



Repairing Standard Enforcement Order

Ordered by the Private Rented Housing Committee

prhp Ref: PRPH/RP/13/0157

Re: Property at Lower Arbol Bungalow, Portnahomack, Tain, IV20 1SQ ("the Property")

Title No: ROS10771

The Parties:-

BRIAN MACLEAY residing at Homelea, Achnairn, Lairg (represented by his agents Marshall Forbes Limited, InBusiness Centre, 24 Longman Drive, Inverness, IV1 1SU ("the Landlord"))

MR and MRS STEPHEN McDONALD residing at Lower Arbol Bungalow, Portnahomack, Tain, IV20 1SQ ("the Tenants")

NOTICE TO BRIAN MACLEAY ("the Landlord")

Whereas in terms of their decision dated 24 March 2014, 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) Any fixtures, fittings and appliances provided by the Landlords under the tenancy 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:-

- (a) To carry out such works as are necessary to allow the obtaining of a clear electrical installation condition report from a suitably qualified electrician and to provide a copy of the said certificate to the committee confirming compliance with the relevant regulations.
- (b) To investigate the condition and operation of the wood burning stove, in particular to ensure that it properly heats the hot water and radiators. The Landlord will require to carry out such works as are necessary to allow this to occur and provide documentary evidence of this from a heating engineer.
- (c) The Landlord shall install a hardwired interlinked smoke/heat detection system compliant with the current Scottish Government guidance contained in the Building Standards Division (Technical Handbooks) 2013 – Domestic, Fire.

The Private Rented Housing Committee order that the works specified in this Order must be carried out and completed within the period of 6 weeks from the date of service of this Notice.

A landlord or a Tenants 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 24 March 2014 before this witness:-


L Johnston

witness

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

E Miller

Chairman



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

prhp Ref: PRPH/RP/13/0157

**Re: Property at Lower Arbol Bungalow, Portnahomack, Tain, IV20 1SQ
("the Property")**

The Parties:-

**MR and MRS STEPHEN McDONALD residing at Lower Arbol Bungalow,
Portnahomack, Tain, IV20 1SQ ("the Tenants")**

**BRIAN MACLEAY residing at Homelea, Achnairn, Lairg (represented by his agents
Marshall Forbes Limited, InBusiness Centre, 24 Longman Drive, Inverness, IV1 1SU
("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's agents 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 18 November 2013 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 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 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;**
 - (c) Any fixtures, fittings and appliances provided by the Landlords under the tenancy are
in a reasonable state of repair and in proper working order;**
 - (d) Any furnishings provided by the Landlords under the tenancy are capable of being
used safely for the purpose for which they are designed;**
 - (e) The Property has satisfactory provision for detecting fires and for giving warning in
the event of fire or suspected fire.**
- 3. By letter dated 9 December 2013 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 Tenants.
5. Following service of the Notice of Referral the Tenants made no further written representation to the Committee other than their original application. An update was provided by Citizens Advice Bureau on 19 December 2013. The Landlord's agents by email dated 10 January 2014 made written representations to the Committee.
6. The Private Rented Housing Committee (comprising Mr E K Miller, Chairman and Legal Member; Mr A Anderson, Surveyor Member; and Mrs L Robertson, Housing Member) inspected the Property on the morning of 4 March 2014. The Tenants were present as were the Landlord's agents.
7. Following the inspection of the Property the Private Rented Housing Committee held a Hearing at Westend Community Centre, Firhill, Alness, IV17 0RS. The Tenants were present and accompanied by a representative from the Citizens Advice Bureau, Alness. The Landlord's agents were present. The Landlord was not present.
8. The Tenants submitted that they did not think the Property met with the repairing standard. The Tenants were of the view that the Property was not properly wind and watertight. There was wind and water penetration through both the windows and the structure of the Property. This caused condensation and damp. They also viewed the electrics within the Property as unsafe. There was also an issue with both the oil heating provided and the wood burning stove. The Tenants were also of the view that there was inadequate provision for smoke detection.
9. The Landlord's agents submitted that it was accepted that there were some electrical works that had to be carried out. The Landlord intended to commence these shortly. The Landlord's agent was of the view that the Property was properly wind and watertight and any condensation/damp was simply caused by (a) the manner in which the Tenants lived in the Property and (b) a failure to properly heat the Property. In relation to the heating at the Property, the Landlord's agents were of the view that both the oil fired heating and the wood burning stove were in proper working order and met the repairing standard.

Summary of the issues

10. The issues to be determined were:-

- (1) Whether the front door was properly wind and watertight and met the repairing standard.
- (2) Whether the back door was properly wind and watertight and capable of being used properly. There was also a question as to whether the Tenants had a key.
- (3) Whether the windows at the Property and also the general exterior of the Property were properly wind and watertight or were allowing draughts and water penetration into the Property.
- (4) Whether the electrical installation within the Property was safe and met the relevant regulations.
- (5) Whether the wood burning stove and its connection to the hot water system and radiators was in proper working order and met the repairing standard.
- (6) Whether the oil fired heating within the Property was in proper working order.
- (7) Whether there was an adequate smoke detection system within the Property compliant with the relevant Regulations.

Findings of fact

11. The Committee found the following facts to be established:-

- 1) The front door met the repairing standard.
- 2) The back door met the repairing standard and a key was available.
- 3) The windows and general exterior of the Property were reasonably wind and watertight and compliant with the repairing standard.
- 4) It was apparent that the electrical installation within the Property did not meet the repairing standard. There were a number of issues that required to be addressed by the Landlord.
- 5) The Committee was unable to determine from the evidence led from both parties whether the hot water system and radiator connections to the wood burning stove in the Property were in proper working order. The stove itself functioned properly in relation to its ability to heat the room it was located in.
- 6) The oil fired central heating was in proper working order.
- 7) There was inadequate smoke detection provision compliant with the relevant regulations within the Property.

