



Repairing Standard Enforcement Order

Ordered by the Private Rented Housing Committee

prhp Ref: PRHP/DD8/67/11

Re: Property at 1 West Mains of Kincaldrum, Forfar, DD8 1TT ("the Property")

Sasine Description: ALL and WHOLE that Property known as and forming cottage at 1 West Mains of Kincaldrum, Forfar, DD8 1TT being part and portion of the subjects described in Disposition by Trustees of Edward Armitstead Baxter and Kinreich Estate Company Limited with consent in favour of Bradford Equitable Building Society recorded in the Division of the General Register of Sasines for the County of Angus on 12th July 1954

The Parties:-

JOHN STEPHEN SPENCE residing at West Mains of Kincaldrum Farm, Forfar, DD8 1TT ("the Landlord")

PETER McLAREN residing at 1 West Mains of Kincaldrum, Forfar, DD8 1TT ("the Tenant")

NOTICE TO JOHN STEPHEN SPENCE ("the Landlord")

Whereas in terms of their decision dated 8th June 2011, 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:-

- (a) The Property is wind and watertight and in all other respects reasonably fit for human habitation;
- (b) The structure of and exterior of the Property (including drains, gutters and external pipes) are in a reasonable state of repair and in proper working order;
- (c) The Property has satisfactory provision for detecting fires and for giving warning in the event of fire or suspected fire.

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 to:-

- (a) Carry out such works of repair or replacement to the windows at the Property as are necessary to render them properly wind and watertight and capable of being open and shut properly.
- (b) Carry out such works of repair or replacement as are required to render the front and rear door at the Property properly wind and watertight.
- (c) Install a hardwired smoke detection system to comply with the appropriate regulations.
- (d) Carry out such works as are necessary to ensure the free flow of sewage and drainage water within the drainage system without overflow in to the garden of the Property.

The Private Rented Housing Committee order that the works specified in this Order must be carried out and completed within the period of 2 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, DD1 4BJ, Chairperson of the Private Rented Housing Committee at Dundee on 8th June 2011 before this witness:-

L Johnston

_____ witness

E Miller

_____ Chairman

Lindsay Johnston
Secretary
Thorntons Law LLP
Whitehall House
33 Yeaman Shore
Dundee
DD1 4BJ



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

prhp Ref: PRHP/DD8/67/11

Re: Property at 1 West Mains of Kincaldrum, Forfar, DD8 1TT ("the Property")

The Parties:-

PETER McLAREN residing at 1 West Mains of Kincaldrum, Forfar, DD8 1TT ("the Tenant")

JOHN STEPHEN SPENCE residing at West Mains of Kincaldrum Farm, Forfar, DD8 1TT ("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 18th March 2011 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 Property is wind and watertight and in all other respects reasonably fit for human habitation;
 - (b) The structure of and exterior of the Property (including drains, gutters and external pipes) are in a reasonable state of repair and in proper working order;
 - (c) The Property has satisfactory provision for detecting fires and for giving warning in the event of fire or suspected fire.
3. By letter dated 25th March 2011 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 their original application dated 18th March 2011. The Landlord made no written representations to the Committee.

6. The Private Rented Housing Committee (consisting of Mr E K Miller, Chairman and Legal Member; Mr D Godfrey, Surveyor Member; and Mr Andy McKay, Housing Member; accompanied by the Clerk, Mr R Shea) inspected the Property on the morning of 27th May 2011. Both the Landlord and Tenant were present during the inspection.
7. Following the inspection of the Property the Private Rented Housing Committee held a hearing at Tealing Village Hall, Inveraldie, by Dundee and heard from both the Tenant and Landlord. Both parties represented themselves.
8. The Tenant submitted that the primary issue was in relation to the windows and doors at the Property. The poor condition of these meant that there was significant water ingress to the Property and this contributed significantly to the damp within the building.
9. The Landlord submitted that he had previously considered carrying out replacement of the windows at the Property but had not done this as his financial position did not allow him to do this. He was not prepared to do it also whilst the Tenant was not paying rent. In relation to the overflow from the drainage system, the Landlord indicated that he had cleaned this out previously and that this was being caused by the Tenant using the wrong kind of toilet paper.

Summary of the issues

10. The issues to be determined are:-
 - Whether the windows at the Property are properly wind and watertight and otherwise in working order.
 - Whether the front and rear doors at the Property are properly wind and watertight and otherwise in proper working order.
 - Whether the roof is in an appropriate condition to meet the repairing standard.
 - Whether there was an appropriate smoke detection system installed within the Property.
 - Whether the Property was damp.
 - Whether the sewerage/drainage systems at the Property were adequate and otherwise met the repairing standard.

Reasons for the decision

11. The Committee based its decision primarily on the evidence obtained during the course of its inspection of the Property.

The Committee inspected the various windows at the Property both internally and externally. Generally these were in poor condition and there were varying degrees of rot and disrepair. A number of the windows were painted shut or were otherwise unable to be opened. The Committee were of the view that the windows did not meet the repairing standard and that the Landlord would require to carry out such works of repair or replacement as were necessary to render the windows properly wind and watertight and capable of being opened and closed in a normal fashion.

The Committee inspected the doors at the Property. It was apparently, particularly in relation to the front door, that water ingress was occurring and that works of repair were required in relation to both.

The Committee inspected the roof of the Property. It was agreed by both parties at the Hearing that the Landlord had recently carried out works to the roof of the Property. There were a couple of slipped slates at the rear. However the Committee noted that there had

been a strong storm several days prior to the inspection and that the slipped slates had probably occurred during the course of this. In the circumstances the Committee were satisfied that the roof did indeed meet the repairing standard.

The Committee inspected the Property and noted that there was no smoke detection system within the Property. This was a clear breach of legislation and the Landlord would require to install a hardwired smoke detection system.

The Committee considered the Tenant's allegation that the Property was damp. The Committee were of the view that the damp in the bathroom was caused by condensation rather than any other fundamental problem. There was undoubtedly some damp ingress into the Property caused by the poor windows and doors but hopefully this would be resolved by the improvements the Landlord would require to carry out. Overall the Committee were not of the view that any damp issues required to be included in the RSEO as these should be substantially addressed by the works to the windows and doors.

Lastly, the Committee considered the position in relation to the sewage. The Committee accepted the Tenant's submission that there had been both sewage and waste water coming up through the drains at the Property. Although the Tenant was not able to show this on the day, there was visual evidence of this around the drain areas at the time of inspection. The Committee were unable to determine whether the Landlord's allegation that the Tenant had used the wrong type of toilet paper was accurate or not. In the circumstances the Committee were of the view that the Landlord would require to carry out such works as were necessary to ensure there was no overflow of sewage or waste water from the drains within the Property and that the system was in proper working order.

Decision

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

Right of Appeal

15. 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

16. 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 E Miller Date 7/6/4
Chairperson