



## Repairing Standard Enforcement Order

Ordered by the Private Rented Housing Committee

**prhp Ref:** PRHP/IV24/124/10

**Re:** Property at Easter Fearn Farm Cottage, Ardgay, Sutherland, IV24 3DL ("the Property")

**Title No:** ALL and WHOLE Easter Fearn Farm Cottage, Ardgay, Sutherland, IV24 3DL being part and portion of the Estate of Mid Fearn being the subjects more particularly described in and disposed by Disposition by Sir John Westin Brooke in favour of Charles Westin Brooke recorded in the Division of the General Register of Sasines for the County of Ross & Cromarty on 18<sup>th</sup> May 1979.

**The Parties:-**

**CHARLES WESTON BROOKE** residing at Mid Fearn Lodge, Ardgay, Sutherland, IV24 3DL ("the Landlord")

**MISS ROMINA McNEIL** residing at Easter Fearn Farm Cottage, Ardgay, Sutherland, IV24 3DL (represented by Miss Alison Macrury, Ross & Cromarty Citizens Advice Bureau, 4 Novar Road, Alness, IV17 0QG) ("the Tenant")

### NOTICE TO CHARLES WESTON BROOKE ("the Landlord")

Whereas in terms of their decision dated 16 December 2010, the Private Rented Housing Committee determined that the landlord has failed to comply with the duty imposed by Section 14 (1)(b) of the Housing (Scotland) Act 2006 and in particular that the landlord has failed to ensure that that:-

- (a) The Property is wind and watertight and in all other respects reasonably fit for human habitation;
- (b) The installations in the Property 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 Landlords under the tenancy are in a reasonable state of repair and in proper working order;

the Private Rented Housing Committee now requires the landlord 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 landlord:-

- (a) To repair the connection between the stove and flue in the downstairs spare room of the Property and thereafter to carry out such other works as are necessary to allow the Landlord to produce a report from a reputable heating engineer confirming that the stove is in proper working order and capable of being used safely by the Tenant.
- (b) To have the said heating engineer confirm whether or not an electrical pump requires to be added to the back boiler in the main living room of the Property to ensure it is in proper working order and, if so required by the recommendation of the said heating engineer, to install an appropriate standard and type of pump.
- (c) To remedy any defects to the electrical system within the Property sufficient to allow the issue of a domestic installation periodic inspection report from a suitably qualified electrician confirming that the system is in satisfactory condition.
- (d) To seal the gaps within the flagstones in the Property with an appropriate sealant.

The Private Rented Housing Committee order that the works specified in this Order must be carried out and completed within the period of 28 days 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.

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 16 December 2010 before this witness:-

**S Clark**

witness

**E Miller**

chairman

Sheila Clack  
Legal Secretary  
Whitehall House  
33 Yeaman Shore  
Dundee  
DD1 4BJ



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

**prhp Ref:** PRHP/IV24/124/10

**Re:** Property at Easter Fearn Farm Cottage, Ardgay, Sutherland,  
IV24 3DL ("the Property")

### **The Parties:-**

**MS ROMINA McNEIL** residing at Easter Fearn Farm Cottage, Ardgay, Sutherland, IV24 3DL (represented by Ms Alison MacRury, Ross & Cromarty Citizens Advice Bureau, 4 Novar Road, Alness, IV17 0QG) ("the Tenant")

**CHARLES WESTON BROOKE** residing at Mid Fearn Lodge, Ardgay, Sutherland, IV24 3DL ("the Landlord")

### **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 at the hearing, determined that the Landlord had failed to comply with the duty imposed by Section 14 (1)(b) of the Act.

