



Repairing Standard Enforcement Order

Ordered by the Private Rented Housing Committee

PRHP Ref: Prhp/EH18/149/10

Title Number MID53555

**Re: The residential dwellinghouse at
12 Broomieknowe
Gordon Bank
Lasswade
Mid Lothian
EH18 1LN
("the property")**

The Parties:-

**Mr K Morrison
resident at the property
("the tenant")**

and

**Mr M Beattie
C/o Rettie & Co Ltd
1 India Street
Edinburgh
EH3 6HA
("the landlord")**

NOTICE TO THE LANDLORD

Whereas in terms of their decision dated 3 April 2011, the Private Rented Housing Committee ("the 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 that the landlord had failed to ensure that:-

- (a) the property was wind and water tight and in all other respects reasonably fit for human habitation;
- (b) the structure and exterior of the property was in a reasonable state of repair and in proper working order;
- (c) the installation for the supply of space heating in the downstairs living room was not in a reasonable state of repair and not in proper working order.

The Committee now requires the landlord to carry out such works as are 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 Committee requires the landlord to carry out such works as are necessary to ensure that:-

- (a) the downpipes and gutters to the rear of the property are in proper working order;
- (b) the east and the west chimneys are in a reasonable state of repair and in proper working order;
- (c) the roof is in a reasonable state of repair and in proper working order (including the slates, the ridge straps and the zinc ridging at the slate roof joints);
- (d) the dampness in the property is eradicated;
- (e) the gas fire in the downstairs living room is in proper working order.

The Private Rented Housing Committee orders that the 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 this and the preceding page are subscribed by Ronald G Handley, Solicitor, Chairperson of the Private Rented Housing Committee at Dunbar on the third day of April 2011 before this witness:-

J Handley

Witness

R Handley

Chairperson

JANE HANDLEY

Name in full

23 LESLIE WAY

Address of witness

DUNBAR

COLLEGE MANAGER

Occupation



Determination by the Private Rented Housing Committee

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

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The Committee's Decision

The Committee, having made such enquiries as it saw fit for the purposes of determining whether the landlord had complied with the duty imposed by Section 14(1)(b) of the Housing (Scotland) Act 2006 ("the Act") in relation to the property, and taking account of the evidence before it, unanimously determined that the landlord had failed to comply with the duty imposed by Section 14 (1)(b). The Committee therefore requires that the landlord carries out such work as is necessary for ensuring that the property meets the Repairing Standard and that any damage caused by the carrying out of any work in pursuance of the Repairing Standard Enforcement Order ("the Order") is made good. The Committee issued the Order as annexed to this Statement of Reasons.

The Background

1. On 24 October 2010 Mr Morrison applied to the Private Rented Housing Panel ("the PRHP") for a determination as to whether or not the landlord had failed to comply with the duties imposed by Section 14(1)(b) of the Act.
2. On 10 January 2011 the PRHP office wrote to Mr Morrison and Mr Beattie confirming that the President of the PRHP had referred the application to a Committee. Both parties were asked if they wished to make written representations and if they wished to attend a Hearing. Written representations were subsequently received from both parties who also confirmed that they wished to attend a Hearing.
3. On 10 February 2011 the PRHP office wrote to both parties intimating that an inspection of the property would take place on 8 March 2010 at 12.30 pm and a Hearing would be held after the inspection at 1.15pm in Bonnyrigg Public Hall, Lothian Street, Bonnyrigg.

The Application

4. In the application Mr Morrison submitted that Mr Beattie had failed to comply with his duty to ensure that the property met the Repairing Standard (as defined in the Act) and that Mr Beattie had failed to ensure that:-
 - (a) the property was wind and water tight and in all other respects reasonably fit for human habitation;
 - (b) the structure and exterior of the property was in a reasonable state of repair and in proper working order;
 - (c) the installations in the property for the supply of water, gas and electricity and for sanitation, space heating and heating water were in a reasonable state of repair and in proper working order.

In particular it was submitted that:

- for 4 months there had been a significant leak into the bedroom occupied by Mr Morrison's daughter;
- from September 2010 there had been evidence of dampness in the downstairs playroom;
- there was further evidence of dampness in another upstairs bedroom;
- the gutters continued to overflow in heavy rain and the down pipes were not in a reasonable state of repair;
- the flashing to both chimney stacks required to be replaced;
- missing and loose slates required replacing;
- the gas central heating required to be checked;

- there were concerns regarding a suspected chimney collapse and the risk of CO leakage;
- the security alarm had not been functioning properly.

The Evidence

5. The Committee had various documents before it including a copy of Mr Morrison's application (to the PRHP), the Tenancy Agreement, written submissions and copies of various e-mails and letters made available by Mr Morrison and Mr Beattie.

