



REPAIRING STANDARD ENFORCEMENT ORDER
Ordered by the Private Rented Housing Committee

**RE: Property at West Lodge, Stobo, Peebleshire EH45 8NY being ALL and WHOLE the subjects known as and forming West Lodge, Stobo, Peebleshire EH45 8NY being part of the lands and Estate of Stobo, in the Parish of Stobo, more particularly described in Disposition in favour of Charles Richard Seymour dated 4 November and recorded in the Division of the General Register of Sasines for the County of Peebles on 20 November, both months of 1997.
(hereinafter referred to as "the House")**

The Parties:

Carol McMillan, West Lodge, Stobo, Peebleshire EH45 8NY (hereinafter referred to as "the Tenant")

Hugh and Charles Seymour, Easterknowe Farmhouse, Stobo, Peebleshire EH45 8NU (hereinafter referred to as "the Landlord")

PRHP REFERENCE: PRHP/RP/13/0019

NOTICE TO HUGH AND CHARLES SEYMOUR

WHEREAS in terms of their decision dated 28 October 2013 the 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 the House meets the repairing standard in that:

- "(a) the house is wind and water tight and in all other respects reasonably 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,*
- (d) any fixtures, fittings and appliances provided by the landlord under the tenancy are in a reasonable state of repair and in proper working order,...."*

The Committee now requires the Landlord to carry out such work as is necessary for the purposes of ensuring that the House 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 Committee requires the Landlord:

- 1 To have all windows in the House, whether by replacement or repair, put into a reasonable state of repair such that they are able to be opened and closed with ease, with all locks working, and so as to prevent water ingress and to reasonably exclude draughts, with all panes of glass undamaged and all frames and sills to be painted adequately and with all mould removed. (As regards the metal windows in the upstairs bedroom there is no obligation to ensure that they can be opened.)
- 2 To repair all decorative damage in the downstairs bedroom and the downstairs hall resulting from water ingress and to remove all mould present.
- 3 To put all light fittings in the House into safe working order and to obtain a certificate from a qualified electrician that the electrical installations in the House are in safe working order and to produce a copy of same to the Committee.
- 4 To repair or replace the wooden lean to garage so that it is in a reasonable state of repair without any sections of rotten wood.
- 5 To repair the ceiling of the store such that it is in a reasonable state of repair.
- 6 To put the front door into a state of repair such that it is reasonably wind and watertight.
- 7 To provide a supply of water which is of sufficient quality and quantity for normal domestic use at the House to include providing, at the Landlord's sole cost, any consumable items such as filters which may be required and to obtain a report by a suitably qualified, independent person as to the sufficiency of the quality and quantity for domestic use of the water supply to the House and to produce a copy of said report to the Committee.

The Committee order that the works specified in this Order must be carried out and completed within three months from the date of service of this Notice.

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 the decision.

Where such an appeal is made, the effect of the decision and 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 typewritten on this and the preceding page are signed by John Miller McHugh, Chairperson of the Private Rented Housing

Committee at Edinburgh on the Twenty Eighth day of October Two Thousand and Thirteen in the presence of the undernoted witness:

J McHugh

Chairperson

Witness **R Murray** ROBERT MURRAY

Witness Address 54 BRUNSWICK STREET, EDINBURGH, EH7 5HX



DETERMINATION BY PRIVATE RENTED HOUSING COMMITTEE

**STATEMENT OF DECISION OF THE PRIVATE RENTED HOUSING COMMITTEE
UNDER SECTION 24(1)
OF THE HOUSING (SCOTLAND) ACT 2006**

In connection with

Property at West Lodge, Stobo, Peebleshire EH45 8NY (hereinafter referred to as "the House")

Carol McMillan, West Lodge, Stobo, Peebleshire EH45 8NY (hereinafter referred to as "the Tenant")

Hugh and Charles Seymour, Easterknowe Farmhouse, Stobo, Peebleshire EH45 8NU (hereinafter referred to as "the Landlord")

PRHP REFERENCE: PRHP/RP/13/0019

DECISION

The Committee having made such enquiries as are fit for the purposes of determining whether the Landlord has complied with the duty imposed by section 14(1)(b) of the Housing Scotland Act 2006 (hereinafter "the Act") in relation to the House, and taking account of the evidence led by the Tenant at the hearing and of the written documentation attached to the application and submitted by the parties, determined that the Landlord had failed to comply with the duty imposed by section 14(1)(b) of the Act.

