



Repairing Standard Enforcement Order

Ordered by the Private Rented Housing Committee

prhp Ref: prhp/RP/14/0172

Re : Property at Mill of Dess Farmhouse, Aboyne, Aberdeenshire AB34 5BE ('the Property')

Sasine Description: ALL and Whole the dwellinghouse and others known as Mill of Dess Farmhouse, Aboyne, Aberdeenshire AB34 5BE, being part of the subjects Registered in the Land Register of Scotland under Title Number ABN109695.

The Parties:-

Scott Mannion and Mrs Cecile Mannion, both residing at Mill of Dess Farmhouse, Aboyne, Aberdeenshire AB34 5BE ('the Tenant')

E W Pepper Limited, incorporated under the Companies Acts and having its Registered Office at Orchard House, Bury Lane Farm, A10 Melbourn, Royston, Hertfordshire SG8 6DF ('the Landlord')

NOTICE TO E W PEPPER LIMITED ("the Landlord")

Whereas in terms of their decision dated 10 October 2014, the Private Rented Housing 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:-

- (a) the installations in the Property 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;
- (b) 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 Private Rented Housing Committee now requires the landlord to carry out such work as is necessary for the purposes of ensuring that the house concerned 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 Private Rented Housing Committee requires the landlord:-

- (a) to carry out such works as are necessary to restore to proper working order or to replace the immersion water heater in the Property;
- (b) to investigate the cause of dampness in the flooring and walls of the shower room, including checking the plumbing in that room and in the adjoining laundry room and thereafter to carry out such repair works as are necessary to eliminate the dampness problem and to make good plasterwork and tiling and redecorate as necessary; and
- (c) to adjust the position of the stove in the Property by moving it forward to ensure that the oven doors can be opened fully without obstruction and to make good any damage to the adjacent wall surfaces caused by moving the stove.

The Private Rented Housing Committee order that the works specified in this Order must be carried out and completed within the period of 4 weeks from the date of service of this Notice.

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, 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 executed by George Barrie Clark, solicitor, Lasswade, chairperson of the Private Rented Housing Committee at Lasswade, on 10 October 2014, before this witness, Valerie Elizabeth Jane Clark, Droman House, 5 School Brae, Lasswade, Midlothian.

Valerie Clark __ witness

George Clark __ chairman



Statement of decision of the Private Rented Housing Committee under Section 24 (1) of the Housing (Scotland) Act 2006

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The Parties:-

Scott Mannion and Mrs Cecile Mannion, both residing at Mill of Dess Farmhouse, Aboyne, Aberdeenshire AB34 5BE ("the Tenant"); and

E W Pepper Limited, incorporated under the Companies Acts and having its registered office at Orchard House, Bury Lane Farm, A10 Melbourn, Royston, Hertfordshire SG8 6DF (represented by its agent Strutt & Parker LLP, St Nicholas House, 68 Station Road, Banchory AB31 5YJ) ("the Landlord").

Decision

The Committee, having made such enquiries as it saw 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 in relation to the house concerned, and taking account of the evidence led by both the Landlord's agent and the Tenant at the hearing, determined that the Landlord had failed to comply with the duty imposed by Section 14 (1)(b) of the Act.

Background

1. By application dated 10 July 2014, 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 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,
 - (b) any fixtures, fittings and appliances provided by the Landlord under the tenancy are in a reasonable state of repair and in proper working order,
3. By letter dated 25 July 2014 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. Following service of the Notice of Referral the Tenant made no written representations to the Committee other than the original application dated 10 July 2014, but copied to the Private Rented Housing Panel a number of e-mails exchanged with the Landlord's agent. The Landlord (by letter dated 14 August 2014), made written representations to the Committee.
6. The Private Rented Housing Committee inspected the Property on the morning of 10 October 2014. The Tenant and the Landlord's agent were present during the inspection. The Committee comprised George Clark (Chairman), Angus Anderson (surveyor member) and Michael Scott (housing member).
7. Following the inspection of the Property the Private Rented Housing Committee held a hearing at The Old Free Kirk Building, Aboyne Masonic Hall, Charlestown Road, Aboyne and heard from both the Tenant and the Landlord's agent, Strutt & Parker LLP, represented by Mr James Craig and Mr David Smart.
8. The Tenant submitted as follows:- a number of the complaints raised in the application had been dealt with by the Landlord's agent and did not require further investigation by the Committee. In particular, the issue of the faulty spot light had been resolved, carpets in the hall, staircase and two bedrooms had been replaced and the Tenant was agreeable to lifting the vinyl floorcovering in the shower room to allow the flooring to dry out. A skirting board in the bathroom had been replaced, new vinyl flooring had been fitted and the bathroom had been redecorated. The back gate had been fixed. The central heating boiler had been replaced, and the Rayburn had been removed and replaced by a Leisure Colourmaster stove oven, but one of the oven doors could not be opened fully, as it was prevented from doing so by the end panel of one of the floor units in the kitchen. In addition, there was no extractor fan to remove steam and cooking smells. The issues relating to "blown" double glazed panels in various windows throughout the house had not been resolved and the landlord had not erected a fence to separate the Property from the site of the proposed development of nearby agricultural and other outbuildings. The Tenant had never thought it safe to use the shower in the shower room, as there was evidence that it had leaked in the past and was not convinced it was not still leaking, so lifting the vinyl floorcovering and allowing the floor to dry out might not be sufficient. The Tenant requested a programme of window replacement works to which both parties could sign up. The application had been necessary because of the very long delays in having necessary repair works done. The Tenant accepted that the rent had not been paid since May 2014, but advised the Committee that the money was held in a separate account and would be paid over whenever an agreed programme of works, was completed.
9. The Landlord's agent submitted as follows:- the Landlord had received advice that the Rayburn had a design fault as a result of which the burner box would have to be replaced on a regular basis at considerable cost. The decision had, therefore, been taken to replace it with a stove which would still be in keeping with the character of the property. The intention was to move the new stove forward a little, to ensure that the oven doors opened fully without obstruction, to tidy up the space that would then be left behind the stove, probably with a ledge and a shelf above and to install a mechanical extractor unit, utilising the existing flue. Trapped steam would not be a problem when the stove was moved forward. The landlord had obtained a quote in relation to the failed double glazed window units and some panels might have to be replaced. This work would be carried out the next time that exterior maintenance works were being undertaken. It would be a phased programme. The new central heating boiler was a condenser boiler with the immersion water heater as a back-up. The Landlord's plumber had the required spare part for the immersion heater and it would be attended to in the next week. This work should have been carried out in early September, but, due to miscommunication, was still outstanding. The Landlord's agent admitted that some works had been outstanding for too long, but stressed that the Landlord was committed to meeting the repairing standard and had in the last year spent more on the Property than he was due to receive in rent, which had not, in any event, been paid since May 2014.

