



**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**

**PRHP Ref: prhp/IV27/62/10**

**Re: The residential dwellinghouse at  
Achd 324  
Drumbeg  
Assynt by Lairg  
Sutherland  
IV27 4NW  
("the property")**

**The Parties:-**

**Mrs A Strachan  
Achd 324  
Drumbeg  
Assynt by Lairg  
Sutherland  
IV27 4NW  
("the tenant")**

**and**

**Mr D Johnson  
Willowbank  
Lochcarron  
Ross-shire  
IV54 8Y  
("the landlord")**

**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. The tenant 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. However the tenant had not signed the application form and on 13 April 2010 it was returned to her with a request that she sign and return it. The tenant did not do so and accordingly she was written to on 29 April 2010 and advised that her application had been withdrawn.
2. On 14 May 2010 the PRHP received a further application from the tenant. On 21 and 24 May 2010 the PRHP office wrote to the tenant and the landlord 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 (or if they wished the opportunity of making oral representations). Written representations were subsequently received from both parties.
3. On 29 June 2010 the PRHP office wrote to both parties intimating that an inspection of the property would take place on 30 July 2010 at 10.30 am and a Hearing would take place at 12.30pm in the Macphail Centre, Mill Street, Ullapool. Enclosed with the letter of 29 June 2010 were copies of all correspondence received from the parties. The venue for the Hearing was subsequently changed and consequently, on 14 July 2010, the PRHP office wrote to both parties intimating that the Hearing would take place in Drumbeg Village Hall at 11.30 am (on 30 July 2010). However Regulation 19(1) of the Private Rented Housing Panel (Applications and Determinations) (Scotland) Regulations requires that parties be given 14 working days' notice of the date, time and place appointed for the Hearing and consequently the Committee considered that it was appropriate to adjourn the Hearing (and the inspection) to ensure that the requirements of Regulation 19(1) were met. This decision was intimated to both parties in a letter of 29 July 2010. The Committee noted that in a letter of 24 July 2010, the landlord had requested an adjournment of the inspection and Hearing scheduled to take place on 24 July 2010. This was to allow current events to be considered.
4. The Committee were aware that there had been a suggestion that there was no valid Tenancy Agreement in existence at the time of the tenant's application and accordingly, in the letter of 29 July 2010, both parties were invited to make representations in regard to this issue. No representations were received from either party.

## **The Application**

5. The tenant submitted that the landlord had failed to comply with his duty to ensure that the property met the Repairing Standard (as defined in the Act) and that the landlord had failed to ensure that:-
  - (a) the property is wind and water tight and in all other respects reasonably fit for human habitation;
  - (b) the structure and exterior of the property are in a reasonable state of repair and in proper working order;
  - (c) any fixtures, fittings and appliances provided by the landlord under the tenancy are in a reasonable state of repair and proper working order;
  - (d) the property has satisfactory provision for detecting fires and for giving warnings in the event of a fire or a suspected fire.

In particular it was submitted that:

- the bathroom/utility extension had a poor quality corrugated iron roof and had a poorly constructed rough brick wall;
  - there were loose slates;
  - there were signs of dampness throughout the property;
  - the gutters/down pipes were not in a reasonable state of repair;
  - the flashing was rotten;
  - all window frames were in a poor state of repair/beyond repair;
  - the main door was warped and had split panels;
  - the external walls had visible cracks;
  - the plastic roof light in the bathroom was poorly sealed and unsightly;
  - there was water ingress around the light switch in the bathroom.
6. Following receipt of the tenant's application, the President of the PRHP intimated that the application should be referred to a Private Rented Housing Committee in accordance with Section 22(1) of the Act.
  7. The Committee served Notice of Referral on the landlord and the tenant in accordance with the terms of Schedule 2, Paragraph 1 of the Act.

## **The Evidence**

8. The Committee had various documents before it including a copy of the tenant's application (to the PRHP), the Lease Agreement, submissions and copies of various e-mails and letters made available by the tenant and the landlord which related particularly to the allegations of dampness in the property.

## **The Inspection**

9. The Committee inspected the property on 30 August 2010 at 10.00am. The tenant and her husband were present during the inspection as was the landlord. Neither party was represented.

## **The Hearing**

10. A Hearing took place in Drumbeg Community Centre after the inspection. Both parties attended the Hearing as did the tenant and her husband, Mr Strachan. Also present at the Hearing was a Mrs MacLean and Mrs Ross (with the landlord) and Mr Shea (Clerk to the Committee).
11. Prior to commencing the Hearing, the chairman reminded the parties that the application had been considered by the President of the PRHP who had referred it to the Committee. The Chairman also reminded the parties that the issue before the Committee was whether the Repairing Standard (as defined in the Act) had been met. The Committee asked the parties if they wished to comment on the various issues identified in the application. The evidence heard by the Committee at the Hearing can be briefly summarised as follows.