Background

By application dated 11 May 2013 (hereinafter referred to as the "Application") the Tenant applied to the Private Rented Housing Panel (hereinafter "the PRHP") for a determination of whether the Landlord had failed to comply with the duties imposed by section 14(1)(b) of the Act.

The Application stated that the Tenant considered that the Landlord had failed to comply with the duty to ensure that the House meets the repairing standard and in particular that the Landlord had failed to ensure compliance with the following paragraphs of section 13(1) of the Act:

*“(a) the house is wind and water tight and in all other respects reasonably 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,
(d) any fixtures, fittings and appliances provided by the landlord under the tenancy are in a reasonable state of repair and in proper working order,...
(f) the house has satisfactory provision for detecting fires and for giving warning in the event of fire or suspected fire.”*

The Tenant complained of a number of defects in the House.

By letter of 3 July 2013, the President of the PRHP intimated a decision to refer the application under section 23(1) of the Act to a Private Rented Housing Committee (hereinafter referred to as “the Committee”).

The Committee comprised the following members:

John McHugh, Chairperson
John Blackwood, Housing Member
Donald Marshall, Surveyor Member

The Committee served Notice of Referral in terms of Paragraph 1 of Schedule 2 to the Act upon the Landlord and the Tenant.

On 20 August 2013 the Committee issued a Direction to the parties: discharging the inspection and hearing originally fixed for 28 August 2013; requiring the parties to provide details of their availability so that a fresh date could be fixed; requiring the Landlord to produce a report as to the quality and sufficiency for domestic use of the water supply to the House; and requiring the parties to provide a copy of the Lease which governs the Tenancy.

On 7 October 2013, the Committee issued a Direction to the parties refusing an application by the Landlord to adjourn the inspection and hearing fixed for 22 October 2013.

The Committee inspected the House on 22 October 2013. The Tenant was present. The Landlord was neither present nor represented.

Following the inspection, the Committee held a hearing at Peebles Community Centre, Walker’s Haugh, Peebles. The Tenant was present. She brought no other witnesses. The Landlord was neither present nor represented. The Committee considered the written submissions and the evidence submitted by the parties and heard representations from the Tenant.

Submissions at the Hearing

The Tenant lives alone in the House. She also runs a small business making and selling soaps from outbuildings adjacent to the House and farms goats and sheep on adjacent land.

The Tenant had a substantial number of complaints regarding the condition of the property.

The Tenant has been in occupation since 1985.

We considered the following specific complaints:

Entrance Way

The Tenant complained of a potentially dangerous steep drop outside the front door of the House (which is set into a steep incline).

Leaking Roof and Guttering in Need of Repair

The Tenant agreed that the Landlord had performed the necessary repairs and there was accordingly now no issue.

Stove

The Tenant had fitted a stove in the fireplace in the upstairs bedroom. She complained that it had been damaged by water ingress because of the condition of the roof.

Front Door

The Tenant complained of draughts and water ingress from the front door and that it was ill fitting.

Light Fittings

The Tenant complains that light fittings are damaged or not in working order. In particular, at the top of the stairs she complained that the ceiling pendant fitting is damaged. Its location also makes it impossible for her to safely change a light bulb. In the lower hall, she complains that the fitting is damaged and incapable of safe operation by reason of water damage. In the kitchen, the ceiling light fitting is damaged and inoperable and in the bathroom, she is concerned about safe operation of the light fitting.

