



Repairing Standard Enforcement Order

Ordered by the Private Rented Housing Committee

prhp Ref: PRHP/RT/16/0252

Re : Property at Little Blairshinnoch Farmhouse, Boyndie, Banff AB45 3AR ("the Property")

Title No: Or Sasine Description:

The subjects described in the Notice of Title of Louise Mary Cumming, Daldavie, Fife to one half pro indiviso share recorded in the General Register of Sasines for the County of Banff on 9 October 2008 and the Disposition by John Barclay to Robert Cumming and Mary Margaret Jane Robertson or Cumming recorded GRS Banff 23 May 1969.

The Parties:-

DR SUZANNE WARREN, Little Blairshinnoch Farmhouse, Boyndie, Banff AB45 3AR ("the Tenant")

MRS MARY CUMMING and MS LOUISA CUMMING, East Baldavie Farm, Banff AB45 2EB ("the Landlords")

ABERDEENSHIRE COUNCIL, Gordon House, Blackhall Road, Inverurie AB51 3WA ("the Third Party Applicant")

The Committee Members were Graham Harding (Chairperson) and Angus Anderson (Surveyor Member)

NOTICE TO Mrs Mary Cumming and Ms Louisa Cumming ("the Landlords")

Whereas in terms of their decision dated 18 October 2016, 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 ("The Act") and in particular that the Landlords have failed to ensure that the property is:-

- (a) wind and water tight and in all other respects reasonable fit for human habitation;
- (b) that 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) that 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) that any fixtures, fittings and appliances provided by the Landlords under the tenancy 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:-

- (a) Repair or replace all the windows at the property exhibiting signs of decay or defective operating mechanisms, including repairing or replacing external or internal cills and to put the windows in a reasonable state of repair.
- (b) Instruct a Raeburn Guild Engineer to carry out an inspection of the Raeburn stove in the kitchen of the property to confirm either that it is in proper working order and in reasonable state of repair or to carry out any work recommended by the said Engineer.
- (c) Repair the cracks in the front and rear elevation walls and the right hand gable.
- (d) Make good all rainwater goods by repairing or replacing as necessary.
- (e) Repair or replace defective kitchen unit drawers and cupboards.

The Private Rented Housing Committee order that the works specified in this Order must be carried out and completed by 31 March 2017.

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.

Please note that in terms of Section 28(1) of the Act, a Landlord who, without reasonable excuse, fails to comply with a RSEO commits an offence liable on summary conviction to a fine not exceeding level 3 on the standard scale. A Landlord (and that includes any Landlord's successor in title) also commits an offence if he or she enters into a tenancy or occupancy arrangement in relation to a house at any time during which a RSEO has effect in relation to the house. This is in terms of Section 28(5) of the Act.

IN WITNESS WHEREOF these presents typewritten on this and the preceding page(s) are executed by GRAHAM STEWART HARDING, Solicitor, Chairperson of the Private Rented Housing Committee at PERTH on 20/10/2016, before this witness:-

J Strachan · Witness

G Harding
Chairman

Jenny Leigh Strachan Name in full

17-21 George Street Address

PMU.

Solator. Occupation



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

prhp Ref: PRHP/RT/16/0252

**Re: Property at Little Blairshinnoch Farmhouse, Boyndie, Banff AB45 3AR
("the Property")**

The Parties:-

**DR SUZANNE WARREN, Little Blairshinnoch Farmhouse, Boyndie, Banff
AB45 3AR represented by her agent Dennis Verdon, Little Blairshinnoch
Farmhouse, Boyndie, Banff AB45 3AR ("the Tenant")**

**MRS MARY CUMMING and MS LOUISA CUMMING, East Baldavie Farm,
Banff AB45 2EB ("the Landlords")**

**ABERDEENSHIRE COUNCIL, Gordon House, Blackhall Road, Inverurie AB51
3WA represented by Ms Julia Leonard ("the Third Party Applicant")**