### **Background**

1. By application dated 26<sup>th</sup> August 2010 the Tenant applied to the Private Rented Housing Panel for a determination of whether the Landlord 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 Landlord had failed to comply with his duty to ensure that the Property meets the repairing standard and in particular that the Landlord had failed to ensure that:-
  - (a) The Property is wind and watertight and in all other respects reasonably fit for human habitation;
  - (b) The installations in the Property 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 Landlords under the tenancy are in a reasonable state of repair and in proper working order;
3. By letter dated 11<sup>th</sup> October 2010 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 Landlord and the Tenant.
5. Following service of the Notice of Referral the Tenant made no further written representation to the Committee other than her original application dated 26<sup>th</sup> August

2010. The Landlord made written representations to the Committee dated 21<sup>st</sup> October 2010.

6. The Private Rented Housing Committee (comprising Mr E K Miller (Chairman and Legal Member), Mr Colin Hepburn (Surveyor Member) and Mr Michael Scott (Housing Member)) inspected the Property on the morning of 8<sup>th</sup> December 2010. The Tenant and her representative Alison Macrury were present as was the Landlord, and his agent Michael Brown, during the inspection.
7. Following the inspection of the Property the Private Rented Housing Committee held a hearing at West End Community Centre, Firhill, Alness. The Landlord and Tenant were both present and represented by Ms Macrury and Mr Brown respectively.
8. The Tenant submitted as follows:-
  - i. The Tenant was of the view that the stoves in the two downstairs public rooms were not in proper working order. The stove in the main downstairs room, whilst a fire could be set and lit in it, soon died out and was not sufficient to heat the water in the immersion tank which it was connected to by way of a back boiler. In relation to the stove in the downstairs spare room, the Tenant was of the view that the seal leading from the stove to the flue was loose and therefore dangerous. The Tenant also had concerns regarding the brickwork surrounding the stove and the lining of the chimney itself.
  - ii. In relation to electrical safety, the Tenant was in doubt that the electrical system at the Property was safe. She had been told by a third party that the immersion tank was not properly earthed and during a recent grant application the local authority had expressed some concern about electrical safety within the Property.
  - iii. The Tenant advised that there still continued to be issues regarding rising water on the ground floor of her property. She was unable to put down a carpet in the living room as, if she did, mushrooms began growing through it. This issue had been looked at by a previous Committee but on the day of the last inspection the floor had been reasonably dry. Nonetheless, the Tenant was of the view that there was an ongoing problem here.

9. The Landlord submitted as follows:-

- i. In relation to the first stove in the living room, there had been a difficulty in getting the fire to light on the first attempt by the Tenant at the inspection. The Landlord was of the view that this was because the Tenant had not properly laid the fire as insufficient kindling had been used and the wood was damp. The Tenant's agent had managed successfully to build a proper fire and it was apparent from that, in the Landlord's submission, that the stove worked properly. The fire should not go out provided there were steps taken to ensure there was not too much ash build up and that there was a flow of air through the vents. In the Landlord's submission the gravity fed system by way of the back boiler to the immersion tank appeared to be in proper working order. A pump had previously been installed but had been removed by the Tenant. The Landlord also submitted that in any event the tank could be heated electrically in addition to the back boiler system.

In relation to the second stove, the Landlord accepted that the connection between the stove and the flue had become loose but was of the view that they had had a highly qualified heating engineer install it and it had been properly fixed at the time. The Landlord was of the view that the Tenant had broken the seal.

- ii. The Landlord accepted that there were some minor items that needed attention. He produced a periodic inspection report from the qualified electrician which indicated that there were several faults that required to be rectified. The Landlord submitted that he was perfectly happy to carry out these works provided access was given.
- iii. In relation to the damp in the floor, the Landlord was of the view that the Tenant should not be putting down a carpet on a flagstone floor. He was of the view that the dampness coming through the floor was a reflection on the lack of heating within the Property. If the Property had not been heated since the start of the year it was inevitable that damp would arise.

### **Summary of the issues**

10. The issues to be determined are:-

- i. Whether the two stoves within the Property are in proper working order.
- ii. Whether the electrical system at the Property is safe and in proper working order.
- iii. Whether there is an issue in relation to damp/water coming through the floor of the Property.

### **Reasons for the decision**

11. The Committee reached its decision based on the evidence obtained by the Committee at the inspection on 8<sup>th</sup> December 2010.