The Landlord, via Charles Seymour's email of 18 October 2013, indicates that he intends to deal with light fitting and plaster repairs after a roof inspection has taken place.

Windows

The Tenant complained about the condition of the windows. Her concerns were:

- 1 In the bedroom on the metal framed single glass windows that there was mould present and that the windows required repainting;

- 2 In the cupboard adjacent to the bedroom that the wooden window frame was badly rotten and the lower pane of glass was absent;
- 3 On the stairs and in the downstairs bedroom, there were double glazed windows but that these let in draughts and rain water around the edges of the double glazed window units. The Tenant advised that wind whistled through the downstairs bedroom window. The Tenant had prepared a video of this happening. The Committee was however of the view that it did not require to consider the video but that it would instead rely upon the submissions at the hearing and its own observations arising out of the inspection;
- 4 That the bathroom window was stiff to close and she found it difficult to reach the top of it to open and close it;
- 5 That the ropes on both kitchen windows were broken. The left hand window (when viewed from inside) could not be locked. Both windows were stiff and hard to open and close;
- 6 The exterior of all windows was in need of repainting.

On questioning from the Committee, the Tenant advised that the upstairs bedroom windows did not open although she appreciated that they were old windows and she had no actual complaint about this.

Hot Water Tank

The Tenant complained that the hot water tank located in the living room was very old and small for the size of the House. It also had a patch repair. The tank and the patch repair had been present in the property since before she took occupation. She was concerned that the repair might fail and that damage would occur. There was no evidence that the tank was not functioning normally nor that the repair was failing.

Store Ceiling

The Tenant complained that the ceiling of the store (accessed via the lean to porch at the back door) was coming down and in need of repair.

Mould

There was evidence of decorative damage and mould growth in the downstairs bedroom and in the lower hall which the Tenant reported was due to water ingress from the (now repaired) roof.

Garage

The Tenant complained that the wooden lean to garage at the side of the property had gaps in the woodwork and rotten sections particularly at the door and at the side. She is unable to use it as she would like.

Water Supply

The Tenant complained as to the quantity and quality of the water supply at the House. She reported that the supply was sourced from a nearby spring. The

supply belonged, as she understood it, to Professor and Mrs Hughes of Highfield, a neighbouring property. The water passes first to a trough in a field close to the House, known as Tup Park. It then travels in two branches to Highfield and to the House. This understanding appears to match with the comments contained in the Charles Seymour's letter on behalf of the Landlord of 26 August 2013.

We were provided with a copy of a letter by Prof Hughes to the Landlord and to the Tenant dated 21 October 2013. We have not had regard to that document as we have not required to do so in order to reach our decision. It is evident however that Prof Hughes may have some concern that a finding might be made by the Committee which had an adverse effect upon the rights of his wife and himself. For the avoidance of doubt, we make no finding as to the ownership of the water supply or of the rights of any party to draw from it.

The Tenant reports that during dry periods, the supply has run out down to only a "trickle". She has been asked by the owners of Highfield not to draw water when there are dry periods because of the adverse effect on them; she has been sympathetic to such requests and considers that her neighbours have been generous in their approach to date.

She attributes the problems with the quantity of supply to the presence of increased numbers of cattle grazing in Tup Park. The supply last ran dry in the Summer of 2012.

As regards quality, the Tenant reports that brown water was issuing from the taps in April 2013. She had involved the local authority's Environmental Health Department. She was unsure of their exact findings. She advised that the Landlord had in recent months installed a filter at the kitchen sink. She understood that Environmental Health were unhappy with that arrangement and had advised that UV and sediment filters were required to be installed at the entry point of water to the property. That also appears to match with the content of Mr Seymour's letter of 26 August 2013.

She indicated that the present filter required refillable cartridges which were expensive and which the Landlord would only supply at a cost to her. She believed that the cost of ensuring the water supply was suitable for domestic consumption should fall upon the Landlord and accordingly that the Landlord should be responsible for meeting the cost of any consumables required such as filter cartridges.

