



Repairing Standard Enforcement Order

Ordered by the Private Rented Housing Committee

PRHP Ref: PRHP/TD14/16/11

Re: All and Whole that cottage known as Huldie Cottage, Ayton Castle Estate, Ayton, TD14 5RD being part and portion of the subjects more particularly described and disposed in the Disposition by Grainger Properties Limited (In Members' Voluntary Liquidation) and the Liquidators thereof (with consent) in favour of David Ian Liddell-Grainger dated Twenty First day of December Nineteen Hundred and Seventy and recorded in the Division of the General Register of Sasines applicable to the County of Berwick on the First day of February Nineteen Hundred and Seventy one ("the Property").

The Parties:-

MISS ALEXANDRINA WHITEHEAD, residing at Huldie Cottage, Ayton Castle Estate, Eyemouth, Berwickshire TD14 5RD ("the Tenant")

and

LADY CHRISTINE DE LA RUE, residing at Ayton Castle, Ayton, Eyemouth, Berwickshire and DAVID HENRY LIDDELL-GRAINGER, residing at Ayton Castle, Ayton, Eyemouth, Berwickshire as Executors Nominated of the late David Ian Liddell-Grainger who resided latterly at residing at Ayton Castle, Ayton, Eyemouth, Berwickshire and who died on 12th March 2007 ("the Landlords")

NOTICE TO LADY CHRISTINE DE LA RUE, residing at Ayton Castle, Ayton, Eyemouth, Berwickshire and DAVID HENRY LIDDELL-GRAINGER, residing at Ayton Castle, Ayton, Eyemouth, Berwickshire as Executors Nominated of the late David Ian Liddell-Grainger who resided latterly at residing at Ayton Castle, Ayton, Eyemouth, Berwickshire and who died on 12th March 2007 ("the Landlords")

Whereas in terms of their decision dated 29th March 2011, the Private Rented Housing Committee determined that the Landlords has failed to comply with the duty imposed by Section 14 (1)(b) of the Housing (Scotland) Act 2006.

The Private Rented Housing Committee now requires the Landlords to carry out such work as is necessary for the purposes of ensuring that the house concerned meets the repairing standard and in particular:-

- (a) Carry out such works as are necessary to the chimney at the property to ensure that it is in a reasonable state of repair and in proper working order.

- (b) Carry out such works as are necessary to repair or replace the kitchen window frame and sill to ensure that it is in a reasonable state of repair and in proper working order.
- (c) Carry out such works as are necessary to eradicate the rising damp within the downstairs bedroom of the property to ensure that the property is wind and watertight and in all other respects reasonably fit for human habitation.
- (d) Carry out such repairs as are necessary to the radiator in the downstairs bedroom so that it is in a reasonable state of repair and in proper working order.
- (e) Carry out such works as are necessary to repair or replace the front door and the front door frame of the property to ensure that they are in a reasonable state of repair and in proper working order.
- (f) Carry out such works as are necessary to the flooring in the kitchen within the property (around the locality of the fridge which is currently installed by the Tenant) to ensure that that flooring is in a reasonable state of repair.
- (g) Carry out such works as are necessary to repair or replace the back door and the back door frame of the property to ensure that they are in a reasonable state of repair and in proper working order.
- (h) Carry out such works as are necessary to ensure that the outside security light can be operated correctly such that it is in a reasonable state of repair and in proper working order.
- (i) Carry out such works as are necessary to the multi fuel stove in the property such that it is in a reasonable state of repair and in proper working order.

The Private Rented Housing Committee requires the Landlords to carry out such works as are necessary to make good any damage caused by the carrying out of the works required in terms of this order.

The Private Rented Housing Committee order that the works specified in this Order must be carried out and completed within 6 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.

A Cowan

Signed
Chairperson

Date: 1st april 2011

C A Millar

....Witness

Carol Anne Millar, 7 West George Street, Glasgow G2 1BA



Determination by 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 Parties:-

MISS ALEXANDRINA WHITEHEAD, residing at Huldie Cottage, Ayton Castle Estate, Eyemouth, Berwickshire TD14 5RD ("the Tenant")

and

LADY CHRISTINE DE LA RUE, residing at Ayton Castle, Ayton, Eyemouth, Berwickshire and **DAVID HENRY LIDDELL-GRAINGER**, residing at Ayton Castle, Ayton, Eyemouth, Berwickshire as Executors Nominated of the late David Ian Liddell-Grainger who resided latterly at Ayton Castle, Ayton, Eyemouth, Berwickshire and who died on 12th March 2007 ("the Landlords")