Decision

**The Committee, having made such enquiries as it saw fit for the purposes
of determining whether the Landlords have 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 Landlords and the Tenant at
the hearing, determined that the Landlords had failed to comply with the
duty imposed by Section 14 (1)(b) of the Act.**

Background

1. By application dated 22 July 2016, the Third Party Applicant 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 Third Party Applicant stated that they 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 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 Landlords under the tenancy are in a reasonable state of repair and in proper working order;
- (e) any furnishings provided by the Landlords under the tenancy are capable of being used safely for the purposes for which they are designed;
- (f) the house has satisfactory provision for detecting fires and for giving warning in the event of fire or suspected fire; and
- (g) the house has satisfactory provision for giving warning if carbon monoxide is present in a concentration that is hazardous to health.

In particular, the application stated:-

- (i) windows are not wind and water tight;
 - (ii) kitchen stove for heating and hot water unsafely installed;
 - (iii) cracks on external walls suggest possible structural problems;
 - (iv) blocked drain outside kitchen and broken and leaking guttering;
 - (v) fire detection does not meet repairing standard;
 - (vi) carbon monoxide detection not provided;
 - (vii) floor covering in kitchen degraded and a trip hazard; and
 - (viii) kitchen drawers and cupboard doors not in working order.
3. The Third Party Applicant had notified the Landlords of the alleged defects by letter of notification dated 29 June 2016.
 4. The President of the Private Rented Housing Panel having considered the application, referred the application under Section 22(1) of the Act to a Private Rented Housing Committee.
 5. The Committee Members were Graham Harding (Chairperson) and Angus Anderson (Surveyor Member).
 6. The Private Rented Housing Committee served Notice of Referral in terms of Schedule 2, paragraph 1 of the Act upon the parties dated 29 August 2016.
 7. By email and letter dated 19 September 2016, one of the Landlords, Mrs Mary Cumming, sent written representations, including a 44 page report, in response to the Tenant's application.

8. The Committee attended at the property on 7 October 2016. On that day, it was dry and relatively mild. The weather over the preceding 7 days had been mainly dry and mild.

The Committee found the property to be a detached one storey and attic farmhouse, constructed upwards of 100 years ago. There is a single storey side projection which appeared to be about 40 years old. The walls are solid stone and the roof is slated. The front of the house faces South West. The accommodation comprises, on the ground floor, a front entrance hall, right hand bedroom, bathroom, lounge leading through to kitchen with utility area, and rear entrance hall off. On the first floor there is a landing and two bedrooms. The windows are aluminium framed and double glazed. There is solid fuel fired central heating to the ground floor apartments and both the open fire in the lounge and the Raeburn stove in the kitchen provide heat for the radiators.

The Committee first inspected the exterior guided to the areas of concern by the Tenant's representative, Mr Verdun. There was a roughly vertical crack to the right hand gable extending from above the bedroom window lintel. The crack had been partially raked out shortly before the inspection. On the front elevation, mid way between the right hand window and the gable, there was a vertical crack extending from approximately one quarter of the way up the wall to the eaves. The crack tapered towards the top, where it appeared to be approximately 5mm wide. On the rear elevation, approximately 900mm away from the corner, there was a similar crack which followed the joints of the stones. There was another roughly vertical crack approximately midway along the rear wall. The crack appeared to be approximately 3mm at its widest.

The windows were inspected. Decay was evident to the ends of the timber window cills and timber frames around the aluminium windows. The majority of the ground floor windows were affected. The kitchen window was found to be difficult to open. The right hand upper bedroom window had pointing missing below the cill and the mechanism was damaged.

The guttering at the right front corner of the house was not properly connected to the corner piece. There were broken clips to the front right hand down pipe and rear left downpipe. There were chips out of a section of the rear downpipe.

One of the cans to the left hand chimney was cracked and the cowl dislodged. It was not clear if this can served the fire or the stove.

