



Repairing Standard Enforcement Order

Ordered by the Private Rented Housing Committee

prhp Ref: prhp/RP/14/0254

Re : Property at Davo Smithy, Fordoun, Laurencekirk AB30 1JB ("the Property")

Title Number: KNC18756

The Parties:-

Mrs Elsie Young and Colin George Young, both Invermuir, Church Road, Luthermuir, Laurencekirk AB30 1YS ("the Landlord")

And

John Ligertwood, Davo Smithy, Fordoun, Laurencekirk AB30 1JB ("the Tenant")

NOTICE TO MRS ELSIE YOUNG AND COLIN GEORGE YOUNG ("the Landlord")

Whereas in terms of their decision dated 18 February 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 and in particular that the Landlord has failed to ensure that the house is wind and water tight and that the structure 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 Property 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 repairs to the east gable of the Property as are necessary in order to restore it to a reasonable state of repair and to make the Property wind and water tight, including repair to or replacement of the tabling and cement flashings, pointing of the gable wall (including the area that was previously sheltered by the outbuilding) and checking the condition of the chimney stack and chimney can, repairing as found necessary.

(b) to carry out such repairs to the flat roof of the dormer extension to the rear of the Property as are required in order to restore it to a reasonable state of repair and to make the Property wind and water tight, including renewing of the associated rainwater goods and damaged internal finishes and

(c) to install a smoke alarm system in the Property to comply with the requirements of the Domestic Technical Handbook, namely that there should be a smoke alarm in the living room of the Property and in the hallway at ground and first floor level and a heat alarm in the kitchen area, all alarms being hard-wired and interlinked.

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

RIGHT OF APPEAL

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.

The Landlord is reminded that it is an offence under Section 28(5) of the Housing (Scotland) Act 2006, to enter into a tenancy of the Property at any time during which this Order has effect in relation to the Property.

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 18 February 2015 before this witness, Valerie Elizabeth Jane Clark, Droman House, Lasswade:-

_ witness

George Clark _ chairman

Valerie Elizabeth Jane Clark



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

prhp Ref: PRHP/RP/14/0254

Re : Property at Davo Smithy, Fordoun, Laurencekirk AB30 1JB ("the Property")

The Parties:-

John Ligertwood, Davo Smithy, Fordoun, Laurencekirk AB30 1JB ("the Tenant")

Mrs Elsie Young and Colin George Young, both Invermuir, Church Road, Luthermuir, Laurencekirk AB30 1YS ("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 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 23 October 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 house is wind and water tight and in all other respects fit for human habitation and
 - (b) the house has satisfactory provision for detecting fires and for giving warning in the event of a fire or suspected fire.
3. By letter dated 16 December 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 further written representation to the Committee other than the original application dated 23 October 2014. The Landlord (by letter, with attachments, dated 2 January 2015), made written representations to the Committee.
6. The Private Rented Housing Committee inspected the Property on the morning of 18 February 2015. The Tenant and the Landlord were present during the inspection. The

Committee comprised George Clark (chairman), Angus Anderson (surveyor member) and John Wolstencroft (housing member)

7. Following the inspection of the Property the Private Rented Housing Committee held a hearing at The Venue, Mearns Community Centre, High Street, Laurencekirk and heard from both the Tenant and the Landlord. Both parties represented themselves, but the Tenant was accompanied by his wife, Mrs Mhairi Ligertwood and by a building contractor, Mr Steve Warren.
8. The Tenant submitted as follows:- there was water ingress to the Property from the east gable and in the area of the flat roofed portion of the dormer extension to the rear. The roof of an outbuilding attached to the east gable had collapsed in 2013, exposing the gable to the elements and the gable required to be repointed. The skew copings stones (tabling) on the east gable also required to be repaired and repointed. The flat roof of the dormer extension had leaked at some time in the past, causing water to come through the ceiling below, which penetrated the bathroom and the upstairs landing of the Property. The Tenant had stripped back the inner surface of the walls in the ground floor east room, removing the lath and plaster to reveal the stonework. The bare floorboards of the room were showing signs of water staining. The Landlord wanted to carry out other repairs and improvements and was of the view that the necessary remedial work could not be carried out without the Tenant temporarily vacating the Property, but the Tenant insisted that the works covered by the application could be done with the Tenant in situ and this view was supported by the evidence given by Mr Warren. The Tenant had been in the Property since 1982, initially paying a rent of £6 per week, but was now paying £130 per month and, in his view, the Landlord was wanting to carry out more extensive work than was necessary and intending to raise the rent significantly when the work was completed.
9. The Landlord submitted as follows:- Mrs Young had visited the Property with an architect in April 2014, had found the Property to be in a poor state of repair and was concerned for the health and safety of the Tenant and his wife. The Tenant had not, prior to this visit, reported the collapse of the roof of the outbuilding attached to the east gable or the leak through the dormer roof as matters requiring the attention of the Landlord, although it was not disputed by the Tenant that these problems had existed for a considerable period of time. A temporary repair was undertaken to the flat roof. Having taken advice from the architect, Aberdeenshire Council's Environmental Health department and a solicitor, the Landlord wished to carry out not only the work requested by the Tenant, but also further repairs which, according to the architect's report, on which the Landlord had relied, were essential, namely external drainage works, installation of chemical damp proof course, replacement of the windows, replacement of the flat roof together with the remainder of the dormer structure, complete rewiring, renewal of east room linings and floor and repairs to the stonework. Mrs Young had tried to negotiate with the Tenant regarding vacating the Property to allow the repair works to be carried out, but the negotiations had been unsuccessful and, on legal advice, the Landlord had served a Notice to Quit on the Tenant in July 2014, the intention being to obtain vacant possession to allow the repairs to be undertaken.

