

## **Determination by the Private Rented Housing Committee**

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

**Re: Property 70 Main Street, Callander, Stirlingshire FK17 8BD  
("the Property")**

#### **The Parties:-**

**Mr. Gilbert Wilson, 70 Main Street, Callander, Stirlingshire ("the Tenant")**

**Valteith Limited, 19 Canning Street, Edinburgh per Mr. Gordon Steele  
("the Landlord")**

#### **Decision**

**The Committee having made such enquiry as is fit for the purpose of determining whether the Landlord has complied with the duty imposed by Section 14(1)(b) of the Housing (Scotland) Act 2006 (hereinafter referred to as "the Act") in relation to the property concerned and taking account of the evidence presented and the written representations 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 1st August 2008 and received on 5th August 2008 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 the Landlord had failed to comply with the duty to ensure the house meets the repairing standard and in particular that the Landlord had failed to ensure compliance with Sections 13(1)(a), (b), (c), (d) and (f) of the Act. The Tenant's complaint of disrepair within the application related broadly to -**

- (a) repair work being needed to both chimneys, the guttering and the roof since as a result of the foregoing disrepair the property suffered a degree of dampness in the living area, the hall and both bedrooms
  - (b) a cracked and leaking w.c. and cracked wash-hand basin
  - (c) the lack of safety certification as regards electrical and gas supplies in the property
  - (d) the lack of a smoke alarm
3. By letter dated 8th September 2008 the PRHP gave intimation that the President of the PRHP had made 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:-
- Mrs. Anne McCamley, Legal Member  
Mrs. Sara Hesp, Surveyor Member  
Mr. Chris Harvey, Housing Panel Member
4. The Private Rented Housing Committee inspected the property on the morning of 24th March 2009. The Landlord, represented by Mr. Gordon Steele, and the Tenant, Mr. Gilbert Wilson were present.
5. Following the said inspection the Private Rented Housing Committee held a Hearing at the Roman Camp Hotel, Callander.

#### **Submissions at the Hearing**

6. The Committee considered the written evidence submitted and heard evidence from Mr. Wilson and Mr. Steele.

Mr. Wilson spoke of the dampness in the property and told us that in 2007 a Surveyor had said it was "awful". He further explained that Environmental Health Officers from Stirling Council had attended the property on three occasions and told him the situation was 'unsatisfactory'. He explained the w.c. had been cracked and leaking since the commencement of his tenancy and there was a hairline crack in the wash-hand basin. Mr. Wilson advised he cannot be satisfied the gas and electrics are safe (although he has seen and signed the gas safety report). Mr. Wilson pointed out there was no smoke alarm in the property.

Mr. Steele agreed work was required to the roof and chimneys to rectify any ingress of water. He explained he was willing, indeed keen, to progress the builder work which had been hampered by a number of factors including reaching agreement with his downstairs commercial tenants and adjoining proprietors regarding the cost and timing of the proposed works. From the estimates on the file it appears the builders cannot guarantee the extent of the work required until work has begun. Mr. Steele explained he had always hoped to reach a negotiated settlement with Mr. Wilson regarding the builder work and expressed his disappointment that this had not been achieved. The Landlord acknowledged the w.c. was cracked and should be replaced, he advised a new w.c. was available but to date the Tenant had refused to allow the replacement. Mr. Wilson explained a local Solicitor had advised him not to have the WC repaired prior to the inspection by the PRHP. Mr. Steele conceded the property does not have a smoke/ fire detecting device. He stated that he had no knowledge of the visits by Environmental Health, nor any feed-back from them.

### **Summary of the Issues**

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

### **Findings in Fact**

8. The Committee made the following findings:-

In July 2007 the Tenant entered into a lease with the Landlord for the rent of 70 Main Street, Callander. This was a short assured tenancy in terms of the Housing (Scotland) Act 1988.

The Tenant notified the Landlord of the required works to the property and the Landlord was aware of the required repairs.

The property is a flatted dwelling on two floors above a shop on the Main Street in the village of Callander comprising living room, kitchen, two bedrooms and bathroom. There is a large balcony which has been fitted with decking thereby providing a patio area.

