

## **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**

ref: PRHP/AB54/73/10

**Re: Property at Fourmanhill Cottage, Forgue, Huntly, Aberdeenshire  
("the Property")**

**Sasine Description: ALL and WHOLE that cottage and garden ground pertaining thereto known as and forming Fourmanhill Cottage, Forgue, Huntly in the County of Aberdeen being the subjects more particularly described in Notice of Payment of Improvement Grant by Aberdeenshire Council dated Sixteenth and recorded in the General Register of Sasines for the County of Aberdeen on the Seventeenth both days of September Two Thousand and Eight.**

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

**Bognie Trust, The Estate Office, Frendraught, Forgue, Huntly ("the Landlord")  
per Gordon Morison**

**Julie Woodward, Fourmanhill Cottage, Forgue, Huntly Aberdeenshire  
("the Tenant")**

#### **Decision**

**The Committee, having made such enquiry as it sees fit for the purposes of determining whether the Landlord has complied with the duty imposed by Section 14(1)(b) in relation to the property concerned, and taking account of the whole written evidence and the evidence led by both the Landlord and the Tenant at the Hearing determines that the Landlord has failed to comply with the duty imposed by Section 14(1)(b) of the Act.**

#### **Background**

- 1. By application dated 17th April 2010 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 the Tenant considered the Landlord had failed to comply with the duty to ensure the house meets the repairing standard and the Tenant brought forward the following alleged breaches:-
  - (a) The roof leaks and affects the sitting room and kitchen
  - (b) There is dampness in the front and back bedrooms.
3. The Private Rented Housing Committee served Notice of Referral dated the 28th April 2010 under and in terms of Schedule 2, Paragraph 1 of the Act on both the Landlord and the Tenant.
4. The Private Rented Housing Committee comprising Mrs. Anne McCamley, Legal Convener, Mr. David Godfrey, Surveyor Member and Mr. Mike Scott, Housing Member inspected the property on the morning of the 19th August 2010. Both the Tenant and the Landlord were in attendance. The Tenant was supported by her father, Mr. Senior. The Landlord was supported by Mrs. Lehuray, Senior Administrator at the Estate Office and Chris Sutton, Foreman.
5. Following the inspection of the property the Private Rented Housing Committee held a Hearing at Stewarts Hall, Gordon Street, Huntly and heard from both the Tenant and the Landlord.
6. The Tenant confirmed work had been carried out on the roof and there has been no water ingress therefrom since the work has been completed. Mrs. Woodward further submitted the dampness in the front and back bedroom remains a problem and is still evident. It had been hoped that drainage work carried out at the rear of the property would rectify the dampness in the walls of the back bedroom however in her opinion if anything the outside work has made the dampness worse. The front bedroom walls and floor are damp.

7. Mr. Morrison spoke on behalf of the Landlord and confirmed the Landlord accepted there was dampness in both bedrooms and wished to rectify the problem. He explained it would be necessary for the Tenant to remove from the rooms while any work was carried out and although three separate start dates had been suggested to the Tenant she had not given a positive response to moving rooms.

### **Findings of Fact**

8. Having inspected the property, taken account of the oral and written evidence and thereafter being guided by the Committee's professional Surveyor Member, the Committee finds the following facts to be established:-

- (a) During the course of our inspection we noted work had been carried out to the roof of the cottage. Exercising our professional skill and judgement we are satisfied that on balance of probability this work has rectified the problem of water ingress through the roof and we are strengthened in this view by the oral evidence of Mrs. Woodward who confirmed there had been no problems since the repair had been effected.
- (b) We saw evidence of rising and penetrating damp in the walls and floor of the front bedroom and the walls of the back bedroom. The dampness level registered as "high" when a meter reading was taken by our professional Surveyor Member. The Landlord acknowledges dampness in both rooms.

Accordingly we find the Landlord is in breach of the Repairing Standard Section 13(1)(b) as we are not satisfied the structure of the house (which includes the foundations and walls) are in a reasonable state of repair insofar as water is able to rise and penetrate.

The Landlord must ensure the house meets the Repairing Standard at all times during the course of the tenancy. We accept the Landlord and Tenant have had some difficulties agreeing a mutually convenient time for the work to be carried out however we are optimistic that after today's Hearing parties will reach an accord. We would remind parties that in terms of Section 181(4) of the 2006

Act the Landlord does have a statutory right of access to the property to carry out any work necessary to comply with his duty in terms of Section 14(1)(b).

Our professional Member considers a specialist report will be necessary to specify the precise measures required to eradicate the dampness in the bedrooms. Such a report should be made available to any subsequent Committee.

### Decision

9. The Committee accordingly determines that the Landlord has failed to comply with the duty imposed by Section 14(1)(b) of the Act.
10. The Committee makes a Repairing Standard Enforcement Order as required by Section 24(1).
11. The decision of the Committee is unanimous.

### Right of Appeal

12. **A Landlord or Tenant aggrieved by the decision of the Private Rented Housing Committee may apply 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.

**A McCamley**

Signed .

Chairman

*J*

Date .....

*19th August 2010*

## **Repairing Standard Enforcement Order**

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

ref: PRHP/AB54/73/10

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**("the Property")**

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

**Bognie Trust, The Estate Office, Fren draught, Forgue, Huntly ("the Landlord")  
per Gordon Morison**

**Julie Woodward, Fourmanhill Cottage, Forgue, Huntly Aberdeenshire  
("the Tenant")**

**NOTICE TO Bognie Trust, The Estate Office, Fren draught, Forgue, Huntly  
per Gordon Morison ("the Landlord")**

Whereas in terms of their decision dated 19th August 2010, 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 - Section 13(1)(b) of the said Act.

the Private Rented Housing Committee now requires the landlord to carry out such works as are necessary for the purposes of ensuring the house meets the repairing standard and that any damage caused by the carrying out of any works in terms of this order is made good.

In particular the Private Rented Housing Committee requires the Landlord:-

To carry out such works as are necessary to eradicate the rising and penetrating damp from the walls of the back bedroom and the walls and floor of the front bedroom of the property.

The Private Rented Housing Committee order that the work specified in this Order must be carried out and completed within a period of **three months** 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 Anne McCamley, Solicitor, Chairman of the Private Rented Housing Committee at Edinburgh on the First day of September, Two Thousand and Ten before Murdoch McCamley, Chartered Accountant, Osborne House, Osborne Terrace, Edinburgh.

**M McCamley**

(witness)

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**A McCamley**

Chairman  
Private Rented Housing  
Committee.