



**REPAIRING STANDARD ENFORCEMENT ORDER**  
**Ordered by the Private Rented Housing Committee**

**RE: Property at Kennels Cottage, Drumoak, Banchory, Kincardineshire AB31 5EY being ALL and WHOLE the subjects known as and forming the Kennels Cottage at Drum Castle Estate, Drumoak, AB31 5EY being part of the lands and Estate of Drum, Schivas and others, in the Parishes of Drumoak and Peterculter, more particularly described in Disposition in favour of the National Trust for Scotland for Places Of Historical Interest or Natural Beauty dated 15 October and recorded in the Division of the General Register of Sasines for the County of Aberdeen on 17 November, both months of 1976.**

**(hereinafter referred to as "the House")**

**The Parties:**

**Matthew Wickham, Kennels Cottage, Drumoak, Banchory, Kincardineshire AB31 5EY (hereinafter referred to as "the Tenant")**

**The National Trust for Scotland, Hermiston Quay, Cultins Road, Edinburgh EH11 4DF (hereinafter referred to as "the Landlord")**

**PRHP REFERENCE: PRHP/RP/13/0050**

**NOTICE TO THE NATIONAL TRUST FOR SCOTLAND**

**WHEREAS in terms of their decision dated 16 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...*

*(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 remove and replace all areas of damaged render on the chimney stack.
- 2 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 handles properly affixed to the windows, 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.
- 3 To put the front door into a state of repair such that it is reasonably wind and watertight.
- 4 To put the kitchen into a reasonable state of repair, whether by repair or replacement, such that there remains no rotten wood, damaged kitchen units or holes likely to allow the entry of mice and to ensure that all work surfaces are undamaged and capable of being cleaned effectively.
- 5 To take steps to ensure that the presence of mice in the House is mitigated by identifying and sealing holes likely to prevent points of access and by employing appropriate professional pest control measures.

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 Sixteenth day of October Two Thousand and Thirteen in the presence of the undernoted witness:

# J McHugh

Chairperson

M O'Carroll

Witness

MICHAEL O'CARROLL

Witness Address

3 PONTON STREET  
EDINBURGH  
EH3 9QQ



**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 Kennels Cottage, Drumoak, Banchory, Kincardineshire AB31 5EY  
(hereinafter referred to as "the House")**

**Matthew Wickham, Kennels Cottage, Drumoak, Banchory, Kincardineshire AB31  
5EY (hereinafter referred to as "the Tenant")**

**The National Trust for Scotland, Hermiston Quay, Cultins Road, Edinburgh EH11  
4DF (hereinafter referred to as "the Landlord")**

**PRHP REFERENCE: PRHP/RP/13/0050**

**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 and the Landlord 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 2 June 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,...  
(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 Tenant complained of a number of defects in the House.

By letter of 23 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  
Michael Scott, Housing Member  
Angus Anderson, 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 26 September 2013, the Committee issued a Direction to the Landlord to the parties refusing an application by the Landlord to adjourn the inspection and hearing fixed for 1 October 2013.

The Committee inspected the House on 1 October 2013. The Tenant was present. The Landlord was represented by Lucy St Johnson, a Chartered Surveyor employed by it; Stephen Small, Solicitor and Secretary to the Landlord; Shirley Evans, Solicitor of Anderson Strathern and Mark Esslemont, Chartered Surveyor of Graham & Sibbald.

Following the inspection, the Committee held a hearing at the Town Hall, High Street, Banchory. The same parties were present as at the inspection. The Committee considered the written submissions and the evidence submitted by the parties and heard representations from the Tenant and on behalf of the Landlord. Ms Evans was the principal advocate for the Landlord at the hearing.

### **Submissions at the Hearing**

The Tenant and his wife live in the House.

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

The Tenant has been in occupation since 2003.

The Landlord sought to have the Committee receive a report prepared by Mr Esslemont which was dated 27 September 2013. The Tenant opposed the document being received or considered by the Committee on the basis that he had not had advance notice of it.

The Committee had regard to the potential prejudice to the Tenant but considered that the report ought to be considered as, while there was no satisfactory explanation for its lateness, its content was explained as being the main part of the submission for the Landlord and as such we accepted that having it in written form (when the Landlord would be entitled to give it in oral form) was helpful. It was also evident that the document made certain concessions as to the condition of the property. We allowed the Tenant an opportunity to read the document.