On 20 August 2013, we issued a direction to the Landlord requiring the Landlord to produce to us by 20 September 2013: *"An up to date report by a suitably qualified independent person on the quality and sufficiency for domestic use of the water supply to the House. Such report should detail the qualifications of the person to provide it."*

No such report was produced. Instead the Landlord responded with a letter by Mr Seymour dated 26 August 2013 enclosing a chain of emails from July 2013 with the local authority's Environmental Health Officer. In that correspondence the Officer refers to her satisfaction with works carried out and to a problem which had

occurred which we infer was one of supply. She identifies the problem as not being caused by the tank. She makes reference to the need to re-site filters. The emails provided do not address adequately the questions of the quality and quantity of supply and the absence of the report directed to be produced places us at a disadvantage.

The Landlord's position is that any disruptions in supply have been the result of air locks or broken ball cocks and that these are attended to promptly. The Landlord asserts via Charles Seymour's email of 18 October 2013 that "Environmental Health have confirmed that the supply is excellent". No evidence of such a confirmation has been produced.

The Tenant reports that the Landlord has been unsympathetic to her requests for assistance during periods of problems with the water supply.

Access

The Tenant reported that relations between her and the Landlord and, in particular, Mr Charles Seymour, were very bad. He was not prepared to discuss repairs and she felt intimidated by his manner which she described as aggressive.

The Landlord had complained that the Tenant had made access difficult and that her dogs had presented a danger to workmen. The Tenant responded that she had made access available on a reasonable basis and would continue to do so. The only relevant incident she was aware of occurred around 12 years ago was when she was told that one of her dogs had bitten a workman. She would keep her dogs under control when visitors were present.

The items of disrepair had reduced the Tenant's enjoyment of the House and, in particular, she had concerns relating to the effects upon her health. She reported that her elderly mother had been unable to stay with her because of the condition of the House.

Summary of the Issues

The issue to be determined is whether the House meets the repairing standard as laid down in section 13 of the Act and whether the Landlord has complied with the duty imposed by section 14(1)(b).

Findings in Fact

The Committee confined their inspection to the items of complaint detailed within the Tenant's Application.

The Committee made the following findings in fact:

The Landlord and the Tenant (and her then husband) entered into a Tenancy Agreement in respect of the House on 1 and 20 August 1985.

The Tenant took possession of the House from 20 June 1985 (originally along with her husband) and has remained in occupation since.

The provisions of Chapter 4 of Part I of the Act apply to the tenancy.

The Tenant notified the Landlord of the defects in the house which are now the subject of the Application by recorded delivery letters dated 17 January 2012 and 14 March 2013.

The inspection on 22 October 2013 revealed:

The House is a two storey cottage of considerable age. It is associated with the estate relating to the nearby Stobo Castle. It has a more modern porch extension erected by the Tenant at the rear door. It has a wooden lean to garage at the side.

The House is in poor condition and in obvious need of maintenance in a number of respects.

There is a steep drop outside of the front door which is protected against only by a single handrail.

In the upstairs bedroom, mould was present around the single glazed metal framed windows.

In the cupboard adjacent to the bedroom, the wooden window frame was badly rotten and the lower pane of glass was missing.

On the stairs and in the downstairs bedroom, there were double glazed windows. The units themselves appeared in good condition but it appeared that they had not been fitted properly and around the edges these had allowed the ingress of rain water.

The bathroom window was stiff to close.

The ropes on both kitchen windows were broken. Both windows were stiff and hard to open and close.

All exterior windows (with the exception of the two double glazed windows) were in need of repainting.

The hot water tank is small and dated. It has a patch repair. There was no evidence of any leak.

There is evidence that there has been water ingress which has caused damage to the décor of the downstairs bedroom and the downstairs hall.

No smoke detectors were present.

Light fittings were damaged in the upstairs and downstairs halls and the kitchen.

