Mr. Iain Murray and Mrs Vicky Murray, care of Peterkins Solicitors, 3 The Square,  
Huntly, AB54 8AE (the "Landlord")**

**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 written documentation attached to the application and written representations submitted by the parties; and the findings at an inspection of the house, 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 11 March 2013 and received on 13 March 2013 the Tenant applied to the Private Rented Housing Panel (hereinafter referred to as "PRHP") for a determination of whether the Landlord had failed to comply with the duties imposed by Section 14(1) (b) of the Act.

2. The application by the Tenant stated that the Tenant considered that the Landlord had failed to comply with the duty to ensure that the house meets the repairing standard and the Landlord had failed to ensure compliance with Section 13(1) (a), (b), (c) and (d) of the Act. The Tenant's complaint of disrepair within the application related to a number of aspects of the house as follows:-
  - 2.1. the multi fuel stove in the living room was unusable.
  - 2.2. the front door, front and back window to lounge were not wind tight.
  - 2.3. the door from the lounge to the kitchen was unusable.
  - 2.4. the kitchen window was not water tight.
  - 2.5. the flat roof over the kitchen leaked.
  - 2.6. the kitchen work tops were in a bad state of repair and could not be cleaned.
  - 2.7. the kitchen ventilation was blocked.
  - 2.8. the kitchen tap did not work properly and leaks.
  - 2.9. the bath and toilet waste pipe were not correctly sealed so as to prevent draughts.
  - 2.10. the shower was incorrectly fitted.
  - 2.11. the skirting boards in the bedrooms were incorrectly fitted and were draughty.
  - 2.12. there were unsafe extension cables.
  - 2.13. the wiring was unsatisfactory insofar as three sockets required replacement.
  - 2.14. there was no gas safety certificate available for the house.

The Tenant submitted a copy letter of notification of required works sent to the Landlord by recorded delivery post. A copy of the missives of let was submitted as a production.

3. By letter dated 13 April 2013 the President of the Private Rented Housing Panel intimated a decision to refer the application under Section 23(1) of the Act to a Private Rented Housing Committee.

The Committee comprised the following members:

Mr. Derek Hogg, Legal Member  
Mr. Mark Andrew, Surveyor Member  
Mrs. Linda Robertson, 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 the Landlord. Following service of that notice, the Landlord's solicitors, Messrs Peterkins, submitted written representations on behalf of the Landlord. In their representations, Peterkins indicated that several attempts had been made to attend at the house on order to assess whether repairs were required, and to then undertake requisite works, but that the Tenant had not given the Landlord's workmen access to the house for this purpose. The Tenant did not submit written representations beyond what was set out in her application to the Private Rented Housing Panel.
5. The Private Rented Housing Committee inspected the house on the morning of 14 June 2013. The Tenant was present as was Mr. J Craig from Peterkins as the representative of the Landlord.
6. Following the said inspection the Private Rented Housing Committee held a hearing at the Linden Community Centre, Huntly. Mr. Craig attended the hearing as representative of the Landlord but the Tenant did not attend nor was she represented by any third party. The Committee considered the findings from the inspection, representations and productions and made their determination of the application.

#### **Landlord's representations**

7. Mr. Craig did not have anything to add to what had been submitted in the written representations made on behalf of the Landlord but did emphasise the point that the Landlord had made efforts to address the Tenant's complaints relating to the state of repair of the house and had arranged for workmen to attend at the house at various times but that they had been refused access by the Tenant. Given this, Mr. Craig felt that the Landlord could do little more to remedy any wants of repair at the house while it remained occupied.

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

8. The issue to be determined is whether the house 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

9. The Committee made the following findings in fact:-
- 9.1. On 18 October 2012 the Tenant entered into a lease with the Landlord for the let of the house. The Tenant occupied the house in terms of a short assured tenancy in terms of the Housing (Scotland) Act 1988. The provisions outlined in Chapter 4 of the Act apply. The Tenant remained in occupation of the house at the time of the inspection.
- 9.2. Whilst in occupation of the house, the Tenant notified the Landlord of the required works to the house and submitted an application to the Panel on 11 March 2013.
- 9.3. The inspection by the Committee on 14 June 2013 revealed:-

The house is a stone-built two-storey detached house of considerable age with a more recently-constructed single storey extension. The Committee confined their inspection to the complaints in the application and found as follows:-

- 9.3.1. The multi fuel stove has been repaired. The outer sections and flue have been sealed by a friend of the Tenant.
- 9.3.2. The lounge windows and front door are relatively modern UPVC type but these have not been fully fitted in that the timber panelling around the windows and door has gaps which admit draughts. The panelling was loose and covered with multi purpose gaffa tape to control draughts.
- 9.3.3. The lounge door is a 12 pane lightweight glazed door which has twisted and does not shut properly and is not capable of proper use.
- 9.3.4. The kitchen window is also a UPVC unit but water penetration was noted from the timber section above the window.
- 9.3.5. The flat roof over the kitchen is of galvanised corrugated sheet steel made in two sheets, rather than one continuous sheet, on a very slight slope. The cooker flue passes up through the flat roof and there is no pointing around the junction between the roofing material and the chimney, save for polyurethane foam. There is a small gap between the two steel sheets and there is insufficient 'lap' between sheets which would admit driven rain. In addition, it was noted that the gutter along

the bottom edge of the kitchen roof leaked which could have been the cause of the water penetration to the head of the kitchen window.