The Committee inspected the stove in the living room. The first fire laid by the Tenant was not particularly successful but in the view of the Committee, this was due to an inadequate supply of kindling being laid together with the wood being used being damp. When the fire was set with more kindling and laid better by the Landlord's agent, the fire took well and provided a good amount of heat. The Committee noted that the stove was connected to the immersion tank by way of a traditional back boiler system. The Committee noted that this was gravity fed. The Committee noted that the Tenant had removed a pump that had previously been installed as she was not satisfied that it had been done safely. As there had been no heating in the Property since March and the room temperature was barely above freezing it was not possible within the timescales available to the Committee to see to what temperature the water was heated to by the back boiler system. Nonetheless the Committee did note that during the period in which they were present it was possible to note an increase in the water temperature and the system was, in the reasonable opinion of the Committee working properly. The Committee also noted that the water was also capable of being heated by an electrical element as well as the back boiler. The Committee did note that the system may still benefit from an electric pump being installed to create a faster flow of water.

In relation to the stove in the spare downstairs room, it appeared to the Committee that the seal leading to the flue was not properly connected. Allegations had been made at the inspection as to how this situation had arisen. However the Committee were only prepared to look at the position on the day and were satisfied that this was not properly connected. On the professional advice of Mr Hepburn, the Committee did not wish to see this fire being lit due to the inadequacy of the vent to the flue. The Committee were of the view that the Landlord would require to fix the connection to the flue. The Committee also noted that the Tenant had produced at the Hearing a letter from Highlands & Islands Fire Brigade relating to some other concerns regarding the stove and the brickwork around it. The Committee wished the Landlord to repair the connection from the stove to the flue and to provide a report from a reputable heating engineer confirming that the stove was in all other regards fit for safe use by the Tenant.

In relation to the issue of electrical safety within the Property, the Committee noted the inspection report produced by the Landlord. The Landlord openly acknowledged that there were some items outstanding on this and confirmed that he was happy to address these if access were given. The Committee were of the view that if a domestic installation Periodic Inspection Report from a suitably qualified electrician was provided which confirmed that the electrical systems within the Property were satisfactory then that was sufficient for the repairing standard to be met. The issue was raised by the Tenant and her representative that there was a suggestion that a higher standard was required to allow a grant application to be approved. The Committee noted this but were of the view that their powers did not extend to ordering the Landlord to carry out improvement works beyond the repairing standard.

In relation to the damp and water rising within the Property, the Committee noted that it was not appropriate for the Tenant to lay floor coverings on a traditional flagstone floor. One issue in relation to the dampness was the lack of heating over the last year in the Property which would encourage dampness within the floor. The Committee required to take into account the age, character and location of the Property and were of the view, generally, that the floor within the Property met the repairing standard. The Committee did, however, note that there were quite substantial gaps between some of the flagstones within the Property and were of the view that it would be appropriate for the Landlord to fill the gaps between the flagstones in the Property with a sealant. This would reduce the amount of water penetration.

Overall the Committee noted that the Property was very damp throughout. The Committee were of the view that this was due to the fact that the Property had not been properly heated and ventilated over a significant period. Whilst there was an obligation on the Landlord to meet the repairing standard and to carry out any necessary repairs there was also an obligation on the Tenant to properly air and heat the Property. Once both fires were working properly and provided the Tenant operated the two stoves in an appropriate fashion, the Committee were of the view that a large number of the problems in the Property would cease or be greatly reduced.

The Committee also noted that in relation to a previous RSEO and Rent Relief Order that had been served on this Property that there appeared to have been some difficulty between the parties in agreeing suitable times for work to be carried out. The Committee emphasised to both parties that it was imperative that access be arranged at mutually convenient times. It would not be appropriate for the Landlord to give a very short notice period to the Tenant for works to be done. Similarly, the Tenant required to make herself available at reasonable time and upon reasonable notice to allow the Landlord access to carry out the works. Both parties accepted their obligations in this regard and undertook to liaise to arrange access through the offices of Alison Macrury.

The Committee discussed with the Landlord and Tenant a timescale for the carrying out of the various works that were required. The Landlord indicated that provided access was given he could carry out the works within a fortnight.

Given the timescale laid down by the Act the Committee were satisfied that a minimum period of 28 days could be given here for the works to be carried out.

#### **Decision**

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

### Right of Appeal

15. 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

16. 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.

**E Miller**

Signed ..... Date 16/12/2020  
Chairperson