



Repairing Standard Enforcement Order

Ordered by the Private Rented Housing Committee

prhp Ref: PRHP/RP/15/0039

Re : Property at Pitskelly Cottage, Main Street, Balbeggie, Perth PH2 6EZ ("the Property")

The Parties:-

Kyle Hamilton and Eilidh May McCallum, sometime Pitskelly Cottage, Balbeggie, Perth PH2 6EZ ("the Tenant")

Joanna Pinkie Maude Cullen, Methven, care of her agents, Bell Ingram Limited, Durn, Isla Road, Perth PH2 7HF ("the Landlord")

Sasine Description: All AND WHOLE the detached dwellinghouse known as Pitskelly Cottage, Main Street, Balbeggie, Perthshire PH2 6EZ, being part and portion of (I) the Farm and Lands of Pitskelly in the Parish of St Martins and County of Perth more particularly described in Disposition in favour of James Norman Methven, recorded in the Division of the General Register of Sasines applicable to the County of Perth on 24 February 1922 (II) the Field extending to 4.146 acres in said Parish and County, more particularly described in Disposition in favour of the said James Norman Methven, recorded in the said Division of the General Register of Sasines on 11 August 1922 and (III) the Farm of Rosemount or Home Farm of St Martins, extending to 59.803 acres in the said Parish and County, more particularly (III) described in the said Disposition in favour of James Norman Methven, recorded in the said Division of the General Register of Sasines on 24 February 1922 .

NOTICE TO JOANNA PINKIE MAUDE CULLEN METHVEN ("the Landlord")

Whereas in terms of their decision dated 2015, 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 the Property is wind and water tight and in all other respects reasonably fit for human habitation, 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 instruct a damp proof specialist member of the Property Care Association to carry out an inspection of the property with a view to reporting on the extent and treatment required of dampness within the hallway of the Property, with all recommended works including satisfactory re-instatement of the interior plasterwork to be carried out. The report, invoices and confirmation that the work has been carried out should be submitted to the Committee.

The Private Rented Housing Committee order that the works specified in this Order must be carried out and completed within the period of three 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 typewritten on this and the preceding page are executed by George Barrie Clark, solicitor, Lasswade, chairperson of the Private Rented Housing Committee at Lasswade, on 4 September 2015, before this witness, Valerie Elizabeth Jane Clark, Droman House, 5 School Brae, Lasswade, Midlothian.

V CLARK

G CLARK

_____ witness

_____ chairman



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

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Joanna Pinkie Maude Cullen, Methven, care of her agents, Bell Ingram Limited, Durn, Isla Road, Perth PH2 7HF ("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 the Landlord's agents 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 25 January 2015 (received on 30 January 2015) 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 in all other respects reasonably fit for human habitation and
 - (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.
3. By letter dated 18 March 2015, 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. On 18 March 2015, The Tenant advised the Private Rented Housing Panel that the tenancy had been lawfully terminated on 9 March 2015, but by a Minute of Continuation dated 23 March 2015, the Private Rented Housing Committee intimated a decision to continue to determine the application, as the alleged repairs, if substantiated, were likely to raise potential health and safety issues for occupants and issues as to whether the Property was wind and water tight and otherwise fit for human habitation.

