

A Repairing Standard Enforcement Order

Ordered by the Private Rented Housing Committee

Re : Property at Findoglen House, St Fillans Perthshire ("the Property") being All and Whole Findoglen House St Fillans, part £4 land of Ardvorlich, 40s land of Downan and Balinalt 40s land of Balimenoeh, and £4 lands of Easter and Wester Finglens described in Disposition to Ardvorlich Estates Ltd recorded in the general Register of Sasines on 5th Jan 1967

**Parties: Mr and Mrs Flynn, Findoglen House, St Fillans Perthshire ("the Tenants")
Ardvorlich Estate Limited (Mr and Mrs Stewart) Ardvorlich
Lochearnhead, Perthshire ("the Landlord")**

NOTICE TO Ardvorlich Estate Limited (Mr and Mrs Stewart) Ardvorlich Lochearnhead, Perthshire ("the Landlord")

Whereas in terms of their decision dated 22 July 2008, The Private Rented Housing Committee having 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 house is wind and water tight and in all other respects reasonably fit for human habitation, that the structure and exterior of the house is a reasonable state of repair and proper working order, that the installations in the house for the supply of water, gas and electricity are in a reasonable state of repair and in proper working order and any fixtures and fittings and appliances provided by the Landlord under the tenancy are in reasonable state of repair and are 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:

- a. Repair or replace the front door to make it wind and water tight
- b. To repair the wood burning fire in the living room or alternatively to replace the same to ensure that it is in proper working order.
- c. To overhaul the windows of the property to ensure that they are in a reasonable state of repair and in proper working order.

- d. To repair or replace the water filter system to ensure a constant and adequate water supply with a minimal requirement for filter changes and to provide adequate provision for water storage.
- e. To brick up the boiler room window that is located within 600mm of the central heating boiler.
- f. To repair/upgrade the central heating system as necessary to ensure that is in proper working order.
- g. To make the domestic oil tank comply with the current Scottish Building Standards.

The Private Rented Housing Committee order that the work specified in this order must be carried and completed within a period of two months from the date of service of this notice.

If the Landlord or the Tenants is/are aggrieved by this decision of the Private Rented Housing Committee they may appeal to the Sheriff by summary application within 21 days of being notified of this decision.

Where such an appeal is made, the effect of the revocation is suspended until the appeal is abandoned or finally determined, and where the appeal is abandoned or finally determined by confirming the decision, the revocation 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 Judith V Lea, solicitor, Unit 3.5 The Granary Business Centre, Coal Road, Cupar, Fife, KY15 5YQ, chairperson of the Private Rented Housing Committee at Cupar on 22 July 2008 before this witness:-

R Graham Witness

J V Lea Chairman

Rachel Graham
31 1/r Dundonald Street
Dundee
DD3 7QA

Assistant/Secretary

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

Re : Property at Findoglen House, St Fillans Perthshire ("the Property") being All and Whole Findoglen House St Fillans, part £4 land of Ardvorlich, 40s land of Downan and Balinalt 40s land of Balimenoach, and £4 lands of Easter and Wester Finglens described in Disposition to Ardvorlich Estates Ltd recorded in the general Register of Sasines on 5th Jan 1967

The Parties:-

Mr and Mrs Flynn, Findoglen House, St Fillans Perthshire ("the Tenants")

Ardvorlich Estate Limited (Mr and Mrs Stewart) Ardvorlich Lochearnhead, Perthshire ("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 Tenants at two hearings, determined that the Landlord had failed to comply with the duty imposed by Section 14 (1)(b) of the Housing (Scotland) Act 2006 in respect of a number of the points brought before the Committee

