



REPAIRING STANDARD ENFORCEMENT ORDER
Ordered by the Private Rented Housing Committee

RE: Property at Croft of Danshillock, King Edward, Banff AB45 3NJ more particularly described in Land Certificate Title number ABN101219 (hereinafter referred to as “the House”)

The Parties:

Amanda McIrvine, formerly of Croft of Danshillock, King Edward, Banff AB45 3NJ (hereinafter referred to as “the Tenant”)

Roger Mark Adam, 18 The Glebe, Kemnay, Inverurie AB51 5NW and Jane Michelle Massey, Lower Plaidy, Turriff AB53 5RJJ (hereinafter referred to as “the Landlord”)

PRHP REFERENCE PRHP/RP/15/0174

NOTICE TO ROGER MARK ADAM AND JANE MICHELLE MASSEY

WHEREAS in terms of their decision dated 22 February 2016 the 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 House meets the repairing standard in that:

“(a) the house is wind and water tight and in all other respects reasonably fit for human habitation...

...(d) any fixtures, fittings and appliances provided by the landlord under the tenancy are in a reasonable state of repair and in proper working order...

...(f) the house has satisfactory provision for detecting fires and for giving warning in the event of fire or suspected fire.”

The Committee now requires the Landlord to carry out such work as is necessary for the purposes of ensuring that the House 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 Committee requires the Landlord:

1 To install fire detection devices in compliance with the terms of the Scottish Government Guidance on Satisfactory Provision for Detecting and Warning of Fires

2 To render the House reasonably free of dampness.

3 To carry out repairs to the roof such that it is in reasonable condition and reasonably able to resist the elements.

4 To produce an Electrical Installation Condition Report prepared by a qualified electrician who is, or whose employer is, registered with NICEIC, SELECT or NAPIT, which confirms that the electrical installations within the House are in safe, working order.

The Committee orders that the works specified in this Order must be carried out and completed within six months from the date of service of this Notice.

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 the decision.

Where such an appeal is made, the effect of the decision and 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 signed by John Miller McHugh, Chairperson of the Private Rented Housing Committee at Edinburgh on the Twenty Second day of February Two Thousand and Sixteen in the presence of the undernoted witness:

John McHugh

Chairperson

Gillian McHugh

Witness

Gillian McHugh

Witness Address

*65 HAYMARKET TERRACE
EDINBURGH*

Witness Occupation

SOLICITOR



DETERMINATION BY PRIVATE RENTED HOUSING COMMITTEE

**STATEMENT OF DECISION OF THE PRIVATE RENTED HOUSING COMMITTEE
UNDER SECTION 24(1)
OF THE HOUSING (SCOTLAND) ACT 2006**

In connection with

Property at Croft of Danshillock, King Edward, Banff AB45 3NJ (hereinafter referred to as “the House”)

Amanda McIrvine, formerly of Croft of Danshillock, King Edward, Banff AB45 3NJ (hereinafter referred to as “the Tenant”)

Roger Mark Adam, 18 The Glebe, Kemnay, Inverurie AB51 5NW and Jane Michelle Massey, Lower Plaidy, Turriff AB53 5RJJ (hereinafter referred to as “the Landlord”)

PRHP REFERENCE PRHP/RP/15/0174

DECISION

The Committee having made such enquiries as are fit for the purposes of determining whether the Landlord has complied with the duty imposed by section 14(1)(b) of the Housing Scotland Act 2006 (hereinafter “the Act”) in relation to the House, and taking account of the written documentation attached to the application and submitted by the parties, determined that the Landlord had failed to comply with the duty imposed by section 14(1)(b) of the Act.

Background

By application dated 28 May 2015 (hereinafter referred to as “the Application”), the Tenant applied to the Private Rented Housing Panel (hereinafter “the PRHP”) for a determination of whether the Landlord had failed to comply with the duties imposed by section 14(1)(b) of the Act.

The Application stated that the Tenant considered that the Landlord had 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 compliance with the following paragraphs of section 13(1) of the Act:

“(a) the house is wind and water tight and in all other respects reasonably fit for human habitation...

...(d) any fixtures, fittings and appliances provided by the landlord under the tenancy are in a reasonable state of repair and in proper working order...

...(f) the house has satisfactory provision for detecting fires and for giving warning in the event of fire or suspected fire.”

The Tenant complained of a number of defects in the House.

By letter of 1 September 2015, the President of the PRHP intimated a decision to refer the application under section 23(1) of the Act to a Private Rented Housing Committee (hereinafter referred to as “the Committee”).

The Committee comprised the following members:

John McHugh, Chairperson

Mark Andrew, Surveyor Member

John Blackwood, Housing Member

The Committee served Notice of Referral in terms of Paragraph 1 of Schedule 2 to the Act upon the Landlord and the Tenant.

On 9 October 2015, the Committee, having been informed that the Tenant had vacated the House, issued a Minute of Continuation of the Application under Paragraph 7(3) of Schedule 2 to the Act.

The Committee inspected the House on 17 February 2016. The Landlord was present. The Tenant was neither present nor represented.

Following the inspection, the Committee held a hearing at the Fife Lodge Hotel, Banff. Neither the Tenant nor Landlord were present nor represented, it having been agreed at the inspection that the Landlord would not attend the hearing. The Committee considered the written evidence submitted by the parties.

Submissions at the Hearing

None were made as the parties were neither present nor represented.

Summary of the Issues

The issue to be determined is whether the House meets the repairing standard as laid down in section 13 of the Act and whether the Landlord has complied with the duty imposed by section 14(1)(b).

Findings in Fact

The Committee confined their inspection to the items of complaint detailed within the Tenant's Application.

