



## Statement of decision of the Private Rented Housing Committee under Section 25 (1) of the Housing (Scotland) Act 2006

prhp Ref: PRHP/EB54/56/10

Re: Property at Gardener's Cottage, Glenbogie, Rhynie, Aberdeenshire, AB54 4JA ("the Property")

### The Parties:-

Mrs Irene Blades residing at Gardener's Cottage, Glenbogie, Rhynie, Aberdeenshire, AB54 4JA ("the Tenant")

Robert Malcolm Hunter Brown residing at Glenbogie House, Glenbogie, Rhynie, Huntly (represented by his agent Shane Greig of Messrs Burnett & Reid, 15 Golden Square, Aberdeen, AB10 1WF) ("the Landlord")

### Decision

The Private Rented Housing Committee, having made such enquiries as was fit for the purposes of determining whether the Landlord had complied with Repairing Standard Enforcement Order ("RSEO") in relation to the Property concerned and, taking account of the representations made by the parties determined by the Landlord should be given an extension of four weeks from the date of service of this Decision to complete the required work in terms of Section 25(1) of the Housing (Scotland) Act 2006.

### Background

1. Reference is made to the determination of the Committee dated 21 July 2010 which determined that the Landlord had failed to comply with the duty imposed by Section 14(1)(b) of the Housing (Scotland) Act 2006. An RSEO was made by the Committee which required the Landlord to carry out the works as specified therein. The said works were to be carried out and completed within 28 days from the service of the RSEO.
2. The Committee (again comprising Mr E K Miller, Chairman and Legal Member; Mr Colin Hepburn, Surveyor Member; and Mr Michael Scott, Housing Member) reinspected the Property on 17 September 2010, being the date after which the works under the RSEO ought to have been completed. The Tenant was present during the inspection. The Landlord was not present during the inspection but his agent Mr Shane Greig of Messrs Burnett & Reid was present throughout.
3. After the reinspection a Hearing was held at the Gordon Arms Hotel, Rhynie. The Tenant was present as was the Landlord's agent.
4. The RSEO required the Landlord to:-
  - (a) obtain a report on the roof and guttering of the Property from a reputable roofer with particular reference to the condition of the roof viz a viz ingress of water at the kitchen, bathroom and lounge windows and to carry out any recommendations of the said report to ensure there is no further ingress of water into the Property via the said windows;

- (b) carry out such decorative works as are necessary to make good damage to paintwork within the Property as a result of previous water ingress;
  - (c) repair or replace the guttering at the front of the porch and to repair or replace any loose or missing slates on the front porch roof and to remove the moss growing on the said roof.
5. During the course of the Hearing the Committee heard from both the Landlord and Tenant on each of the three areas of work that were required, in turn.

In relation to item (a) of the RSEO, the Landlord's agent acknowledged and accepted that a report on the roof and guttering of the Property had not been provided. He had requested the Landlord's contractor to investigate and report but he had simply carried out the work he thought was required. An invoice had been provided by the Landlord's agent which did give some indication of the works that had been carried out and was therefore beneficial to the Committee. The Landlord's agent's view was that works had been done and the Property should now be wind and watertight. There had been no further incidents of water ingress and the Landlord's agent was of the view that the matter had now been dealt with. The Tenant acknowledged that there had been no further instances of water ingress in the Property.

In relation to item (b) it was acknowledged and accepted by the Landlord's agent that the internal decoration had not been carried out. Although the Landlord's contractor had been instructed to carry out these works, they had been slipshod in dealing with it and had not turned up on the times that they had requested or had offered to turn up on such a short period of notice that it was unreasonable to expect the Tenant to accommodate them. The Landlord's agent advised that he had written to the Landlord's contractor to advise him they were no longer to be carrying out any work on behalf of the Landlord. A new painter had been instructed and an estimate had already been provided. The intention was for work to start in the second week of October.

In relation to item (c) the Landlord's agent advised that the loose and missing slates on the front roof porch had been dealt with and the moss growing on the roof had also been addressed. There had still been an issue in relation to the guttering at the front of the porch and the Landlord's agent accepted that the Landlord's contractor had not dealt with this properly at first. Again the original Landlord's contractor had been removed from this job and on the morning of the inspection a new contractor had in fact carried out the installation of the new gutter. Accordingly the Landlord's agent was of the view that item (c) had also now been complied with.

#### **Reasons for the decision**

6. The Committee considered the submissions of both parties and also the results of their inspection of the Property prior to the Hearing.

In relation to item (a) it appeared to the Committee that the roof was in reasonable order. There were no slipped or missing slates and there were no obvious signs of leaks from the gutters and downpipes. Accordingly, after discussion, the Committee were satisfied that item (a) of the RSEO had been complied with. The water ingress had occurred during a very harsh winter and, in the view of the Committee, had exploited some minor defects in the roof. On the basis that these minor defects had been put right and that there had been no further instance of water ingress to the Property at or around any of the three windows, the Committee were satisfied on this issue.

