



NOTICE OF A DECISION TO VARY
A REPAIRING STANDARD ENFORCEMENT ORDER
ORDERED BY THE PRIVATE RENTED HOUSING COMMITTEE

prhp Ref: prhp/KA19/109/11

PROPERTY

**Re : Property at S.V.G.C.A Cottage, Culzean Castle Country Park, Maybole, Ayrshire, KA19 8JX erected on ALL and Whole that plot or area of ground extending to eleven poles and seventeen square yards or thereby, bounded on the north-west by a pathway from Culzean Home Farm to Culzean Castle and to the south-west by the hall and four houses known as New Stables, forming part of the Culzean Policy Grounds, part of the lands and Barony of Culzean, in the Parish of Kirkoswald and County of Ayr, all as more particularly described in the Feu Charter by the National Trust for Scotland for Places of Historic Interest or Natural Beauty in favour of the Scottish Garden City Housing Society Limited dated Twenty ninth January and recorded in the general Register of Sasines for the County of Ayr on Sixteenth February, both months in the year Nineteen hundred and fifty three; Together with the dwellinghouse and whole other buildings and erections thereon, the heritable fittings and fixtures therein and thereon, free ish and entry therefrom and thereto, and the parts, privileges and pertinents effeiring thereto.
("the Property")**

The Parties:-

Mr. Krisham Moodley, S.V.G.C.A Cottage, Culzean Castle Country Park, Maybole, Ayrshire, KA19 8JX
("the Tenant")

The Scottish Veterans' Garden City Association (Inc), having their registered office at New Haig House, Logie Green Road, Edinburgh, EH7 4HQ
("the Landlord")

29 August 2013

NOTICE TO The Scottish Veterans' Garden City Association (Inc), having their registered office at New Haig House, Logie Green Road, Edinburgh, EH7 4HQ
("the Landlord")

The Private Rented Housing Committee having determined that the **Repairing Standard Enforcement Order** dated 23 August 2011 relative to the Property should be further varied, the said **Repairing Standard Enforcement Order is hereby further varied** with effect from the date of service of this Notice in the following respects:-

1. The Landlord will undertake the following repairs ("the works"):
 - a. Engage suitably qualified tradesmen to investigate and identify the source of the condensation, dampness and mould in both bedrooms in the Property and carry out such work as is necessary to eliminate the condensation, dampness and mould, which work will include the replacement of the mould affected plaster and redecoration.
 - b. Replace the existing shingle roof covering.
 - c. Remove, or install a switch to enable the Tenant to operate the positive ventilation system.
 - d. Install a 'closed' solid fuel fire in the living room.
 - e. Install an adequate automatic extraction system in the kitchen to address the condensation issue in the kitchen.
 - f. Arrange for the completion of the installation of the replacement garage roof including rainwater goods.
 - g. Repair or replace the fencing to the side and rear of the property.
 - h. Replace the cracked chimney pot on the southern elevation and renew the chimney cowl.
2. For the avoidance of doubt, the Landlord will temporarily re-house the Tenant if that is necessary to allow the work to proceed and will reinstate any damage caused to the property by the works.
3. The Committee HEREBY FURTHER ORDERS that the works specified in this Notice must be carried out and completed before the expiry of the Completion Date of six months from the date of service of this Notice.

Subsection 25(3) of the Housing (Scotland) Act 2006 does not apply in this case.

A landlord or a tenant aggrieved by this 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 variation is suspended until the appeal is abandoned or finally determined, and where the appeal is abandoned or

finally determined by confirming the decision, the variation 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(s) are executed as follows-

D Preston

Chairman

.....29-8-13.....

Date of Signing

.....Glasgow.....

Place of Signing

G Wardlow

Witness

.....Gemma Wardlow.....

Name

Address

.....Europa Building
450 Argyle St
Glasgow.....