Internally, the kitchen area was inspected first. There were two areas where the vinyl floor covering was obviously damaged. In one area, a section of vinyl had ripped and was missing. A second area had a V-shaped tear. The Raeburn stove was inspected. Other than a dent to the flue pipe, to the non specialist eye, there were no obvious defects. The stove was not in use at the time of the inspection. The Committee then inspected the kitchen cabinets. The middle drawer in the unit to the right of the stove had fallen down inside the cabinet. The carcass of the unit appeared to be deformed, being too wide to keep the drawer in the correct place. The doors of two wall units were ill fitting when in the closed position.

The interior of the bedroom windows were inspected. There were holes in the internal cills that connected to the holes in the exterior cills. Staining below the bedroom gable window was tested with a damp meter and found to have normal levels of moisture (less than 10%). There was loose paper and staining to the window soffit. These areas were tested with a damp meter and were found to have normal moisture levels (18%).

During the inspection, it was noted that heat detectors had been installed in the kitchen and lounge and smoke alarms had been fitted to the entrance hall and landing ceiling. Carbon monoxide detectors were installed in the kitchen and lounge.

One of the Landlords, Mrs Mary Cumming, was present at the inspection, as was the Tenant and the Tenant's representative, Dennis Verdon. The Third Party Applicant was represented by Ms Julia Leonard.

9. Following the inspection of the property, the Private Rented Housing Committee held a Hearing at Banff and heard from the Tenant and the Tenant's representative and the Landlords. The Landlords were represented by Mrs Mary Cumming. Ms Louise Cumming was not present. The Third Party Applicant's representative, Ms Julia Leonard, was also heard. The Tenant and the Third Party Applicant submitted that the Tenant had reported issues with regard to the condition of the property to Aberdeenshire Council. The Tenant had indicated to the Council that she was concerned that by making an application to the Private Rented Housing Panel the Landlords would serve notice on her to quit. As a result, Aberdeenshire Council agreed to submit a Third Party application to the Private Rented Housing Panel. Following on from the application being submitted, the Landlords served a Notice to Quit on the Tenant. The Tenant and Third Party Applicant submitted that there was rot to the window cills which rendered them not wind and water tight. They further submitted that there were issues with the window mechanisms that made several of the windows difficult to open or close. The Tenant considered that the windows appeared to be in working order when she moved into the property.
10. The Tenant submitted that the Raeburn stove in the kitchen was not operating properly. Smoke backed up and the flue did not draw. The Tenant moved in in November 2012 and arranged for the chimney to be swept in about August 2013. The Tenant made reference to the Report by F & J Chimney Services attached to the application. The Tenant's representative, Mr Verdon, suggested that there were too many angles to the flue and that the cowl should be concreted in place. He thought that smoke was leaking into the attic space. He said that there was no protective asbestos for the collar where the flue vented into the chimney and that there were signs of burnt plasterboard. As a result of the Tenant's concerns about the state of the stove, it was not being used. The Tenant's representative, Mr Verdon, thought that the vents in the stove had been concreted over and that as a result the stove did not draw properly and could only burn wood, not coal. The Tenant confirmed that there was a separate electric water heater to heat water and that there was a back boiler connected to the fire in the lounge which provided hot water and heating to the ground floor radiators.

The Tenant suggested that the property was not wind and water tight and not safe due to the cracks in the exterior walls, which were leading to water ingress.

Mr Verdon believed that the integrity of the building was an issue due to the way that the cracks on both the front wall and rear wall were aligned, that the gable end was dropping and coming away from the building. This had been suggested to him by the builder instructed by the Landlords to carry out repairs.

The Tenant confirmed that the drain at the left hand rear corner of the building had been unblocked but that the downpipe leading into the drain was insecure and leaves and other detritus could enter the drain and cause further blockage.

