



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

prhp Ref: PRHP/IV2/5/09

Re : Property at Blackhills Farmhouse, Moyness Road, Auldearn, IV12 5JZ ("the Property")

The Parties:-

MR ALAN HARFIELD residing at Blackhills Farmhouse, Moyness Road, Auldearn, IV12 5JZ (represented by their agent Ms Sarah Gauld, of Messrs Innes and MacKay, Solicitors, Kintail House, Beechwood Business Park, Inverness, IV2 3BW ("the Tenants"))

THE TRUSTEES for the CAWDOR MAINTENANCE TRUST c/o Messrs Bowlts, Chartered Surveyors, Barnhill, Pluscarden, by Elgin, IV30 8TZ (represented by their agent Kenneth Bowlts Esq of the said Messrs Bowlts Chartered Surveyors ("the Landlords"))

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 Landlords and the Tenants 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 20 January 2009 the Tenants 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 Tenants stated that the Tenants 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) all windows within the property were wind and water tight;
 - (b) the front and rear doors to the property were wind and water tight.
 - (c) there were smoke alarms within the property.
 - (d) the harling to the external walls of the property remained undamaged and that the external walls did not suffer discolouration.
3. By letter dated 28 January 2009 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 Tenants.

5. Following service of the Notice of Referral the Tenants (by letter dated 4 February 2009), made written representations to the Committee. The Landlords (by letter dated 10 February 2009), made written representations to the Committee.
6. The Private Rented Housing Committee (comprising Mr Ewan Miller, Chairman and Legal Member, Mr Colin Hepburn, Surveyor Member and Mrs Linda Robertson, Housing Member) inspected the Property on the morning of 26 March 2009. The Tenants son, the Tenants agent, the Landlords agent and the Clerk Mr Robert Shea were all present during the inspection.
7. Following the inspection of the Property the Private Rented Housing Committee held a hearing at Auldearn and heard from both the Tenants and the Landlords. The Landlords were represented by their surveyor, Mr Kenneth Bowlt of Bowlts Chartered Surveyors. The Tenants were represented by Ms Sarah Gauld of Messrs Innes and Mackay.
8. The Tenants submitted as follows:-

The Tenants agent acknowledged that since the date of the application to the Panel, smoke detectors had been fitted in the Property and these were working satisfactorily. The Tenants agent also indicated that the Tenants now accepted that the complaint regarding the discolouration of the exterior of the building and the harling damage was insignificant and that it was not of a level that would mean the Landlord had failed to meet the repairing standard. Accordingly, the Tenant's agent confirmed the Tenant did not wish to pursue these aspects of the application before the Committee.

The Tenant's agent highlighted the terms of a letter of undertaking from the Landlords to the Tenants from 2002 in which the Landlords undertook to carry out certain works to the Property, including those referred to in the application before the Committee. The Tenants agent then reiterated her written submissions that the front and rear doors were not wind and water tight. In particular, in relation to the rear door, this was evidenced by the damage around the door. In relation to the windows, again it was submitted that these did not meet the repairing standard as they were not wind and water tight and this led to condensation problems within the property.

9. The Landlords submitted as follows:-

The Landlords acknowledged that a letter of undertaking had been given in 2002 to the Tenants. The Landlords position was that they disputed the interpretation of the wording in relation to the extent of the undertakings given. The dispute between the Landlords and the Tenants in relation to the terms of this letter had now been rumbling on for a long time.

In relation to the windows, there were replacement windows prepared for the kitchen and upstairs bathroom but these had never been installed due to the ongoing dispute over the letter of undertaking between the parties. The Landlords acknowledged that there were some missing handles and some areas of rot but that generally they were of the view that the windows were wind and water tight. In relation to the front door, their view was that whilst it could do with being re-hung, it complied with the repairing standard. In relation to the rear door, it was acknowledged that there was water penetration occurring and that this door was not sufficient and did not meet the standard. The Landlord had advised that they had instructed the replacement of both front and rear doors.

