



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

prhp Ref: PRHP/IV2/83/10

Re : Property at Wester Brae of Cantray Farm, Croy, Inverness, IV2 5PR ("the Property")

The Parties:-

GARY WILLIAMSON residing at cottage at Wester Brae of Cantray Farm, Croy, Inverness, IV2 5PR (represented by his agent, Mr David McGrath of Inverness Citizens Advice Bureau) ("the Tenant")

JAMES DALLAS AND JESSIE DALLAS residing at Wester Brae of Cantray Farm, Croy, Inverness, IV2 5PR represented by their agent, Mr Richard M Smith, Allied Surveyors Scotland plc, Lyle House, Fairway Business Park, Inverness, IV2 6AA ("the Landlords")

Decision

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

Background

1. By application dated 14th May 2010 the Tenant applied to the Private Rented Housing Panel for a determination of whether the Landlords 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 Landlords had failed to comply with his duty to ensure that the Property met the repairing standard and in particular that the Landlords 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 and exterior of the Property (including drains, gutters and external pipes) are in a reasonable state of repair and in proper working order; and
 - (c) the installations in the Property for the supply of water, gas and electricity and for sanitation, space heating and heating water are in a reasonable state of repair and in proper working order.
3. By letter dated 22nd July 2010 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 Tenant.

5. Following service of the Notice of Referral the Tenant made no further written representation to the Committee other than his original application dated 14th May 2010. The Landlords (by letter dated 26th July 2010), made representations regarding inadequate notice being given to them of the works required by the Tenant. The Panel was of the view that sufficient notice had been given and advised the Landlords of this by letter of 4th August 2010. The Landlords made no other representations in relation to the repairing issues.
6. The Private Rented Housing Committee (comprising Mr E K Miller, Chairman and Legal Member; Mr Mark Andrew, Surveyor Member and Mrs Linda Robertson, Housing Member) inspected the Property on the morning of 13th September 2010. The Tenant was present during the inspection. The Landlords, Mr Dallas and his representative, Mr Smith, were also present during the inspection.
7. Following the inspection of the Property the Private Rented Housing Committee held a hearing at The Craigmonie Hotel, Annfield Road, Inverness and heard from both the Tenant and their Landlords. The Landlord, Mr Dallas, was present and was accompanied by Mr Ian McLennan and represented by Mr Smith of Allied Surveyors. The Tenant was present and was accompanied by Mr David McGrath of Inverness Citizens Advice Bureau.
8. The Tenant submitted as follows:-

The Tenant indicated that he was satisfied that during the course of the inspection the Committee had seen all of the relevant parts of the Property that, in his view, required attention and at this stage, and subject to any submission the Landlords might have, he had no submission to make. Mr McGrath for the Tenant indicated that the primary reason for the application to the Committee was due to the fact that the Tenant wished to have a shower installed within the Property to assist with a disability. Grants for the improvement works had not yet been able to be obtained due to the condition of the Property hence the application to the Committee.

9. The Landlords submitted as follows:-

Mr Smith for the Landlords accepted that there were issues in relation to the condition of the Property and that the Landlords required to address these. In his view the following items would require to be attended to:-

- The guttering at the Property required repair or replacement as appropriate.
- To eradicate damp penetration the ground level on the exterior of the building at the roadside elevation required to be reduced.
- He accepted that that the skew course flashings were in poor condition and needed attention. The cement pointing was cracked and needed to be repointed.
- The window the on the roadside elevation covering the small area of the small bedroom and the bathroom needed to be replaced and repair/re-decoration works around this area carried out as appropriate.
- Whilst the Landlords accepted that there were various cracks within the Property were of the view that none of these were causing any structural difficulties and were consistent with the age and character of the Property.
- The Landlords' agents submitted that there was no outstanding issue in relation to the drainage system at the Property, There was a septic tank which had been upgraded recently. The toilets had flushed properly and were tested during the inspection and there was no sign of any external leakages on the roadside elevation of the Property. The Landlords' agent did accept that there was water

leaking from the outfall pipe connected to the WC in the bathroom and that this would require to be fixed.

- In relation to the electrics, the Landlords' agent was of the view that a replacement meter box had been fitted and Hydro Electric would not have done this had they felt that other works were required.

Summary of the issues

10. The issues to be determined are as per the Tenant's original application to the Private Rented Housing Panel:-

- Whether the house is wind and watertight;
- Whether the septic tank is substandard;
- Whether the electrical system and wiring within the Property meets the repairing standard; and
- Whether the plumbing in the Property meets the repairing standard.

