



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

**prhp Ref:** PRHP/IV2/14/12

**Re:** Property at Birchwood, Culloden Road, Westhill, by Inverness ("the Property")

### **The Parties:-**

**MS JEAN MULLEN** residing at Birchwood Guest House, Culloden Road, Westhill, by Inverness, IV2 5BQ ("the Tenant")

**GARY MACDONALD** residing at No Bother, Largandour Farm, Daviot, Inverness, IV2 6XN (represented by their agent Ms Jennifer Hamill, BBM Solicitors, Unit 5B Wick Business Park, Wick ("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 not failed to comply with the duty imposed by Section 14 (1)(b) of the Act.

### **Background**

1. By application dated 13 January 2012 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;
3. By letter dated 9 February 2012 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 received 20 February 2012 and a letter dated 15 May 2012, made further written representations to the

Committee. The Landlord by letter dated 1 March 2012 made written representations to the Committee.

6. The Private Rented Housing Committee (comprising Mr E K Miller, Chairman and Legal Member; Mr M Andrew, Surveyor Member; and Mrs L Robertson, Housing Member accompanied by the Clerk Mr G Thomson) inspected the Property on the morning of 2 August 2012. The Tenant and her partner along with the Landlord's agent were present during the inspection. The Landlord was not present during the inspection.
7. Following the inspection of the Property the Private Rented Housing Committee held a hearing at The Spectrum Centre, Inverness and heard from both the Tenant and the Landlord's agent. The Landlord was represented by their solicitor Ms J Hamill of BBM Solicitors, Wick. The Tenant represented herself and was accompanied by her partner.
8. The Tenant submitted that when she had entered into the lease of the Property it had been on the understanding that she would apply for planning permission for the existing garage/store room to be converted into a granny flat for her mother. The Tenant alleged that she had an agreement with the Landlord that he would contribute to the cost of this. The Landlord had then reneged on this agreement and as a result the conversion of the garage/store room to a granny flat had not gone ahead. On the basis that it had not gone ahead, the Tenant was now of the view that she should be entitled to use the garage/store room for its original purpose as a garage and that because there was a wall immediately behind the garage door it could not be used as such.
9. The Landlord's agent submitted an Affidavit from the Landlord's wife at the Hearing. She also submitted that there had never been any agreement with the Tenant for the Landlord to contribute to the cost of the conversion. The most the Landlord might have been prepared to do was make good some holes in the plasterboard wall immediately behind the garage door. The Landlord's agent submitted that the garage/store room had been viewed on a number of occasions by the Tenant in its current condition. She would have known that it could not be used as a garage and only as a store room. Knowing this she had still entered into the lease. The Landlord's agent submitted that as the Property was wind and watertight there was no breach of the repairing standard and the matter was not really appropriate to be heard by the Committee.

#### **Summary of the issues**

10. The issues highlighted in the application covered a variety of matters such as broken guttering, the back door to the Property, faulty electrics and some other minor miscellaneous matters. Both parties had confirmed prior to the Hearing that these matters had been attended to. A Periodic Inspection Certificate had been produced as well. Accordingly the only matter that remained to be determined was in relation to the garage/store room at the Property.

#### **Findings of fact**

11. The Committee found the following fact to be established:-
  - The garage/store room did not breach the repairing standard.

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

12. The Committee based its decision on the evidence obtained during the course of the inspection of the Property and the submissions from the parties at the Hearing.

The Committee firstly considered whether current condition of the garage/store room could be considered a breach of any of the provisions of Section 13(1) of the Act. The Committee considered that if it was accepted that the garage/store room should be available to the Tenant for use as a proper garage then the garage/store room, as it currently stood, would not comply with Section 13(1)(d) of the Act. This requires the

structure and exterior of the house to be in a reasonable state of repair and in proper working order. The garage door was not capable of being opened due to the internal wall built behind it. Accordingly the garage door could not be said to be in proper working order.

The Committee, however, required to consider what the Tenant's reasonable expectation was in relation to the garage/store room at the time of signing the lease. The Tenant accepted during the course of the inspection that she had inspected the Property on several occasions. It was the view of the Committee that it would have been very obvious during these viewings that the Property was not capable of being used as a garage at that point and was only capable of being used as a store room. It was readily apparent that there was an internal wall built directly behind the garage door that could preclude the garage door opening. The Tenant agreed that at the time of taking the lease the intention had been to convert the store room to a granny flat. If that was the case then the Tenant clearly had no long term expectation that she would be able to use it as a garage. Whilst the Tenant had been successful in obtaining planning permission for the conversion of the garage/store room, if this had been unsuccessful then the Tenant would simply have been left with a store room and would, no doubt, have been happy with this. In the view of the Committee the issue here had arisen because the Landlord was no longer prepared to commit funds to the conversion works. The application to the Committee was, in the view of the Committee, driven more by the Tenant feeling aggrieved rather than a realistic anticipation that she should be able to use it as a proper garage. The Committee did note the terms of the lease particulars which did describe the garage/store room as a garage. That said, after discussion, the Committee were satisfied that it was always a store room that the Tenant knew was being provided to her.

Notwithstanding that the Committee found in favour of the Landlord, the Committee did have sympathy for the Tenant in this matter. The Committee found the Tenant to be a credible witness and had no reason to doubt her assertion that the Landlord had agreed to contribute to the cost of the conversion works. The documentation within the papers before the Committee indicated this and this was further confirmed by a further email chain between the parties submitted by the Tenant after the Hearing. The Committee fully understood that the Tenant felt justifiably aggrieved by the actions of the Landlord. However, this matter was, in essence, a contractual dispute between the Landlord and Tenant. The Committee could, therefore, do nothing further to assist the Tenant.

#### **Decision**

13. The Committee accordingly determined that the Landlord had not failed to comply with the duty imposed by Section 14 (1)(b) of the Act.
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.

Signed **E Miller** Date 29/8/12  
Chairperson