



Repairing Standard Enforcement Order

Ordered by the Private Rented Housing Committee

prhp Ref: PRHP/RP/13/0074

Re: Property at 14a Balnakeil, Durness, Sutherland, IV27 4PT ("the Property")

Sasine Description: ALL and WHOLE the subjects known as and forming 14 Balnakeil Craft Village, Durness being the subjects more particularly described in Feu Disposition to Jack Macpherson and another recorded in the Division of the General Register of Sasines for the County of Sutherland on 24 July 1981

The Parties:-

MISS LESLEY SMITH residing at 14 Balnakeil, Durness, Sutherland, IV27 4PT ("the Landlord")

MISS LINDA TURTLE formerly residing at 14a Balnakeil, Durness, Sutherland, IV27 4PT (represented by her representative Miss Lorraine Rose, Citizens Advice Bureau, 4 Nova Road, Altness) ("the Tenant")

NOTICE TO MISS LESLEY SMITH ("the Landlord")

Whereas in terms of their decision dated 20 January 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) 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 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;
- (d) Any fixtures, fittings and appliances provided by the Landlords under the tenancy are in a reasonable state of repair and in proper working order;
- (e) Any furnishings provided by the Landlords under the tenancy are capable of being used safely for the purpose for which they are designed;
- (f) 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 install a proper step to the rear of the Property and to remove the concrete currently present in order to meet the repairing standard.
- (b) To replace the broken pane of glass in the main bedroom of the Property and to carry out such works of repair or replacement to the windows at the rear of the Property sufficient to render them properly wind and watertight and otherwise compliant with the repairing standard. The said works would also require to identify the cause of damp ingress within the Property and would include such works as were necessary to prevent further damp ingress.

- (c) To carry out such works of repair or replacement to the gutters and external pipes at the Property sufficient to render them in proper working order and compliant with the repairing standard.
- (d) To carry out such works of repair and replacement to the drainage system at the rear of the Property serving both the kitchen and bathroom sufficient to meet the repairing standard.
- (e) To produce a current Gas Safety Certificate confirming that the gas appliances within the Property are compliant with the repairing standard.
- (f) To carry out such works as are necessary to the electrical systems within the Property to allow a suitably qualified electrician to provide a clear Electrical Installation Condition Report confirming that the systems within the Property are compliant with the repairing standard
- (g) To provide a proper cap on the hot water tank.
- (h) To provide a cover for the cold water storage tank.
- (i) To repair or replace the door to the main bedroom.
- (j) To carry out such works to the flooring within the kitchen to ensure that it is no longer a trip hazard.
- (k) To install a hardwired mains smoke detection system compliant with the relevant regulations and repairing standard.
- (l) To investigate the cause of the damp ingress in the living room at the front of the Property and to carry out such works as are necessary to prevent further damp ingress.

The Private Rented Housing Committee order that the works specified in this Order must be carried out and completed within the period of 6 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 20 January 2014 before this witness:-

<p>_____ witness</p> <p>Lindsay Johnston Secretary Thorntons Law LLP Whitehall House 33 Yeaman Shore Dundee DD1 4BJ</p>	<p>Ewan Miller</p>	<p>Chairman</p>
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Statement of decision of the Private Rented Housing Committee under Section 24 (1) of the Housing (Scotland) Act 2006

prhp Ref: PRHP/RP/13/0074

Re: Property at 14a Balnakeil, Durness, Sutherland, IV27 4PT ("the Property")

The Parties:-

MISS LINDA TURTLE formerly residing at 14a Balnakeil, Durness, Sutherland, IV27 4PT (represented by her representative Miss Lorraine Rose, Citizens Advice Bureau, 4 Nova Road, Alness) ("the Tenant")

MISS LESLEY SMITH residing at 14 Balnakeil, Durness, Sutherland, IV27 4PT ("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's representative 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 14 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 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 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;
 - (d) Any fixtures, fittings and appliances provided by the Landlords under the tenancy are in a reasonable state of repair and in proper working order;
 - (e) Any furnishings provided by the Landlords under the tenancy are capable of being used safely for the purpose for which they are designed;
 - (f) The Property has satisfactory provision for detecting fires and for giving warning in the event of fire or suspected fire.

