

**Notice of a decision to Vary**  
**A Repairing Standard Enforcement Order**  
**Ordered by the Private Rented Housing Committee**

prhp Ref: EKM/KW8/83/12

Re : Property at 2 Craikaig Cottage, Loth, Helmsdale, KW8 6HP ("the Property")

**The Parties:-**

Mr & Mrs Ruddy residing at 2 Craikaig Cottage, Loth, Helmsdale, KW8 6HP (represented by their agent Ms Lorraine Rose, Ross & Cromarty Citizens Advice Bureau) ("the Tenants")

Mr Michael Dudgeon, residing at Craikaig Farm, Loth, Helmsdale, Sutherland, KW8 6HP represented by Mr Malcolm McCall and Mr & Mrs John Whittaker ("the Landlord")

**NOTICE TO MICHAEL DUDGEON ("the Landlord")**

The Private Rented Housing Committee having determined on [blank] September 2013 that the **Repairing Standard Enforcement Order** relative to the Property dated 29 June 2012 and 20 December 2012 should be varied, the said **Repairing Standard Enforcement Order is hereby varied** with effect from the date of service of this Notice in the following respects:-

1. The period allowed for the completion of the work required by the order is extended (or further extended) for a further 6 weeks from the date hereof.

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 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 26 September 2013 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 25(1) of the Housing (Scotland) Act 2006

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Re : Property at 2 Crakaig Cottage, Loth, Helmsdale, KW8 6HP ("the Property")

### The Parties:-

Mr & Mrs Ruddy residing at 2 Crakaig Cottage, Loth, Helmsdale, KW8 6HP (represented by their agent Ms Lorraine Rose, Ross & Cromarty Citizens Advice Bureau) ("the Tenants")

Mr Michael Dudgeon, residing at Crakaig Farm, Loth, Helmsdale, Sutherland, KW8 6HP (represented by Mr Malcolm McCall and Mr & Mrs John Whittaker) ("the Landlord")

### Decision

The Committee, having made such enquiries as it saw fit for the purposes of determining whether the Landlord had complied with the Repairing Standard Enforcement Order ("RSEO") in relation to the Property, and taking account of the representations made by the Landlord and the Tenants, determined that the Landlord should be given an extension for a period of 6 weeks from the date of this Decision to allow for completion of the required work under the RSEO in terms of Section 25(1) of the Housing (Scotland) Act 2006 ("the Act").

### Background

1. Reference was made to the Determinations of the Committee dated 29 June 2012 and 20 December 2012 which determined that the Landlord had failed to comply with the duty imposed by Section 14(1)(b) of the Act and to the subsequent RSEO and variation, also of 29 June 2012 and 20 December 2012, made by the Committee. The original RSEO had required the Landlord to carry out works as specified therein. The said works were to be carried out and completed within 4 months of the service of the RSEO. Subsequent to that the variation of the RSEO dated 20 December 2012 gave the Landlord a further period of four months to carry out the work.
2. Mr R Buchan, the Surveyor Member of the Committee had reinspected the Property on 29 May 2013. Whilst some external pointing works had been carried out, the other items remained outstanding as set out in the decision of 20 December 2012.
3. Subsequently, Mr E.K. Miller, Chairman and Legal Member and Mr R Buchan, Surveyor Member, being the members of the original committee, reinspected the Property on 9 September 2013. The Tenants were present and represent by Ms Lorraine Rose of Ross & Cromarty Citizens Advice Bureau. The Landlord, it was understood, had bail conditions which prohibited him from being in the Tenants presence and, accordingly, he was represented by Mr Malcolm McCall and Mr & Mrs Whittaker, who were all long-standing friends. Subsequent to the inspection a hearing was held at the Belgrave Arms Hotel, Helmsdale where all of the parties narrated above were present.
4. Following on from the last hearing, the outstanding works to be carried out were:
  - (a) Such works of repair or replacement as were necessary to ensure the front door was wind and water tight and complied with the repairing standard.

- (b) such works of repair or replacement as were required to ensure that the windows at the Property were properly wind and water tight, capable of opening and closing properly, lockable and otherwise were in such condition as was required to meet the repairing standard.
  - (c) to install a duct to the new extraction fan within the bathroom of the Property;
  - (d) to re-point those areas of the rear external wall where there were open joints in the masonry.
5. The Committee carried out its reinspection on 9 September 2012. It was apparent from this reinspection that not all the works required by the RSEO had been carried out.

In relation to the front door no further works had been carried out.

In relation to the windows, no further works had been carried out.

In relation to the extractor fan, a new one had been installed as previously noted. However, the duct remained to be installed.

Some areas of the rear external wall had been repointed, albeit with poor quality workmanship. The majority of the open joints in the masonry had now been filled in.

At the Hearing, the Committee highlighted to the Landlord's representatives that the Committee had received a very firm undertaking at the last hearing in December from the Landlord and his wife that the works would be carried out. The Landlord and his wife had advised then that they had recently received their single farm payment and had the funds and were in a position to proceed with the work.