Summary of the issues

10. The issues to be determined were whether the Property met the repairing standard as laid down in Section 13 of the Act and whether the Landlord had complied with the duties imposed on landlords by Section 14(1)(b) of the Act.

Findings of fact

11. The Committee finds the following facts to be established:-
 - The tenancy is a Short Assured tenancy
 - A number of carpets in the Property appear to be nearly new. There is some evidence of staining in the other carpets in the Property.
 - The immersion water heater in the Property is not presently connected and functional.
 - There is a degree of misting in a number of double glazed window units, but the windows still admit light and it remains possible to see through all of the windows.
 - The oil-fired Rayburn Stove, which provided heating, hot water and cooking facilities has been removed and replaced by a new oil-fired central heating boiler (sited externally) and a range style cooker. One of the oven doors in the replacement cooker in the Property cannot be fully opened, due to the position of the adjacent kitchen units.
 - There is no extractor fan fitted to remove cooking smells or steam from the stove. There is evidence that a flue was in place and attached to the Rayburn which has now been removed, but it would not have provided ventilation to the hob, its primary function being to remove fumes from the Rayburn. The replacement stove is electrically powered.
 - There is evidence of moisture in the structure of the floor of the ground floor shower room and in the area behind the wall tiles of the shower unit, which forms a party wall with the adjoining utility room. The moisture in the floor may be trapped residual moisture, unable to evaporate as the floor is covered with vinyl and the floor may dry out if the vinyl is lifted for a period. The Committee was, however, unable to identify the original cause of the moisture in the floor and walls and, as the Tenant, in evidence, advised the Committee that the shower had not been used since the commencement of the lease, cannot determine whether the problem which gave rise to the moisture has been resolved or is ongoing.
 - There is no fence to delineate the Property boundary at the front garden and driveway area, but this is not a matter on which the Private Rented Housing Panel would be entitled to make a Repairing Standard Enforcement Order.

Reasons for the decision

12. The Committee found evidence of staining on a number of the carpets in the Property which have not recently been replaced by the Landlord, but determined that the staining was not sufficient in extent to render them unsafe to use and justify the making of a Repairing Standard Enforcement Order. The Tenant had confirmed that the "worst" of the carpets had been replaced by the Landlord following the Tenant's complaints.
13. The parties were agreed that the immersion water heater in the Property was not connected and functioning at the time of the inspection and the Landlord's agent confirmed that the new boiler was the main provider of hot water to the Property, but that the immersion heater was a back-up system for the provision of hot water. As it forms part of the installation in the Property for heating water, the Committee determined that it was not in a reasonable state of repair and in proper working order, so did not meet the Repairing Standard.

14. Although there was misting to a number of the glazed panels, the windows could be opened and closed, admitted light and allowed a view of the outside; on balance, the Committee took the view that they met the Repairing Standard.
15. As one of the oven doors in the stove cannot be fully opened, so cannot be safely used, the view of the Committee was that it was not in proper working order and did not, therefore, meet the Repairing Standard.
16. The Committee was not able to make a Repairing Standard Enforcement Order in respect of the absence of an extractor vent in the cooking area of the kitchen, as the purpose of the previous vent had been to remove fumes from the stove of the oil-fired Rayburn and the installation of an extractor fan would constitute an improvement to the Property rather than a replacement of an installation that was faulty.
17. The Committee was unable to determine whether the moisture detected in the shower room was residual, following on from a problem which had been rectified or whether the problem which had caused it was ongoing. The Committee determined, therefore, that cause of the moisture should be investigated and any recommended remedial work carried out.

Decision

18. The Committee accordingly determined that the Landlord had failed to comply with the duty imposed by Section 14 (1)(b) of the Act.
19. The Committee proceeded to make a Repairing Standard Enforcement Order as required by section 24(1).
20. The decision of the Committee was unanimous.

Right of Appeal

21. 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

22. 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** Date..... 10 October 2014

Chairperson