DECISION OF THE PRIVATE RENTED HOUSING COMMITTEE

relative to

3rd VARIATION OF A REPAIRING STANDARD ENFORCEMENT ORDER

PRHP Ref: prhp/KA19/109/11

PROPERTY

S.V.G.C.A Cottage, Culzean Castle Country Park, Maybole, Ayrshire, KA19 8JX erected on ALL and Whole that plot or area of ground extending to eleven poles and seventeen square yards or thereby, bounded on the north-west by a pathway from Culzean Home Farm to Culzean Castle and to the south-west by the hall and four houses known as New Stables, forming part of the Culzean Policy Grounds, part of the lands and Barony of Culzean, in the Parish of Kirkoswald and County of Ayr, all as more particularly described in the Feu Charter by the National Trust for Scotland for Places of Historic Interest or Natural Beauty in favour of the Scottish Garden City Housing Society Limited dated Twenty ninth January and recorded in the general Register of Sasines for the County of Ayr on Sixteenth February, both months in the year Nineteen hundred and fifty three; Together with the dwellinghouse and whole other buildings and erections thereon, the heritable fittings and fixtures therein and thereon, free ish and entry therefrom and thereto, and the parts, privileges and pertinents effeiring thereto.

PARTIES

**Mr. Krisham Moodley, S.V.G.C.A Cottage, Culzean Castle Country Park,
Maybole, Ayrshire, KA19 8JX**

Tenant

and

The Scottish Veterans' Garden City Association (Inc), having their registered office at New Haig House, Logie Green Road, Edinburgh, EH7 4HQ **Landlord**

Decision

The Committee determined to further vary the Repairing Standard Enforcement Order (RSEO) dated 23 August 2011 and recorded in the Division of the General Register of Sasines applicable to the 20 of Ayr on 20 September 2011, which was Varied by Notices of Variation dated 39 January and 27 March both 2012, in terms of the Notice of Variation dated 29 August 2013.

Background

1. Reference is made to the 2nd Variation of the Repairing Standard Enforcement Order (RSEO) dated 25 March 2012 in terms of which the Committee obtained a further specialist report from Dr Stirling Howieson, which report is dated 26 March 2013.
2. Dr Stirling Howieson BArch(Hons) DipArch MPhi, PhD ARIAS FCIBSE FHEA is an architect and engineer and a senior lecturer in building and design at the University of Strathclyde, Department of Engineering. He is a member of the Department of architecture and building science at Strathclyde University and director of the Centre for Environmental Design and Research. The Committee accepted his report as an expert report.
3. Copies of Dr Howieson's report were sent to the parties for comment and representations were received from the Landlord dated 6 and from the Tenant dated 10, both May 2013. Copies of the parties' representations were copied to each other and further comments thereon were received from the Landlord dated 31 May and from the Tenant dated 3 June. The Committee considered these representations and comments and concluded that it would be appropriate to undertake a further inspection of the property and thereafter to hold a further hearing in order to determine the issues.
4. On 13 May 2013 a further application by the Tenant was received by the Private Rented Housing Panel (PRHP) in terms of which it was stated that the Tenant considered that the Landlord had failed to comply with the duty imposed by Section 14 (1) (b) of the Housing (Scotland) Act 2006 ("the Act") in that the Landlord had failed to ensure that:
 - a. 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.

- b. 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.
 - c. Any fixtures, fittings and appliances provided by the landlord under the tenancy as in a reasonable state of repair and in proper working order.
- 5. By letter dated 29 May 2013 the President of the PRHP intimated a decision to refer the application under section 22 (1) of the Act to a Committee (reference number prhp/rp/13/0009). The President elected to refer this application to the same committee which was dealing with the outstanding application (reference number prhp/KA19/109/11).
- 6. By Direction dated 6 August 2013 the Committee determined that the 2 applications should be conjoined in terms of Regulation 11 (1) of the Private Rented Housing Panel (Applications and Determinations) (Scotland) Regulations 2007.
- 7. In particular the Tenant complained that:
 - a. The drainage from a wet room which had been installed by the Tenant with the consent of the Landlord was not in proper working order which resulted in a hazard to the Tenant.
 - b. A cracked chimney pot required to be replaced.
 - c. The garage roof, which had been damaged in a storm, required to be repaired.
 - d. The garden fence required to be repaired.
 - e. Reference was also made to:
 - i. the inadequate kitchen fan above the cooker
 - ii. difficulty in closing the back door
 - iii. the front door which continued to leak
 - iv. part of the basket in the open fire was broken
 - v. gutters were overflowing during heavy rain
 - vi. chimney cowl required to be repaired or replaced
- 8. Accordingly an inspection and hearing was scheduled for 21 August 2013 at 11.00 am.

