



Repairing Standard Enforcement Order

Ordered by the Private Rented Housing Committee

prhp Ref: PRHP/PH22/170/10

RE: Property at Lairig View Cottage, Aviemore, Inverness-shire, PH22 1QD ("the Property")

Title No: ALL and WHOLE the subjects known as and forming Lairig View Cottage, Aviemore being the subjects disposed in and described by Feudal Conveyance containing Feu Disposition by James Anderson Ogilvie-Grant, Viscount Reidhaven in favour of Angus Mackintosh Smith and Georgina Smith recorded in the Division of the General Register of Sasines for the County of Inverness on 15th February 1991 under exception of the subjects known as Lairig View, Aviemore being the subjects described in Disposition by Angus Mackintosh Smith in favour of Georgina Smith recorded in the General Register of Sasines for the County of Inverness on 23rd July 2010.

The Parties:-

ANGUS MACKINTOSH SMITH residing formerly at Lairig View Cottage, Aviemore, Inverness-shire, PH22 1QD and now at 22 Old Mill Place, Tattenhall, Chester ("the Landlord")

PHILIP MULLINS residing at Lairig View Cottage, Aviemore, Inverness-shire, PH22 1QD ("the Tenant")

NOTICE TO ANGUS MACKINTOSH SMITH ("the Landlord")

Whereas in terms of their decision dated 19th April 2011, 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 the property is:-

- (a) The Property is wind and watertight and in all other respects reasonably fit for human habitation;
- (b) The structure of and exterior of the Property (including drains, gutters and external pipes) are in a reasonable state of repair and in proper working order;
- (c) The installations in the Property 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;

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 carry out such works as are necessary to install a proper septic tank and sewerage connected to the Property compliant with the relevant regulations.
- (b) To repair or replace the windows at the Property to ensure that they are properly wind and watertight and capable of opening and shutting smoothly.
- (c) To repair or replace the rainwater disposal system within the Property to ensure that it is in proper working order.
- (d) To replace the front door leading to the hall at the Property and to ensure that the replacement is properly wind and watertight and in working order.

- (e) To replace the porch roofs at the front of the Property and to ensure that the replacements are properly wind and watertight.
- (f) To overhaul the main roof of the Property and carry out such repair or replacement as is necessary to render the roof of the Property properly wind and watertight.
- (g) To carry out such works as are necessary to the main frame and foundations of the Property as are necessary to ensure that it is properly wind and watertight and to improve the insulation within the walls of the Property sufficient to render the Property fit for human habitation.

The Private Rented Housing Committee order that the works specified in this Order must be carried out and completed by 31st August 2011.

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 type written on this and the preceding page are executed by Ewan Kenneth Miller, Solicitor, Whitehall House, 33 Yeaman Shore, Dundee, DD1 4BJ, Chairperson of the Private Rented Housing Committee at Dundee on 19th April 2011 before this witness:-

L Johnston

_____ witness

E Miller

_____ Chairman

Lindsay Johnston
Secretary
Thorntons Law LLP
Whitehall House
33 Yeaman Shore
Dundee
DD1 4BJ



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

prhp Ref: PRHP/PH22/170/10

RE: Property at Lairig View Cottage, Aviemore, Inverness-shire, PH22 1QD
("the Property")

The Parties:-

PHILIP MULLINS residing at Lairig View Cottage, Aviemore, Inverness-shire, PH22 1QD
("the Tenant")

ANGUS MACKINTOSH SMITH residing formerly at Lairig View, Aviemore, Inverness-
shire, PH22 1QD and now at 22 Old Mill Place, Tattenhall, Chester ("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, and taking account of the evidence led by both the Landlord and the Tenant at the hearing, 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 18th November 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 that the Tenant 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 Property is wind and watertight and in all other respects reasonably fit for human habitation;
 - (b) The structure of and exterior of the Property (including drains, gutters and external pipes) are in a reasonable state of repair and in proper working order;
 - (c) The installations in the Property 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) The Property has satisfactory provision for detecting fires and for giving warning in the event of fire or suspected fire.
3. By letter dated 10th December 2010 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 way of letter dated 19th December 2010 made further written representations to the Committee. The Landlord, by way of letter from Messrs T C Young, Solicitors dated 21st February 2011, had made written representations to the Committee.
6. The Private Rented Housing Committee (comprising Mr E K Miller, Chairman and Legal Member; Mr C Hepburn, Surveyor Member; and Mrs L Robertson, Housing Member accompanied by the Clerk, Mr R Shea) inspected the Property on the afternoon of 1st April 2011. The Tenant and the Landlord were both present during the inspection.
7. Following the inspection of the Property, the Private Rented Housing Committee held a hearing at the Macdonald Aviemore Highland Resort, Aviemore. Both the Landlord and Tenant were present and represented themselves.
8. The Tenant submitted as follows. The Tenant had given a running commentary on his view of the outstanding matters during the course of the inspection. The Tenant submitted that he had never had any agreement with the Landlord's mother that he would be allowed to reside in the Property at a low rent in return for doing repairs. He had previously never sought many repairs to be done as he had understood that the Property was owned by the Landlord's mother. He was conscious that she was an elderly lady and did not wish to impose upon her. He advised that it had since transpired that the Property was owned by the Landlord and therefore he had now raised the issue of the various repairs.
9. The Landlord submitted as follows. The Landlord produced a report from Messrs John Dockrey, Builders of Airdrie which advised that the Property was in very poor condition and that the best way forward would be to demolish and rebuild it rather than carry out any repairs. The Landlord submitted that he agreed with this in terms of this Report. He fully accepted that the Property was in very poor condition and did not meet the repairing standard. His very strong preference was to simply demolish the Property and rebuild. He would be meeting with his solicitors Messrs T C Young on Monday 4th April to discuss a way forward in dealing with this. There had been previous discussions with the Tenant to have him removed from the Property in order that he could carry out these works although the Landlord accepted that this was not an issue for the Committee. The Landlord submitted that it was only in the last little while that he had become aware of the deterioration in the Property and the extent of the repairs required.