6. The Private Rented Housing Committee served Notice of the Minute of Continuation under and in terms of Schedule 2, Paragraph 7(3) of the Act upon both the Landlord and the Tenant.
7. Following service of the Notice of Referral the Tenant made no further written representation to the Committee other than the original application dated 25 January 2015. The Landlord (by letter dated 2 April 2015), made written representations to the Committee.
8. The Private Rented Housing Committee inspected the Property on the morning of 4 September 2015. The Tenant, having vacated the Property, was not present or represented at the inspection and the Committee members were admitted to the Property by the new tenants, Mr and Mrs Robert Tainsh. The Landlord's agents were present during the inspection, their representatives being Mark Mitchell, one of their Directors, and Catherine Smith, their Assistant Land Agent.
9. The Committee comprised George Clark (chairman) and Robert Buchan (surveyor member).
10. A schedule of photographs taken at the inspection is annexed to and forms part of this Statement of Decision.
11. Following the inspection of the Property the Private Rented Housing Committee held a hearing at MacDonald Arms Hotel, Main Street, Balbeggie and heard from the Landlord's agents. The Tenant, having vacated the Property, was not present or represented at the hearing.
12. The Tenant, in the application, submitted as follows:- the gutters and downpipes of the Property had been broken since the tenancy started and had still not been fixed or unblocked; there was dampness in the hall which had still not been addressed; the front garden wall had been dangerous until a recent repair; slates and pointing were falling from the roof, even after a recent repair; there was mice infestation due to the exterior walls; the downpipe was leaking continuously and had severely damaged the rear wall of the Property.
13. The Landlord, by letter dated 2 April 2015, submitted as follows:- the gutters and downpipes had been repaired on two occasions and any further works had recently been completed as necessary; the Tenant had reported dampness in the hall and arrangements had been made for it to be inspected, but the Tenant was not able to grant access and it was reported that the problem had improved and investigation was no longer needed; a contractor had now assessed the problem and believed it was due to condensation, but the position would be monitored and if it did not improve over the summer months, further investigations would take place; some repairs to the garden wall had been carried out and it posed no immediate danger, but the work could only be completed when the weather allowed; repairs had been carried out to the roof and the contractors had found no evidence of nail rot; pointing works had been instructed and completed; there was no evidence that the exterior walls were the cause of mice entering the Property and Graham Pest Control had found no evidence of mice infestation; there was no leaking downpipe, but there had been a problem with an overflow pipe that the Tenant had failed to report to the Landlord. The tenant had not allowed immediate access to the plumber seeking to fix the problem, but, once access had been allowed, the necessary repair work had been carried out.
14. The Landlord's also said that a pre-tenancy inspection undertaken by an employee of Bell Ingram Limited had concluded the Property met the repairing standard. A Record of Condition had been undertaken on 4 June 2014, but the Landlord acknowledged that it had not been signed by the Tenant. The initial reporting of the problem with the garden wall and an electric socket had been by letter received by the Landlord's agents on 24 October 2014. The agents had instructed an immediate repair to the electric socket and had instructed a repair to the garden wall after inspecting it on 1 November 2014. Given

the nature of the work required, it could not be completed in cold and frosty weather and was completed in February 2015. The Tenant had reported that the damp problem underneath the window in the hall was no longer a problem and, on being informed otherwise, the Landlord's agents had instructed a contractor in Blairgowrie, Alister Finlay to provide a quote for repairing it, but he had been unable to arrange with the Tenant a time or date for access.

15. At the hearing, the landlord's agents told the Committee that the Tenant had gone round the Property prior to taking on the tenancy and, at that time, it was in "For Sale" condition, as the Landlord had been considering selling it. The tenant had been told that the Landlord could not carry out external works in the worst of the weather, but, in the spring, two repairs had been carried out to the guttering and it had been checked again in March, when Allan Robertson & Son was carrying out roof repair work. Mice tended to find their way into warm rural properties in the winter, but the Tenant had not been prepared to allow the use of any form of baiting control, which had been suggested by Graham Pest Control. There had been difficulties encountered by contractors in obtaining access to the Property, as the Tenant's partner was unwell and the Landlord's agents had been anxious not to exacerbate the problem. Accordingly, they were very careful about how they arranged access, but contractors were reporting back to them that they could not arrange access to carry out inspections and repairs.
16. The Landlord's agents told the Committee that the dampness problem appeared to come and go. The wall was completely dry at the corner where a damp proof course had been injected. They were very reluctant to tear up the stone floor in the hall, as it would be a massive job, but were keen to consider what options might be available, such as screeding.

Summary of the issues

17. 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

18. The Committee finds the following facts to be established:-
 - The tenancy is a Short Assured Tenancy, which commenced on 1 June 2014 and which has been lawfully terminated.
 - The Property comprises a detached stone cottage with slated roof, built over 120 years ago.
 - There is no evidence of broken, blocked or leaking gutters and downpipes.
 - The front garden wall appears to be secure and in a reasonable state of repair.
 - There is no evidence of loose, slipped or missing slates on the roof, which appears to be in a reasonable state of repair.
 - There is no evidence of mice infestation within the Property.
 - There is evidence of rising/penetrating damp in the hallway of the Property.

Reasons for the decision

19. The Committee recognised that a number of repairs had recently been carried out by the Landlord, some of which related to matters raised by the Tenant and accepted that it had been reasonable for the Landlord to have to wait until the end of winter weather to complete some of the external works. The only element of the Tenant's complaint that was outstanding was the issue of rising/penetrating damp in the hallway and the Committee was of the view that the extent of the problem could only be determined by an inspection and report by a suitably qualified specialist

Decision

- 20. The Committee accordingly determined that the Landlord had failed to comply with the duty imposed by Section 14 (1)(b) of the Act.
- 21. The Committee proceeded to make a Repairing Standard Enforcement Order as required by section 24(1).
- 22. The decision of the Committee was unanimous.

Right of Appeal

- 23. **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

- 24. 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 Date 4 September 2015
Chairperson