Inspection

- 9. The Committee inspected the Property on the morning of 21 August 2013 in the presence of: the Tenant and Mrs Moodley, who were represented by Mr John Mulholland; and the Landlord, represented by Mr Peter Minshall and Ms Anne Hamilton. Mr Moodley accompanied the Committee during part of the inspection but Mr Minshall and Mr Mulholland, both of whom provided information and comments to the Committee accompanied the Committee throughout.
- 10. The inspection revealed:

- a. Roof Space: Extensive dampness to the underside of the shingle roof as identified by use of a moisture meter. The Committee noted that the dampness had extended into the battens to which the shingles were fixed. The Committee noted that at the previous inspection in August 2011 the extent of severity of the damp had not been evident although it had been referred to in previous reports and by Dr Howieson.
- b. Kitchen: The window above the cooker was fixed and not openable. It was fitted with a trickle vent. There was an extractor fan above the cooker which was manually operated from a wall mounted switch. The Committee noted signs of condensation in the back of kitchen units.
- c. Back Door: was fully operational and was fitted with a rubber seal which was slightly damaged at the lower end.
- d. DriMaster Unit: the Committee noted that no switch had been fitted to enable the Tenant to switch the unit on and off.
- e. Bedroom 1 (to front): The signs of dampness and mould appeared to be significantly worse than had been evident at the inspection on 11 August 2011. This was confirmed by readings on the moisture meter within the covered recess, along the party wall adjoining the neighbouring cottage and on the west facing wall beneath the window. Part of the area affected by damp was in the vicinity of that which had been subject to a carbide test carried out by Rentokil in 2010. The Committee was unable to determine conclusively whether the dampness resulted from rising damp or penetrating damp or a combination. It was reported that the neighbouring property which had been unoccupied in August 2011 but was now tenanted suffered from extensive dampness. As a result of the findings in this bedroom, the Committee examined the rear bedroom and found evidence of excessive dampness therein by use of the moisture meter.
- f. Shower Drain: The Committee noted no issue with the drain and it was reported that the fault had been traced to a blockage in the outlet pipe between the house and the septic tank which had been cleared resulting in the proper operation of the shower. The issue with the gutters also appeared to have been resolved as a result.
- g. Fire Basket: It was reported that the problem with the basket in the fire had been resolved.
- h. Front Door: The Committee was unable to determine any problem with the door and noted through the use of the moisture meter that

there was no extensive staining of the chipboard floor nor excessive dampness detected.

- i. Chimney: The chimney cowl was not revolving whereas the cowls on the adjoining property were. Using binoculars, the chimney pot to which the cowl was attached could be seen to be cracked.
- j. Garden Fence: The fences to the rear and side of the garden were dilapidated.
- k. Garage: The garage roof had been replaced but the work had not been completed. Filler had yet to be applied between the roof and the sidewalls and guttering and rainwater goods require to be fitted.

Hearing

11. Following the inspection a hearing took place at the Carrick Centre, Maybole at 2.00pm. The parties who had been present at the inspection also attended the hearing.
12. At the outset the Chairman outlined to the parties the observations of the Committee from the inspection from which it was clear that a number of the issues which had previously been identified and which had been covered by Dr Howieson's report were still evident and would require attention.
13. Accordingly the hearing focused on the observations of the Committee and on the report by Dr Howieson dated 26 March 2013. The parties acknowledged that the Property continues to suffer from extensive issues. Mr Minshall on behalf of the Landlord acknowledged the observations of the Committee and indicated that he accepted the remedial measures identified in paragraph 5 of Dr Howieson's report.
14. The Committee expressed its disappointment that none of the remedial measures had been addressed prior to the hearing. Mr Minshall responded that he had been awaiting a further ruling by the Committee. The Committee regretted that the Landlord had not appreciated that the Landlord's obligations required to be fulfilled at all times notwithstanding any application to the PRHP. There had been nothing to prevent the remedial measures being addressed and the problems and discomfort experienced by the Tenant resolved sooner.
15. As the terms of the Landlord's response to the report had been to take issue with some of its recommendations and it had not been clear that the Landlord accepted the remedial measures the Committee had determined that a further inspection and hearing had been necessary.
16. In particular and with reference to paragraph 5 of Dr Howieson's report:

