

Repairing Standard Enforcement Order

Ordered by the Private Rented Housing Committee

Case reference number : PRHP/G82/137/12

Re:- Property at Ballymenoch Cottage, Brooks Road, Cardross, Dunbartonshire, G82 5HD ("the property")

The Parties:-

Ms Isabel Crawford, residing at Ballymenoch Cottage, Brooks Road, Cardross, Dunbartonshire, G82 5HD ("the tenant")

and

Mr Archibald Scott Gray, Chartered Accountant, as judicial factor to the sequestrated estate of the late Ian McMurdo Thomson per his agent, Zolfo Cooper LLP, Cornerstone, 107 West Regent Street, Glasgow, G2 2BA ("the landlords")

Notice to Archibald Scott Gray, as judicial factor to the sequestrated estate of the late Ian McMurdo Thomson

Whereas in terms of the decision dated 27 November 2012 the Private Rented Housing Committee determined that the landlord had failed to comply with the duty imposed by Section 14(1)(b) of the Housing (Scotland) Act 2006 and in particular the landlord had failed to ensure that:-

- (a) the house is wind and watertight;
- (b) the structure and exterior of the house is in a reasonable state of repair; and
- (c) the house has a satisfactory provision for detecting fires and for giving warning in the event of fire or suspected fire.

The Private Rented Housing Committee now requires the landlord to carry out such work as is necessary for the purpose of ensuring that the house concerned meets the repairing standard and that any damage caused by the carrying out of the works in terms of the order is made good.

In particular the Private Rented Housing Committee requires the landlord to carry out the following works

- To thoroughly examine the property to identify the cause of the water ingress and damp penetration in the hallway and to carry out repairs to prevent further water ingress and to

eradicate the penetrating dampness in the hallway and to make the hallway wind and water tight.

- To thoroughly examine the property to identify the cause of rising/penetrating dampness within the living room of the property and to carry out works to prevent further rising/penetrating dampness and to make the walls of the property water tight to eradicate the dampness.
- To thoroughly examine the property to identify the cause of penetrating dampness within the kitchen room of the property and to carry out works to prevent further penetrating dampness and to make the walls of the property water tight to eradicate the dampness.
- To thoroughly examine the property to identify the cause of water ingress/penetrating dampness within the bedrooms of the property and to carry out works to prevent further water ingress/penetrating dampness and to make the ceilings and walls of the property water tight to eradicate the dampness.
- To carry out repairs to the gutters and downpipes to the property to place them in a reasonable state of repair and in proper working order.
- To carry out reinstatement works/repair of resultant damage, following eradication of damp/water penetration]
- To install within the property smoke alarms on both levels which require to be hard wired and inter-linked.

The Private Rented Housing Committee orders that the works specified in this Order must be carried out within twenty eight days of the date of this Order.

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. The appropriate respondent in such appeal proceedings is the other party to the proceedings and not the PRHP or the Committee which made the decision.

Where such an appeal is made the effect of the decision or 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 decision and the order are to be treated as having effect from the day on which the appeal is abandoned or so determined.

J Bauld

Signed.....

Date 27 November 2012

James Bauld, Chairperson

N Walker

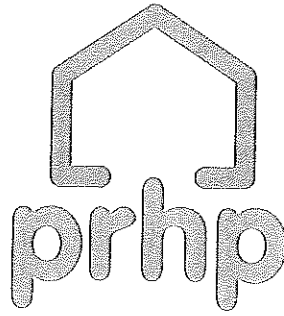
Signature of Witness.....

Date 27 November 2012

Name: NATALIE WALKER

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

SENIOR COURT ADMINISTRATOR



Determination by the 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

PRHP Ref: PRHP/G82/137/12

**Re:- Property at Ballymenoch Cottage, Brooks Road, Cardross, Dunbartonshire, G82 5HD ("the
property")**

Land Register title No: DMB5199

The Parties:-

**Ms Isabel Crawford, residing at Ballymenoch Cottage, Brooks Road, Cardross,
Dunbartonshire, G82 5HD
("the tenant")**

and

**Mr Archibald Scott Gray, Chartered Accountant, as judicial factor to the sequestrated estate of
the late Ian McMurdo Thomson per his agent, Zolfo Cooper LLP, Cornerstone, 107 West
Regent Street, Glasgow, G2 2BA
("the landlord")**

The Committee comprised:-

- Mr James Bauld - Chairman
Mr Kingsley Bruce - Surveyor member
Mr Tom Keenan - Housing member

Decision:-

The Committee unanimously decided that the landlord had failed to comply with the duties imposed by Section 14(1)(b) of the Housing (Scotland) Act 2006 ("the 2006 Act"). The Committee accordingly decided to make a Repairing Standard Enforcement Order (RSEO) as required by Section 24(2) of the 2006 Act.

