



## Repairing Standard Enforcement Order

Ordered by the Private Rented Housing Committee

prhp Ref: prhp/RP/13/0068

Re : Property at North Cottage, Crofts of Dipple, Fochabers IV32 7LL ("the Property")

**Sasine Description:** ALL and Whole that area of ground extending to 0.107 hectares or thereby, with the dwellinghouse and others erected thereon known as North Cottage, Crofts of Dipple, Fochabers in the County of Moray, being the subjects more particularly described in and in feu farm disposed by Feu Disposition by the Crown Estate Commissioners in favour of William Alexander McKay, dated 21 and recorded in the Division of the General Register of Sasines applicable to the County of Moray 30, both days of April 1986.

### The Parties:-

William Alexander McKay, Tombain, Crofts of Dipple, Fochabers IV32 7LL ("the Landlord")  
and  
Ronald Proctor, North Cottage, Crofts of Dipple, Fochabers IV32 7LL ("the Tenant")

### NOTICE TO WILLIAM ALEXANDER MCKAY ("the Landlord")

Whereas in terms of their decision dated 7 November 2013, 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 house is wind and water tight and in all other respects fit for human habitation, and
- (b) the installations in the house 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:-

(1) to instruct a suitably qualified timber and rising damp specialist to inspect the ground floor timbers of the Property for damage by woodworm and rising damp and thereafter to carry out such works, in accordance with the specialist's recommendations, as are necessary to repair or replace the flooring timbers in such a way as to eliminate the current cause of rising damp in the Property..

(2) to install an outfall pipe from the septic tank and backfill the soakaway with suitable material, reinstate the garden ground and carry out such other works as are required to ensure that the septic tank and soakaway system are in a reasonable state of repair and in proper working order.

The Private Rented Housing Committee order that the works specified in this Order must be carried out and completed by 31 March 2014.

**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 George Barrie Clark solicitor, Edinburgh, chairperson of the Private Rented Housing Committee at Edinburgh on 7 November 2013 before this witness:-

V Clark witness

G Clark chairman

Valerie Elizabeth Jane Clark  
7 Newbattle Terrace  
Edinburgh

*Certified*



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

prhp Ref: prhp/RP/13/0068

Re : Property at North Cottage, Crofts of Dipple, Fochabers IV32 7LL ("the Property")

The Parties:-

Ronald Proctor, North Cottage, Crofts of Dipple, Fochabers IV32 7LL ("the Tenant")

William Alexander McKay, Tombain, Crofts of Dipple, Fochabers IV32 7LL ("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 9 August 2013 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 house is wind and water tight and otherwise fit for human habitation,
  - (b) the structure and exterior of the house (including drains, gutters and external pipes) are in a reasonable state of repair and in proper working order,
  - (c) the installations in the house 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 11 September 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 Tenant.
5. Following service of the Notice of Referral the Tenant (by letter dated 12 September 2013), made written representations to the Committee. He stated that the required work had been done to the house, but work still had to be done to the septic tank and soakaway, which he felt should be replaced as the lid had collapsed. The soakaway was just a large hole which had been dug and left open. Waste was no longer lying at the

back door due to the hole having been dug, but waste was still coming out of the septic tank and lying in the hole. The Landlord (by letter dated 14 September 2013), made written representations to the Committee. The Landlord stated that the work as listed by the Tenant in the application had all been satisfactorily completed. A new tank had been fitted and the hatch in the ceiling had been reframed. The septic tank did not require replacing and the soakaway was functioning perfectly. One slipped roof tile had been fixed and on inspection, there was no evidence of water damage in the roof space. The floorboards had been checked with a moisture meter and no problems had been detected. It was evident that one floorboard had been cut previously and not replaced properly. All floorboards had been made secure. The damp patches and dampness were, he stated, due to poor usage of the heating and lack of ventilation by the Tenant. In summary, he said, the Tenant had misused the Property and the adjoining garden as they were both in excellent repair prior to the tenancy.

