

Determination by Private Rented Housing Committee

Statement of Decision of the Private Rented Housing Committee

(Hereinafter referred to as "the Committee")

Under Section 24(1) of the Housing (Scotland) Act 2006

Case Reference Number: PRHP/TD12/16/10

Re:- Property at 3 Butterlaw Farm Cottages, Coldstream, Berwickshire, TD12 4HQ ("**the property**")

The Parties:-

Janet Colvine residing at 3 Butterlaw Farm Cottages, Coldstream, Berwickshire, TD12 4HQ ("**the tenant**")

And

R G Russell & Company Limited, Simprim Farm, Coldstream, Berwickshire, TD12 4HG ("**the landlords**")

The Committee comprised:-

Mr James Bauld	- Chairperson
Mr Donald Marshall	- Surveyor member
Mr John Blackwood	- Housing member

Background:-

1. On 13th July 2010, the Committee issued a Determination which decided that the landlords had failed to comply with the duty imposed by Section 14(1)(b) of the Housing (Scotland) Act 2006 ("the Act"). On the same date the Committee issued a Repairing Standard Enforcement Order ("RSEO") in respect of the property.
2. The RSEO made by the Committee required the landlords to carry out such works as were necessary to:-
 - Restore the cistern and hot water tap within the bathroom to proper working order
 - To make all windows wind and watertight
 - to carry out repairs to the property to eradicate dampness
 - To carry out repairs to the exterior doors to make them wind and watertight
 - To instruct a suitably qualified electrician to carry out a periodic inspection report certifying that all electrical fittings and wiring within the property are safe

3. The Committee ordered that the works specified in the RSEO were to be carried out and completed within 2 months of the date of the service of the Notice. The RSEO was effectively served on the landlords.
4. On 8th November 2010 the Committee carried out a further inspection of the property for the purpose of ascertaining whether the repairs required by the RSEO had been completed.
5. During the inspection of the property, the Committee noted that substantial re-wiring work had been carried out to the property. The Committee also noted that a new exterior door had been supplied and fitted to the rear of the property. The Committee noted that various works appeared to have been done to the windows throughout the property. The Committee were also advised that repairs had been carried out to the cistern and hot water tap within the bathroom although there was some dispute with regard to their effectiveness. The Committee noted that there still appeared to be evidence that some of the windows were not wind and watertight within the property.
6. A reconvened hearing of the Committee then took place on the same date. That date had been notified to the parties in advance to allow them to make representations to the Committee either in writing or at the hearing. The purpose of the hearing was to decide whether the landlords had complied with the RSEO made by the Committee in terms of Section 26(1) of the Act.

The Hearing

7. The hearing of the Committee took place within Coldstream Community Centre. The hearing was attended by the tenant together with Mr and Mrs Hugh Russell representing the landlords of R G Russell & Co Ltd.
8. At the commencement of the hearing, the Committee established that the tenant was satisfied that the electrical wiring work which had been required in terms of the RSEO had been completed. The house had been completely re-wired and a periodic inspection report had been provided by the landlords certifying that the property had been inspected and tested by Malcolm Hood from DCI Electrical Services, Coldstream, Berwickshire. The report confirmed that the electrical installations within the property were satisfactory and that no remedial work was required. The inspection had been carried out on 5th October 2010. Accordingly the Committee were satisfied that the requirement in the RSEO to instruct a suitably qualified electrician to carry out a periodic inspection report certifying that all electrical fittings and wiring within the property were safe had been fully met. All parties also agreed that this condition had been met.
9. The Committee then turned to the question of the repairs required to the cistern and hot water tap within the bathroom of the property. Again it was agreed by all parties that the taps were now fully functioning and all repairs had been completed. With regard to the cistern, the tenant's position was that there was still a leak from the pipe between the cistern and the toilet bowl. During the inspection it had been noted by the Committee that the pipe was still leaking. During the hearing the landlords accepted that the pipe was still leaking and indicated that works would be done to remedy this within a short space of time.
10. The Committee then turned to consider the question of whether works had been carried out in terms of the RSEO to make all windows within the property wind and watertight. During the inspection of the property, the weather was very wet and windy. The Committee noted during their inspection that works had been done to the exterior of the windows. During the inspection the Committee noted that in the two rooms on the upper floor to the front of the property there appeared to be substantial evidence of water ingress particularly at the joint between the upper and lower sashes of the window. At the hearing the Committee asked the tenant whether she accepted that all windows had now