The Tenant and her partner said that the damage to the flooring in the kitchen had become worse over the duration of the tenancy but there had been damage to the flooring when the Tenant moved in. With regard to the kitchen units, the Tenant explained that the drawer unit had been added shortly after the tenancy commenced and was in poor condition when it was installed. The drawers would not stay on their runners. The kitchen cabinet doors did not close properly and could not be adjusted further.

The Tenant denied that damage had been caused internally to the windows by the Tenant's dogs. The damage came from the outside and that the property was aired daily with windows being left open.

The Tenant accepted that a Notice to Quit had been served by the Landlords but that the Tenant was not going to vacate the property by 1 November 2016. The Tenant accepted that there had been occasions when tradesmen had been turned away after being instructed by the Landlords but that this was because the Tenant had not been given 24 hours advance notice. There were other issues in the background and the Tenant wished all communication from the Landlords to go through the Tenant's solicitor.

11. The Landlords submitted as follows:-

The Landlords had requested a quote from a joiner to carry out remedial works to the windows and window cills. This was with a view to replacing the windows. This had been requested in 2015 but had not been carried out but the Landlords had every intention of replacing the windows, or most of them. The Landlords had not yet obtained any quotes for this work. The Tenant had accepted the house as being in good repair at the commencement of the Lease. The Landlords said that the Tenant was due to leave on 1 November 2016 and would consider renting it out thereafter if anybody wanted it.

The Landlords explained that the Raeburn stove had been installed by a local plumber. There was insulation in situ. It had been installed in 2014 and was a reconditioned stove. The Landlord had not seen any burned plasterboard and believed that the collar was insulated. The Tenant had not been supplied with any instructions but the Landlords believed these would be accessible

online. The Landlords thought that the type of stove did not work properly unless there was a window open to cause a through draught.

With regard to the cracks in the gable, the Landlords explained that they had employed a stone mason earlier in the week to carry out picking and pointing. As the work was to the exterior of the building, they did not accept that the Tenant's permission was required. The Landlords said that there had been issues in the past with access to the Tenant's property. The Landlords commented that the damp readings taken at the inspection showed that the walls were in an acceptable condition.

The Landlords said that they intended to carry out whatever work was necessary to the gutters and downpipes and would replace them as required. It was the Landlords' intention for someone to carry out this work as soon as possible. The Landlords thought that the detritus from the ground where the Tenant was keeping pigs could have contributed to the previously blocked drain.

With regard to the kitchen flooring, the Landlords said that it was in a reasonable condition at the commencement of the tenancy, as could be seen from the photographs supplied in the Landlords' submissions. There was no Inventory taken at the commencement of the Lease. The Landlords accepted that the kitchen was quite old. The Landlords felt that if people put too much weight in a drawer then it would be liable to break. The Landlords thought that the drawer unit and kitchen generally may need replaced.

The Landlords suggested that the damage to the windows had been partially caused by the Tenant keeping three dogs and a cat in the property and that this would increase the amount of condensation and create dampness and made reference to the photographs taken showing the dogs in the window. The Landlords felt that the problems had been caused by a lack of ventilation and lack of heating.

The Landlords confirmed that the Tenant had been given Notice to Quit and was due to remove herself from the property on 1 November 2016 but that if she did not do so then there would be a delay in removing the Tenant whilst the matter went to Court. The Landlords thought that it was difficult to assess when any remedial works would be done.

Summary of the Issues

The issues to be determined are:-

1. Whether or not the windows are wind and water tight and in reasonable working order.
2. Whether or not the kitchen stove was safely installed and in proper working order.
3. Whether or not the cracks on the external walls were indicative of structural problems or could allow water ingress.

4. Whether the drain to the rear of the property was blocked and whether there was broken and leaking guttering.
5. Whether there was adequate provision for detecting fires and for giving warning in the event of fire or suspected fire.
6. Whether there was satisfactory provision for giving warning if carbon monoxide was present in a concentration that was hazardous to health.
7. Whether the floor covering in the kitchen was degraded and constituted a trip hazard.
8. Whether the kitchen drawers and cupboard doors were in proper working order.