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 Regulated (Protected) tenancy, as it predates the coming into force of the Housing (Scotland) Act 1988.
 - The Property is a one storey and attic, detached cottage, built of stone with a slate roof in a rural setting and is upwards of 150 years old, with a flat roofed rear dormer extension which appears to have been added approximately 40 years

ago. The roof of an outbuilding attached to the east gable has collapsed at some time in the past and the roof of a corresponding outhouse attached to the west gable is in a serious state of disrepair and is also likely to collapse if remedial works are not carried out in the near future.

- The underside of the flat roof above the bathroom and the upstairs landing has been exposed by the removal of the ceiling plaster. There is clear evidence of rainwater penetration in this area and the ceiling of the bathroom shows signs of extensive staining from water ingress. Externally, the gutter in the area of the dormer is loose and the downpipe is missing.
- The collapse of the roof of the outhouse attached to the east gable has exposed a large portion of the gable wall which previously would have been sheltered by the roof above. Very little of the pointing material in the gable wall remains intact. The tabling (coping stones) on the top of the gable at the front slope wall has deteriorated markedly, with spalling to the stonework. The pointing to the cement flashing between the stonework and slates and the chimney pointing is weathered. The tenant has at some time in the past removed the lath and plaster interior of the room and there is clear evidence that the condition of the gable wall has resulted in water penetration in the wall and floor timbers of the east-most ground floor room in the Property. The floor timbers are soft and show extensive signs of penetrating dampness. There are no smoke detectors in the Property.

Reasons for the decision

12. The Parties do not dispute the facts set out in Paragraph 11 above, but they have been unable to reach agreement as to whether the matters complained of in the application can be dealt with whilst the Tenant and his wife remain in occupation of the Property. The Landlord wishes to carry out more extensive remedial works, but would then expect to receive a rent that reflected the improved condition of the Property, but the Tenant told the Committee that all he wished was that the Property be made wind and water tight and, in his view, that could be achieved without requiring his wife and him to move out. It seemed to the Committee that there was scope for further discussion between the Parties, perhaps involving a services of a mediator, with a view to reaching agreement as to a scope of works, but the Committee made it clear to the Parties that this was not a matter on which it could have any input and that the Committee could only determine the matters set out in the application.
13. The Committee was of the view that there were several defects in the Property which would have fallen within its remit, had they been included in the Tenant's application to the Private Rented Housing Panel. The electrical installation in the Property is dated and aspects of it may not be safe, with Bakelite light switches and evidence of rubber coated wiring. There were electrical fittings in the very damp areas of the Property, particularly in the east-most ground floor room although the Tenant advised the Committee that this room is not used as living or sleeping accommodation. The issues of dampness in the flooring in that room were exacerbated by the fact that the floorboards appear to be in direct contact with the solum beneath. The window frames throughout are in a very poor state of repair. The roof over the outbuilding attached to the west gable of the house is sagging and appeared to be in danger of collapse. The Committee could not, however, make any Orders in respect of these items as they were not included in the application.
14. The Committee was of the view that the defects set out in Paragraph 11 above were such that the Property did not meet the repairing standard in that it is not wind and water tight as required by Section 13(1)(a) of the Act. The Committee also found that the Property did not have satisfactory provision for detecting fires and of giving warning in the event of fire or suspected fire, so failed to meet the repairing standard as set out in Section 13(1)(f) of the Act.

Decision

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

Right of Appeal

18. 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

19. 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..... *18 February 2015*
Chairperson