Background

1. By application dated 26 January 2008, the Tenants applied to the Private Rented Housing Panel for a determination as to 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 they considered the Landlord to have failed to comply with the duty to ensure that the house meets the repairing standard and in particular that the Landlord had failed to ensure that the house was wind and water tight and in all other respects reasonably fit for human habitation, that the structure and exterior of the house (including drains, gutters and external pipes) were in a reasonable state of repair and in proper working order, that the installations in the house for the supply of water, gas and electricity and for sanitation, space heating and heating water were in a reasonable state of repair and in proper working order and that any fixtures and fittings and appliances provided by the Landlord under the tenancy were in a reasonable state of repair and proper working order.
3. By a letter dated 19 February 2008 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 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 supplied further information by way of letters and photographs. The Landlord made written representations dated 25 February 2008.
6. The Private Rented Housing Committee inspected the property on 15 April 2008. The Tenants and the Landlord were present during the inspection. Following the inspection of the property, the Private Rented Housing Committee held a hearing at The WRI Hall, Comrie and heard representations from both the Tenants and the Landlord.
7. There were various issues to be considered and the Committee went through the issues raised by the Tenants one by one.
8. The first issue raised by the Tenants was in connection with the front door which the Tenants submitted required draught proofing. The Tenants had pointed out at the inspection that there were gaps at the top and bottom and the Landlord explained that there had been problems with the door sticking and they had planed the door but there was now a problem with it not being draught proof. The Tenants explained that they were to obtain a grant from the Council to put in insulation in the loft and this might also cover draught proofing. It was explained that the insulation could not be installed because there was woodworm in the roof timbers which has not been treated and there was also a dispute between the Landlord and the Tenants with regard to liability for the cost of the electricity which would be consumed when illuminating the loft while the necessary work was being done.
9. The next issue raised by the Tenants was in connection with the wood burning stove in the living room. The Tenants explained that when the fire was lit, the room filled with smoke and the flue did not function properly. The Tenants stated that the regulator on the fire was broken and they could only have it full on. The Tenants stated that some of the fire bricks on the hearth had been replaced but they became loose and damaged after only three to six months. The fire basket had also been replaced. The Tenants however explained that if there was any wind, the room became full of smoke and they had had to redecorate on a number of occasions. The Landlord stated that they were under the impression that the fire had been repaired and was fully functional but indicated that they were not adverse to replacing the fire with something that the suppliers said would be sufficient to heat the room.
10. The next issue was in connection with the adequacy of the central heating system. The Tenants stated that a new central heating system had been installed in August 2007 but there were still problems due to airlocks and the fact that some of the old radiators did not work properly. The Tenants suggested that the difficulty maybe due to the different diameters of the pipes. The Tenants submitted that there was a problem with dampness and condensation in the second living room. The Landlord indicated that the dampness and condensation was not helped by the fact that the open fire in the second living room had been closed up by the Tenants and that the heating was not on often. The Tenants clarified that they had the heating on twice per day. The Tenants also indicated that the radiator in the back bedroom was not of sufficient size to heat the room. The Landlord indicated that the radiator was of the size recommended by the heating engineer. The Tenants accepted that the new radiators worked fine but there were difficulties with some of the rooms not heating up properly.
11. The next issue was the windows. The Tenants submitted that a number of these were painted shut and it was not possible to open them. The Landlord indicated that they had been unaware of this but accepted that something should be done about it and agreed to send the handyman to free the windows up.