- 9.3.6. The kitchen work tops are in a poor state of repair with gaps at the joints and around the sink.
- 9.3.7. No kitchen ventilation was found at the house save for openable windows. The Tenant claimed that the Gas Safe Certificate intimated a requirement for mechanical ventilation, but since the inspection the Committee has had sight of the current gas safety certificate for the house which does not stipulate a requirement for the provision of any additional ventilation in the kitchen in relation to the range cooker.
- 9.3.8. The kitchen tap was leaking and failed to turn on and off correctly.
- 9.3.9. The bath was found to have sunk and dropped down below the level at which it was fitted and there is consequently a large gap around the edge of the bath which would not only admit draught but would appear to be unsafe. There was a poor seal against the outlet pipe from the WC.
- 9.3.10. The shower cannot be used as it is electric and when turned on breaks the main fuse that is located in the adjoining outbuilding.
- 9.3.11. There is a small gap around the skirting board in the ground floor bedroom at the front window which would admit draught.
- 9.3.12. The Tenant has removed all extension cables and this complaint was withdrawn.
- 9.3.13. The Committee found two sockets in the kitchen to be loose but generally had concerns over the wiring, particularly from the main fuse in the adjoining steading

### **Reasons for the Decision**

- 10. In considering the repairing standard the Committee carried out an inspection of the house and in particular closely examined the specific defects highlighted in the application. The Committee considered the written representations made and the representations of Mr. Craig at the hearing. While the Committee has some sympathy with the Landlord's position in relation to being denied access to the house in order to attend to repairs, this is not something which is relevant to the Committee's decision on whether the house does or does not comply with

the Repairing Standard. Section 16(4) of the Act provides that a landlord is not to be treated as having failed to comply with the repairing duty imposed by section 14(1) where the purported failure occurred only because the landlord lacked necessary rights (of access or otherwise) despite having taken reasonable steps for the purposes of acquiring those rights. However, section 181(4) of the Housing (Scotland) Act 2006 gives a landlord, or someone authorised by him, the right to enter the house both (a) for the purpose of viewing its state and condition for the purpose of determining whether the house meets the repairing standard, and (b) in order to carry out any work which is necessary to comply with the landlord's repairing duty or to comply with a repairing standard enforcement order. The Committee also noted that in terms of the short assured tenancy agreement which the parties entered into that the Landlord did reserve rights of access to the house, with or without workmen, to carry out repairs, subject to giving the tenant notice. The Landlord does not therefore lack necessary rights of access, although clearly the issue of enforcing these rights is a separate matter.

11. The Committee based its decision primarily on the evidence obtained during their inspection of the property, as well as subsequent sight of a current gas safety certificate for the house, which the Landlord's agents supplied and which is dated 15 December 2012.
12. The Tenant confirmed that the multi fuel stove had been repaired and the Committee took the view that the stove complied with the Repairing Standard. The Committee also took the view that, as a current gas safety certificate existed in respect of the house and did not require any additional or mechanical ventilation to be provided in the kitchen in order to safely operate the range cooker, the kitchen ventilation was adequate and that the house met the Repairing Standard in this respect.

### **Decision**

13. The Committee, considering the terms of Section 13(3) of the Act, determined that the Landlord had failed to comply with the duty imposed by Section 14(1) (b) of the Act.
14. The Committee found that the house does not meet the Repairing Standard in that:-
  - 14.1 The condition of the lounge windows and front door; the kitchen window; the kitchen roof; the skirting board at the front window in the ground floor bedroom and the bath means that the house is not wind and watertight and

reasonably fit for human habitation. Accordingly the house does not meet the repairing standard laid down in Section 13(1)(a) which states that the repairing standard is met if the house is wind and watertight and in all other respects reasonably fit for human habitation; Furthermore, the lounge windows, the front door, the kitchen window and the kitchen roof do not meet the repairing standard laid down in Section 13(1)(b) which states that 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;

14.2 The condition of the lounge door and the kitchen worktops means that these fixtures and fittings are not in a reasonable state of repair and in proper working order. Accordingly the house does not meet the repairing standard laid down in Section 13(1)(d) which states that the repairing standard is met if any fixtures, fittings and appliances provided by the landlord under the tenancy are in a reasonable state of repair and in proper working order;

14.3 The condition of the kitchen tap; the shower; the bath and the outlet pipe from the W.C. and the wiring in the house means that these installations are not in a reasonable state of repair and in proper working order. Accordingly the house does not meet the repairing standard laid down in Section 13(1) (c) which states that the repairing standard is met if 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.

15. The Committee proceeded to make a Repairing Standard Enforcement Order as required by Section 24(2).
16. The Committee were of the view that the Landlord would require to:
  - 16.1. carry out repairs to the fitting of the lounge windows and front door to eliminate draught; and to the flat roof over the kitchen to prevent leaks and to eliminate water penetration to the head of the kitchen window,
  - 16.2. replace the kitchen work tops and kitchen tap,
  - 16.3. repair the bathroom floor and re-fit the bath so that this is properly sealed against the walls and properly seal the WC outlet pipe,
  - 16.4. ensure that the electrical supply to the shower is safe,

- 16.5. seal the skirting boards in the ground floor bedroom,
- 16.6. repair, replace or remove the lounge door;
- 16.7. provide a periodic inspection report (PIR) of the electrical installation and wiring of the property and a Portable Appliance Test (PAT) for any portable equipment provided by the Landlord (including white goods). This to be carried out by a competent and qualified electrician.
17. The Committee considered how long the Landlord would require to carry out the works in the circumstances. The Committee were of the view that twelve weeks would be sufficient.
18. The decision of the Committee was unanimous.

### **Right of Appeal**

19. 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**

20. 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 Hogg**

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Derek Hogg

Chairperson, 29 July 2013