Reasons for the decision

11. The Committee based its decision on the evidence heard from both the Landlords and the Tenant during the course of the Hearing but primarily on the basis of the inspection carried out by the Committee. The Committee noted that the guttering on the roadside elevation of the Property was missing completely. The Landlords had advised at the inspection that this had come away with the weight of snow over the winter. The guttering on the rear elevation was in very poor condition. The Committee noted that in view of the Committee, based on its inspection, all the guttering at the Property along with the downpipes and soakaways required to be repaired or replaced as appropriate to ensure compliance with the repairing standard.

The Committee inspected the exterior of the Property and the various cracks within the Property. The Committee accepted the Landlord's submission that some of these were present through historical movement and were consistent with a property of the age and character of the Property. An example of this was the heat cracking along the line of the flue on the westmost gable. However the Committee were also satisfied that some remedial work was required to the exterior of the Property to render it properly wind and watertight. The Committee were of the view that the skew stones on the gable end required to be properly flashed and repointed. The stonework on the westmost chimney required to be pointed and the spur stone on the northwest corner of the Property needed pointing.

The Committee inspected the windows throughout the Property. Although the Tenant had indicated during the course of the inspection and Hearing that he was only concerned with the large window on the roadside elevation, the Committee were of the view that generally the windows at the Property did not meet the repairing standard. The windows were all in poor condition and subject to varying degrees of damage and rot. They could not properly said to be wind and watertight. In particular the large window on the roadside elevation was in very poor condition. This was beyond repair and would require to be replaced. The internal lintel on this window would also require to be replaced and extended. Repair works would generally require to be carried out in this area upon replacement of the window to ensure the area was wind and watertight. This would include the plastering of the ingo's. The crack running generally vertically from the top of the lintel to the downpipe would also require to be repointed.

In relation to the question of damp penetration, the Committee accepted that the Landlords' submission that in a Property of this type and location this age and character and with a stone floor there would always be some element of damp penetration into the

Property. The Committee were of the view that the level of damp penetration in the room used by a Tenant as a workshop was unacceptable. The Committee agreed with the Landlords' agent that the damp entering the northeastmost corner of the Property was due to the level of the ground on the exterior of the Property being higher than the internal level. Accordingly the Landlords would require to lower the exterior ground level to the same level or lower than the interior of the Property on the roadside elevation and the eastern gable side. Combined with the reinstallation of the guttering of the Property this should be sufficient to materially reduce the level of damp penetration within the Property.

In relation to the question of drainage, the Committee were happy to accept the joint submission of the parties that the septic tank itself was now in proper working order. There was also agreement that the toilet itself was leaking and this would require to be attended to by the Landlords. The Committee were of the view that the toilet did flush adequately. The Tenant had been of the view that there was leaking occurring from the pipe leading to the septic tank immediately outside the roadside elevation of the Property. The Committee were unable to determine from the inspection whether this was correct. The Committee noted that the drainage system exited the Property at the point where a large amount of work would require to take place around the rear large roadside elevation window and where ground lowering would also take place. The Committee were of the view that these works would expose the external drainage pipe and this could be checked by the Landlords at this stage to ascertain whether there were in fact any leaks in it.

There was a discussion at the Hearing regarding the electrical system, what works had been carried out by the Tenant and whether these had caused problems. The Tenant had submitted at the inspection that the hall light was not working and that the bathroom light started to smoke when used. Neither had bulbs in them during the course of the inspection and the Committee were unable to check the position during the inspection. Whilst there was a modern meter box within the Property, the fuse box was very dated. The Tenant advised that he had fitted this himself as the previous one had ceased working. The Landlords expressed dissatisfaction with the work carried out by the Tenant in this regard and suggested this may have been part of the problem. The Committee were unable and indeed unwilling to be drawn into a discussion as to who had carried out what works. The Tenant was entitled to a property that had a basic electrical system that was safe. The Committee were of the view that a periodic inspection report would be required from a suitably qualified electrician confirming what, if any, works were required to bring the system up to a safe basic standard and confirmation that the works had been carried out. The Committee noted that there was no smoke alarm system in the Property and for compliance a hardwire mains smoke detector would require to be fitted.