12. In connection with the new central heating boiler, the Tenants expressed grave concern with regard to the vents which had allegedly been incorrectly fitted and which they submitted were allowing carbon monoxide to enter the property when the wind is blowing in a certain direction. The Tenants wanted it made safe. The Tenants also submitted that there should not be a window above the flue. The Landlord stated that the window could not open and this was accordingly not a problem. The Landlord's position was that the boiler was installed by qualified heating engineers and the vents were fitted by the Landlord's handyman on the heating engineer's instructions.
13. With regard to the water system, it was explained that a filter system was installed in 2007. Perth and Kinross Council had checked the water after the filters were put in and the water supply was found to be of an acceptable quality. The Tenants however explained that they still had a lot of difficulty with the water as when it rained for any prolonged period the filters required to be changed. The Tenants explained that when there was heavy rain, the water pressure dropped and no water came out of the taps. The Tenants were unable due to their health to change the filters and they had to ask the Landlord to come and change them. The Tenants submitted that this happened on a regular basis and that the supply was often intermittent. The Tenants submitted that they thought there were problems with air blockages. The Landlord stated that the filtration system had been approved by the Council and advised that they went to change the filters whenever asked to do so by the Tenants.
14. In connection with the condensation in the utility room, the Tenants submitted that everything in this room was damp and anything kept in the room deteriorated. Water dripped from everywhere. The Landlord explained that the back wall had always been a problem and had been inspected by builders who had inserted a silicone based damp proof course and drainage at the back and they were not sure what else could be done. The Landlord stated that the problem seemed to have got worse since the water system was installed. The Tenants indicated that they were aware of other properties owned by the Landlord where there was a box around the water systems and there did not appear to be a problem.
15. In connection with the bathroom, the Tenants submitted that there was mould on the wall and a condensation problem. The Tenants also had concerns with regard to the cistern for the toilet leaking. The Landlord indicated that they were unaware of any difficulty with mould and that they would have their plumber look at the cistern.
16. In connection with the chimney pot, the Tenants indicated that they were concerned that it would blow off in high winds. The Landlord confirmed that they had recently had it looked at by a local firm of Roofing Contractors who had confirmed that they had made it safe.
17. In connection with the oil leak, the Tenants confirmed that the pipe had been repaired and was no longer leaking.
18. In connection with the gutters, the Tenants confirmed that the holes had been filled in but there was still sometimes a problem with water splashing over the guttering when there was heavy rain. The Tenants however indicated that this did not cause them much of a problem.
19. The Tenants confirmed that the slates on the roof had been fixed.
20. In connection with the vermin at the inspection it had been confirmed by the Tenants that the holes had been blocked and there were no longer any live vermin in the property so far as they were aware.
21. After the end of the hearing the Tenants produced a letter from the Hydro Electric in connection with the wiring of the property.

Summary of the issues, findings in fact and reasons for decision.

There were a number of issues raised by the Tenants in this case. These are as follows:

- a. In connection with the condition of the front door, the Committee had to consider whether or not the house was wind and water tight in terms of Section 13 (1) (a) of the Act. It was clear from the inspection that the front door was not windproof. There were gaps both at the top and the bottom of the door. The Committee considered that even having regard to the age and character of the property, the door requires to be repaired or replaced to make it wind and water tight.
- b. In connection with the loft insulation, the Committee had to consider whether or not a lack of insulation breached the repairing standard. The Committee considered that the lack of insulation did not fall into any of the categories set out in the repairing standard. In connection with the alleged wood worm, there was no evidence that this was structurally affecting the property in terms of Section 13(1)(b) of the Act or breached 13 (1) (a) of the Act.
- c. In connection with the fire in the living room, the Committee considered that this was a fixture and fitting provided by the Landlord and the Committee had to consider whether or not it was in a reasonable state of repair and in proper working order. It was clear from the evidence and from the inspection that the temperature regulator on the fire was broken and that when the fire was used, smoke came out into the room. The Landlord indicated that they were prepared to replace the fire and the Committee considered that in order to meet the repairing standard, the fire would require to be repaired or replaced to ensure that it is in proper working order to comply with Section 13 (1) (c) of the Act
- d. In connection with the central heating, the Committee considered this to be an installation in the house and in terms of Section 13(1)(c) of the Act the Committee had to decide whether or not it was in a reasonable state of repair and in proper working order. The Committee noted that despite the fact the tenants had the heating on twice a day, certain rooms in the house did not heat up. The Landlord indicated that the central heating had been installed by qualified heating engineers and should be sufficient for the purpose. The Tenants raised concerns with regard to the safety of the vents near the boiler, but the Landlord's position was that the boiler was put in by qualified heating engineers and the vents were installed as per the heating engineer's instructions. The Committee did not consider that it had sufficient evidence before it to be able to determine whether the central heating was in a reasonable state of repair and in proper working order. Accordingly the Committee obtained an expert report from a central heating engineer to test the system to ensure that it was working properly and that it was operating safely. The report was asked to include comments on the adequacy of the ventilation and the position of the flue. The committee received the report from the central heating engineer and this was copied to both the Tenants and the Landlord. The Landlord produced a report from their plumbing, heating and ventilation engineer in connection with the central heating system. The Committee reconvened the hearing in respect of the central heating system , on 10 July 2008 again at The WRI Hall, Comrie and heard further submissions from the Landlord and the Tenants. The report from the central heating engineer raised issues with regard to the adequacy of the domestic oil storage tank. Although this was not raised in the Tenant's original application, the Committee decided that it had jurisdiction to deal with it as the tank forms part of the central heating system at the property.