### **Gutters**

Mr Strachan accepted that some remedial works had been carried out on the gutters. Mr Johnston confirmed that repairs had been affected to the gutters.

### **Cracks/External walls**

Mr Strachan told the Committee that there had been major cracks in the gable end wall and that water had been running down the internal walls of the living room. Whilst accepting that the landlord had installed pine cladding to the internal living room wall, he advised that this had not eradicated the dampness. Mr Johnston confirmed that he had installed the pine cladding and advised the Committee that it had been difficult to carry out external remedial works during periods of bad weather. However when able to do so, he had filled in the cracks in the external walls and applied "Thompsons Water Sealant". These works had been completed in April 2009. Mr Johnston suggested that the cracks in the external walls had been there for around 30 years.

### **Roof/walls in the extension (bathroom)**

Mr Strachan submitted that the bathroom was cold and unsightly. Mr Johnston advised the Committee that the roof in the bathroom had been replaced and that he had installed pine cladding on the internal walls. He suggested that the bathroom was adequate.

### **Loose slates**

The Committee advised the parties that it appeared to us that there were no missing roof slates. Mr Strachan had no further comments to make on

this matter. Mr Johnston told the Committee that appropriate remedial works had been carried out to address this matter in April 2009.

#### **Flashing**

Mr Strachan had no further comments to make.

#### **Window frames**

Mr Strachan suggested that the window frames were rotten. Whilst it had been suggested that some remedial works had been carried out, the effectiveness of these works had not been obvious. Mr Johnston advised that the remedial works had been carried out on the windows in April 2009.

#### **Main door**

The Committee advised Mr Johnston that it appeared that a panel in the door was cracked. Neither party had any specific comments to make in regard to this issue.

#### **Window in utility room**

Mr Johnston accepted that the window in the utility room was cracked/broken.

#### **Bathroom light fitting**

Mr Strachan suggested that there had been signs of water ingress around the light fitting in the bathroom. Mr Johnston advised that he had been unaware of this problem.

The Committee then afforded both parties the opportunity of making any final submissions. Each gave a brief account of the problems they had encountered in attempting to resolve matters. The Committee confirmed to the parties they were aware of these difficulties from the documentary evidence but reminded the parties of the role of the Committee.

### **Summary of the issues**

12. The issue to be determined by the Committee was whether the landlord had complied with the requirements of the Act in ensuring that the property met the Repairing Standards.

### **Findings of fact**

13. The Committee found the following facts to be established:-
  - In accordance with a Lease Agreement entered into by both parties on 12 November 2008, Mrs Strachan is the tenant of the property which is owned by Mr Johnston who is the landlord.
  - On 14 May 2010 the tenant made an application to the PRHP and on 21 and 24 May 2010 the PRHP office wrote to the tenant and the landlord confirming that the President of the PRHP had referred the application to a Committee for a determination.

- The property comprises a 4 room cottage with utility room, kitchen area and bathroom. The property was built pre 1900.
- The roof of the property is slated and is in a reasonable state of repair and in proper working order.
- The gutters and rhone pipes are in a reasonable state of repair and in proper working order.
- The flashing is in a reasonable state of repair and is in proper working order.
- There is no evidence of water ingress around the light fixture in the bathroom.
- Having regard to the age, character and location of the property, the bathroom is in a reasonable state of repair.
- There is a gap in one of the panels of the front door and the front door does not close properly. The front door is not in a reasonable state of repair or in proper working order.
- The window in the utility room is cracked/broken and not in a reasonable state of repair.
- The gable end wall of the property is not wind and watertight and consequently water is ingressing into the living room and the bedroom immediately above the living room.
- There is water ingress to the downstairs bedroom and in the ceiling of the utility room.
- There are no smoke detectors fitted in the property.

#### **Reasons for the decision**

14. We were mindful from the documentary evidence before us that there was a degree of acrimony between the parties and that there were a number of letters and e-mails between the parties. These documents related to a number of issues such as the payment of rent and the condition of the property (including the claim that there was dampness within the property).
15. It was clear from the inspection that part of the guttering had been replaced. This was confirmed by Mr Johnston at the Hearing. The Committee accepted that the gutters (and the rhone pipes) were in a reasonable state of repair and in proper working order. It was also clear from the inspection that there were few slates missing and Mr Johnston advised us that he had replaced some of the slates. Having regard to the age, character and location of the property, the Committee were satisfied that that the slated roof was in a watertight condition. Similarly, and for the same reasons the Committee accepted that the flashing had been repaired and was in a reasonable state of repair.
16. In regard to the suggestion that there was water ingress around the light switch in the bathroom, the Committee found no evidence of this in the course of the inspection.