Ms Evans advised that the Landlord accepted Mr Esslemont's report as an accurate report on the condition of the House and submitted that the Committee should treat it as such.

Ms Evans advised that the Landlord would be prepared to give any undertakings regarding the House required by the Committee and including an undertaking not to re-let it until any repair issues had been addressed.

After reading the report, the Tenant indicated that he felt that his position had been vindicated. He had been upset that the Landlord had previously maintained that condensation issues within the House were attributable to his lifestyle whereas he had always been of the view that he had been careful in relation to his activities (such as avoiding drying clothes indoors) to avoid generating condensation. Although condensation had been an issue for some time, the Tenant advised that the Landlord had only fitted new extractor fans relatively recently. He felt that the Landlord was only now acknowledging for the first time issues which he had been raising over a period of years during the tenancy.

We considered the following specific complaints:

#### Leaking Roof

The Tenant complained of a leaking roof. He spoke of high winds having caused damage and of patch repairs having been undertaken by the Landlord's workmen. He associated problems of condensation and dampness within the property with water ingress from the roof.

Mr Esslemont's report at paragraph 2.02 stated the Landlord's view of the condition of the roof. It notes the need to replace ridge tiles over 2-3 years and an immediate need to address damaged render to the chimney stack which Mr Esslemont considers is providing a route for water ingress.

#### Front Door

The tenant complained of water ingress from the front door. This tended to be a seasonal problem. When it was raining in winter, water would often "flow in". The Tenant had prepared a video of this happening. Unfortunately technological problems had prevented the Committee from being able to view it. 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.

The Landlord's position was recorded in paragraph 2.07 of Mr Esslemont's report. That accepts faults with the door and that remedial works are required. The Landlord indicated at the hearing that it accepts that the door does not meet the repairing standard.

#### Windows & Exterior Paintwork

We initially approached these as separate complaints at the hearing but it quickly became apparent that the two issues were the same.

The Tenant complained about the condition of the windows. His concerns were that the exterior of the windows required repainting, there were cracked panes in the windows in the bathroom and the dining room and that the windows allowed draughts to enter. He complained that the windows were unsightly and allowed water ingress.

On questioning from the Committee, the Tenant advised that some windows opened and some did not. Handles had been removed and windows sealed up, he assumed, to reduce draughts. He had no actual complaint about these two issues.

He complained that the Landlord had refused to give attention to the windows on the grounds that the House was listed and that the windows could not be replaced. The Tenant had discovered that property is not actually listed. The Tenant advised that he had discovered that his home insurance would be void in the event of a claim because of the cracked glass and the condition of the windows which meant that they could not be secured. The Tenant indicated that he would like to see the windows replaced or secondary glazing installed.

The Landlord's position was as per paragraph 2.07 of Mr Esslemont's report. The Landlord would accept the findings of the Committee on the issue. The Landlord indicated at the hearing that it accepts that the broken panes constitute a breach of the repairing standard.

There was a general acceptance by the parties that the design of the metal windows was less than ideal and was likely to have contributed to condensation problems within the property.

#### Shower

The Tenant advised that there had been an "explosion" of some kind in a neighbouring house which had a similar shower. He was concerned that the same may happen in his house. The shower was in working order but old. He believed that either a new shower should be installed or that an RCD required to be installed. There had been some problems with water pressure but those seemed to be more general rather than specifically related to the shower.

The Landlord's position is that the shower works adequately. It referred to paragraph 3.01 of Mr Esslemont's report.

### Asbestos

The Tenant complained of the presence of asbestos in the cupboard above the front door which houses the electrical consumer unit and shower isolator switch. His only basis for thinking that asbestos was present was that he had been told that it was by an electrician sent by the Landlord to carry out work. That electrician had refused to carry out the works he had intended because of the asbestos which he said he believed to be present.

The Landlord's position is that asbestos may wrongly have been identified. It carries out a regular survey of its properties for asbestos and maintains a register. It does not believe that asbestos is present in this case.

### Kitchen

The Tenant complained of rotten wood in the kitchen around the sink and the worktop to the right of the sink as well as at the skirting boards. He regards it as a health hazard and believes that he has suffered a loss of use and enjoyment of his home because of the condition of the kitchen.

The Landlord's position is that the kitchen does not meet the repairing standard and requires to be replaced.