In relation to item (b) it was clear that no work had been carried out and accordingly the RSEO had not been fully complied with.

In relation to item (c) the Committee were of the view that this had also been complied with. The roof was now clear of the excessive moss that was previously growing. The slates had been replaced and fixed down. The new gutter was of good quality and had

been properly installed. A cement fillet had been installed by the Landlord's contractor at the rear of the roof and this should prevent water backing up and ingressing into the porch. Accordingly the Committee were satisfied that item (c) had been dealt with.

There then followed a discussion between the parties in relation to how the non-compliance by the Landlord of item (b) should be dealt with. The Landlord's agent stressed that the non-compliance was not due to any unwillingness on the part of himself or indeed the Landlord to comply with the RSEO. The Landlord's agent was of the view that non-compliance had resulted due to the Landlord's contractor failing to carry out the works when instructed. The Landlord's agent fully accepted this and apologised to the Tenant for this element of non-compliance. The Tenant stated that her view had been all along that the difficulty was with the Landlord's contractor. The Landlord's contractor was well known for having a haphazard approach to dealing with works and could not be relied upon.

The Landlord's agent sought a variation of the RSEO to allow them to complete the works. A reputable painting contractor had been instructed and had carried out an inspection of the Property to see what works had been done. As a gesture of goodwill, the Landlord's agent indicated that rather than just simply touching up the damage caused by the water ingress, the Landlord was prepared to fully redecorate the lounge, bathroom, kitchen and porch. The Committee considered matters and were of the view that whilst there had been non-compliance by the Landlord the non-compliance was not wilful and that the Landlord would complete the works if a variation of the RSEO was made giving the Landlord further time.

The Tenant agreed that she was happy to have the rooms repainted although she raised a difficulty in relation to her inability to move two large units in the lounge to allow painting to take place. The Landlord's agent said that he doubted that the contractor would be prepared to do this and it would be for the Tenant to resolve this. After discussion the parties agreed between themselves that the Landlord's agent would endeavour to see if the contractor would move the furniture for the Tenant but if they were not prepared to do so then they would simply carry out the touching up work only. The Tenant accepted that this may be the case in the event that the contractor would not move the furniture for her.

In any event the Committee were satisfied that this matter could be resolved between the parties themselves as to the exact works that were to be done and were content to vary the RSEO giving an extension of 28 days to allow compliance with item (b) of the RSEO.

#### **Decision**

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.

#### **Effect of section 63**

9. 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 .....  
Chairperson

**E Miller**

..... Date 22/9/2010 .....



## Notice of a decision to Vary

### A Repairing Standard Enforcement Order

Ordered by the Private Rented Housing Committee

prhp Ref: PRHP/EB54/56/10

Re: Property at Gardener's Cottage, Glenbogie, Rhynie, Aberdeenshire, AB54 4JA ("the Property")

Title No: ALL and WHOLE that property known as and forming Gardener's Cottage, Glenbogie, Rhynie being part and portion of the subjects described in Disposition by Susan Mary Bachelor or Brown in favour of Robert Malcolm Hunter Brown recorded in the Division of the General Register of Sasines for the County of Aberdeen on 12 April 2006.

#### The Parties:-

Robert Malcolm Hunter Brown residing at Glenbogie House, Glenbogie, Rhynie, Huntly (represented by his agent Shane Greig of Messrs Burnett & Reid, 15 Golden Square, Aberdeen, AB10 1WF) ("the Landlord")

Mrs Irene Blades residing at Gardener's Cottage, Glenbogie, Rhynie, Aberdeenshire, AB54 4JA ("the Tenant")

#### NOTICE TO ROBERT MALCOLM HUNTER BROWN ("the Landlord")

The Private Rented Housing Committee having determined on 17 September 2010 that the Repairing Standard Enforcement Order relative to the Property dated 21 July 2010 should be varied, the said Repairing Standard Enforcement Order is hereby varied with effect from the date of service of notice in the following respects:-

- (i) The period allow for the completion of the works required by the Order is extended by 28 days from the date of service of this Notice.

Section 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 by Ewan Kenneth Miller, solicitor, Whitehall House, 33 Yeaman Shore, Dundee, DD1 4BJ, chairperson of the Private Rented Housing Committee at Dundee on 22 September 2010 before this witness:-

**L Johnston**

Witness  
Chairman

**E Miller**

22/9/2010

Lindsay Johnston  
Legal Secretary  
Whitehall House  
33 Yeaman Shore  
Dundee  
DD1 4BJ

Confirmed a true and complete copy

Signed E. U. V.  
Notary Public