



Repairing Standard Enforcement Order

Ordered by the Private Rented Housing Committee

prhp Ref: prhp/IV14/54/13

Re : Property at Oakfield, Achilty, Contin, Ross-shire IV14 9EG ("the Property")

Sasine Description: ALL and WHOLE the detached bungalow dwellinghouse with the garden ground pertaining thereto known as Oakfield, Achilty, Contin, Strathpeffer in the County of Ross and Cromarty, being part of the Farm and lands of Achilty more particularly described in and disposed by Feu Charter by Sir Robert Evelyn Mackenzie in favour of Robert Mackay, dated 4 August and recorded in the Division of the Register of Sasines applicable to the County of Ross and Cromarty 1 September, both in the year 1944

The Parties:-

Doreen Alice Butcher, Eilean View (otherwise Eilean House), Achilty, Contin IV14 9EG and Margaret Ann Fraser, formerly Treetops, Contin, Strathpeffer and now Achnacloich, Achilty, Contin IV14 9EG ("the Landlord")

Gordon Day and Louise Day, sometime Oakfield, Achilty, Contin, Ross-shire IV14 9EG ("the Tenant")

NOTICE TO DOREEN ALICE BUTCHER and MARGARET ANN FRASER ("the Landlord")

Whereas in terms of their decision dated 8 August 2012, 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 and in particular that the landlord has failed to ensure that:-

- (a) 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;
- (b) 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
- (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.

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 exhibit a report from a suitably qualified contractor, confirming that the fireplace in the living room can be safely used for the burning of solid fuel and is in a reasonable state of repair and in proper working order;
- (b) to exhibit an up to date service report from a suitably qualified contractor, confirming that the central heating boiler is in a reasonable state of repair and in proper working order; and
- (c) to exhibit a current Portable Appliance Testing Report from a person authorised to issue such reports, confirming that the 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 order that the works specified in this Order must be carried out and completed within the period of 4 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 preceding page are executed by George Barrie Clark, solicitor, Edinburgh, chairperson of the Private Rented Housing Committee at Edinburgh on 8 August 2013 before this witness:-

V Clark

witness

G Clark

chairman

Valerie Elizabeth Jane Clark
7 Newbattle Terrace
Edinburgh



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

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Re : Property at Oakfield, Achilty, Contin, Ross-shire IV14 9EG ("the Property")

The Parties:-

Gordon Day and Louise Day, sometime Oakfield, Achilty, Contin, Ross-shire IV14 9EG ("the Tenant")

Doreen Alice Butcher, Eilean View (otherwise Eilean House), Achilty, Contin IV14 9EG and Margaret Ann Fraser, formerly Treetops, Contin, Strathpeffer and now Achnacloich, Achilty, Contin IV14 9EG ("the Landlord")

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) in relation to the house concerned, 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 14 March 2013, 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 Tenants stated that the Tenants 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 water tight 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;
 - (d) 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
 - (e) the house has provision for detecting fires and for giving warning in the event of fire or suspected fire.
3. By letter dated 2 May 2013 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 Tenant.
5. Following service of the Notice of Referral the Tenant (by letter sent on their behalf by Ross and Cromarty Citizens Advice Bureau dated 9 May 2013), made written representations to the Committee to the effect that the Tenant had vacated the Property on being re-housed by the Local Authority on 27 April 2013. The Landlord (by letter dated 14 May 2013), made written representations to the Committee to the effect that the Tenant had left the Property on 1 or 2 April. On 3 June 2013, the Private Rented Housing Committee considered whether the application should be determined or abandoned, all in terms of Schedule 2, Paragraph 7(3) of the Act, and decided to continue to determine the application on public interest grounds, as it contained allegations which, if substantiated, were likely to raise health/safety issues for any future tenants of the Property.
6. The Private Rented Housing Committee inspected the Property on the afternoon of 8 August 2013. The Tenant was not present or represented at the inspection. The Landlord, Doreen Butcher, was present during the inspection.
7. Following the inspection of the Property the Private Rented Housing Committee held a hearing at Dingwall Community Centre. Neither the Landlord nor the Tenant was present or represented at the hearing.