At the reconvened hearing the Tenants indicated that they accepted the central heating engineer's report, which was an independent report. The Tenants stated that carbon monoxide was coming in through the study window from the flue on the outside of the property. The Tenants lodged photographs in respect of this. The Tenants suggested that there required to be a flue going from the boiler up

and out through the roof. The Tenants stated that Mr Flynn was having blood tests at the hospital in connection with carbon monoxide poisoning and these blood tests had shown an unusually high level of carbon monoxide in the blood. The Tenants also submitted that the carbon monoxide alarm has gone off both when in the boiler room and when in the study. In connection with the tank, the Tenants submitted that both reports stated that the tank should be banded. The Tenants submitted that it was next to a drain and was a fire hazard and did not meet the building regulations. The Tenants stated that they had concerns as there had been spillage of oil from the tank in the past and it could happen again. The Landlord submitted that the window in the study was not mentioned in the central heating engineer's report and referred to the report from their plumbing, heating and ventilation engineer which indicated that all the measurements from the vents and the outlets complied with the legal limit. The Landlord pointed out that there was no written evidence that the Tenant had carbon monoxide poisoning and there was no evidence to verify that the carbon monoxide alarms had gone off. The Landlord submitted that the central heating system was working properly. In connection with the tank, the Landlord stated that they were advised that if it was installed more than 15 years ago it did not require a building warrant. The Landlord stated that they were not sure if it required to be banded under the regulations but if this was required they would do it. The Landlord submitted that there was no evidence with regard to the historical spillage. The Landlord confirmed that the volume of the tank was 1250 litres.

Having considered the report from the central heating engineer, the report from the Landlord's plumbing, heating and ventilation engineer and the further submissions from the Landlord and the Tenants, the Committee made the following findings with reasons in connection with the central heating system.

- d(1) In connection with the boiler, although the central heating engineer's opinion was that the boiler was too small for the property, this view clearly conflicts with the view of the engineer who installed the boiler in the property when the previous boiler was replaced. The Tenant's position is that the central heating system is not working properly and the committee cannot be satisfied on the evidence available that the central heating system is fully working at present. The central heating engineers report makes mention of the difficulty of there being insufficient pressure to re-supply the combination boiler. The installation of a gravity fed water storage tank should result in an increase in pressure which might resolve the situation without the need to replace the boiler.
- d(2) In connection with the radiators the radiator in the east most ground floor living room is not presently adequately working and requires to be replaced with one of sufficient size to adequately heat the room. However if the central heating system is flushed as suggested by the heating engineer and if a water storage tank is installed the remainder of the existing heating system may be shown to be adequate.
- d(3) In connection with the location of the boiler the current Scottish Building Standards state that the vents must be 600mm away from the boiler. It is clear from the central heating engineer's report that the closest vent is 803 metres from the boiler. This complies with the Scottish Building Standards.
- d(4) In connection with the boiler room window, this is too close to the boiler and should be bricked up so that it can never be opened.
- d(5) In connection with the study window, neither the central heating engineer or the Landlord's plumbing, heating and ventilation engineer

raised any issue with regard to the location of this window and its proximity to the flue. It was clear from the evidence before the Committee that the study window is substantially more than 600mm away from the flue. The Committee noted the Tenants' concerns with regard to carbon monoxide poisoning but there was no medical evidence lodged with the Committee. On the basis of the expert reports available to the Committee, there is nothing to suggest that the location of the study window in relation to the flue, does not comply with the Scottish Building Standards.