Decision

The Committee, having made such enquiries as it saw fit for the purposes of determining whether the Landlords have now 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 led by the Tenant and the Landlords, both in writing and at the hearing, determined that the Landlords have failed to comply with the duty imposed by Section 14 (1) (b) of the Act

Background

- 1 By application to the Private Rented Housing Panel dated 25th January 2011 the Tenant applied to the Private Rented Housing Panel for a determination as to whether the Landlords have failed to comply with the duties imposed by Section 14(1) (b) of The Housing (Scotland) Act 2006.
- 2 By letter dated 27th January 2011 the Private Rented Housing Panel intimated the decision of the President of the Panel, to both the Landlords and the Tenant, to refer the application under Section 22 (1) of the Act to a Private Rented Housing Committee for determination.

- 3 The Private Rented Housing Committee wrote to both the Tenant and the Landlords by letter dated 1st March 2011. That letter confirmed to both parties that the Private Rented Housing Committee intended to inspect the Property on 28th March 2011 and thereafter to hold a hearing in relation to the Tenant's application on the same date.
- 4 The Private Rented Housing Committee inspected the Property on the morning of 28th March 2011. The Tenant was present at the inspection. The Landlords were represented at the inspection by their Estate Factor, Mr Alexander Douglas Niven. The Committee was assisted at their inspection by Clerk to the Committee Mr Robert Shea.
- 5 Following the inspection of the Property the Private Rented Housing Committee held a hearing at The Eyemouth Community Centre, Albert Road, Eyemouth. The hearing was attended by the Tenant, and Mr Niven on behalf of the Landlords.
- 6 The Committee were able to consider the following papers in advance of the hearing:-
- (a) The Tenant's application to the Private Rented Housing Panel dated 25th January 2011, which included a copy of a letter to the Landlords dated 21st January 2011 in which the Tenant had given notice to the Landlords of a number of issues she considered to be in disrepair in respect of the Property.
 - (b) Written representations prepared by Messrs Turcan Connell on behalf of the Landlords which were received by the Private Rented Housing Committee on 9th February 2011 and which included a copy letter from the Landlords' estate factors to the Tenant dated 25th January 2011, together with a copy Notice to Quit and form AT6 which the Landlords had served upon the Tenant.
 - (c) Copy letter from Messrs Turcan Connell, Solicitors for the Landlords, dated 24th March 2011 which included further written representations on behalf of the Landlord in relation to the application.
- 7 In terms of her application the Tenant submitted that she considered the Landlords had failed to meet the Repairing Standard as the property had the following defects:-
- (a) the plumbing which served the bathroom at the Property was not in a reasonable state of repair as a consequence of which the bathroom had in the past been flooded with raw sewerage.
 - (b) the roof of the Property was in a poor condition as several tiles on the roof required replacement.
 - (c) the chimney of the Property was not in a reasonable state of repair as there were a number of cracks in the rendering to the chimney and it leaned at an angle which the Tenant did not consider to be safe.
 - (d) the window frame of the kitchen to the Property was rotten and allowed water ingress into the property.
 - (e) the downstairs bedroom of the Property suffered from significant dampness. The Tenant maintained that she was unable to use the bedroom because of this dampness.
 - (f) the radiator in the downstairs bedroom of the Property leaked badly and that it was not operational.
 - (g) the front door of the Property was not in a reasonable condition. The Tenant maintained that the door could not be securely locked and that the wooden frame of the door was rotten and that there were gaps underneath the door and around the door which allowed excess water ingress into the property.
 - (h) the flooring, under the fridge, in the kitchen of the Property was rotten and required urgent attention.

- (i) the back door of the Property was not in a reasonable condition as it allowed water ingress into the property and was not wind and watertight.
- (j) one of the outside security lights of the Property could not be switched off and accordingly was not in a reasonable state of repair.
- (k) the Stanley Multi Fuel stove within the Property was not in a reasonable state of repair. The Tenant maintained that the system allowed excess hot water to be expelled through an overflow pipe at the rear of the Property. When that water was ejected it was extremely hot which the Tenant maintained was dangerous. In addition the Tenant maintained that a cover on the flue of the chimney for the stove (which had been installed for access into the flue) and which was within the kitchen was broken. The Tenant was concerned as to the safety of the flue leading from the stove which she maintained was in a dangerous condition and in particular could allow dangerous carbon monoxide gases to escape.

