



Repairing Standard Enforcement Order

Ordered by the Private Rented Housing Committee

prhp Ref: PRHP/RP/14/0182

Re : Property at 16 Arabella, Nigg Station, Tain, IV19 1QH (Title Number ROS1265) ("the Property")

The Parties:-

Enrico Butzke, residing at 16 Arabella, Nigg Station, Tain, IV19 1QH ("the tenant"),

and

William McGillivray, Glastullich Farm, Nigg Station, Tain, IV19 1NB ("the landlord")

NOTICE TO William McGillivray, Glastullich Farm, Nigg Station, Tain, IV19 1NB ("the landlord")

Whereas in terms of their decision dated 4 November 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 house is wind and water tight and in all other respects, reasonably fit for human habitation.
- (b) The furnishings provided by the landlord under the tenancy are capable of being used safely for the purpose for which they are designed.
- (c) The installations in the house for the supply of electricity are in a reasonable state of repair and in proper working order
- (d) The 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 overhaul the electrical installation and ensure that the electrical installation is earthed, then to obtain and exhibit an updated and satisfactory domestic electrical installation condition report from a registered NICEIC contractor
- (b) To repair or replace the windows throughout the property to render them wind and watertight, & in a reasonable state of repair.
- (c) To replace the missing floorboard in bedroom 2 on the first floor of the property.
- (d) To repair, refit or replace the damaged & defective bath panel.
- (e) To repair, refit or replace the mixer tap on the bath.
- (f) To replace the front door of the property with a door of suitable quality & to fit a functioning weather seal to make the house wind and watertight.
- (g) To repair the rear door surround and to remove the old weather seal from that door and replace it with a new and working weather seal.
- (h) To relocate the central heating pump to a safe dry place within the property.

The Private Rented Housing Committee order that the works specified in part (a) this Order must be carried out and completed within 21 days from the date of service of this Notice.

The Private Rented Housing Committee order that the remaining works specified in this Order must be carried out and completed within the period of six 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 type written on this and the preceding page are executed by Paul Doyle, solicitor, 24 Haddington Place, Edinburgh, chairperson of the Private Rented Housing Committee, at Edinburgh on 6th November 2014 before Kirsten Boettcher, secretary, 24 Haddington Place, Edinburgh

K Boettcher witness

Paul Doyle chairman



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

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Re : Property at 16 Arabella, Nigg Station, Tain, IV19 1QH ("the Property")

The Parties:-

Enrico Butzke, residing at 16 Arabella, Nigg Station, Tain, IV19 1QH ("the tenant"),

and

William McGillivray, Glastullich Farm, Nigg Station, Tain, IV19 1NB ("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) in relation to the house concerned, and taking account of the evidence led by both the Landlord and the Tenants at the hearing, determined that the Landlord has failed to comply with the duty imposed by Section 14 (1)(b) of the Act.

Background

- 1 By application dated 1 August 2014, the tenant applied to the Private Rented Housing Panel for a determination of whether the landlord has failed to comply with the duties imposed by Section 14(1)(b) of the Housing (Scotland) Act 2006.
- 2 The application by the tenant stated that the tenant considered that the landlord 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 that:
 - (a) The house is wind and watertight, and in all other respects, reasonably fit for human habitation,
 - (b) The structure and exterior of the house is in a reasonable state of repair and in proper working order,
 - (c) The installations in the house for the supply of space heating and heating water are in a reasonable state of repair and in proper working order,
 - (d) The fixtures, fittings and appliances provided by the landlord are in a reasonable state of repair and in proper working order,
 - (e) The house has satisfactory provision for detecting fires and for giving warning in the event of fire or suspected fire
- 3 By letter dated 21 August 2014, 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. The Committee members were:

Paul Doyle (Chairperson)
Mark Andrew (Surveyor Member)
Michael Scott (Housing Member)