17. It was suggested that the bathroom was cold and unsightly. However the Committee found that although the external wall was unsightly and the roof was made of corrugated iron, the bathroom was wind and water tight. Taking account of the age, character and locality of the house, the Committee was satisfied that the bathroom met the Repairing Standard.
18. As indicated, in the course of the inspection, the Committee noted that one of the panels in the front door was cracked. We also noted that the door did not close properly. We found that the door was not wind and water tight, was not in a reasonable state of repair and did not meet the Repairing Standard.
19. Similarly, during the inspection, the Committee observed that the window in the utility room was cracked/broken and that there was evidence of water ingress in the ceiling of the utility room which had caused a distortion in the ceiling covering. We found that the utility room did not meet the Repairing Standard.
20. It was clear that there was evidence of water ingress in the living room and in the bedroom situated above the living room. This was confirmed by the Protimeter damp meter used during the course of the inspection. Readings taken at the gable wall at ground and first floor level, around window openings and to the rear wall indicated excessive ingress of dampness through the stonework of the property. Similar excessive readings were found in the first floor westernmost bedroom in the gable wall and the ceiling adjoining the gable. The chimney and stone skew flashing to the slate roof requires to be re-pointed to eliminate water penetration. We had no reason to doubt that Mr Johnston had carried out works in an effort to eradicate this problem. However it was clear that these efforts had not eliminated the dampness. The Committee concluded that the problem of dampness in the living room and the bedroom above the living room was because the external gable end wall was porous. Similarly whilst the windows on the ground floor had been painted, further works will be required to ensure that they are wind and watertight and meet the Repairing Standard.
21. The Committee noted that there was a large hole in the plaster covering the rear wall in the bedroom located on the ground floor of the property. The Committee also observed evidence of excessive dampness in that wall. This bedroom is not water tight and does not meet the Repairing Standard.
22. It was clear from the inspection that no smoke detectors had been fitted in the property.

## **Decision**

23. The Committee determined that the landlord had failed to comply with the duty imposed by section 14(1) (b) of the Act.

24. The Committee proceeded to make a Repairing Standard Enforcement Order as required by section 24(1) of the Act.
25. The decision of the Committee was unanimous.

### **Right of Appeal**

26. 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**

27. 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.....  
Chairperson

**R Handley**

..... Date.....17/9/2010.....



## **Repairing Standard Enforcement Order**

### **Ordered by the Private Rented Housing Committee**

**PRHP Ref: prhp/IV27/62/10**

**Re: the property at Achd 324, Drumbeg, in the Parish of Assynt, by Lairg, Sutherland, IV27 4NW all as more particularly described in the Feu Disposition by Edmund Hoyle Vestey in favour of David Howe Lawson Johnston and Another recorded in the Division of the General Register of Sasines for the County of Sutherland (Search Sheet 3002) on Twenty first day of June, Nineteen hundred and eighty two  
("the property")**

**Mrs A Strachan  
Achd 324  
Drumbeg  
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Sutherland  
IV27 4NW  
("the tenant")**

**and**

**Mr D Johnson  
Willowbank  
Lochcarron  
Ross-shire  
IV54 8Y  
("the landlord")**

### **NOTICE TO THE LANDLORD**

Whereas in terms of their decision dated 17 September 2010, 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 is wind and water tight and in all other respects reasonably fit for human habitation;
- (b) the structure and exterior of the property are in a reasonable state of repair and in proper working order;
- (c) any fixtures, fittings and appliances provided by the landlord under the tenancy are in a reasonable state of repair and proper working order;
- (d) the property has satisfactory provision for detecting fires and for giving warnings in the event of a fire or a suspected fire.

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:-

- (a) repair or replace the cracked panel in the front door and/or repair and replace the front door that it closes properly and is wind and water tight;
- (b) repair or replace the ground floor windows to ensure that they are wind and water tight and in proper working order;
- (c) carry out such works as are necessary to ensure that the west gable external wall, the west gable chimney and skew of the property are wind and water tight and that there is no water ingress in the living room and the bedroom located on the upper floor of the property;
- (d) carry out such works as is necessary to eradicate the dampness in the rear wall of the east ground floor bedroom;
- (e) replace the cracked/broken window in the utility room;
- (f) carry out such works as is necessary to eradicate the dampness in the ceiling of the utility room of the property;
- (g) install hard wired smoke detectors within the property ensuring that the recommendations contained in BS 5839, Part 6 are complied with.

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.

**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 two preceding pages are subscribed by Ronald G Handley, Solicitor, Chairperson of the Private Rented Housing Committee at Dunbar on the seventeenth day of September 2010 before this witness:-

**J Handley**

Witness

**R Handley**

Chairperson

JANE HANDLEY Name in full

23 LESLIE WAY Address of witness

DUNBAR

FE COLLEGE MANAGER Occupation