- d(6) The committee did not consider that there was any issue with regard to the boiler being sited on the external side of the corner as it is clearly more than 300mm away from the corner and accordingly complies with the Scottish Building Standards.
- d(7) In connection with the domestic oil tank, the Scottish Building Standards Technical Handbook 2007, which provides guidance on the Building (Scotland) Regulations 2004, states that tanks between 90 and 2500 litre capacity should be banded. The Committee accordingly considered that the domestic oil tank should be banded to comply with the building standards. As the Committee had not inspected the domestic oil tank, it is not clear whether the oil tank is closer than 1.8 meters from the eaves of the property. If it is it will require to be relocated or the eaves will require to be replaced with a non combustible material. The Committee also considered that the tank should be supported in accordance with the current Scottish Building Standards.
- e. In connection with the windows, these are clearly part of the structure and exterior of the house and in terms of Section 13 1(b) of the Act require to be in a reasonable state of repair and in proper working order. It was apparent from the evidence provided and from the inspection that a lot of the windows in the property are not able to open. The Landlord accepted that something should be done to rectify this. The Committee find that the windows do not comply with Section 13(1)(a) of the Act and require the Landlord to overhaul the windows to ensure that they are in a reasonable state of repair and in proper working order.
- f. In connection with the water supply, the Committee required to consider whether the installations in the house for the supply of water were in a reasonable state of repair and in proper working order in terms of Section 13(1)(c) of the Act. It was clear from the evidence provided by the tenants which was not disputed by the Landlord that although the water supply was now adequate in terms of purity it was not constant. The Tenants presently have to let the Landlord into the property on a regular basis to change the filter. According to the evidence provided the filter should only be required to be changed once every three months but at this property it appears that the filters have to be changed every time it rains for any length of time. The Committee accordingly do not find that the water supply is in a reasonable state of repair and in proper working order and require the Landlord to repair or replace the filter system to ensure a constant and adequate water supply with a minimum requirement for filter changes and provide adequate provision for water storage.
- g. In connection with the condensation in the utility room, the back living room and the bathroom, the Committee had to consider whether this met the repairing standard under Section 13(1)(a) in respect of the house being reasonably fit for human habitation. The Committee considered that the condensation and damp were probably being caused by inadequate heating and ventilation. The Committee acknowledged that there is an element of condensation and damp in these rooms but if the central heating is working properly and the windows are overhauled so that they can be opened for ventilation, this may resolve the

condensation problems. The Committee accordingly deferred a decision on this issue until after the heating system has been repaired / upgraded and the windows have been overhauled.

- h. In connection with the bathroom cistern, it was not clear to the Committee whether it was actually leaking or whether the problem was caused by condensation. Taking into account the age and character of the building, the Committee do not consider on the basis of the evidence provided that the state of the bathroom cistern was such that it resulted in a breach of Section 13(1)(c) of the Act.
- i. In connection with the oil leak, it was confirmed that this has now been fixed and accordingly the Committee did not find any breach of the repairing standard.
- j. In connection with the chimney pot, it was clear from the evidence from the Landlord that a slater had recently inspected this and found it to be safe. There was no evidence to indicate that since the chimney pot had been fixed it was anything other than safe. The Committee accordingly did not find a breach of the repairing standard in respect of this matter.
- k. In connection with the gutters, on the basis of the evidence it would appear that it was only in exceptionally heavy rain that there was any overflow now that the holes have been fixed. Accordingly having regard to the age and character of the building, the Committee did not find any breach of the repairing standard.
- l. The Committee noted that any missing or broken slates had been fixed and accordingly there was no breach of repairing standard in connection with this matter.
- m. In connection with the vermin, the Tenants confirmed that the holes have now been filled in and no evidence was provided of any recent problem with live vermin. The Committee accordingly do not find any breach of the repairing standard in connection with this matter.
- n. In connection with the electricity supply, this was mentioned at the inspection and the Tenants handed over a letter from The Ofgem Approved Laboratory in connection with this. This was after the hearing had concluded and the Landlord did not have an opportunity to comment on the terms of the letter. This was also not raised in the tenants application and accordingly has to be treated as a variation to the application. It was agreed that the letter be sent to the Landlord for comments. The Landlord had the wiring completed on 1 May 2008. The tenants confirmed that the necessary work had been carried out. There is accordingly no outstanding issue here.

Decision

1. The Committee accordingly determined that the Landlord had failed to comply with the duty imposed by Section 14(1)(b) of the said Act in respect of a number of the matters raised by the Tenants.
2. The Committee proceeded to make a repairing standard enforcement order as required by Section 24 (2).
3. The decision of the Committee is unanimous.
4. In connection with the condensation problem the Committee's decision is reserved until after the central heating system has been repaired / upgraded and the windows have been overhauled.

Right of Appeal

1. 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

2. 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 **J V Lea** Date..... 22/7/08.....
Chairperson