The Inspection

8 The Committee's observations from their inspection of the house are as follows:-

| | Complaint | Observation |
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| (a) | The bathroom plumbing | From their observations of the plumbing, and having tested same, the Committee could see no evidence of any particular problem with the plumbing or the drainage system from the toilet in the bathroom |
| (b) | The roof | Although there were a couple of missing slates on the roof of the property they did not appear to be causing any particular significant problems to the water integrity of the roof. The condition of the roof appeared to the Committee to be reasonable having regard to the age and locality and the type of the property. |
| (c) | The chimney | The chimney serving the property was observed to be leaning and not perpendicular to the roof. The Committee observed that there had been various past remedial works to the chimney which included patch repairs to the rendering of the chimney. Notwithstanding this, the rendering on the chimney was severely cracked. |
| (d) | Kitchen window frame | The kitchen window frame and sill were both severely affected by wet rot. The kitchen window was not capable of being opened. |
| (e) | Dampness in downstairs Bedroom | All walls in the downstairs bedroom were affected by substantial rising dampness. Some of the walls were wet to touch. When using a damp meter the Committee noted that there were exceptionally high meter readings indicating excessive levels of dampness on all walls of the bedroom. The Committee further observed patches of mould (consistent with excessive dampness) at various points on the walls of the bedroom. |
| (f) | Radiator in downstairs Bedroom | The radiator in the bedroom appeared to be leaking. |
| (g) | The front door | The front door and door frame of the property was rotten in places. Pointing around the door frame was missing. The Committee saw evidence of previous water ingress into the property from around the front door. There was no working lock mechanism on the front door. The Committee observed |

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| | | that the door did not appear to be wind and watertight. |
| (h) | Kitchen flooring | The Committee observed that the Tenant had placed a board under the fridge in the kitchen and that the wooden flooring around this area of the kitchen floor was rotten. The Committee observed that the most likely cause of the rot was attributable to the water ingress through the front door to the hallway which adjoined this particular area of flooring in the kitchen. |
| (i) | The back door | The Committee observed that the back door of the property and the door frame were rotten in places. There was evidence of past water ponding in the hall areas and the door did not appear to the Committee to be wind and watertight. |
| (j) | Outside security light | The Committee observed the outside security light had a bulb removed. |
| (k) | Multi fuel stove | The Committee observed the overflow pipe from the multi fuel stove, although they did not observe any water coming out of the overflow pipe. The Committee did observe that the cover on the rear of the flue for the stove (located within the kitchen) was not secured and appeared to have broken bolts. |

The Hearing

- 8 At the hearing it was explained to the Tenant and to the Landlords' representative that the Private Rented Housing Committee had jurisdiction to determine whether or not the property meets the Repairing Standard in terms of Section 13 (1) of the Act as at the date of the hearing.
- 9 The Landlords' representative advised the Committee that he understood that the Landlords intended to sell the Property in the near future. The Committee stated that the Landlords' future plans for the Property were irrelevant as to their determination as to whether or not the property met the Repairing Standard as at the date of the hearing.
- 10 The Landlords' representative made reference to a document which he had recently discovered (and which had not been lodged with the Committee or intimated to the Tenant) which suggested that an agreement had been reached with the Tenant (at the time she took occupation of the Property) wherein she had agreed to carry out certain repairs to the property at her own cost. The suggestion from the Landlords' representative was that the terms of this agreement meant that the Landlords were not required to carry out certain of the repairs which the Tenant now requested. The Committee stated that (in terms of Section 17 of the Act) the terms of any agreement between the Landlords and the Tenant are of null effect in so far as they purport to require the Tenant to carry out, or pay for, or contribute towards the cost of any work which the Landlords require to ensure be carried out for the purposes of complying with the duty imposed by Section 14 (1) of the Act. Accordingly the Committee determined that any submissions from the Landlords or their agent in this respect were irrelevant to the determination as to whether or not the property met the Repairing Standard as at the date of the hearing.
- 11 In written submissions the Landlords had intimated to the Committee that the Landlords had served a Notice to Quit upon the Tenant which terminated the tenancy as at 18th March 2011. The Committee noted that as at the date of the hearing the Tenant remained in occupation of the property. The Committee determined that the Notice to Quit served upon the Tenant, if valid, had the effect of creating a statutory tenancy. The Committee determined that even if notices served upon the Tenant were valid, the tenancy would continue until terminated by an order of the Sheriff Court. Accordingly the Committee were satisfied that they continued to have jurisdiction to determine whether or not the property met the Repairing Standard as at the date of the hearing.
- 12 In their written submissions of 24th March 2011 the Landlords highlighted that the letter from the Tenant which set out her complaints regarding the property and which was dated 21st January 2011 was posted on 24th January 2011 and that no opportunity had been given to the Landlords to