- 4 The Private Rented Housing Committee served notice of referral under and in terms of Schedule 2 Paragraph 1 of the 2006 Act on both the landlord and the tenant.
- 5 Following service of the notice of referral, the tenant made further written representations dated 5 September 2014. The landlord made further written representations dated 9 September 2014.
- 6 The Private Rented Housing Committee inspected the property during the morning of 20 October 2014. Both the tenant and the landlord were present throughout the inspection.
- 7 Following inspection of the property, the Private Rented Housing Committee held a hearing at West End Community Centre, Firhill, Alness, IV17 0RS at 11.30 am. Both the landlord and the tenant were present and both the landlord and the tenant provided oral evidence to the Committee. The tenant provided evidence with the assistance of an interpreter provided by the Private Rented Housing Panel. The tenant participated fully in the hearing, answering all questions without hesitation. The Committee are satisfied that there were no difficulties with linguistic interpretation or comprehension.
- 8 The tenant submitted that the property has been neglected by the landlord and that there are 33 defects in the property as set out in the "*schedule of deficiencies*" produced by the tenant. It is the tenant's position that he has reported each of the 33 problems set out in the schedule of deficiencies to the landlord and that the landlord has either refused or delayed to attend to any of the necessary repairs. As a result, it is the tenant's position that the house fails to meet the repairing standard.
- 9 The landlord's position is that when he let the property to the tenant, the property & the installations and the fixtures and fittings contained in the property were all in good working order, and any defects were created by the tenant, who (according to the landlord) has neglected the property whilst refusing to pay rent. It is the landlord's position that there is no longer a good relationship between the landlord and the tenant and that the tenant has been deliberately obstructive, so that the landlord has not been in a position to either inspect the property or to carry out repairs.

Summary of Issues

- 10 The issues to be determined are whether the property meets the repairing standard and whether:
 - (a) The house is wind and watertight, and reasonably fit for human habitation in terms of Section 13(1)(a) of the 2006 Act.
 - (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 in terms of Section 13(1)(b) of the 2006 Act.
 - (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 in terms of Section 13(1)(c) of the 2006 Act.
- (d) The fixtures, fittings and appliances provided by the landlord under the tenancy are in a reasonable state of repair and in proper working order in terms of Section 13(1)(d) of the 2006 Act, and
 - (e) The property has satisfactory provision for detecting fires and for giving warning in the event of fire or suspected fire in terms of Section 13(1)(f) of the 2006 Act.

Findings in Fact

11 The Committee finds the following facts to be established:

(a) On 7 September 2009, the landlord agreed to lease to the tenant the property at 16 Arabella, Nigg Station, Tain, IV19 1QH. A lease was entered into between the landlord and the tenant. That lease was renewed on 15 November 2011. The lease entered into on 15 November 2011 records that the tenant's partner, Birgit Schwarz, is jointly a tenant with the applicant. The lease entered into on 15 November 2011 created a short assured tenancy (in terms of Section 32 of the Housing (Scotland) Act 1988). The landlord's obligations contained in that lease are consistent with the landlord's duty to repair and maintain a property in terms of Sections 13 and 14 of the 2006 Act.

(b) The property forms a detached dwelling-house with gardens to the front, side and rear. The front door of the property opens onto a lean-to porch, providing access to a central hall on the ground floor. The property has two storeys. The ground floor has a dining room, living room and kitchen. On the first floor, there are three bedrooms and a bathroom.

(c) The property benefits from double glazed windows throughout. The double glazed window units are old and tired, and are approaching the end of their useful life. The double glazed units in the kitchen and dining room on the ground floor have failed. The outside glazed unit in the kitchen (above the sink) is cracked. The outside large window pane in the living room is cracked. The seals on the double glazed units in the entrance porch, the kitchen, the dining room, the living room, the hall, the bathroom and the three bedrooms have all failed. The rubber seals to the opening sections of all of the windows are old and worn and in some cases have perished and consequently allow draughts to enter. The double glazed window units throughout the property require to be replaced.

(d) There is a wooden entrance door to the front of the property. The door is old and worn by weather. The panels which connect together to form the door have become loose and are separating. There are holes in the lower part of the door, through which a significant draught enters the property. The door is old and past its useful life; it needs to be replaced.

(e) To the rear of the property, there is a door which provides access from the exterior of the property to the kitchen. The frame around the door has been damaged. The wooden frame needs to be repaired. There is a weather seal attached to the frame around the door. The weather seal has perished and parts of the weather seal have separated and are no longer there. The weather seal around the door needs to be replaced.