Summary of the Issues

8. The issues to be determined are whether the Landlord has complied with the duty imposed by Section 14(1)(b) of the Act and whether the Property meets the repairing standard as set out in Sections 13(1)(a),(b),(c),(d) and (f) of the Act.
9. The Tenant, in the application, stated that the cavities behind the fireplace were not sealed and it was open to the wind, that the utility room, hall and bathroom ceilings had significant gaps all around and were open to the loft space, that there was no main room thermostat for the heating and the radiators in the hall and bedrooms had no thermostatic valves, that the hot water circuit was defective as the tank thermostat was faulty and the heating performance was severely impaired, as the hot water got up to boiler temperature and was dangerous, that the bathroom radiator had a leak and that the boiler had not been serviced. The application also stated that no appliances in the house had been safety tested, that the cooker hood was not vented out of the room, that the bathroom had a pendant light fitting which was unsafe, that the outside light near the back door was broken and unsafe, that the guttering on the east side of the Property had been cleaned out but the drain was completely blocked, that the guttering on the west side required to be cleaned out, that the waste water drainage from the kitchen and utility room sinks and washing machine plumbing did not drain properly and that water pumped out by the washing machine flowed into both sinks.

Findings of fact

10. The Committee finds the following facts to be established:-
 - The tenancy is an assured tenancy, commencing on 1 February 2013. It was not necessary for the Committee to determine whether it was a Short Assured Tenancy, but the paperwork examined by the Committee included a letter from Ross and Cromarty Citizens Advice Bureau to the Landlord dated 15 March 2013, to the effect that the Tenant had occupied the Property from 12 January 2013, a date earlier than the date of service of the Form AT5.
 - There is an electric fire in the fireplace in the living room, which is currently used as the main source of heating, but there is an unsealed gap between the fireplace and the chimney, as a result of which the fireplace would require adaptation before it could safely be used as a coal fire.

- There are no gaps in the ceilings of the utility room, hall and bathroom. Any gaps that did exist there have been taped, filled and decorated.
- A number of radiators do not have thermostatic valves, but, although such valves are desirable, their absence does not constitute a failure to meet the repairing standard.
- The riser from the hot water tank is hot to the touch, but there is no evidence of leakage and there is a thermostat on one of the pipes leading to the hot water tank.
- There is a new radiator and heated towel rail in the bathroom.
- The Committee has not seen any evidence of a service report for the boiler.
- The Committee has not seen evidence of a current Portable Appliance Testing Report for the appliances provided by the Landlord under the tenancy.
- The Committee has seen a Periodic Inspection Report form J Stewart Property Services Limited dated 2 August 2013, which does not contain any recommendations for remedial works. The Report was given to the Committee by the Landlord at the inspection.
- The cooker hood is a charcoal-filter only hood and, whilst it would be desirable to have it vented to the exterior of the Property, the fact that it does not does not constitute a failure to meet the repairing standard.
- There appears to be a new light fitting in the bathroom. It is not a pendant fitting and is operated by a switch located outside the bathroom.
- The outside light was working at the time of the inspection and was not broken.
- There is no evidence of choked guttering at the Property and no evidence of a blocked drain. There is, however, a quantity of moss on the roof, so the gutters will require to be cleaned out on a regular basis.
- The waste pipe from the washing machine is connected to the drainage above the level of the u-bend. This is likely to lead to a certain amount of "bubbling" of water in the sink when the machine is draining, but is not regarded by the Committee as being a significant problem.
- There is a mains-wired smoke detector, which appears to be functioning, in the hallway.

Reasons for the decision

11. The Committee is concerned that the fireplace in the living room cannot, without adaptation, be safely used for the burning of solid fuel. The Committee accepts that, at present, there is an electric fire located in the fireplace, but the fireplace is part of the structure of the Property and as such should be in a reasonable state of repair and in proper working order, so that it is capable of being used for burning solid fuel, albeit that is not how it is presently being used. The Committee, therefore, will require a report confirming that the fireplace can be safely used for the burning of solid fuel. Whilst there is no visible evidence that the boiler is not functioning properly, the Committee wish to see an up to date report confirming that the boiler has been serviced and is in proper working order. The Committee also require an up to date Portable Appliance Testing Report in respect of the appliances provided by the Landlord, as there is no evidence provided by the Landlord that such a report already exists. The Landlord provided the Committee at the inspection with a Periodic Inspection Report in respect of the electrical installation, but that report did not cover appliances.

Decision

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

Right of Appeal

15. 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

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.

Signed **G Clark** Date *8 August 2013*
Chairperson