

Repairing Standard Enforcement Order

Ordered by the Private Rented Housing Committee

Re : Property at Castlegreen, Carness Road, St Ola, Kirkwall, Orkney, KW15 1UE ("the Property")

The Parties:-

Mrs Carol Anne Bowmaker, residing at Castlegreen, Carness Road, St Ola, Kirkwall, Orkney, KW15 1UE ("the Tenant")

Mr Andrew Sinclair and Mrs Ruth Sinclair, residing at Carness Farm, Carness Road, Kirkwall, Orkney, KW15 1UE ("the Landlords")

NOTICE TO Mr Andrew Sinclair and Mrs Ruth Sinclair, Carness Farm, Carness Road, Kirkwall, Orkney, KW15 1UE ("the Landlords")

Whereas in terms of their decision dated 27 March 2008, the Private Rented Housing Committee determined that the Landlords have failed to comply with the duty imposed by Section 14 (1)(b) of the Housing (Scotland) Act 2006 and in particular that the Landlords have failed to ensure that:-

- (a) the house is wind and watertight and in all other respects reasonably fit for human habitation, and;
- (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.

the Private Rented Housing Committee now requires the Landlords 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 Landlords to carry out such works as are necessary to:-

- (a) make the house wind and watertight and in all other respects reasonably fit for human habitation.
- (b) Carry out such repairs as are necessary to bring the structure and exterior of the house, garage and outbuilding (including the roof, drains, gutters and external pipes) to 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 four 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.

A Cowan

Signed..... Date..... 27/3/08
Chairperson

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

Re : Property at Castlegreen, Carness Road, St Ola, Kirkwall, Orkney, KW15 1UE ("the Property")

The Parties:-

Mrs Carol Anne Bowmaker, residing at Castlegreen, Carness Road, St Ola, Kirkwall ("the Tenant")

Mr Andrew Sinclair and Mrs Ruth Sinclair, residing at Carness Farm, Carness Road, Kirkwall, Orkney, KW15 1UE ("the Landlord(s)")

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 in writing and at the hearing, determined that the Landlord has failed to comply with the duty imposed by Section 14 (1)(b) of the Act.

Background

1. By application dated 26 November 2007 the Tenant applied to the Private Rented Housing Panel for a determination of whether the Landlords 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 Landlords had failed to comply with their duty to ensure that the house meets the repairing standard and in particular that the Landlords had failed to ensure that:-
 - (a) the house is wind and watertight and in all other respects reasonably fit for human habitation. (Section 13 (1) (a) of the Act)
 - (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 (Section 13 (1) (b) of the Act).
 - (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. (Section 13 (1) (c) of the Act).
3. By letter dated 24 January 2008 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 Landlords and the Tenant by letter dated 24 January 2008.
5. Following service of the Notice of Referral the Tenant made further written representations (in addition to those attached to her original application) by letters dated 3 February 2008 and 10

March 2008. The Landlords (by letter dated 4 February 2008), made written representations to the Committee. Both the Landlords and the Tenant lodged with their written correspondence various other documents which were relied upon by the parties. In Particular both parties lodged photographs of the Property and the Tenant lodged copies of various Statutory Notices served against the Landlords by Orkney Islands Council which specified repairs required to be carried out to the Property under and in terms of Section 108 of the Housing (Scotland) Act 1987. The Landlords, at the hearing, produced a Survey report prepared by Stephen Omand, Chartered Valuer Surveyor of 14 Victoria Street, Kirkwall, Orkney. The survey report produced was prepared following an inspection by the Surveyor of the Property on 15 January 2008.

6. The Private Rented Housing Committee inspected the Property on the morning of 27 March 2008. Mrs Ruth Sinclair (being one of the joint Landlords) was present during the inspection. The Tenant was not present during the inspection.
7. Following the inspection of the Property the Private Rented Housing Committee held a hearing at Kirkwall. Mrs Ruth Sinclair (being one of the joint Landlords) was present. The Tenant did not attend the hearing.
8. The Tenant has submitted a large amount of correspondence and supporting papers. The detail of how the Tenant considered her Landlord had failed to meet the repairing standard can be summarised as:-
 - (a) that the roof of the Property was in serious disrepair and was not wind and watertight. In particular the Tenant complained that the Property had sustained serious damage to the roof in a gale in March 2007 and again in November 2007. As a result of the damage caused to the roof of the Property, a large number of slates and ridge tiles were missing from the Property and the roof was not wind and watertight, and in all other respects fit for human habitation.
 - (b) The Tenant further complained that the roof of the garage that adjoined the main living area of the Property and the roof of the adjoining outhouse had also been damaged during the same storms. The Tenant again complained that the garage and adjoining outhouse were not wind and watertight.
 - (c) The Tenant complained that there was sewerage slurry seeping into the garden area.
 - (d) The Tenant complained that a main electricity supply which was housed in the garage of the Property was not in a reasonable state of repair and was not safe as it could be affected by water ingress to the garage, as a consequence of the defective roof.
9. The Landlords accepted, at the hearing, that the roof of the Property was not wind and watertight. They explained that various temporary repairs had been carried out and that a temporary tarpaulin had been installed to cover the roof to give temporary protection to the Property from the elements. The Landlords submitted that it was their intention to demolish the Property and it was not economic to repair the roof. The Landlords submitted that they had raised proceedings in Kirkwall Sheriff Court to recover possession of the Property from the Tenant. The Landlords submitted that no repairs were necessary to the garage roof or to the outbuildings as these did not form part of the tenancy. The Landlords submitted that the electricity supply housed in the garage of the Property is the property of Scottish Hydro and had it been in a state of disrepair or not in proper working order this would have been reported to the Landlords by Scottish Hydro at the time electricity meter readings were taken. No such reports had been made. The Landlords further submitted there was no evidence of any sewerage slurry within the garden area.

