



Repairing Standard Enforcement Order

Ordered by the Private Rented Housing Committee

prhp Ref: PRHP/RP/14/0210

Re : Property at Brackendale, Kingswells, Aberdeen, AB15 8QQ ("the Property")

Sasine Description: ALL and WHOLE those subjects known as and forming Brackendale, Kingswells by Aberdeen, AB15 8QQ being the subjects described in and disposed by a Disposition by George Richard Simpson Junior, Farmer, to Peter Alexander Simpson and Mary Graham Simpson recorded in the Division of the General Register of Sasines for the County of Aberdeen on 28 June 1978.

The Parties:-

Mrs Catherine Johnston Clark Le Huray residing at Kisumu, Crudie, Turriff, Mr Daniel Breslin, residing at 10 Grange Gardens, Peterhead and Mrs Carol Cran residing at 6 Turnberry Crescent, Bridge of Don, Aberdeen, AB22 8PD and Mr James Cruickshank residing at 22 Belmuir Gardens, Dyce, Aberdeen, AB21 7LS ("the Landlords")

Sarah Pinkerton, formerly residing at Brackendale, Kingswells, Aberdeen, AB15 8QQ ("the Tenant")

NOTICE TO

**Mrs Catherine Johnston Clark Le Huray, Daniel Breslin, Mrs Carol Cran
and Mr James Cruickshank ("the Landlords")**

Whereas in terms of their decision dated 5 January 2015, 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 ("The Act") and in particular that the landlord has failed to ensure that the property is:-

- (a) The structure of and exterior of the Property (including drains, gutters and external pipes) 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 landlords:-

- (a) To carry out such works of repair or replacement to the garage annexed to the Property to ensure that it is properly wind and water tight, capable of being used properly and generally compliant with the repairing standard.

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

Please note that in terms of section 28(1) of the Act, a landlord who, without reasonable excuse, fails to comply with a RSEO commits an offence liable on summary conviction to a fine not exceeding level 3 on the standard scale. A landlord (and that includes any landlord's successor in title) also commits an offence if he or she enters into a tenancy or occupancy

arrangement in relation to a house at any time during which a RSEO has effect in relation to the house. This is in terms of Section 28(5) of the Act.

In witness whereof these presents type written on this and the preceding page are executed by Ewan Kenneth Miller, Solicitor, Whitehall House, 33 Yeaman Shore, Dundee, DD1 4BJ, Chairperson of the Private Rented Housing Committee at Dundee on 5 January 2015 before this witness:-

Ewan Miller

Chairman

— witness

Lindsay Johnston
Secretary
Thorntons Law LLP
Whitehall House
33 Yeaman Shore
Dundee
DD1 4BJ



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

prhp Ref: PRHP/RP/14/0210

Re : Property at Brackendale, Kingswells, Aberdeen, AB15 8QQ ("the Property")

The Parties:-

Sarah Pinkerton, formerly residing at Brackendale, Kingswells, Aberdeen, AB15 8QQ ("the Tenant")

Mrs Catherine Johnston Clark Le Huray residing at Kisumu, Crudie, Turriff, Mr Daniel Breslin, 10 Grange Gardens, Peterhead, Mrs Carol Cran residing at 6 Turnberry Crescent, Bridge of Don, Aberdeen, AB22 8PD and Mr James Cruickshank residing at 22 Belmuir Gardens, Dyce, Aberdeen, AB21 7LS ("the Landlords")

Decision

The Committee, having made such enquiries as it saw fit for the purposes of determining whether the Landlords has complied with the duty imposed by Section 14 (1)(b) in relation to the house concerned, and taking account of the evidence led at the hearing, determined that the Landlords had failed to comply with the duty imposed by Section 14 (1)(b) of the Act.