### Mice

The Tenant advised that mice enter the house during winter. He had heard mice again a couple of weeks before the hearing although he had not observed their presence more recently. He advised that a contractor, Presly Pest Control had been employed by the Landlord some five years ago but had not returned. They had placed bait boxes and that had seemed to reduce the problem that year. The Tenant wanted the Landlord to employ pest control measures such as employment of a contractor once again. The Tenant was uncertain of where the mice entered the property.

Mr Esslemont's report notes evidence of the presence of mice at paragraph 2.08. The Landlord indicated that it would be prepared to deal with the presence of mice within a reasonable time and had offered assistance to the Tenant. The Tenant advised that he had refused a recent offer (evidenced by a letter of 8 July 2013 lodged by the Landlord) to send a pest controller because he was about to be removed from the House and in his view, it was not the correct time of year for undertaking the work.

### Septic Tank

There had been a history of problems with the septic tank including blockages in the system. The Tenant had helped deal with these. He had been advised that there may be a blockage in a pipe underneath the house, possibly caused by tree roots. The Tenant reported no current problems other than that the tank could be smelly.

The Landlord's position was that it was not aware of any current problems with the septic tank but that if any were found, it would be prepared to deal with them.

## 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 entered into a Tenancy Agreement in respect of the House on 1 March 2003.

The Tenant took possession of the House from 1 March 2003 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 letter dated 17 June 2013.

The inspection on 1 October 2013 revealed:

The House is a single storey cottage of considerable age associated with the estate relating to the nearby Drum Castle. It has a more modern extension housing the entrance hall, bathroom, bedroom and living room. It also adjoins what are understood originally to have been kennels which are now disused.

In the bedroom, there were evidently problems relating to condensation. The Tenant displayed belongings upon which mould had grown. The Tenant complained of efflorescence although there was little evidence of same.

In the living room, the carpet had been taken up and a stove installed which the Tenant said he had done to combat condensation but to no avail. There was no evidence of current water ingress although the Tenant indicated where there was evidence of water ingress in the area beneath the chimney breast.

Metal framed single glazed windows were present throughout the property (except in the dining room where the rear facing window was wooden). There was evidence of condensation and mould growth around the windows. Window handles were broken off. There were cracks in the bathroom and front facing dining room windows.



In the kitchen, mice droppings were present in the cupboard under the sink. The floor of the unit under the sink was sagging leaving a gap and there were gaps around the pipe work which may have been the point of entry for mice. The worktops were badly worn. The sections of worktop had joins which were not smooth. Rotten wood was present around the sink area.

The render to the chimney stack was cracked.

The external paintwork on all window frames was flaking and in need of repainting. In the sole wooden window, the paint had flaked off leaving exposed wood.

There was no evidence of water ingress at the front door at the time of the inspection (when the weather was dry).

There was no evidence of asbestos in the cupboard housing the electrical consumer unit.

### **Reasons for the Decision**

In reaching our decision, we have had regard to the significant concessions made on behalf of the Landlord in relation to the House's compliance with the repairing standard and to the contents of Mr Esslemont's report.

The render to the chimney stack was cracked and in need of repair and appeared to be a source of water ingress. That is likely to be an aggravating factor in the condensation related issues in the House although the building design including the windows are also likely to be significant contributing factors.

Although we were unable to observe the ingress of water at the front door, we accepted the Tenant's evidence in this regard. The Landlord accepts problems with the front door.

We observed the poor condition of the windows and the paintwork.

There was no evidence that the shower was not to the repairing standard and the available evidence suggested that it worked safely and as intended.

There was no evidence of the presence of asbestos in the area complained of; even the Tenant had not himself observed it but had relied upon advice apparently given by the Landlord's electrical contractor.

The kitchen units were very old and in poor condition. The worktops were worn through in places; sections were not well joined together such that they would not present surfaces able to be cleaned or suitable for the safe preparation of food. Wooden sections around the sink area were rotten. The floor of the under sink unit was sagging.

There was evidence of the presence of mice and that there had been a failure by the Landlord to mitigate their presence by addressing the Tenant's complaints by attempting to prevent their entry.

There was no evidence of any current difficulty with the septic tank.

#### The Repairing Standard

The Committee consider that the defects in relation to: the chimney stack render; the windows; the condition of the front door; the condition of the kitchen; and the presence of mice 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.

On the basis of the evidence heard, it appeared that it may be the case that the Tenant may soon no longer be in occupation of the House and that a very full programme of refurbishment works may be carried out at the House before it is re-occupied. If that is the case, then 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: 16 October 2013