



Statement of decision of the Private Rented Housing Committee under Section 60 of the Housing (Scotland) Act 2006

prhp Ref: prhp/RP/13/0068

Re : Property at North Cottage, Crofts of Dipple, Fochabers IV32 7LL ("the Property")

The Parties:-

Ronald Proctor, North Cottage, Crofts of Dipple, Fochabers IV32 7LL ("the Tenant")

William Alexander McKay, Tombain, Crofts of Dipple, Fochabers IV32 7LL ("the Landlord")

Decision

The Committee, having made such enquiries as it saw fit for the purposes of determining whether the Landlord has carried out the work required by the Repairing Standard Enforcement Order in respect of the Property made on 7 November 2013, and taking account of the evidence led by both the Landlord and the Tenant at the hearing, determined that the Landlord had failed to carry out the work required by the said Repairing Standard Enforcement Order and that, accordingly, it would not certify that the work has been completed in terms of section 60 of the Act and that it would not revoke the Rent Relief Order in respect of the Property made on 4 July 2014 in terms of Section 27 of the Act.

Background

1. By application dated 9 August 2013 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 house meets the repairing standard and in particular that the Landlord had failed to ensure that:-
 - (a) the house is wind and water tight and otherwise 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,
3. By letter dated 11 September 2013 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. The Private Rented Housing Committee inspected the Property on the morning of 7 November 2013. Following the inspection, the Private Rented Housing Committee held a hearing at Inchberry Village Hall, Orton, Fochabers and proceeded to issue a Repairing Standard Enforcement Order. The Committee comprised George Clark (Chairman), Mark Andrew (Surveyor member) and John Wolstencroft (Housing member).
6. On 4 July 2014, the Committee re-inspected the Property and thereafter held a hearing at Fochabers Public Institute, Fochabers. The Committee determined that the Landlord had not complied with the terms of the Repairing Standard Enforcement Order and proceeded to make a Rent Relief Order in respect of the Property and intimated to the local authority the failure to comply.
7. The Landlord did not appeal the decision of the Committee and, on 22 August 2014, his solicitors, Messrs Cockburns, 82 High Street, Elgin, forwarded to the Private Rented Housing Panel a report from Swift Services Wood Preservation in respect of the Property and requested that the Committee revoke the Repairing Standard Enforcement Order.
8. The Committee re-inspected the Property on 9 October 2014. The Housing member was unable to attend, so the Committee comprised George Clark (Chairman) and Mark Andrew (Surveyor member). The Landlord and the Tenant were both present at the inspection.
9. Following the inspection, the Committee held a hearing at the Gordon Arms Hotel, Fochabers. The Landlord and the Tenant both attended the hearing and represented themselves. The Landlord was accompanied by Mrs Ann Scott, who provided the Committee with evidence regarding the inspection which had been carried out by Swift Services Wood Preservation.
10. The Tenant submitted that the company who had carried out the inspection had lifted the living room carpet adjacent to the fireplace, but had not looked under the carpet at the gable wall end of the room, where the Committee had found serious damp problems. The inspector had not used a damp meter and did not appear to have one with him, but had merely carried out a visual inspection with a torch. The Tenant also advised the Committee that he had been served with a Notice to Quit which would require him to vacate the Property on 30 November 2014.
11. The Landlord told the Committee that any problem would be addressed properly when the Property was vacated and that it would then be upgraded with a new porch, new windows and full central heating. The Landlord stressed that the Property had been in good condition when the Tenant moved in. Mrs Scott had been present when Swift Services Wood Preservation had carried out their inspection. She confirmed that the inspector had not used a moisture meter and had not taken any photographs.

Summary of the issues

12. The issues to be determined were whether the Landlord had carried out the work required by the Repairing Standard Enforcement Order made on 7 November 2103 and whether the Rent Relief Order made on 4 July 2014 should be revoked.

Findings of fact

13. The Committee finds the following facts to be established:-
 - The Committee noted evidence of water ingress at the threshold leading from the front door of the Property, caused by rainwater having come in through the porch earlier in the week, when there had been an exceptionally heavy period of rain. This issue was not, however, covered by the Repairing Standard Enforcement Order and the Committee was not able to make a further Order in relation to it.

- The Tenant lifted the carpet and underlay in the areas of the living room floor which had been found at the previous inspections to be affected by rising damp and the Surveyor member of the Committee tested these areas using a damp meter. The testing disclosed significant moisture readings which became higher towards the centre of the floor and there was a 20% moisture content reading in the new floorboards which had recently been replaced, adjacent to the gable wall and extending approximately one metre into the room. The moisture content rose to 30% beyond that and was 40% in the corner of the room. On the opposite side of the room, the reading beside the fireplace was 60% and was over 70% in the area affected by the recent ingress of rainwater.
- The Committee noted the report by Swift Services Wood Preservation dated 31 July 2014, which stated that a complete survey had not been carried out as the Property was inhabited and carpeted. The specialist company did not lift any carpets, so did not inspect the areas which had been identified by the Committee as being affected by woodworm and rising damp.

Reasons for the decision

14. The Committee was disappointed that, if the specialist company had been instructed by the Landlord to inspect the ground floor timbers for damage by woodworm and rising damp, as stated in the Repairing Standard Enforcement Order, they had not requested that the carpet be rolled back to expose the floor timbers and the Committee was surprised that the evidence suggested that the inspector did not have a damp meter with him. The Committee was, therefore, not satisfied that the specialist company had been directed to inspect the areas which had been identified by the Committee in the Statement of Reasons which accompanied the Repairing Standard Enforcement Order as being affected by woodworm and rising damp. Accordingly, the Committee determined that the report by Swift Services Wood Preservation did not fulfil the requirements set out in the Repairing Standard Enforcement Order and that the Repairing Standard Enforcement Order and the Rent Relief Order would remain in place.

Decision

15. The Committee accordingly determined that the Landlord had failed to carry out the work required by the Repairing Standard Enforcement Order made on 7 November 2013 and accordingly refused to certify that the work has been completed and refused to revoke the Rent Relief Order made on 4 July 2014.
16. The decision of the Committee was unanimous.

Right of Appeal

17. **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

18. 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..... **George Clark** Chairperson 9 October 2014