Findings of Fact

The Committee finds the following facts to be established:-

1. The tenancy is a short assured tenancy which commenced on 1 October 2012 until 1 October 2014 and from month to month thereafter. The Tenant has been given Notice to Quit on 1 November 2016 but does not intend to vacate the property at that time.
2. The property is not wind and water tight and in all other respects reasonably fit for human habitation [Section 13(1)(a) of the Housing (Scotland) Act 2006]. The windows have had no recent maintenance. The right hand kitchen window does not open. The upper right hand bedroom window mechanism is damaged. The wooden window cills on most of the windows have rotted and there are holes in the cills, both internally and externally. There is a lack of pointing under the cill in the right hand upper bedroom. The Committee considered that it was possible that some of the damage to the internal cills could have been caused or added to by the Tenant's dogs or cat.
3. That it was not possible for the Committee to determine whether or not the kitchen stove was in a reasonable state of repair and in proper working order and safe to use.
4. The structure and exterior of the house, including drains, gutters and external pipes, are not in a reasonable state of repair, nor in proper working order.

The Committee found that the cracks in the front, rear and gable walls could lead to some water ingress, especially in the gable wall. The Committee did not find that the cracks were affecting the integrity of the building.

The blocked drain at the kitchen end of the building had been cleared. The downpipes and guttering were not in a reasonable state of repair. Plastic retaining clips on the downpipes at the rear were missing. The front right hand corner downpipe had broken retaining clips and the end piece of the guttering was loose. On the rear elevation, there was a cracked section of guttering and substantial green staining indicative of the guttering leaking.

5. There was damage to the kitchen flooring but, on balance, the Committee preferred the evidence of the Landlords to that of the Tenant. It was more likely than not that the damage had been caused by the Tenant.

The kitchen cupboards and drawer unit were not in proper working order. The drawer unit in particular was beyond repair.

There was adequate provision for fire detection and carbon monoxide detection.

Reasons for the Decision

The Committee considered that whilst the condition of the property may have been made worse by the Tenant's use and her keeping animals in and around the property, it was clear that there were problems with the windows, cills, gutters, downpipes and walls of the property that rendered the Landlords in breach of the duty imposed by Section 14(1)(b) of the Act. The Committee were satisfied from the inspection and discussions with both parties at the Hearing that these issues primarily lay with the age and construction of the property and the general lack of maintenance over a lengthy period. In reaching its decision, the Committee acknowledged that the Tenant had not always facilitated repairs being carried out by the Landlords by insisting on being given 24 hours notice, even when no internal access to the property was required.

The Committee carefully considered the evidence of both parties with regard to the condition of the drawer unit and kitchen cabinets and concluded that the failure of the drawer unit came about as a result of its age and being relocated within the kitchen. Similarly, the Committee concluded that the failure of the kitchen cabinet doors to close properly was primarily due to their age and that they were approaching the end of their useful life. The Committee were unable to conclude whether or not the Raeburn stove was safe to use or in proper working order. The Committee therefore concluded that further investigation by a Raeburn approved engineer was appropriate.

Considering the evidence of the Landlords and the Tenant with regard to the condition of the flooring in the kitchen, the Committee preferred the evidence of the Landlords and was of the view that the damage to the flooring was more likely than not caused by the Tenant or other occupants of the property. Whilst the photographs lodged by the Landlord did not specifically show the portion of the floor in question, the Committee felt that given the apparent condition of the property as shown in the Landlords' photographs and comparing with the current condition, such an inference could be drawn.

As the Landlords had installed new fire, heat detection and carbon monoxide detectors, the Committee were satisfied that the Landlords were meeting their obligations in this regard.

Decision

The Committee accordingly determined that the Landlords had failed to comply with the duty imposed by Section 14(1)(b) of the Act, as stated.