The ceiling in the store is coming down and requires repair.

The lean to garage is in very poor condition. It has significant sections of rot and appears to rely for its structural stability upon concrete slabs laid against its side wall.

Reasons for the Decision

We found the Tenant to be entirely credible in her evidence and accepted what she told us as accurate in all material respects.

We accepted the evidence that there were no outstanding roof or guttering repairs.

We observed and accepted the Tenant's evidence regarding the problems with the front door.

We observed and accepted the poor condition of the windows and the exterior paintwork. Although we were unable to observe the whistling of draughts around the double glazed windows, we accepted the Tenant's evidence in this regard.

We observed and accepted that ceiling light fittings were damaged in the upstairs and downstairs halls, the bathroom and the kitchen.

We observed and accepted that the décor in the downstairs hall and downstairs bedroom had been damaged by water ingress as a result of the damaged roof.

We observed and accepted that the ceiling in the store is coming down and requires repair.

We observed and accepted that the lean to garage is in very poor condition. It has significant sections of rot and appears to rely for its structural stability upon concrete slabs laid against its side wall.

We accepted the Tenant's evidence as to the problems with quality and quantity of the water supply and we consider that it is the responsibility of the Landlord to ensure that a wholesome supply of water suitable for domestic purposes is available and that the Landlord's responsibility includes providing any consumables such as filter cartridges necessary to fulfil that responsibility.

We make no finding in respect of the damage to the upstairs bedroom stove because it is the property of the Tenant and its disrepair, however caused, is not an issue within our jurisdiction.

We find no breach of the repairing standard in respect of the tank and the repair thereof on the basis that there is no leak and no evidence of any material defect.

We make no finding as regards the steep drop at the front door of the House as this was not included in the Application.

We observed that the Tenant had ticked the box on the application form relating to the absence of measures for the detection of fire but that she has given the Landlord no notification of her complaint in this regard. Accordingly, we were unable to make a finding in this respect. It would be open to the Tenant to notify the Landlord of this matter and to raise a fresh application to the PRHP. The Landlord would be well advised to take immediate advice upon the Landlord's obligations in this regard and to act accordingly without delay.

The Lease

The Tenant maintains that the document governing her occupation of the House is the document dated 1 and 20 August 1985. The Landlord maintains that it is the document produced by the Landlord dated 8 September 1992. The Tenant has produced documents supporting her interpretation of the legal position. We make no finding in respect of this issue given that we are concerned with the repairing standard and that there is no dispute between the parties that the Tenant occupies the under a lease to which the repairing standard applies.

We noted that both the 1985 and the 1992 documents include the outbuildings.

The Repairing Standard

The Committee consider that the defects in relation to: the windows; the light fittings; the presence of mould; the damaged décor; the front door; the water supply; the store ceiling and the wooden garage constitute breaches of the repairing standard.

Repairing Standard Enforcement Order

Having decided to make a Repairing Standard Enforcement Order, the Committee considered the length of time which should be provided for compliance. The Committee elected to impose a period of three months which it considered to be reasonable having regard to the nature of the repairs required.

Given that exterior paint work is required to be undertaken over the winter period, it may be that the three month period provided will prove to be inadequate. The Landlord is reminded of the provisions of section 25 of the 2006 Act which it may choose in future to avail itself of.

Decision

The Committee, considering the terms of section 13(3) of the Act, determined that the Landlord had failed to comply with the duty imposed by section 14(1)(b) of the Act.

The Committee proceeded to make a Repairing Standard Enforcement Order as required by section 24(2) of the Act.

The decision of the Committee was unanimous.

Right of Appeal

Section 64 of the Act provides a right of appeal to a landlord or tenant aggrieved by a decision of a private rented housing committee. An appeal may be made to the Sheriff within 21 days of the Landlord or Tenant being informed of the decision.

Where such an appeal is made, the effect of the decision and 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.

J McHugh

John M McHugh
Chairperson

Date: 28 October 2013