6. The Private Rented Housing Committee inspected the Property on the morning of 7 November 2013. The Tenant and the Landlord were present during the inspection. The Committee comprised George Clark (Chair), Mark Andrew (Surveyor) and John Wolstencroft (Housing member).
7. Following the inspection of the Property the Private Rented Housing Committee held a hearing at Inchberry Village Hall, Orton, Fochabers and heard from both the Tenant and the Landlord. Both parties represented themselves.
8. The Tenant submitted as follows:- Some of the work specified in the application had now been carried out by the Landlord. Specifically, an overflow pipe had been fitted to the new water tank, the hole in the living room ceiling had been framed and an access hatch fitted, the loose floor board in the bedroom, adjacent to the front door, had been fixed down and the slipped slates on the roof had been reinstated. The septic tank and soakaway had not, however, been fixed, although some works had been carried out and were ongoing. Sewage was not now backfilling and reappearing close to the rear door of the Property and solid waste did not now appear to be passing from the septic tank to the soakaway. The work, however, was not complete, in that the excavation had not been backfilled. In addition, the floors in the original part of the house were still very wet, despite the fact that some floorboards closest to the gable wall of the Property had been replaced. This had been raised as a concern by the environmental health inspector, Mr Andrew Stewart, in his reports following inspections on 7 April 2011 and 9 August 2011, referred to in the Tenant's application.
9. The Landlord submitted as follows:- He agreed that the soakaway was not working properly and that the work to fix it was not yet completed. It had still to be back-filled. He had put corrugated sheeting on top of the hole and would re-inspect it in a week or so to check that it was soaking away properly. He would then put in a pipe and backfill with aggregate. Otherwise, the works mentioned in the application had been completed. The Landlord considered that the Tenant was responsible, for emptying the septic tank but the Tenant advised that he had not seen the standard terms and conditions that covered this point as his lease comprised a one page agreement.

### **Summary of the issues**

10. The issues to be determined were whether the Property met the repairing standard as laid down in Section 13 of the Act and whether the Landlord had complied with the duties imposed on landlords by Section 14(1)(b) of the Act.

### **Findings of fact**

11. The Committee finds the following facts to be established:-
  - The tenancy is an assured tenancy
  - An overflow pipe has been fitted to what appears to be a recently installed water tank in the attic space.
  - An access hatch has been fitted in the ceiling of the living room.

- There is no evidence of a loose floor board in the bedroom, adjacent to the front door.
- Floorboards in the living room close to the gable wall and extending approximately 3 feet into the room have recently been replaced.
- There is a slipped slate above the water tank overflow pipe and a number of slipped or cracked slates around the chimney stalks on the front and rear elevations. The Tenant confirmed at the hearing that this is not a matter of concern to him and that no water is getting into the Property from this source.
- The slab covering the rodding eye for the drainage system is cracked and broken.
- Excavation works have been carried out in the rear garden to expose the soakaway system. These works are not completed and there is a large hole in the garden ground, covered by a sheet of corrugated iron. There is no evidence that the walls of the septic tank have collapsed.
- Testing by the surveyor member of the Committee, using a damp meter disclosed significant moisture in the wall area to the right of the living room fireplace. The Committee concluded that this was mainly caused by a previous leak of water from above, but that because there was evidence of damp floorboards adjacent to those that had been replaced it was likely that rising damp was evident so the floor was unlikely to dry out in time. The floorboards also had significant woodworm and were likely to fail in the future. The same problem was noted in the area of the threshold leading from the front door of the Property.

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

12. The Committee was conscious that the landlord had completed most of the repair works included in the application and that he had taken some steps to deal with the issues regarding the septic tank and soakaway, but it was clear that, as at the date of inspection, the septic tank and soakaway system did not meet the repairing standard. In addition, the floorboards in the original part of the house were very damp and did not meet the repairing standard as the house was not wind and water tight,

#### **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 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**

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..... **G Clark** .....Chairperson 7 November 2013