Background

1. By application dated 2 September 2014 the Tenant applied to the Private Rented Housing Panel for a determination of whether the Landlords 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 Landlords had failed to comply with his duty to ensure that the house meets the repairing standard and in particular that the Landlords had failed to ensure that:-
 - (a) The Property is wind and watertight and in all other respects reasonably fit for human habitation;
 - (b) The structure of and exterior of the Property (including drains, gutters and external pipes) are in a reasonable state of repair and in proper working order.
3. By letter dated 14 October 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 Landlords and the Tenant.
5. Following service of the Notice of Referral the Tenant by way of documentation received on 27 October 2014 made further written representations to the Committee. The Landlords solicitor made written representations to the Committee received on 24 and 28 October 2014.
6. The Private Rented Housing Committee (comprising Mr E K Miller, Chairman and legal member, Mr A Anderson, surveyor member and Mrs L Robertson, housing member)

inspected the Property on the morning of 9 December 2014. The Tenant was not present, the tenancy having been terminated on 4 December 2014. Mrs Le Huray, one of the Landlords was present and represented the Landlords.

7. Following the inspection of the Property the Private Rented Housing Committee held a hearing at the Credo Centre, 14/20 John Street, Aberdeen. Mrs Le Huray of the Landlords was present and represented the Landlords. The Tenant was neither present nor represented.
8. The Tenant had submitted that the garage was leaking and needed to be repaired. The Tenant submitted that as a result of the roof leaking items belonging to her that had been stored in the garage had been damaged. The Committee noted that in the subsequent correspondence provided to the Committee the Tenant had listed additional items that she claimed required to be repaired within the Property. However the Committee was satisfied that the only competent part of the submission that had been properly notified was as set out in the application form and that related to the repair of the garage.
9. Mrs Le Huray of the Landlords submitted that they accepted that the roof was leaking within the garage and that they needed to carry out repair works. Mrs Le Huray confirmed that she and her family had arranged for the main exterior wall of the garage to be demolished and rebuilt along with a new roof. Contractors had been appointed to do this and she was expecting the works to be complete within the next couple of months. The Landlords were disappointed that matters had fallen into dispute with the Tenant. Whilst the Landlords did not dispute that the roof in the garage was leaking, it only applied to a certain part of the garage. The Tenant could easily have placed their belongings in a separate area within the garage where they would not have been damaged.

Summary of the issues

10. The issue to be determined whether the garage was properly wind and water tight and met the repairing standard.

Findings of fact

11. The Committee finds the following facts to be established:-
 - The garage was let with the house and therefore falls within the requirements of the repairing standard.
 - The garage was not properly wind and water tight and required to be repaired/replaced.

Reasons for the decision

12. The Committee based its Decision primarily on the evidence obtained during the course of the inspection.

The Property comprised a 1960's two bedroom bungalow in a rural area of Aberdeenshire. Although the Committee confined its inspection primarily to the garage, overall the Property appeared to be in generally good condition. It was, however, readily apparent that the garage was leaking and in need of repair. There was water visible on the underside of roof beams and water staining round the inside of the exterior wall of the garage. Felt from the underside of the roof was coming away in places and was impinging on the proper opening of the garage door. The top surface of the corrugated sheeting was found to be flaking and felt flashings around the edges were perished.

It was apparent to the Committee that some works of repairs or replacement in line with what the Landlords were proposing was required. In the circumstances, the Committee felt obliged to serve a Repairing Standard Enforcement Order on the property. The

Landlords indicated that they would hope the works would be done within the next month or two. The Committee was conscious that the property was in a remote location and depending on weather conditions the necessary works could take some time to complete. Accordingly the Committee determined that a period of four months would be given to the Landlords to complete the works.

The Landlords' solicitor had raised two preliminary points in relation to the application. Firstly, that the application had only been submitted by Mrs Pinkerton whereas the lease was in the names of Mr & Mrs Pinkerton and both should have submitted the application. The Committee was satisfied that in terms of the Act an application can be raised by a "tenant" as defined in Section 194. There is no requirement for all tenants to submit the application and an individual tenant within a joint tenancy should not be deprived of any rights if other joint tenants elect not to complain. Secondly, the Landlords' solicitor highlighted that the tenancy had terminated prior to the inspection by the Committee. The Committee noted the terms of Paragraph 7(3) of Schedule 2 of the Act, which allows a Committee, if it so elects, to continue to determine an application where the tenancy has been lawfully terminated. The Committee elected to continue to determine in this case.

Decision

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

Right of Appeal

- 16. 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

- 17. 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.

Ewan Miller

Signed Date 5/1/18
Chairperson