been made wind and watertight. The tenant indicated that she did not accept that the windows had been fully repaired and that in particular all south facing windows and the skylight nearest to the bathroom were still substantially affected by water ingress. She also indicated that the windows to the rear of the property still suffered substantially from draughts. The landlords stated at the hearing that their belief was that all the windows were wind and watertight. They claimed that when they had inspected them during the inspection that they could see no evidence of any wet rain or wind coming through the windows. On being asked by members of the Committee whether they had noticed significant water ingress on both the upstairs windows, they did not accept that. The landlords stated they believed that the work which had been done to the windows had been done to a high standard.

11. The Committee then turned to the question of repairs required to eradicate dampness within the property. The Committee had noted during their inspection that an extractor fan had been fitted to the kitchen of the property. The tenant had indicated that this was now causing further problems as the external vents did not prevent draughts coming through. The tenant also stated that the windows were still running with water and that dampness was coming through the front door. With regard to the new rear door the tenant also indicated that there was still water penetrating through the door as it had not yet been fully sealed. The tenant stated that dampness in the property was still a problem, particularly round the front door. The landlords did not accept that the property was suffering from dampness and indicated that the extractor fan had been installed by the contractors to extract steam from the kitchen to assist in alleviating any dampness which may exist.
12. The committee had noted that a new exterior door had been fitted to the rear of the property. The tenant indicated that there was still a difficulty with this door in that there were leaks through the door. The landlords did not agree that this was the case. However the landlords had lodged with the Committee paperwork from East Weston Limited, the contractors they had instructed to carry out the works. In that report their contractor had indicated that the tenant had noticed a small leak in a door panel and that the contractor had agreed to seal this as required.
13. The front door to the property had not been replaced and the tenant continued to complain that there were significant draughts coming through this door. The landlords' position was that to replace the front door required a door to be specially made as the door size was not a standard size available. They indicated that a new draft excluder had been put all round the exterior of the door.
14. The Committee finally noted that the current rent for the property was £204.55 per month and this was reviewed every three years.
15. The Committee then invited each of the parties to provide any closing comments that they wished to do and both took the opportunity to further state their position to the Committee. The hearing was then concluded.

Determination and Reasons

16. The Committee considered all the evidence and representations which had been made. The Committee also took into account the evidence which was clear to them during their own inspection. The Committee decided that in terms of Section 26(1) of the Act that the landlords had failed to comply with the full terms of the RSEO. The Committee accepted that repairs had been done to the electrical systems and that the landlords had complied fully with the requirement in the RSEO to instruct a suitably qualified electrician to carry out the periodic inspection report and to certify that all electrical fittings and wiring within the property were safe. The Committee were happy to accept that those works had been completed. The Committee also accepted that works required to the hot water tap within the bathroom had been completed. The Committee were of the view that the landlords had failed to comply with the RSEO in respect of the repairs to the cistern, the repairs required to make all windows wind and watertight and to repair the exterior doors to make

them wind and watertight. The Committee were satisfied that there remained substantial problems with the windows to the property and in particular the upstairs windows were suffering substantially from continuing water ingress. The Committee accepted the evidence from the tenant that the rear door, although newly fitted, continued to have problems with water ingress. This was also supported by the written report from the landlords' own contractor. The Committee were not satisfied that the dampness within the property had been eradicated.