Summary of the issues

10. The Chairman, after discussion with the other Members of the Committee, indicated to both parties that whilst it was clear that there had been an ongoing dispute for a number of years over the interpretation of the letter of undertaking, this was essentially a contractual dispute between the parties which fell outwith the remit of the Committee. The Committees remit was simply to look at the items complained of and to ascertain

whether or not they met the repairing standard or not. Accordingly, the issues to be determined by the Committee were:-

- (a) whether the front and rear doors were wind and water tight and whether repair or replacement was required; and
- (b) whether the windows within the Property were wind and water tight and whether repair or replacement was required

Findings of fact

11. The Committee finds the following facts to be established:-
 - The rear door to the Property was very poorly fitted and was clearly not wind and water tight. There was clear evidence of water penetration to the surrounding area
 - The front door was poorly fitted and was not properly wind and water tight.
 - Overall the windows throughout the property were in poor repair (particularly the downstairs bedroom side window, the rear kitchen window and the upstairs bathroom window). There were varying degrees of wind and water penetration due to poor seals, missing handles and rotting sills.

Reasons for the decision

12. The Committee reached its decision based on the evidence obtained by the Committee at the inspection on 26 March 2009. Mr Colin Hepburn the Surveyor Member of the Committee inspected the rear door area. The door was not a proper external door and was very poorly fitted. Damp meter readings were taken and were found to be high. There was visual evidence of damp penetration caused by water ingress and this had caused staining and damage to the supporting surrounding frame. Mr Hepburn inspected the front door. It was noted that this was poorly hung and daylight was visible from the inside particularly along the top of the door resulting in wind penetration. In relation to the windows it was clear from the external and internal inspection by the Committee that a large number of the sills were suffering from rot and there were several areas of wood damage and decay, some severe. This was noted particularly in the downstairs bedroom side window and the kitchen and bathroom windows. Internally there was a lack of proper seals on the window openings which contributed to them not being properly wind and water tight. Several handles were also missing which contributed to the defects.

Decision

13. The Committee accordingly determined that the Landlord 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.

Signed
Chairperson

E Miller

Date..... *6/4/09*



Repairing Standard Enforcement Order

Ordered by the Private Rented Housing Committee

prhp Ref: PRHP/IV2/5/09

Re : Property at Blackhill Farmhouse, Moyness Road, Auldearn, IV12 5JZ ("the Property")

Sasine Description: ALL and WHOLE that plot or area of ground together with the buildings erected thereon known as and forming Blackhills Farmhouse, Moyness Road, Auldearn being which subjects hereby described form part and portion of ALL and WHOLE those larger subjects described in Disposition in favour of Hugh John Vaughan Earl of Cawdor and others as Trustees of the Cawdor Maintenance Trust and recorded in the Division of the General Register of Sasines for the County of Nairn on Eighth July Nineteen Hundred and Eighty Six

The Parties:-

MR ALAN HARFIELD residing at Blackhills Farmhouse, Moyness Road, Auldearn, IV12 5JZ (represented by their agent Ms Sarah Gauld, of Messrs Innes and MacKay, Solicitors, Kintail House, Beechwood Business Park, Inverness, IV2 3BW ("the Tenants"))

THE TRUSTEES for the **CAWDOR MAINTENANCE TRUST** c/o Messrs Bowlts Chartered Surveyors, Barnhill Pluscarden, by Elgin, IV30 8TZ (represented by their agent Kenneth Bowlts Esq of the said Messrs Bowlts Chartered Surveyors ("the Landlords"))

NOTICE TO THE TRUSTEES for the **CAWDOR MAINTENANCE TRUST** ("the Landlord")

Whereas in terms of their decision dated 6 April 2009, 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 property is:-

(a) wind and water tight and in all respects reasonably fit for human habitation.;

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 replace the rear door and make good any damage caused to the surrounding frame and floor caused by previous water penetration and to ensure the replacement door is wind and water tight;

(b) to repair or replace the front door and to ensure that it is wind and water tight; and

(c) repair or replace all windows within the property to ensure that they are wind and water tight.

The Private Rented Housing Committee order that the works specified in this Order must be carried out and completed within the period of 3 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.

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

chairperson of the Private Rented Housing Committee at Dundee on 6 April 2009

before this witness:-

M Allan

__ witness

E Miller

__ Chairman

1 U
MARGARET JEAN ALLAN name in full

WHITEHALL HOUSE Address

33 YEAMAN SHORE

DUNDEE DD1 4BJ

SOLICITOR Occupation