The Committee enquired of the Landlords' agent what, in his view, would be a reasonable timescale for carrying out the works. The Landlords' agent felt that 3-4 months would be a reasonable period. The Landlords agent pointed out that even once the works had been done it may take a longer period for the damp within the Property to dry out. The Committee accepted that this might be the case. The Committee were of the view that the timescale proposed by the Landlords was a reasonable one. The Tenant had no objections to this.

Various issues were raised during the course of the Hearing in relation to the impact of the works on rent, the type of tenancy, the Landlords' title and the breakdown in the relationship between the Landlords and Tenant. Whilst the Committee noted the points that both sides made none were relevant for the purposes of this Decision.

The Committee did note that the Tenant had disability issues and the primary issue for him was the installation of his shower. This required confirmation that the Property met a basic standard of electrical safety and, whilst the Committee were not prepared to set a separate timescale for this aspect of the works, the Committee did impress upon the Landlords the importance of carrying out these works as soon as possible. The Landlords agreed to undertake the electrical check and any works required as soon as possible. The Committee also noted that the Tenant required confirmation of the Landlords' title in order to claim the grant monies and again the Landlords would endeavour to provide this.

The Committee pointed out to the Tenant that it was important that he was flexible in providing access to the Landlords during the course of the works and he agreed to do so.

Decision

12. The Committee accordingly determined that the Landlords 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 Landlords 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 ...
Chairperson

E Miller

.... Date..... 22 / 9 / 2016



Repairing Standard Enforcement Order

Ordered by the Private Rented Housing Committee

prhp Ref: PRHP/IV2/83/10

Re : Property at Wester Brae of Cantray Farm, Croy, Inverness, IV2 5PR ("the Property")

Sasine Description: ALL and WHOLE those subjects at Brae of Cantray, Croy, Inverness being the subjects described in and disposed by Disposition by the Executors of Hugh Dallas in favour of James Dallas and Jessie Dallas recorded in the Division of the General Register of Sasines for the County of Inverness on 5th July 1985.

The Parties:-

JAMES DALLAS and JESSIE DALLAS residing at Wester Brae of Cantray Farm, Croy, Inverness, IV2 5PR ("the Landlords")

GARY WILLIAMSON residing at cottage at Wester Brae of Cantray Farm, Croy, Inverness, IV2 5PR ("the Tenant")

NOTICE TO JAMES DALLAS and JESSIE DALLAS ("the Landlords")

Whereas in terms of their decision dated 22 September 2010, the Private Rented Housing Committee determined that the Landlords have 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 watertight and in all other respects reasonably fit for human habitation;
- (b) the structure and exterior of the Property (including drains, gutters and external pipes) are in a reasonable state of repair and in proper working order; and
- (c) the installations in the Property for the supply of water, gas and electricity and for sanitation, space heating and heating water are in a reasonable state of repair and in proper working order.

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 carry out such works as are necessary for:-

- (a) to repair or replace as appropriate the guttering and downpipes at the front and rear of the Property and carry out any repair works as are appropriate to the existing soakaways;
- (b) to properly flash and repoint the skew stones on the gable elevations of the Property sufficient to render the Property wind and watertight;
- (c) repoint the stonework on the west chimney sufficient to render it wind and watertight;
- (d) to repoint the spur stone on the northwest corner of the Property sufficient to render it wind and watertight;
- (e) to replace the large window on the roadside elevation of the Property, to extend and replace the internal lintel above this window and to carry out such pointing and plastering to the ingo's and around the window in general to render it wind and watertight including repointing the crack in the Property running from the said window to the adjacent downpipe.

- (f) In relation to the other windows within the Property to repair or replace these as appropriate and generally to ensure that the said windows are wind and watertight and capable of opening and closing properly;
- (g) To reduce the ground level on the exterior of the Property so as to be level with or lower than the ground level on the interior of the Property on both the roadside elevation of the Property and the east gable end of the Property;
- (h) To repair the leak from the underside of the toilet and, when dealing with ground lowering works in (g) above, a check on the outfall pipe connected to the WC inside the bathroom leading to the septic tank where it is adjacent to the property to ensure it is not leaking;
- (i) To provide the Committee with a clean period inspection report from a suitably qualified electrician confirming that the Property has a safe system of basic electrics and to carry out such works as are necessary to allow the issue of the said Certificate by a qualified electrician. These works are to include the installation of a hardwired smoke detector system within 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 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(s) 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 22 September 2010 before this witness:-

M Ryden

witness

E Miller

Chairman

Solicitor
Whitehall House
33 Yeaman Shore
Dundee
DD1 4BJ