Having given the last variation, on the basis of this firm assurance, the Committee were extremely disappointed at the lack of progress made. The Committee highlighted that whilst the Landlord appeared to now suggest some of the works were not required, he had not taken any opportunity to appeal any of the decisions previously made by the Committee. Accordingly, the previous decisions of the Committee as to the works required still stood.

The Committee could see little benefit in giving a further variation and highlighted the appropriate steps at this stage would normally be to consider making a rent Relief Order (RRO), and to refer the matter to the local authority and to the police for prosecution. Given that the Landlord already had an outstanding criminal matter in relation to his behaviour towards the Tenant it seemed, to the Committee, to be foolhardy of the Landlord to be getting himself into a position where he may be committing further criminal offences in relation to a breach of the repairing standards. This could lead to difficulties with his Landlord registration.

The Tenant's representative submitted that whilst they were disappointed that no further works had been carried out, they remained of the view that they would wish the Landlord to be encouraged to carry out the works. The Tenants were on housing benefit and they would receive no personal benefit were a rent relief order to be imposed. It was apparent to the Committee that the Tenant had carried out significant redecoration of the Property since the last inspection. The Tenant would rather see the Property improved, particularly in relation to the windows. They would prefer to agree to a variation if they had some assurance the Landlord was prepared to carry out the works.

The Landlord's representatives were keen to encourage the Landlord to carry out the appropriate works to allow the removal of the RSEO, without the necessity of a rent relief order being granted. They did, however, indicate that they did not have the authority to agree anything on behalf of the Landlord.

The Landlord's representatives were happy to try to contact the Landlord to see if he would give a firm undertaking to carry out the works.

A brief adjournment of the hearing took place to allow the Landlord's representatives to try to contact the Landlord and gain instructions.

The Committee took the opportunity of the adjournment to consider matters and determine what works were still essential to allow the RSEO to be lifted.

The Committee considered the repointing of the rear external wall. Whilst this had been done in a poor fashion, the Committee was of the view that it was likely that this now met the repairing standard.

The Committee considered the lack of a duct from the extraction fan. The Committee had originally sought to introduce this requirement as they had a concern that condensation would exit the fan and re-enter the Property at the upstairs rear bedroom, where there had been a previous damp issue. However, the Committee had noted that the plasterboard area around the rear bedroom window had been repaired some time ago, the area had been redecorated and appeared to be in good order. The fan had now been in place for some time, without a duct. No recurrence of damp had taken place, and accordingly the Committee was prepared to reconsider the position as to whether the duct was now required.

In relation to the windows, the Committee remained firmly of the view that these did not meet the repairing standard and were in generally poor condition. Whilst the option remained to the Landlord to carry out repairs to the windows in order to meet the repairing standard, the Committee was of the view that they were beyond economic repair and it was simply better if the windows were replaced. In relation to the front door, this needed minor adjustment to ensure that it was properly wind and watertight.

In relation to the parties' submissions, the Committee considered whether they would be prepared to grant a variation. The Committee were extremely reluctant to do this given the previous undertaking by the landlord and his subsequent failure to act upon this. However, the Committee were cognisant of the fact that the Tenants were keen to see the works done and did not wish to see the Landlord pushed down the route of an RRO, where he may then be less inclined to complete the works. With some considerable reluctance, the Committee determined that they would be prepared to grant a short variation to allow the Landlord to complete the works required to the windows and door. This would only be done, however, if the Committee received written confirmation by 13 September 2013 that the Landlord was prepared to carry out the works to the windows and the door and they received independent confirmation from a third party contractor that they had been instructed to carry out the works and gave a timescale for doing so.

The Committee then reconvened the hearing.

The Landlord's representatives advised that they had been unable to contact the Landlord to obtain instruction. They were, however, keen to see the matter progressed and would encourage him to carry out the works. The Committee indicated that they were prepared to give a few days grace before issuing its decision. In this period it would be for the Landlord to provide a written undertaking that he would Repair/replace the windows and door and to provide independent confirmation from a third party contractor that they were instructed. The Committee were prepared to delay the issue of their decision until Friday 13 September and, if the appropriate confirmations were received from the Landlord prior to then, then they would consider a short variation.

The Committee highlighted that if this undertaking was received and the Landlord then failed to carry out the works again, the Committee would have no option but to place an RRO on the Property. The Committee, in setting the level of the RRO, would take into account the failures to adhere to undertakings. The Committee hoped that this would not be necessary. Accordingly, the Committee determined that, if the Landlord provided

written confirmation that he would repair/replace the windows and door and that a third party contractor confirmed that he was instructed to carry out the works then the Committee would give a short variation. If no such confirmation was received by Friday 13 September, then the Committee would simply proceed to impose a Rent Relief Order.

The hearing was brought to a close.

Subsequent to the hearing, the appropriate undertakings, as requested by the Committee were received from both the Landlord and an independent contractor. The Committee discussed the matter further and agreed to grant a variation of a further 6 week period to allow the works to be completed.

**Decision**

- 6. The Decision of the Committee was that the RSEO would be varied to give the Landlord a further period of 6 weeks to complete the works required by as determined by the original RSEO.
- 7. The decision of the Committee was unanimous.

**Right of Appeal**

- 8. **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.**
- 17. **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 E Miller Date 26/2/13  
Chairperson