respond to the terms of that letter before the Tenant made an application to the Private Rented Housing Panel on 25th January 2011. The Committee determined that in terms of Section 14 of the Act the Landlord in a tenancy must ensure that the house meets the Repairing Standard at all times during the tenancy. The duty imposed upon the Landlord in terms of Section 14 applies only where the tenant notifies the Landlord that work requires to be carried out for the purposes of complying with that duty. The Committee determined that the Tenant had notified the Landlords that work required to be carried out to the property in terms of her letter of 21st January 2011. Accordingly the Landlords were required to ensure that the house met the Repairing Standard at all times during the tenancy. The Committee observed that the Landlords have had the opportunity (since the date they received the Tenant's letter to the date of the hearing) to carry out further inspections and to carry out any such work as they identified as necessary.

- 13 The Committee heard evidence on all of the complaints raised by the Tenant from both the Tenant and the Landlords' representative.
- 14 Taking each of the Tenant's complaints in turn and having considered both the written and oral evidence available to the Committee, the Committee made the following findings:-

| | Complaint | Observation |
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| (a) | The bathroom plumbing | The Committee noted that the Tenant complained of an intermittent issue with the plumbing which served the bathroom. The Tenant indicated that on occasions in the past the plumbing system serving the toilet had failed and this had caused a series of floods within the bathroom. The Committee noted that the last occasion, when the Tenant complained of this issue, was in June 2010. The Committee did not observe any particular problems with the plumbing or the drainage system as at the date of the hearing. In the circumstances the Committee were not satisfied that there was evidence that the plumbing/drainage within the bathroom did not meet the Repairing Standard. |
| (b) | The roof | Whilst there were some minor maintenance work required to the roof the Committee were of the view that the roof was, nonetheless, wind and watertight. The roof being part of the structure and exterior of the house appeared to be in a reasonable state of repair having regard to the age and type of property. In all the circumstances the Committee were not satisfied that there was sufficient evidence to suggest that the roof of the property did not meet the Repairing Standard. |
| (c) | The chimney | The chimney of the property is part of the structure and exterior of the house. The Committee observed the cracked rendering and general condition of the chimney and were satisfied from their observations that it was not in a reasonable state of repair. Accordingly the Committee determined that the condition of the chimney did not meet the Repairing Standard as specified at Section 13 (1) (b) of the Act. |
| (d) | Kitchen window frame | The kitchen window frame was severely rotten and the window itself did not open. The window, being part of the structure and exterior of the house was not in a reasonable state of repair or in proper working order. The Landlords' agent at the hearing accepted that the window required repair. In all the circumstances the Committee were satisfied that the kitchen window did not meet the Repairing Standard as specified at Section 13 (1) (b) of the Act. |
| (e) | Dampness in downstairs Bedroom | The Committee were satisfied that from their own observations and from the evidence of the Tenant the |

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| | | downstairs bedroom within the property suffered excessively from rising damp. In the circumstances the Committee were of the view that the house could not be regarded to be wind and watertight and in all other respects reasonably fit for human habitation as required by Section 13 (1) (a) of the Act. Accordingly the property did not meet the relevant Repairing Standard in this respect. |
| (f) | Radiator in downstairs Bedroom | The Committee noted that there was evidence that the radiator was leaking at its control valve and accepted the evidence of the Tenant that the radiator did not function or work correctly. The Committee determined that as an installation in the house for space heating the radiator was not in a reasonable state of repair or in proper working order. The condition of the radiator accordingly did not meet the Repairing Standard as specified at Section 13 (1) (d) of the Act. |
| (g) | The front door | The Committee observed that both the front door and its frame were rotten and that there was pointing missing around the door frame. The Committee observed that the condition of the frame would allow water ingress and accepted the evidence of the Tenant to the effect that past water ingress has been substantial. The front door of the property (as part of the structure and exterior of the building) was not in a reasonable state of repair or in proper working order as required by Section 13 (1) (b) of the Act. |
| (h) | Kitchen flooring | The kitchen floor of the property appeared to have been substantially affected by wet rot, probably connected to the water ingress through the front door. The kitchen flooring being part of the structure of the property was not in a reasonable state of repair or in proper working order as required by Section 13 (1) (b) of the Act. |
| (i) | The back door | The back door and its frame were both rotten. Daylight could be seen around the door and there was an excessive gap at the bottom of the door. There was evidence of past water ponding in the hallway of the property, where water had gone under and round the door. The Committee determined that the condition of the door and its frame were not in a reasonable state of repair or in proper working order as required by Section 13 (1) (b) of the Act. |
| (j) | Outside security light | The Committee were not able to observe the outside security light in operation. The Committee, however, accepted the evidence of the Tenant which was to the effect that the outside security light could not be switched off following recent electrical works carried out at the property. The Landlords' agent did not dispute that this was the case. Accordingly the Committee were satisfied that the outside security light, as a fixture provided by the Landlords under the tenancy, was not in a reasonable state or repair or in proper working order as required by Section 13 (1) (d) of the Act. |
| (k) | Multi fuel stove | The Committee did not observe excessive hot water being expelled through the overflow pipe at the rear of the property. The Committee did note that the overflow pipe led over the lower roof of the property into a gutter area. The Tenant gave evidence to the effect that when the excess water was expelled by the system it tended to spurt beyond the guttering of the property and could land on individuals |