- a. Positive pressure ventilation system: The Committee was disappointed that despite the question of a switch being fitted to enable the Tenants to turn on and off the unit having been discussed at the previous hearing this had not been carried out. It had also been an option to remove the unit following the findings of Dr. Howieson. The Landlord undertook to arrange for the local representative to meet with the Tenant to identify a suitable location for a switch.
- b. Roof Coverings: The Landlord agreed to investigate the replacement of the roof. Mr Minshall maintained his position that the lifespan of the shingles had been stated to be 50 years. The Committee determined that such a lifespan might be expected in ideal conditions but that in the environment in Scotland and in the vicinity of the Property this would be unlikely to be achieved. It also noted that in any event the roof had been in place for almost 40 years and that the evidence from the expert reports and from the inspection confirmed that the roof was nearing the end of its useful life. The inspection followed one of the sunniest summers on record and although there had been heavy rain in the days before the inspection, the deterioration since the last inspection taken together with the comments raised in previous reports and the circumstances of the inspection at the end of the summer all suggested that the time had come for the roof to be replaced. Mr Minshall submitted that as the roof was part shared with the attached cottage owned by National Trust for Scotland, there could be a delay in implementing such work. The Committee acknowledged that the National Trust for Scotland would require to be consulted but did not accept that the lack of their agreement should delay the replacement of the roof which could be carried out to the Property separately.
- c. Upgrade Open Fire: The Landlord agreed to install a 'closed' solid fuel fire in line with the recommendation in Dr Howieson's report. The Tenant suggested that, if such a fire were to be fitted, then it would seem sensible to provide a closed fire with a back boiler and radiators at the same time given the extensive nature of remedial works which are likely to be carried out in the rest of the property. Mr Minshall said that it was likely that the closed fire alone would be sufficient to heat the whole property.
- d. Cooker Hood: Dr Howieson recommended the installation of a cooker hood extractor fan unit. The parties identified some difficulties that may be encountered in such an installation. The Landlord agreed that the existing ventilation is inadequate and agreed to install an adequate system to address the condensation issue in the kitchen. Various options were mentioned including re-organising the kitchen layout and/or connecting an extractor fan to

the kitchen light or the kitchen cooker switch and the landlord was urged to consult with the tenant on the best option.

- e. Off Peak Storage System: The parties agreed that the existing off Peak storage system was in working order. They also agreed that the installation of a closed solid fuel might resolve the heating situation and accordingly agreed to take no action at this time with regard to the system.
- f. Front Door: the Tenant acknowledged that the Committee had been unable to detect any difficulty or leakage in the vicinity of the front door.
- g. Back Door: the Tenant acknowledged that the Committee had been unable to detect any difficulty in the closing of the back door.
- h. The committee noted that the shared chimney stack, which is thought to be redundant, has cracked rendering.

17. The Committee considered the other issues:

- a. Rising/Penetrating Damp: the Landlord acknowledged that the issue of dampness in the bedrooms was a serious concern and required to be addressed as a matter of urgency. It was noted that as dampness was apparent in the areas which had been tested by Rentokil it may be possible to require them to undertake further work.
- b. Shower Unit: the Committee noted that the difficulty with the shower unit had been resolved. The question of responsibility for maintenance of the unit, which had been installed by the Tenant was discussed. Mr Mulholland referred the Committee to the SVGCA Handbook at item 32 which confirmed that the Landlord was responsible for maintenance of the shower unit unless its installation had been unauthorised.
- c. Garage Roof: The Landlord undertook to have the outstanding work required to complete the replacement of the roof and rainwater goods undertaken.
- d. Garden Fence: The Landlord advised that they had been in communication with the National Trust for Scotland regarding the common fence and acknowledged that the rear fence required to be repaired.