Reasons for the decision

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

The Committee inspected the front door. Whilst this was dated it did appear to be functioning properly and was capable of being opened and closed properly. There was a very small amount of water ingress on the day in question. However the Property was in a very isolated and exposed location. Overall whilst the door was dated it did appear to be functioning correctly and the Committee was satisfied that it met the repairing standard.

The Committee inspected the back door at the Property. Again this was dated but appeared to be functioning properly. A replacement key had been provided and accordingly compliance with the repairing standard had been achieved.

The Committee inspected the windows at the Property. These were relatively modern double glazed units. Generally these were in adequate condition and appeared to be properly wind and watertight. There were one or two areas where very minimal draughts could be felt. However, given the age, character and the particularly exposed location of the Property the Committee was satisfied that the windows within the Property were compliant with the repairing standard. The general exterior of the Property was also in reasonable condition and appeared to be wind and watertight. The Tenants had complained of having condensation and damp within the Property. The Committee was of the view that this was not caused by any defect in the structure of the Property but rather due to the lack of regular heating of the Property and condensation from the general use of the Property by the Tenants. The Tenants had a large amount of possessions within the Property which would be contributing to the condensation issue.

The Committee was satisfied that the electrical installation within the Property was not compliant with the repairing standard. A socket within the lounge was unable to be switched on properly, the light switch in the bathroom functioned erratically and the light inside the back door was damaged. The Tenants had raised a number of other issues in relation to electrical safety such as a poorly functioning oven and heat stemming from beneath the hob top. The Committee was unable to determine whether these complaints were also breaches of the repairing standard during the course of the

inspection. However it was apparent that there were electrical issues within the Property. Accordingly the Landlord would require to carry out such works within the Property as were necessary to allow the issue of a clear Electrical Installation Condition Report confirming compliance with the relevant regulations. The electrician should, in the course of carrying out the report, check all of the specific items complained of as well as the electrical system generally.

The Committee inspected the wood burning stove which was located in the lounge. This was connected to the hot water supply and 7 radiators within the Property. There was an oil storage tank for providing heating to the same radiators. It was accepted at the Hearing that the previous wood burning stove had not been working properly. This had been replaced in December 2013. Whilst the new stove worked initially, the Tenants alleged that a couple of days after its installation the stove failed to heat the hot water supply and radiators. It was not disputed that the stove worked in heating the lounge but rather that it failed to heat the hot water and radiators. In contrast, the Landlord's agent's submission was that the system had been checked in January and had been working at that time. The Tenants were adamant that the system was still failing to work at the date of the inspection. The system was not in use during the course of the inspection and accordingly the Committee was unable to reach a determination. The Committee weighed the evidence of the two parties. Both parties appeared to have a genuine belief that their version of events was correct. Accordingly the Committee was unable to determine definitively whether there was an ongoing issue. In the circumstances the Committee determined that the Landlord would require to carry out a check on the system again and carry out any works necessary to ensure that it worked properly and was compliant with the repairing standard. A copy of the report should be provided to the Committee

The Committee also inspected the oil tank at the Property. This had recently been replaced. After discussion, the Tenants accepted that the new tank was performing properly and that the radiators could be heated from this. The Tenants, however, did not wish to use the oil system until such time as they had been reimbursed for oil lost during a leak from the old tank. The question of compensation to the Tenants fell outwith the jurisdiction of the Committee. Given the Tenants accepted that the new oil tank was in proper working order the Committee was satisfied that compliance with the repairing standard had been achieved in this regard. The personal choice of the Tenants not to use the tank was a matter for them.

The Committee inspected the smoke detection system within the Property. There were three battery powered smoke detectors in the Property, one of which had been removed from its fixing. The Tenants advised that these had only been put up within the last few months. The Landlord's agents had been advised by the Landlord that they had been there for a longer period and pre-dated 2007. The Committee noted that according to the title sheet the Landlord had only purchased the Property in 2009, after the requirement to install hardwired smoke alarms had taken effect. It was not clear to the Committee how the Landlord would have been aware of a pre-2007 date for installation. In any event, the alarms that were present appeared to be very new and the Committee was satisfied that the Tenants version of events was correct. Accordingly, the Committee was readily satisfied that there was a breach of s13(1)(f) of the Act. In terms of s13(5) of the Act, in assessing whether there is satisfactory provision the Committee must have regard to the guidance issued by the Scottish Ministers. The current guidance refers to the Scottish Government Domestic Technical Handbook from 2013. This specifies that there should be at least:-

- One functioning smoke alarm in every room which is frequently used by the occupants for general daytime living purposes
- One functioning smoke alarm in every circulation space, such as hallways and landings
- One heat alarm in every kitchen, and
- all alarms should be interlinked

Given there were only battery powered smoke alarms present the Committee did not view this as satisfactory. The Committee saw no reason for the current 2013 guidance not to apply to the Property.

The Committee considered the amount of time that the Landlord would require to do the works. Given these only related to carrying out some basic electrical repairs, a check on the wood burning stove (and any repairs required as a result of this check) and the installation of a proper smoke detection system, the Committee did not perceive that it should take the Landlord long to carry out these works. The Committee was satisfied that a period of 6 weeks would suffice.

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 Tenants 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 **E Miller** Date..... 24/3/2014.....
Chairperson