3. By letter dated 15 October 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 made no further representation other than the original application. The Landlord by letter dated 16 September 2013 made written representations to the Committee.
6. The Private Rented Housing Committee inspected the Property on the morning of 4 November 2013. The Committee comprised Mr E K Miller (Chairman and Legal Member), Mr C Hepburn (Surveyor Member) and Mr M Scott (Housing Member). The Tenant's representative was present but the Tenant was not. The Landlord was also present. The Tenant had removed from the Property and accordingly the Tenant's representative did not have a right to be present during the inspection. However, the Landlord had no objection to her presence and, accordingly, the Tenant's representative accompanied the Committee during the course of the inspection.
7. Following the inspection of the Property, the Private Rented Housing Committee held a Hearing at the Smoo Cave Hotel, Durness, Sutherland and heard from both the Landlord and the Tenant's representative. The Tenant was not present.
8. The Tenant submitted as follows:-
 - a. In the Tenant's application it has been stated that the Tenant had concerns regarding the disrepair within the house. The Tenant stated that she had been given assurance that various matters would be dealt with. Although the Tenant acknowledged some works had been carried out, the Tenant's position was that the Property remained in a poor state of repair. All aspects of the repairing standard were, in the Tenant's submission, being breached.
 - b. In particular, there were specific issues in relation to the drainage at the Property, damp, the general condition of the structure, gas safety, electrical safety and various other matters. The Tenant's representative advised that as a result of the alleged failure of the Landlord, the Tenant had required to obtain alternative accommodation through the local authority as the Tenant felt unable to stay in the Property any longer.
9. The Landlord submitted as follows:-
 - a. The Landlord submitted that her original intention had not been to rent the Property out, rather her plan was to sell. Whilst the Tenant had been looking to purchase the Property from the Landlord she had not been in a position to fund this. Accordingly agreement had been reached between the parties to rent the Property for a couple of years. The Property had previously been commercial premises from which the Landlord had run her business.
 - b. The Landlord accepted that the Property did not meet the repairing standard and highlighted that she had been unaware of the extent of the requirements upon her as a private landlord. The Landlord also highlighted that, in her submission, damage had been caused to the Property by the Tenant.
 - c. The Landlord accepted that some works were required and would be guided by the Committee in this regard. In any event the Landlord did not intend to rent the Property out as a residential dwellinghouse but to return it to its previous use as commercial premises.

Summary of the issues

10. The issues to be determined were:-

- (a) Whether the back door of the Property was properly wind and watertight and otherwise met the repairing standard.
- (b) Whether the windows in the Property were adequate and met the repairing standard.
- (c) Whether there were holes in the exterior wall of the second bedroom and also whether this room had dampness within it.
- (d) Whether the external pipes and drains at the Property were in working order and otherwise met with the repairing standard.
- (e) Whether the drainage system at the Property was in proper working order.
- (f) Whether the air vent from the exterior kitchen wall met the repairing standard.
- (g) Whether the soil pipe at the rear of the toilet was in proper working order or otherwise met the repairing standard.
- (h) Whether the gas system within the Property was in proper working order and met the repairing standard.
- (i) Whether the electrical installation within the Property met the repairing standard.
- (j) Whether the water tank was leaking and whether there were exposed wires above this.
- (k) Whether the lack of a cover on the cold water tank was a breach of the repairing standard.
- (l) Whether the immersion heater was broken.
- (m) Whether the taps in the kitchen were leaking and causing damage to the cupboard under the sink.
- (n) Whether the toilet cistern was cracked and also whether the pipes leading from the toilet were cracked and leaking.
- (o) Whether there was damp within the shower room.
- (p) Whether the second bedroom (which had previously been a public toilet during the last use of the building as commercial premises) was contaminated as a result of its previous use.
- (q) Whether there were broken polystyrene tiles throughout the Property and, as a result, whether this breached the repairing standard.
- (r) Whether the door to the main bedroom closed properly and met the repairing standard.
- (s) Whether there was damp in the flooring of the main bedroom.
- (t) Whether the flooring throughout the Property met the repairing standard or was damp and/or a trip hazard.
- (u) Whether the Property was fitted with an adequate smoke detection system compliant with the relevant regulations.