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| | | <p>passing that location at the property. As such the Tenant maintained that the condition and functioning of the multi fuel stove was inefficient in this respect.</p> <p>The Tribunal did not observe any water coming from the overflow pipe at the time of their inspection and could not be satisfied on the available evidence that the stove/hot water system did not meet the repairing standard in this respect. The Committee recommend however that the Landlord should arrange for a full maintenance inspection of these fixtures to ensure that they meet all necessary safety standards.</p> <p>The Committee observed that the cover to the access point on the back of the flue serving the stove within the kitchen was not properly secured and were of the view that it was in a dangerous condition which could allow the omission of poisonous gases. Accordingly the Committee determined that the condition of that part of the stove was not in a reasonable state of repair or in proper working order as required by Section 13 (1) (d) of the Act.</p> |
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Decision

- 15 The Committee accordingly determined that the Landlords had failed to comply with the duty imposed by Section 14 (1) (b) of the Act. In particular the Landlords had failed to ensure that the property met the Repairing Standard at all times during the tenancy. The Committee determined that the Tenant had notified the Landlords that work required to be carried out to the property and that the Landlords had failed to carry out this work.
- 16 Having determined that the Landlords had failed to comply with the duty imposed by Section 14 (1) (b) of the Act, the Committee proceeded to make a Repairing Standard Enforcement Order as required by Section 24 (2) of the Act. In particular the Committee require the Landlords to:-
- (a) Carry out such works as are necessary to the chimney at the property to ensure that it is in a reasonable state of repair and in proper working order.
 - (b) Carry out such works as are necessary to repair or replace the kitchen window frame and sill to ensure that it is in a reasonable state of repair and in proper working order.
 - (c) Carry out such works as are necessary to eradicate the rising damp within the downstairs bedroom of the property to ensure that the property is wind and watertight and in all other respects reasonably fit for human habitation.
 - (d) Carry out such repairs as are necessary to the radiator in the downstairs bedroom so that it is in a reasonable state of repair and in proper working order.
 - (e) Carry out such works as are necessary to repair or replace the front door and the front door frame of the property to ensure that they are in a reasonable state of repair and in proper working order.
 - (f) Carry out such works as are necessary to the flooring in the kitchen within the property (around the locality of the fridge which is currently installed by the Tenant) to ensure that that flooring is in a reasonable state of repair.
 - (g) Carry out such works as are necessary to repair or replace the back door and the back door frame of the property to ensure that they are in a reasonable state of repair and in proper working order.
 - (h) Carry out such works as are necessary to ensure that the outside security light can be operated correctly such that it is in a reasonable state of repair and in proper working order.

(i) Carry out such works as are necessary to the multi fuel stove in the property such that it is in a reasonable state of repair and in proper working order.

17 The Committee further determined that any damage caused by the carrying out of any works in relation to the pursuance of these necessary repairs to the property was to be made good by the Landlords.

18 The Committee determined that the repairs required to the property must be completed within a period of 6 weeks of the date of intimation of the Repairing Standard Enforcement Order upon the Landlords.

19 The decision of the Committee was unanimous.

Right of Appeal

20 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

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, 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.

A Cowan

Signed
Chairperson

Chairman

Date: 1st April 2011

C A Millar

.....Witness

Carol Anne Millar
7 West George Street
Glasgow G2 1BA