17. The Committee considered whether a Rent Relief Order should be made in terms of Section 27 of the Act. The Committee determined that such an Order should be made given the landlords' failure to comply fully with the terms of the RSEO and given the landlords' failure to provide any reasonable excuse for such failure. The time initially allowed under the RSEO to complete the repairs had been extended by the Committee.
18. The committee then considered the amount by which any rent payable under the tenancy in question should be reduced. In doing so the Committee considered the impact of the outstanding repairs upon the tenant's enjoyment of the property. The Committee also took into consideration that the landlords had carried out significant works to address the problems with the electrical wiring in the property and had taken significant steps towards carrying out repairs to the windows and the exterior doors. In all the circumstances the Committee determined that an appropriate reduction in rent would be to reduce the rent payable under the tenancy by 20% of the monthly rental thus reducing the rent from £204.55 per month to £163.64 per month. The Committee considered that the Rent Relief Order should be effective from 28 days after the last date on which the Decision to make the Rent Relief Order may be appealed under Section 64 of the Act.

Decision

19. The Committee, having made such enquiries as it saw fit for the purposes of determining whether the landlords had complied with the RSEO in relation to the property concerned and taking full account of all the evidence provided by both the tenant and the landlords at the hearing determined that the landlords had failed to comply fully with the RSEO in terms of Section 26(1) of the Housing (Scotland) Act 2006 and that notice of failure be served upon the Local Authority in which the property is situated.
20. The Committee proceeded to make a rent Relief Order in terms of Section 27 of the Act which order shall take effect 28 days after the last date on which the decision to make the Rent relief Order may be appealed under Section 64 of the Act..
21. The Decision of the Committee was unanimous.

Rights of Appeal

22. A landlord or tenant aggrieved by the decision of the Committee may appeal to the Sheriff by summary application within 21 days of being notified of that decision.
23. The appropriate respondent in such appeal proceedings is the other Party to the proceedings and not the PRHP of the Committee which made the decision.

Effects of Section 63

24. Where such an appeal is made, the effect of the decision and of any Order made in consequence of it is suspended until the appeal is abandoned or finally determined.
25. Where the appeal is abandoned or finally determined by confirming the decision, the decision and the Order made in consequence of it are to be treated as having effect from the day on which the appeal is abandoned or so determined.

Signed... **J Bauld**
James Bauld, Chairperson

Date... *26 Nov 2010*

Signature of Witness... **G Williams**

Date... *26/11/10*

Name: Gillian Williams

Address: 7 West George Street, Glasgow, G2 1BA

Designation: Senior Court Administrator

Rent Relief Order

Ordered by the Private Rented Housing Committee

Property at Property at 3 Butterlaw Farm Cottages, Coldstream, Berwickshire, TD12 4HQ ("the property")

The Parties:-

Janet Colvine residing at 3 Butterlaw Farm Cottages, Coldstream, Berwickshire, TD12 4HQ ("the tenant")

And

R G Russell & Company Limited, Simprim Farm, Coldstream, Berwickshire, TD12 4HG ("the landlords")

NOTICE TO R G RUSSELL & COMPANY LIMITED, Simprim Farm, Coldstream, Berwickshire, TD12 4HG

In terms of their decision dated 26 November 2010, the Private Rented Housing Committee ("the Committee") determined in terms of Section 26(1) of the Housing (Scotland) Act 2006 ("the Act") that the Landlord has failed to comply with the Repairing Standard Enforcement Order in relation to the house made by the Committee.

The Committee determined to make a Rent Relief Order in terms of Section 27 of the said Act reducing the rent payable under the tenancy for the house by an amount of 20% of the monthly rent being £40.91 per calendar month of the rent which would, but for the order, be payable. The rent reduction will take effect 28 days after the last date on which the decision to make the Rent Relief Order may be appealed under Section 64 of the said Act.

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. Where the appeal is abandoned or finally determined by confirming the decision, the Rent Relief Order will take effect 28 days after the date on which the appeal is abandoned or the decision is confirmed.

J Bauld

James Bauld, Chairperson
Private Rented Housing Committee

Date 26 November 2010

Signature of Witness..

G Williams

Date 26/11/10

Name: Gillian Williams

Address: 7 West George Street, Glasgow, G2 1BA

Designation: Senior Court Administrator