Decision and Reasons

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

By way of an background it may be useful to highlight the particular nature of the Property. Balnakiel is a former Ministry of Defence early warning station that was built in the 1950s. There are a number of properties within the site which are all now in private ownership. These were built in the 1950s and are of basic construction. The property in question originally formed one building and the Landlord (or her father who owned it previously) had split it into two parts, number 14 being a residential property, where the Landlord resided and number 14a which was a commercial premises but had been let as residential premises to the Tenant (with one room still being used for commercial purposes).

The Committee first examined the back door of the Property. Since the application had been made the Landlord had installed a new modern PVC door. The door itself had been installed to a good standard and met the repairing standard. The Committee did, however, note that upon exiting from the rear door there was no proper step but simply a large lump of concrete. This was a trip hazard and did not meet the repairing standard. The Landlord would require to address this.

The Committee inspected the windows within the Property. The windows to the front of the property were relatively modern double glazed units and met the repairing standard. The rear windows were of metal frame single glazed construction and were extremely dated. The windows at the rear required to be overhauled and works carried out to meet the repairing standard. In the main bedroom there was also one window pane which was cracked and this would require to be replaced to meet the repairing standard.

The Committee inspected the holes in the second bedroom wall. These had been filled in and did not appear to be an issue. There was no evidence of dampness within the bedroom.

It was also evident that there was dampness within the main bedroom. This may have been caused as a result of water ingress through the rear windows or, alternatively, condensation. The Landlord would require to investigate and carry out such works as were necessary to address the issues.

The Committee inspected the external pipes, drains and downpipes. There were a number of issues complained of: (a) there were some small leaks from the gutters and these would require to be repaired to meet the repairing standard (b) the Tenant had complained of a broken downpipe at the side of the Property. This was not fixed into a drain and simply discharged on to the ground. The Committee were of the view that this was not uncommon of properties of this age. The Committee was satisfied that this met the repairing standard. Contrary to the Tenant's submission there were no pools of water present at the Property (it was raining at the time of the inspection, which aided the Committee in reaching this view) and (c) the drainage system at the rear of the Property in relation to both the bathroom and kitchen was inadequate. One of the waste water pipes was broken and this would require to be replaced. The drainage system at the rear appeared to have been cobbled together over a number of years. To meet the repairing standard this would require to be properly installed and connected into the drainage system properly

The Committee inspected the airvent for the exterior kitchen wall. The Landlord advised that the fan had been removed prior to the tenancy starting and she had simply placed a piece of wood over where the former airvent was. The Committee noted that the kitchen windows at the Property opened and accordingly there was sufficient ventilation. The Committee were satisfied this was not a breach of the repairing standard.

The Committee inspected the soil pipe at the rear of the toilet. Contrary to the Tenant's submission, this did not appear to be leaking either internally or externally. Accordingly, the Committee was satisfied that this aspect of the repairing standard had been met.

The Committee inspected the gas system at the Property. The Tenant provided a Gas Safety Certificate to the Committee during the course of the Hearing. The Certificate confirmed that the system was not in proper working order. The Tenant also produced an invoice from the same gas engineer in relation to works carried out to the system. It appeared to the Committee that the system may now be compliant as a result of the works carried out. However, for some reason, the gas engineer had not provided an updated Gas Safety Certificate confirming that the Property was now compliant. Accordingly an updated Gas Safety Certificate would need to be provided confirming that the system was now compliant.