(f) In the past, there has been mould on the walls in the kitchen, the larder (within the kitchen), two of the bedrooms and the bathroom. At the date of inspection, committee members could see that there had been previous mould staining on the inside face of some exterior walls. Damp meter readings were taken throughout the property. The damp meter readings indicated that this property is not affected by either rising or penetrating damp. The mould staining seen throughout the property is most likely to have been caused by lack of heating and poor ventilation, causing condensation. Condensation can be eradicated if the property is properly heated and ventilated, and if items of furniture are moved away from the inside faces of exterior walls to allow the condensation moisture to leave the property.

(g) The property benefits from oil-fired central heating. The central heating pump is immediately beneath the floorboards in the central hall of the property. The pump sits on the wood supporting the floor and on the ground itself. In the past, water has entered the subfloor area. The pump is driven by electricity. Any vibration from the pump is felt and heard at ground floor level. The central heating pump needs to be relocated to a more suitable place to avoid the impact of flooding or rising ground water levels and to remove vibration.

(h) The kitchen benefits from vinyl flooring. The remaining floors throughout this property are covered in carpet. The carpets are not new. Some of them are dirty.

(i) Access to the first floor of this property is gained by a staircase leading from the central hallway to the landing on the first floor. Access to each of the rooms on the first floor is gained from that landing.

(j) The bathroom (on the first floor) has a three piece sanitary suite. The bath panel is broken. There is a hole in the bath panel. The bath benefits from a mixer tap unit, but the mixer tap unit does not work properly. A replacement mixer tap unit is required.

(k) There are three bedrooms on the first floor of the property. The door to bedroom number 1 is immediately opposite the top of the stairs. Bedroom number 2 is to the right of bedroom number 1 and bedroom number 3 is to the right of bedroom number 2 and to the right of the stairs. A floorboard at the entrance to bedroom number two is missing.

(l) The property benefits from an electricity supply with a 13 amp circuit. With the landlord's permission, the tenant replaced the fuse board in or about June 2013. The fuse board benefits from circuit breakers. In June 2013, an electrical installation condition report was carried out. A copy of that report is attached to the appellant's application to the Private Rented Housing Panel. The electrical installation in the property has not been earthed. The property is occupied by the tenant, his partner and their two young children. The condition of the electrical installation in this property creates a significant risk to the occupants of the property.

(m) The interior walls to the upstairs of the property are made of asbestos. Asbestos is a building material which was used until the 1980s but is now prohibited. It is viewed to be safe as long as it is maintained in good condition, but if it is damaged, it can produce tiny dust particles which, if inhaled, can cause serious respiratory illness. It is classified as a hazard under the Housing Health and Safety Rating System. Asbestos material which is in good condition and free from damage does not pose any health risks. The risk is only created if the asbestos is damaged and fibres of asbestos dust are released into the air. There is no sign of cracking, chipping or fraying of the asbestos within this property, but the tenant must

remember not to scrape the asbestos surfaces, nor drill holes in the asbestos, nor compromise the integrity of the asbestos sheeting.

(n) The floorboards throughout the property were dry when they were inspected by the committee on 20 October 2014. The central heating system was working and the radiators were warm throughout the inspection on 20 October 2014.

(o) The committee viewed this property on a bright, clear, dry, autumn morning during daylight hours. There were no signs of overflowing drains nor of water ingress throughout the property.

Reasons for Decision

12 (a) Inspection of this property took place at 10.30am on 20 October 2014 on a clear, sunny, dry autumn morning. Both the landlord and the tenant were present throughout the inspection. Both the landlord and the tenant were accompanied by their partners. The tenant welcomed committee members into the property at the rear door of the property which led into the kitchen. Before the inspection commenced, committee members had a chance to consider the documentary evidence produced by both the landlord and the tenant. The tenant has produced a "*schedule of deficiencies*" which lists 33 complaints. The surveyor member had prepared a "*schedule of reported failures*", a copy of which is annexed to this decision. The surveyor member handed a copy of his "*schedule of reported failures*" to both the landlord and the tenant, so that the parties would have a clear focus on the items to be inspected.

(b) Committee members inspected the rear door providing access from the exterior to the kitchen. There is nothing wrong with the door itself, but committee members could see that the wooden framed surround of the door has a splintered section which requires repair. Attached to the timber surround, there is a weather seal which is old and worn. Parts of the weather seal have broken off and there are signs of perishing on the weather seal. Although the door opens and closes easily and the door fulfils its function, it is clear that without a properly functioning weather seal and with a splintering wooden surround, the rear door is a source of draughts and is not therefore both wind and water tight.