The Committee made the following findings in fact:

Jane Massey and the Tenant entered into a Tenancy Agreement in respect of the House on or around 28 April 2014.

The Landlord was recorded on the Lease as Jane Massey, c/o Lower Plaidy, Turriff AB53 5RJ.

Roger Mark Adam and Jane Michelle Massey are the registered owners of the House.

The Tenant took possession of the House from 2 May 2014 and vacated on or around November 2015.

The provisions of Chapter 4 of Part I of the Act apply to the tenancy.

The Tenant notified the Landlord of the defects in the house which are now the subject of the Application by letter of 14 May 2015 and by her solicitor's letter of 20 May 2016, both addressed to Ms Massey.

The inspection on 17 February 2016 revealed:

There was a poorly repaired hole in the ceiling of the bedroom facing the main road. There appeared to have been water ingress and the roof was in need of repair.

There was evidence of dampness.

Several light fittings were inadequately secured to the ceilings.

There was no evidence of any problems with the septic tank or related plumbing.

Only battery operated smoke alarms were present.

A schedule of photographs taken by the Surveyor Member at the inspection is appended to this Determination.

Reasons for the Decision

Roof/ceiling over bedroom

There is evidence of water ingress and of the roof requiring repair.

Electrical

Several light fittings were inadequately secured to the ceilings.

Dampness

The walls of the bedroom facing the main road showed evidence of dampness being present. The House had been unoccupied and unheated for some time and there was evidence of damp conditions elsewhere in the House.

Smoke Alarms

The only smoke alarms present were battery operated.

Septic Tank

The Tenant had complained in the Application about a blocked sewage connection. The Application appeared to suggest that the matter had already been addressed by her. There was no evidence of any problems with the sewage arrangements on inspection.

Repairing Standard

We consider the condition of the roof, the presence of dampness, the condition of the light fittings and the absence of mains powered smoke alarms to be a breach of the repairing standard.

Repairing Standard Enforcement Order

Having decided to make a Repairing Standard Enforcement Order, the Committee considered the length of time which should be provided for compliance. The Committee elected to impose a period of six months. In setting this length of time, the Committee took into consideration that Mr Adam and Ms Massey intend to divorce with Mr Adam being likely to acquire Ms Massey's share of the House. Mr Adam proposes to occupy the House as his home and we were advised that there are no plans to let the House. It is likely to take some considerable time for Mr Adam and Ms Massey to agree the arrangements which are to apply and the House is unoccupied at present.

Observations

Mr Adam indicated that the matters which are the subject of complaint would be dealt with by him when he took occupation of the House again. The Committee recognises the unusual circumstances of this case and the Landlord is reminded that it may apply to the PRHP in future to vary the terms of the Repairing Standard Enforcement Order including the timescale for compliance.

In the event that there should be a change of plan from the current intentions for the House and the Landlord decides to let the House, the Landlord should bear in mind the need for a Landlord's Gas Safety Certificate. The Landlord is further reminded that granting a new tenancy of the House while a Repairing Standard Enforcement Order is in place would constitute an offence.

Decision

The Committee, considering the terms of section 13(3) of the Act, determined that the Landlord had failed to comply with the duty imposed by section 14(1)(b) of the Act.

The Committee proceeded to make a Repairing Standard Enforcement Order as required by section 24(2) of the Act.

The decision of the Committee was unanimous.

Right of Appeal

Section 64 of the Act provides a right of appeal to a landlord or tenant aggrieved by a decision of a private rented housing committee. An appeal may be made to the Sheriff within 21 days of the Landlord or Tenant being informed of the decision.

Where such an appeal is made, the effect of the decision and 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.

John McHugh

John McHugh
Chairperson

Date: 22 February 2016

PRHP/RP/15/0174; Crofts of Danshillock, King Edward, Banff, AB45 3NJ;

Schedule of Photographs



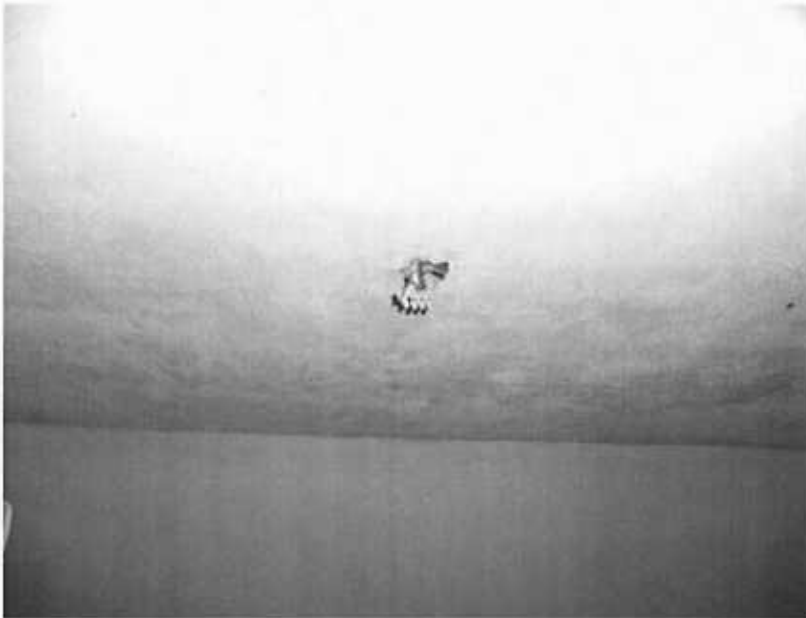
Front Elevation to roadside



Side elevation



Patched damp hole in bedroom



Bare wires in 1st floor bedroom



Loose light fitting on 1st floor