Background

1. By application dated 23rd July 2012, the tenant applied to the Private Rented Housing Panel ("PRHP") for a determination that the landlord had failed to comply with the duties imposed by Section 14(1)(b) of the 2006 Act.
2. In the application made by the tenant, the tenant stated that she considered that the landlord had failed to comply with his duty to ensure that the house met the repairing standard and, in particular the landlord had failed to ensure that :-
 - a. the house was wind and water tight and in all other respects reasonably fit for human habitation
 - b. that the structure and exterior of the house (including drains, gutters and external pipes) were in a reasonable state of repair and in proper working order
 - c. that the installations in the house for the supply of water, gas and electricity and for space heating and for water heating were in a reasonable state of repair and in proper working order.
 - d. that the fixtures, fittings and appliances provided by the landlord under the tenancy were in a reasonable state of repair and in proper working order.
 - e. that any furnishings provided by the landlord under the tenancy were capable of being used safely for the purpose for which they were designed; and
 - f. that the house has satisfactory provision for detecting fires and for giving warning in the event of fire or suspected fire.
3. After sundry correspondence between the PRHP and the tenant, the President of the Private Rented Housing Panel intimated a decision to refer the application under Section 22(1) of the 2006 Act to a Private Rented Housing Committee. Intimation was given by letter dated 29th August 2012 to the parties.
4. By letter dated 3rd October 2012, the Private Rented Housing Committee served notice on both the landlord and the tenant that an inspection and hearing would take place on 24th October 2012 at 10 am.

5. The Committee attended at the property on the morning of 24th October 2012 and carried out an inspection. The tenant was present during the inspection and was assisted by her daughter Ms Mary Crawford. The landlord was neither present nor represented at the inspection.
6. Following the inspection of the property, the Committee held a hearing at the Benview Resource Centre in Dumbarton. At that hearing the tenant was present and was represented again by her daughter Ms Mary Crawford. The landlord was represented at the hearing by Mr Thomas Monteith, solicitor, Bird Semple, 21 Blythswood Square, Glasgow, G2 4EL.

Summary of Issues

7. The issues complained of by the tenant in her application before the Committee can be summarised as follows:-
 - Water ingress within the hall of the property.
 - Dampness within the living room, bathroom and kitchen of the property.
 - Dampness in the bedroom of the property.
 - Lack of repair to gutters and down pipes.
 - Lack of smoke alarms.

The Hearing

8. At the hearing, Mr Monteith, the solicitor for the landlord indicated that there was no dispute that there were difficulties with this property. He advised the Committee that the estate of the late Mr Thomson was insolvent and the judicial factor had been appointed to in-gather the estate to obtain the maximum amount for the creditors of the late Mr Thomson. He indicated that the winding up of this estate had been complex and had continued for nineteen years. He indicated to the Committee that there were a variety of different bequests in Mr Thomson's Will which also created legal complexities. He advised that the Court of Session would shortly be making a decision with regard to the relevant claims of the various beneficiaries. He advised that the estate has no cash and that the rental income achieved for the property occupied by Mrs Crawford is used simply to cover the costs of the judicial factor and none of these monies are used towards paying the upkeep of the property. He advised the Committee that he was aware that the repairing standard placed a liability on the landlord, however he indicated that the rent on this property had not been increased for nineteen years, that the estate had no cash to effect any repairs and that the judicial factor had taken no steps to remove the tenant on the basis that there was an understanding that the tenant would deal with any repairs. He indicated that if the committee decided that repairs were required, the judicial factor would take steps to apply to remove the tenant.
9. Mr Monteith was then questioned by the members of the Committee. He did not agree that the rental income should be used to deal with repairs to the property. He indicated it is the only income open to the estate and that all other assets have been liquidated. He indicated that an application to obtain permission to sell the property occupied by Mrs Crawford and the adjoining property occupied by a Mrs Reid was before the Court of Session. He indicated there were various difficulties with the judicial factor selling such property given the relevant terms of the late Mr Thomson's Will. He indicated that Mrs Reid, who occupies the adjoining property was entitled to a liferent of that property and was also entitled to the rental income

from the property occupied by Mrs Crawford. Mr Monteith indicated that no payments had ever been made to Mrs Reid of any of the rental income from the property occupied by Mrs Crawford. He again reiterated that it was his understanding that the rent for this property had never been increased on the basis that the factor had understood that the tenant would maintain it. He indicated that if that was not a correct understanding then the factor would have no option but to go to court to remove the tenant. He indicated that if the judicial factor had any cash it would first be used to pay the judicial factor's costs, thereafter to pay the creditors of Mr Thomson's estate and thereafter to the beneficiaries of the estate. He indicated that the judicial factor would need to then look at removing the tenant.