(c) Committee members inspected the front door of the property which leads onto a lean to porch. It was obvious that there were holes in the front door. The individual wooden panels which made up the door are separating. There are gaps in the joints between the wooden panels. It is quite clear that wind and water pass through the gaps in the front door. Neither the front door nor the rear door to this property are wind and water tight and because of the failures in the front and rear doors, the property is not wind and water tight so cannot comply with the requirements of Section 13(1)(a) of the 2006 Act.

(d) Committee members inspected each room of the property. All of the rooms have a window to the exterior (including the bathroom). The property has double glazed window units throughout. The double glazed window units are old. Two of the exterior window panes (the kitchen to the side of the property above the sink and the living room to the front of the property) are cracked. The rubber seals to the opening sections of all of the windows are old and worn and in some cases have perished and consequently allow draughts to enter. There were signs of condensation staining on every window unit. Committee members could feel draughts passing through each of the window units. About half of the surface wall area of the lean to porch on the ground floor of the property (adjacent to the front door) is made up of double glazed

units. The seals on those double glazed units are compromised and draughts whistle through each of the windows throughout the property. The double glazed window units are old and beyond their useful life. They need to be repaired or replaced (throughout the house).

(e) The tenant complains that there is mould "*everywhere*" in the kitchen, that two of the bedrooms are affected by mould and the larder off the kitchen is affected by mould. Committee members could see signs of mould staining which had been cleaned off. The surveyor member took damp meter readings throughout the property. The readings were within the normal range and there was no sign of either rising or penetrating damp. The damp meter readings and the observations of the committee lead the committee to the conclusion that there is no evidence of either rising or penetrating damp affecting this property. On the balance of probabilities and placing reliance on the levels of the damp meter readings taken by the surveyor member as well as the nature and extent of mould staining on the interior face of the exterior walls, it is most likely that the staining has been caused by condensation.

(f) Condensation damp is not a sign of a defect in a property; it is caused by the use of the property. Condensation damp and the associated mould can be remedied by the tenant's actions. The main factors which cause condensation in a property are an excess of moisture produced in a property which does not have enough ventilation and has cold surfaces when the outside temperature is low. The problems which have been caused can be remedied by careful ventilation of the property to remove moist air and ensure a through flow of (warm) dry air.

(g) The tenant complains that the drains are overflowing, that the sub-floor floods, that the kitchen floor surface is regularly flooded by drain overflow and that the central heating pump which is located below a floorboard on the ground floor cuts out because of water ingress. On the date of inspection, committee members noted that all floorboards were dry. There was no sign of overflowing drains and there was no obvious historic water staining. Both the surveyor and the housing member of the committee lifted floorboards and inspected the central heating pump, which appeared to be in working order and was not compromised by water. There was no water in the sub-floor area at the time of inspection. But the committee accepts the tenant's unchallenged evidence that the sub-floor area floods from time to time (depending on the weather). The central heating pump is driven by electricity. The mixture of water and electricity is unsafe. The committee conclude that the central heating pump is an installation for space heating which is not in proper working order because it's functionality is likely to be compromised when the weather causes water to enter the sub-floor area.

(h) The tenant complains that the heating system "*...has caused problems throughout*". The tenant complains that the heating has an intermittent fault and uses a large amount of fuel. Committee members noted that, at the time of inspection, the central heating was working, the pump was functioning and the radiators were warm. There was no reliable evidence from which the committee could conclude that there is a defect with the central heating system.

(i) The three bedrooms and the bathroom in this property are on the first floor. Committee members went up the stairs to the first floor. On entering the second bedroom, committee members noticed that a floorboard is missing. A piece of carpet has been placed over the gap where the floorboard should be. Committee members were accompanied by an interpreter who was there to assist the tenant. The interpreter stumbled and nearly fell when her foot was caught in the hole covered by a carpet in that bedroom.

(j) The tenant complains that the carpets and floor coverings throughout the property are "*rotten, edges defective and stink of urine*". Committee members have seen cleaner floor coverings, but the floor coverings are properly placed on the floor. Committee members did not see sign of defective edges nor of rot. Committee members could not detect any smell from the floor coverings.