Summary of the issues

10. The issue to be determined by the Rented Housing Committee is whether or not the Property meets the repairing standard in terms of Section 13 (1) (a), 13 (1) (b) and 13 (1) (c) of the Act as at the date of the hearing.

Findings of fact

11. The Committee finds the following facts to be established:-

- (a) The tenancy is an assured tenancy.
- (b) The Property is not wind and watertight and is not in all other respects reasonably fit for human habitation. There is serious disrepair to the roof of the dwellinghouse. This was accepted by the Landlords. The Committee further noted that the gutters and external rain water pipes were not in a reasonable state of repair. At certain parts of the Property, including the rear of the Property, there was no rain water disposal system.
- (c) There was serious disrepair to the roof of the garage adjoining the Property and to the roof of the outhouse which adjoined the Property. Both the garage and the outhouse form part of the Property as they are both structures which are capable of being occupied and enjoyed together with the living accommodation. There was disrepair to the pointing on the rear wall of the Property.
- (d) There was no evidence that the electrical supply housed in the garage of the Property was not in a reasonable state of repair or in proper working order.
- (e) Sewerage slurry was not seeping into the garden.

Reasons for the decision

12. It was clear from the inspection of the Property that the roof of the Property had suffered serious damage. The Landlords accepted that the roof of the Property was not wind and watertight. The survey report produced by the Landlords confirmed that the iron nails securing the slates and timbers were corroded and structurally unsound. The report further confirmed that the roof required immediate stripping and replacing (including all timber). The report further concluded that when the roof was replaced the ceiling would have to be renewed as they are attached to the existing roof structure, as were the electrics, plumbing and loft insulation. The report further concluded that the gutters and down pipes around the Property are in poor order and require replacement. The Committee during their inspection noted the temporary tarpaulin which had been placed over the roof of the Property. The Committee further noted the disrepair to the roof of the garage and the outbuilding which were attached to the Property. Both the roof of the garage and the roof of the outbuilding were in a serious state of disrepair. In parts, daylight could be seen through the roof of both the garage and the outbuilding. Neither the garage nor the outbuilding were wind and watertight, nor were they in a reasonable state of repair. The Committee noted that the rain water disposal system of gutters and pipes was not in a reasonable state of repair. Certain parts of the Property did not have gutters. The rear wall of the Property requires pointing in places. The Committee noted the electricity supply which entered the Property at a meter in the garage. The Committee were satisfied that the supply was in a reasonable state of repair and in proper working order. The Committee accepted that there was a potential risk that the supply could be affected by water ingress through the damaged roof of the garage. As the Committee had accepted that the garage roof did not meet the repairing standard, any repairs to that roof would minimise any risk of water ingress affecting the electrical supply. The Committee did note there appeared to be some evidence of a small amount of sewerage in the garden area. The Committee were not satisfied however the sewerage was as a consequence of any failure on the part of the Landlords to keep installations for the supply of water, gas and electricity and for sanitation etc in a reasonable state of repair or in proper working order. The Committee noted the Landlords' intention to recover possession of the Property from the Tenant and to demolish the Property. The Committee considered that such factors were irrelevant when determining whether the Property met the repairing standard as at the date of the hearing. As at the date of the hearing the Property was occupied by a Tenant under an assured tenancy. It was therefore a tenancy to which the repairing standard continued to apply as at the date of the hearing. Accordingly the future intentions of the Landlords with regard to the Property were irrelevant when considering whether the Property met the repairing standard.

Decision

13. The Committee accordingly determined that the Landlords had failed to comply with the duty imposed by Section 14 (1)(b) of the Act.
14. The Committee proceeded to make a Repairing Standard Enforcement Order as required by Section 24(2) of the Act.
15. The decision of the Committee was unanimous.

Right of Appeal

16. 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

17. 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 Cowan

Signed ...
Chairperson

Date.....27/3/08.....