Summary of the issues

10. The issues to be determined are:-
 - (1) Whether the septic tank/sewerage arrangements at the Property are adequate.
 - (2) Whether the windows at the Property are properly wind and watertight.
 - (3) Whether there is a proper smoke detection system fitted within the Property.
 - (4) Whether the front door to the Property is wind and watertight and otherwise meets the repairing standard.
 - (5) Whether the downpipes and gutters at the Property are in proper working order.
 - (6) Whether the roof over both the porch and the main building are adequate and meet the repairing standard.

- (7) Whether the main frame of the Property were wind and watertight and in all other respects sufficient to render the Property reasonably fit for human habitation.

Reasons for the decision

11. The Committee reached its decision based primarily on the evidence obtained during the course of its inspection of the Property.

The Committee were most disappointed at the condition of the Property. The Property was in exceptionally poor repair and barely fit for human habitation. There were extensive defects to the Property, and in particular to all aspects of the exterior of the Property.

The Committee inspected the sewerage arrangements. Sewage from the Property had been taken to a hollow in the ground approximately 10 metres from the Property. The Tenant advised that this had been grassed over but recently this surface cover had collapsed into the hole. As a result, at the time of the inspection, sewage was, effectively, to an open cesspit. The Tenant had covered over the hole with a sheet of corrugated iron and some tree branches. The Committee were of the view that this was wholly inadequate and there were clear environmental health concerns. The Landlord would require to install proper sewerage arrangements at the Property as soon as possible.

The Committee inspected the windows at the Property. These were in very poor condition throughout and showing significant signs of rot and general wear and tear. All of the windows within the Property would require to be repaired or replaced.

The Committee inspected the smoke alarms at the Property. There was a working battery operated smoke alarm in the Property at the date of the inspection. The Tenant had advised that his had been present when he moved in although a new battery had been required. It was accepted by both parties that this met the repairing standard.

The Committee inspected the front door of the Property that led to the hall (as opposed to the front door that led to the kitchen). This was in very poor condition, was badly warped and suffering from rot. The Committee were of the view that this could not be repaired and therefore would require to be replaced with a new door.

The Committee inspected the gutters and downpipes comprising the rainwater disposal system. There was evidence of various defects and leaks within this. In relation to the downpipes at the rear of the Property there were various holes within these. All leaks would require to be fixed and any damaged sections of guttering and downpipe would require to be replaced.

The Committee inspected the roof over the two small front porches and the main roof itself. The porch roofs were simply made of corrugated plastic and were not properly connected to the main building. Evidence of water penetration was apparent in the Property as a result of this. Holes were also visible in the plastic at places. These would require to be replaced. The main roof, which was made of corrugated metal, was also in very poor condition and showing signs of wear and tear. An overhaul of this would require to be carried out to ensure that it was properly wind and watertight.

The Committee also inspected the main wooden frame of the Property and the brick foundations. The Tenant had carried out repairs/replacement works to the southern gable end of the Property and a good job had been made of this. The remaining sides of the frame and foundation, however, were in very poor condition. A number of the boards were rotten, the foundations were crumbling and the whole frame of the Property was generally in very poor condition. The Committee were concerned that the Property was in such poor condition. It was clear from the inspection and indeed the Landlord's submission that there was little or no insulation within the walls of the Property. This would need to be remedied by the Landlord to bring the Property up to a standard fit for human habitation.

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).
- 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 **E Miller**
Chairperson

..... Date..... 19/4/2011