Numerous allegations had been made by the Tenant regarding the electrical system within the Property. The Landlord confirmed that she had had her own electricians inspect the system and they had confirmed that it did not comply and was not safe. The Landlord acknowledged that she required to have work done but had not wanted to do so until the Tenant had vacated and until the Committee had inspected the Property. The Committee was of the view that it would be appropriate for the Landlord to provide an Electrical Installation Condition Report in clear terms. The Landlord would require to carry out works required to allow the issue of the clear Electrical Installation Condition Report.

The Committee inspected the hot water tank. There were exposed wires above this. A proper cap needed to be placed on the top of the hot water tank. Contrary to the Tenant's submission there did not appear to be any leakage around the pipes from the water tank.

The Committee noted that the cover on the internal cold water tank was missing and this would require to be replaced.

The immersion heater was tested whilst the Committee was present. It appeared to be in proper working order.

The Committee inspected the taps in the kitchen and underneath the sink. Everything appeared to be in proper working order in this regard.

The Committee inspected the toilet system. Contrary to the Tenant's submission this was not cracked and there did not appear to be any leaks from the pipes leading from the toilet.

The Committee inspected the toilet/shower room. Whilst there was some evidence of a little condensation damage, generally there did not appear to be any significant mould or other damage and the Committee was satisfied the repairing standard was being met.

The Committee inspected the second bedroom. There was no evidence of any smell of sewage from this room. The floor covering had been removed and accordingly the Committee did not see any breach of the repairing standard. The Landlord should, however, note that the Committee was of the view that it may not be appropriate to use this room as a second bedroom. The bedroom had exceptionally small windows from which no means of egress could occur in the event of a fire. The Committee was of the view that this meant the room would not comply with the relevant fire regulations.

The Committee noted that various polystyrene tiles from the internal ceilings were missing. The Committee viewed this as cosmetic only and did not view this as a breach of the repairing standard.

The Committee inspected the door to the main bedroom. One hinge had been completely ripped from the door surround and accordingly this would require to be repaired in order for the repairing standard to be met.

The Committee inspected the floor within the main bedroom. The floor covering had been removed and there was no evidence of any dampness, contrary to the Tenant's submission.

The Committee inspected the flooring throughout the Property. Generally this was in reasonable condition. It did not pose a trip hazard. The exception was in relation to the kitchen where the linoleum was a trip hazard and would require to be repaired/replaced.

The Committee noted that the Landlord had provided the Tenant with a battery powered smoke detector. This was inadequate and a hardwired smoke alarm would require to be installed to comply with the relevant regulations.

The Committee also noted that there was damp running along the front of the living room at the Property. This would require to be addressed by the Landlord.

The Committee considered a timescale for the works to be carried out within. The Committee were aware that the Property was in an extremely remote location and that there were a limited number of tradesmen who could attend at the Property to carry out the works. Accordingly the Committee was satisfied that a period of 6 months was appropriate for the Landlord to carry out the works.

The Committee did note that the previous use of the Property had been as commercial premises. The building had only been used as a residential dwellinghouse for a short period. The Committee was of the view that the Property may not actually have a current planning permission to be used a residential property. The Landlord intended to use the Property as commercial premises again from summer of 2014. She then intended to sell the Property at some point in the future. The Committee did not doubt that the Landlord did not intend to relet the Property as a residential property. However, a valid complaint had been made, the Property had been used as a residential property and did not meet the repairing standard. Accordingly the Committee was of the view that it was still appropriate to impose a Repairing Standard Enforcement Order (RSEO) on the Property. The Committee was of the view that it may be appropriate for it, once the period of the RSEO had elapsed, to take a lenient view of non-compliance if clear evidence could be provided to the Committee showing that the Property was again continuing in commercial rather than residential use. If the Property were to be sold for commercial purposes in the future then the Committee would consider lifting the RSEO at that stage providing sufficient comfort could be given that the Property was going to remain in commercial use rather than residential.

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.

Ewan Miller

Signed Date..... 20/1/2014
Chairperson