18. The Committee noted that the nature and extent of the work involved in addressing the remedial measures would create serious discomfort if the Tenants elected to remain in the property whilst remedial work was being carried out.

Reasons

19. Despite the previous inspections and hearings and the extensive specialist reports which have been obtained, the issues raised by the Tenant persisted at the time of the inspection. The Committee had considerable experience of disputes concerning dampness/condensation and mould. It is recognised that mould growths may be a health hazard and previous attitudes that condensation issues are predominantly a tenant's problem have long been abandoned. Scottish House Condition surveys have shown a significant reduction in the incidence of condensation in houses in Scotland partly due to a change in attitudes and partly due to improved levels of heating, insulation and ventilation together with modern products such as humidistats and positive pressure ventilation units of the type fitted in this property.

As already identified by the Committee, this case is unusual in that the Landlord has carried out significant improvement to the property. The walls and roof have been insulated; there is an open fire, good modern double glazing and electric night storage heaters. There is also a positive pressure ventilation unit which is normally highly regarded by occupants. Carbide tests have shown that the property was not suffering from rising dampness. These factors have also contributed to the length of time this case has taken and the need for multiple reports and inspections.

Apart from the higher than usual internal temperature maintained by the Tenant identified by Dr Howieson, the indications that a Tenant is contributing to the problem normally found, such as mould on windows, indicating that they are rarely opened, sealed ventilators and the lack of an open fire, are not evident here. In addition the furniture and belongings are carefully arranged away from perimeter walls to ensure a flow of air around the Property and in all other respects the Property appears well kept.

Despite all of this, the Property continues to suffer from dampness and mould. As reported by Dr Howieson, the measures taken by the Landlord are having an effect. It was thought that the problem had been made worse by the lack of occupation in the adjoining house but the recent occupation appears to have made matters worse.

In such circumstances the Committee would urge the parties to avoid a "blame culture" and to work together to try to find the balance of heating and ventilation that would result in a condensation/mould free environment.

20. The expert report of Dr Stirling Howieson identified remedial measures to allow the tenants to maintain internal comfort conditions and inhibit condensation recurring, while reducing excessive heating costs.

21. Dr Howieson's recommendations had not been implemented prior to the date of the inspection and the Tenants continued to experience the discomfort occasioned by the problems with the Property.
22. The Committee was satisfied that the Tenant continued to incur unreasonable costs in attempting to maintain a reasonable living environment in the property notwithstanding the considerable work carried out in the past and the expense incurred by the Landlord. The Committee acknowledge the extent of that work and that the problems could reasonably be expected to have been resolved. However the evidence of the inspection and Dr Howieson's report clearly indicated that some problems persisted and that further work would be required in an attempt to find a resolution.
23. The Landlord acknowledged and accepted that the remedial measures should be implemented.
24. Moisture meter readings taken might suggest rising dampness but, as determined by the carbide tests undertaken, rising dampness was not an issue at that time. The evidence of dampness found at this inspection might suggest that the wrong type of plaster has been used on the walls following the remedial work undertaken in the past; that the walls have since become affected by rising dampness; or that the dampness is from another source. In any event the cause needs to be determined and remedied and the mould affected plaster removed and replaced.
25. The cracking on the shared stack and the moisture meter readings taken in the party wall of the front bedroom might suggest that there is dampness coming from the redundant stack or from problems in the adjoining property and this will require further investigation and treatment.
26. The Committee was unable to identify problems with the back or front doors and was accordingly not in a position to make any order in that regard. However the Tenant undertook to monitor the position in the Committee hopes that any difficulties can be resolved mutually without further reference to it.
27. The Committee considered it reasonable to allow a period of six months to comply with the varied Order but hoped that commencement of the work would start as soon as possible so as to ensure that as much as possible could be undertaken before winter.
28. The decision of the Committee was unanimous.

A landlord or a tenant aggrieved by this 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 variation is suspended until the appeal is abandoned or finally determined, and where the appeal is abandoned or finally determined by confirming the decision, the variation will be treated as having effect from the day on which the appeal is abandoned or so determined.

D Preston

Chairman

29-8-13
Date