The inspection revealed damp patches in the hallway, living room and both bedrooms. A damp meter reading showed an area of current dampness in the westmost bedroom only. None of the damp patches in the property exhibited mould growth although there was crystallisation in the plaster. The Committee noted the cracked and leaking w.c., and a hairline crack in the

wash-hand basin. There was no smoke alarm in the property.

### **Reasons for the Decision**

9. In considering the repairing standard issue the Committee carried out an internal and external inspection of the property and in particular closely examined the specific defects highlighted by the Tenant in the application. In addition the Committee carefully considered the written documentation and oral evidence submitted. The Committee considered the representations of both parties in relation to the repairing standard.

After inspection the Committee is satisfied the property is fit for human habitation. While inspection did reveal some dampness overall it was not in our view of such severity as to render the property unfit for human habitation. As stated above the damp meter registered moderate dampness in one area in the west bedroom although the plasterwork in the living room hall and east bedroom has been subject to water penetration. Significantly there is no mould growth on any of the plasterwork. Accordingly the Committee is satisfied the repairing standard in Section 13(1)(a) of the Act has been met.

External visual inspection together with written and oral evidence persuaded us that the roof (both pitched and flat), chimneys and rainwater conductors are not in a reasonable state of repair. The chimney breasts are cracked, the gutters appear to be blocked and misaligned and the roof is missing slates. It is our opinion that this disrepair has led to damp ingress in the living accommodation which if not rectified may re-appear. In light of the foregoing the repairing standard set out in Section 13(1)(b) has not been met.

The Committee is satisfied the installations in the property for the supply of gas and electricity are in a reasonable state of repair and in proper working order. We are strengthened in this view by the production of the gas and electrical safety certificates. However the w.c. is cracked and leaking and is not in a reasonable state of repair. Accordingly we find the property does not meet the repairing standard in Section 13(1)(c). The hairline crack in the washhand basin is not significant in terms of the repairing standard.

The Committee did not observe any defects with fixtures and fittings or appliances and none were pointed out.

Lastly the Tenant advised and the Landlord conceded the property does not have a smoke/fire detector thus the property does not meet the repairing standard set out in Section 13(1)(f) of the Act.

### **Decision**

10. 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 and proceeded to make a Repairing Standard Enforcement Order as required by Section 24(2). The Decision of the Committee was unanimous.

### **Right of Appeal**

11. **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**

12. 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.

**A McCamley**

Signed

Chairperson /

..... 16<sup>th</sup> April 2009

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

**prhp Ref:**

**Re: Property at 70 Main Street, Callander, Stirlingshire ("the Property")**

**Title No: Property at 70 Main Street Callander FK17 8BD being a first floor flatted dwelling house registered in the Land Register of Scotland under Title Number PTH29159 :**

**The Parties:-**

**Mr. Gilbert Wilson, 70 Main Street, Callander, Stirlingshire ("the Tenant")**

**Valteith Limited, 19 Canning Street, Edinburgh ("the Landlord")**

**NOTICE TO Valteith Limited ("the Landlord")**

Whereas in terms of their decision dated Sixteenth April 2009, 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

- (1) the structure and exterior of the house are in a reasonable state of repair and in proper working order
- (2) 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
- (3) the house has satisfactory provision for detecting fires and for 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 property 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 repair the structure and exterior of the property to ensure they are in a reasonable state of repair and without prejudice to the foregoing generality to repair or rebuild the roof and east and west chimneys of the property and thereby eliminate any damp ingress to the living accommodation. The Private Rented Housing Committee order that the works specified in this part of the Order must be carried out and completed **within the period of six months** from the date of service of this Notice.
- (b) To replace the w.c. in the bathroom and to ensure it is in proper working order.
- (c) To install a hard wired inter linked smoke detector in the property.

The Private Rented Housing Committee order that the works specified at (b) and (c) of this Order must be carried out and completed **within the period of six 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 subscribed by Anne McCamley, chairperson of the Private Rented Housing Committee at Edinburgh on the Sixteenth day of April 2009 in the presence of Murdoch McCamley, Chartered Accountant, Osborne House, Osborne Terrace, Edinburgh

**M McCamley**  
(witness)

**A McCamley**

Chairperson