The Committee proceeded to make a Repairing Standard Enforcement Order as required by Section 24(1) of the Act.

The decision of the Committee was unanimous.

Right of Appeal

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

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 Harding Date 20/10/2016
Chairperson



Schedule of Photographs
Little Blairshinnoch Farmhouse, Boyndie, Banff AB45 3AR
Case Reference Number PRHP/RT/16/0252
Date: 07/10/2016



Figure 1 Front Elevation



Figure 2 Right hand gable elevation



Figure 3 Right hand bedroom window



Figure 4 Right hand bedroom gable window sill.



Figure 5 Front elevation right hand side vertical crack.



Figure 6 Bedroom window front elevation



Figure 7 Kitchen window cill



Figure 8 Left gable elevation/side addition and kitchen window.



Figure 9 Left hand chimney.



Figure 10 Kitchen window



Figure 11 Left hand rear corner and downpipe.

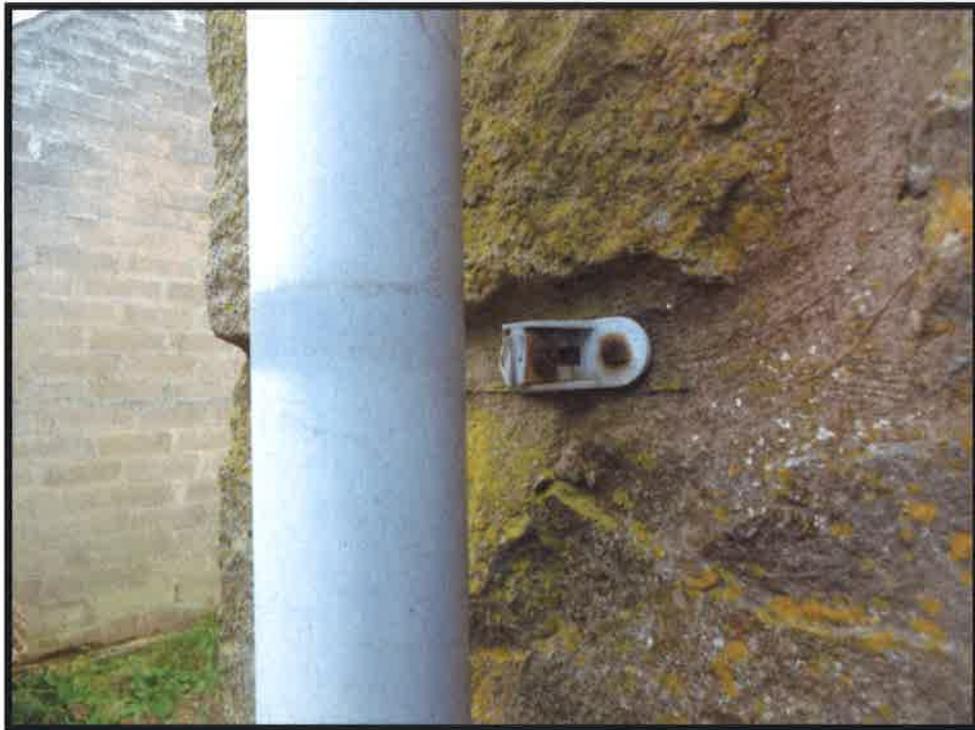


Figure 12 Example broken clip.



Figure 13 Broken gutter rear elevation



Figure 14 Lounge rear window



Figure 15 Rear right corner and bedroom gable window



Figure 16 Rear left corner



Figure 17 Rear wall vertical crack



Figure 18 Kitchen overview



Figure 19 Kitchen vinyl



Figure 20 Drawer unit



Figure 21 Wall units



Figure 22 Bedroom front window internal



Figure 23 Bedroom gable window internal



Figure 24 Bedroom gable window internal



Figure 25 Upper Bedroom window internal