The Inspection

6. The Committee inspected the property on 8 March 2011 at 12.15pm. Mr Morrison attended and Mr Beattie was represented by Mr Sinclair and Mr Hay.

The Hearing

7. A Hearing took place in Bonnyrigg Public Hall after the inspection. Mr Morrison attended as did Mr Sinclair and Mr C Hay on behalf of Mr Beattie. Also present at the Hearing was Mr R Shea (Clerk to the Committee).
8. Prior to commencing the Hearing, the chairman reminded the parties that the issue before the Committee was whether the Repairing Standard (as defined in the Act) had been met. The chairman advised the parties that the Committee had no power to determine whether or not Mr Morrison was entitled to compensation from Mr Beattie. The evidence heard by the Committee at the Hearing can be briefly summarised as follows.

Dampness in the property

Mr Morrison advised that as a consequence of the problems with dampness he had been required to vacate the property. He accepted that works had been carried out on the roof, the chimneys and the gutters but submitted that these works had still not resolved the problems. Mr Sinclair and Mr Hay confirmed that works had been carried out in an effort to eradicate the dampness problems in the property. However they accepted that further works were required and consequently a schedule of works had been agreed with a contractor who would shortly be commencing the works.

The Security alarm

Mr Morrison accepted that the security alarm was now in proper working order.

The gas fires

Mr Morrison accepted that the gas fire in the "office" had not been functioning at the time of the commencement of the Tenancy Agreement. However the gas fire in the downstairs living room had been functioning

properly at the commencement of the Tenancy Agreement but it was no longer working.

Summary of the issues

9. The issue to be determined by the Committee was whether Mr Beattie had complied with the requirements of the Act in ensuring that the property met the Repairing Standard.

Findings of fact

10. The Committee found the following facts to be established:-

- On 1 April 2010 Mr Morrison and Mr Beattie entered into a Tenancy Agreement which relates to the property.
- On 24 October 2010 Mr Morrison applied to the PRHP for a determination as to whether or not Mr Beattie had failed to comply with the duties imposed by Section 14(1)(b) of the Act.
- The property is a 4 bedroomed detached house built pre 1900. The property is in good decorative order.
- There has been water ingress in the property, in particular in the upstairs bedroom situated at the gable end of the property (which had been occupied by Mr Morrison's daughter), in the upstairs bedroom at the other gable end of the property (which had been occupied by Mr Morrison's son) and in the downstairs playroom.
- The roof of the property is slated and is not in a reasonable state of repair and in proper working order.
- The gutters and downpipes are not in a reasonable state of repair and not in proper working order.
- The east and west chimneys are not in a reasonable state of repair and not in proper working order.
- The gas fire in the downstairs lounge is not in working order.
- A device has been installed in the property for detecting CO emissions.
- The security alarm is in proper working order.

Reasons for the decision

11. The Committee noted from the documentary evidence before us that Mr Morrison had been seeking compensation from Mr Beattie because he

and his family had been unable to use the property. However we reminded ourselves that we had no power to consider whether or not Mr Morrison was entitled to compensation.

12. The inspection was carried out on a day when it was not raining and consequently it was not entirely clear to what extent the downpipes and gutters to the rear of the property were in proper working order. However the Committee noted that there was evidence of dampness in the external wall. This dampness was in the same area as the dampness the Committee observed in the upstairs bedroom, situated at the gable end of the property. The Committee accepted that some works had been carried out. These works included the removal of climbing plants and works on the gutters and downpipes. However it seemed likely that further works were necessary.
13. The Committee was unable to carry out a proper inspection of the chimneys. However Mr Hay accepted that the chimneys had not been in a reasonable state of repair and consequently remedial works had been carried out. Mr Hay also accepted that further works were necessary to the east and the west chimneys.
14. Similarly the Committee was unable to carry out an inspection of the roof but again it was not disputed that additional works were required to the roof to ensure that it was in a reasonable state of repair and in proper working order (including the slates and the ridge straps and zinc ridging at the slate roof joints).
15. The Committee were satisfied that the gas fire in the downstairs living room was not functioning at the time of the inspection but that it had been at the time of the commencement of the Tenancy Agreement. In these circumstances the Committee concluded Mr Beattie should complete such works as were necessary to ensure that this gas fire worked properly.
16. The Committee noted that Mr Morrison accepted that a device had been installed in the property for the detection on CO emissions.

Decision

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

Right of Appeal

20. A landlord or tenant aggrieved by the decision of a PRHP Committee may appeal to the Sheriff by summary application within 21 days of being notified of that decision.

Effect of section 63

21. 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. 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... R Handley Date... 3 April 2011
Chairperson