(k) Committee members inspected the bathroom. The bathroom contains a three piece sanitary suite. The tenant complains about the quality of the bath. The committee members' inspection disclosed that there was nothing actually wrong with the bath; however the bath panel has a hole in it. The tenant complains that he was promised a shower and there is no shower. The bath has mixer taps. The purpose of mixer taps is to regulate the temperature of water by providing a unified supply from both the hot and the cold water sources. Because of the defect in the mixer tap, it will only provide either hot or cold water, not a mixture of temperatures. Committee members draw the conclusion that the mixer tap unit is defective and needs to be replaced.

(l) The tenant complains that the kitchen cupboard unit which houses the sink is defective. Committee members inspected the interior of the under-sink cupboard in the kitchen and could see that the back of the cupboard was broken. However, the cupboard unit is neither unstable nor unsteady. The broken back of the cupboard is concealed from view. The broken back of the under sink cupboard is no more than a cosmetic defect. It does not affect the usability of the cupboard and so does not engage the repairing standard.

(m) Committee members could see that the interior walls of the bedrooms in the upstairs of the property are made of asbestos. The asbestos has been painted. The integrity of the asbestos has not been compromised. It is within committee members' knowledge that it is only if asbestos fibres or dust are in the atmosphere that a risk is created. There is no evidence that the presence of the asbestos in this property presents a risk. Both the landlord and tenant are on notice that the interior of the bedrooms contains a potentially hazardous substance which must not be disturbed.

(n) We consider carefully the terms of Section 13(1)(a) of the 2006 Act. We have to determine whether or not the house is reasonably fit for human habitation. The presence of asbestos in the bedrooms of young children causes committee members concern, however, there is no apparent defect in the asbestos. S.13(1)(a) would be engaged if the asbestos sheeting present in the bedrooms was disturbed. Committee members come to the conclusion that the asbestos does not render the property unfit for human habitation, however the tenant and the landlord must be aware that to drill, chip, scrape or scratch the asbestos would render the property unfit for human habitation and would require the safe removal of all the asbestos within the property.

(o) Committee members were shown the fuse box and the circuit breakers in this property. During the inspection, the tenant insisted that the property is not earthed. The landlord told us that the condition of the electrical installation was out with his knowledge.

(p) Committee members inspected the exterior of the property and could not see evidence of drainage overflow. Committee members noted that the gate providing access to the front garden from the side of the house is loose and is secured by a wire, rather than working hinges.

(q) A hearing took place (after the inspection) at 11.30am within West End Community Centre, Firhill, Ainess. Both the landlord and the tenant were present at the hearing. The tenant was assisted by a German interpreter provided by the Private Rented Housing Panel. Both the landlord and the tenant answered questions from committee members. The committee then reserved its determinations.

(r) The tenant produces a domestic electrical installation condition report dated June 2013 which confirms the tenant's assertion that the electrical installation in this property is not earthed. Committee members are concerned that the presence of an unearthed electrical installation creates a risk to the life of the occupants of the property. The committee therefore find that this property is not reasonably fit for human habitation because the electrical installation is unsafe. The committee make a repairing standard enforcement order, requiring sufficient works to be carried out to the electrical installation to ensure that they are both earthed and rendered safe within seven days. The committee finds that the supply of electricity is not in a reasonable state of repair and is not in proper working order.

(s) The committee saw that there are defects in the doors and windows to the property. The committee therefore draws the conclusion that the property is neither wind nor water tight in terms of Section 13(1)(a) of the 2006 Act.

(t) The committee saw a poorly concealed hole in the floor in the second bedroom of the property where there is a floorboard missing and that in the bathroom, the mixer tap is defective and the bath panel is broken. The committee therefore come to the conclusion that the fixtures, fittings and appliances provided by the landlord are not in a reasonable state of repair, nor are they in proper working order in terms of Section 13(1)(d) of the 2006 Act.

(u) In his application form, the tenant complained that there is not a satisfactory provision for detecting fires and for giving warning in the event of fire or suspected fire. Committee members noted that there were battery operated smoke alarms in this property. This tenancy has existed since September 2009. The committee make a repairing standard enforcement order requiring (*inter alia*) an overhaul of the electrical installation in this property. The landlord will want to take the opportunity to ensure that a hardwired smoke detection system is inserted in the property.

Right of Appeal

13. 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

14. 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.

Paul Doyle

Signec

Chairperson →

Date

4/11/2014