10. On further questioning Mr Monteith conceded that the property was not free from defects. His position was that the condition of the property was reflected in the rent and in his view if the tenant was not happy her solution was to leave the property.
11. The Committee then listened to Ms Crawford representing her mother, the tenant. She indicated that the rent had been increased substantially from £117 to approximately £300 in 1992 when Mr Thomson became the landlord. She also indicated that the judicial factor had refused to allow her mother to install a gas central heating system to the property even when that was being funded wholly by a Government scheme. She indicated that her mother and her late father had carried out various minor repairs to the property over the course of their occupation but that the repairs currently required were major works which could not be done by them. She indicated that the biggest problem within the property was the substantial water ingress within the entrance hall. She indicated that had started in December 2011. She indicated to the Committee that the wall and floor in the hall were now sodden and that the wall was black with mould and that there was fungus growing on the wall. She also indicated that there was ongoing dampness within the living room, that there was water ingress and dampness in the bedroom, that there was condensation in both the shower room and the kitchen and that the windows within the property were old and were not in good condition. She also indicated to the Committee that the gutters and down pipes externally were in poor condition and that there was no smoke alarm within the property fitted by the landlord.
12. The hearing was then concluded and the Committee thanked the parties for their attendance and indicated that a decision would be intimated to them in due course.

Findings of Fact

13. Having considered all the evidence the Committee finds the following facts to be established:-
 - a) The subjects of let comprise of a two storey end terraced cottage building in a rural location. The building is of stone construction and has a slate roof. The property comprises a living room on the ground floor to which access is obtained to a small kitchen and small shower room. Also on the ground floor is a small entrance hallway which provides access via stairs to the upper level which contains two bedrooms. The windows are wooden sash and case windows and are single glazed. The property is in a remote rural location and is approximately two miles outside Cardross which has transport and shopping facilities.
 - b) There is evidence of water ingress in the entrance hallway. The floor of the entrance hallway was wet. The wall which is the common wall to the adjoining property, was substantially affected by penetrating dampness. Fungal growth was clearly visible on the wall in various places. Photographic evidence was taken of same.
 - c) Evidence of penetrating damp was also found within the living room to the property, the kitchen to the property, the shower room to the property and to the bedrooms to the property.

- d) The external gutters and downpipe are in a poor condition. Plant growth is evident within some of the gutters.
- e) There is no central heating system within the property. Heating is provided to the property from a variety of mains powered electric heaters.
- f) The property extends over two storeys. There is no smoke alarm on the upstairs level and the smoke alarm on the ground floor is battery operated and had been installed by the tenant.

Reasons for Decision

- 14. The Committee considered the issues of disrepair set out above and concluded that the evidence from the tenant together with the evidence obtained during the inspection indicated that the property failed to meet the repairing standard. The Committee were satisfied that these failures constituted a clear breach of Section 13(1) of the 2006 Act. The Committee accordingly determined to make a RSEO.
- 15. The Committee noted that the hallway of the property was particularly badly affected by penetrating damp. The Committee were not able to determine the source of the penetrating dampness but strongly suspect that the source is the adjoining property. The Committee noted during its deliberations that Ms Crawford indicated that the tenant in the adjoining property had carried out a bathroom refurbishment in or around December 2011 which was approximately the time that the penetrating dampness within the hall became noticeable. The tenant has taken all possible steps to deal with the penetrating dampness but is unable to do so.
- 16. The Committee also noted that evidence of penetrating damp is apparent in various other places throughout the property. Again the Committee are not able to determine the cause of the penetrating dampness but again they suspect it may be caused by a failure of the damp proof course within the external walls of the property.
- 17. The Committee noted during the hearing that the representative of the landlord indicated that the landlord basically had no intention of carrying out any repairs to this property and indicated that should an RSEO be made that the landlord will simply take steps to evict the tenant. The Committee were concerned that the landlord's representative seemed to have no intention of complying with the repairing standard nor using the rental income being paid by the tenant to carry out any maintenance to the property.
- 18. The decision of the Committee was unanimous

Rights of Appeal

- 19. 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
- 20. The appropriate respondent in such appeal proceedings is the other Party to the proceedings and not the PRHP or the Committee which made the decision

Effect of Section 63

- 17. 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.

18. 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**

Date *27 November 2012*

Chairperson

Signature of Witness... **N Walker**

Date *27 November 2012*

Name: *NATALIE WALKER*

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

Designation: *SENIOR COURT ADMINISTRATOR.*