



**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 13 Canmore Place, Kincardine O' Neil, Aboyne,  
Aberdeenshire AB34 5BG (hereinafter referred to as "the House")

Iain Duncan, 13 Canmore Place, Kincardine O' Neil, Aboyne,  
Aberdeenshire AB34 5BG (hereinafter referred to as "the Tenant")

Andrew Bradford, Kincardine Estate Office, Kincardine O'Neil, Aboyne,  
Aberdeenshire AB34 5AE(hereinafter referred to as "the Landlord")

**PRHP REFERENCE PRHP/RP/15/0057**

**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 referred to as "the Act") in relation to the House, and taking account of the evidence led on behalf of the parties at the hearing and of the written documentation attached to the application and submitted by the parties, determined that the Landlord had not failed to comply with the duty imposed by section 14(1)(b) of the Act.

**Background**

By application dated 8 February 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,  
(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...”*

The Tenant complained of a number of defects in the House, being:

- 1 The need for painting of the timber cladding and that some cladding had split;
- 2 The condition of the roof which allows the entry of insects;
- 3 Heating not working;
- 4 Problems caused by water ingress;
- 5 Inadequate sound proofing.

By letter of 4 March 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  
Angus Anderson, Surveyor Member  
John Wolstencroft, 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.

The Committee inspected the House on 3 June 2015. The Landlord was present along with representatives from his managing agents, David Smart and Lorna Stewart of Strutt & Parker LLP. The Tenant and his wife were present.

Following the inspection, the Committee held a hearing at Banchory Business Centre, Burn O’Bennie Road, Banchory. The same persons were in attendance. The Committee considered the written evidence submitted by the parties and heard representations from both the Tenant and the Landlord.

## Submissions at the Hearing

### 1 The need for painting of the timber cladding and that some cladding had split

The Tenant considered that the cladding required to be painted. The Tenant is concerned that the condition of the cladding wood may deteriorate if this is not addressed.

The Landlord advised that the re-painting would be done as part of a scheduled maintenance programme involving all of the houses on the development. It would not take place this year. The Landlord regards any flaking of paintwork as only a cosmetic issue as the wood is pre-treated.

### 2 The condition of the roof which allows the entry of insects

There was a history of infestation by wasps. The Tenant was concerned that insects were able to access the roof space by passing under gaps in the roof including under warped wooden roof tiles.

The Landlord considered that the roof was operating as intended, with the warping of the tiles being as designed. The gaps were a feature of the roof and indeed such gaps would exist on a traditional slate roof.

### 3 Heating not working

The Tenant confirmed that the broken heater had been repaired and that this aspect of the application was withdrawn.

### 4 Problems caused by water ingress

The Tenant was concerned that water was entering the property via an as yet unidentified route. The Tenant was concerned about the presence of mould in the living room and the bedrooms. Water had been observed running down the face of the inside bedroom walls. The Tenant was concerned that there may be a dampness problem which had caused some warping of the laminate floor near to the back door in the living room.

The parties agreed that efforts to identify any source of water ingress had been unsuccessful. A repair to the floor near to the back door had been carried out.

The Landlord considers that the reported problems are likely to arise from condensation. The Tenant reports being aware of condensation and to having kept the property well heated and ventilated. The Tenant reports that mould patches are wiped away but return after a short interval.

### 5 Inadequate sound proofing

The Tenant and his wife report hearing noises in their bedroom, which is located at the rear of the House and at the part of the House nearest the end of the terrace. Those noises come, the Tenant believes, from the bungalow at the other end of the terrace, No.11. In particular, the Tenant and his wife regularly hear noise which they consider to be from the male

occupant urinating in the upstairs toilet of No.11. The noise is reported as being very loud in their bedroom.

The Tenant and his family do not hear other general living noise (such as television noise) from No.11 and do not complain of noise emanating from the middle house, No.12.

The Landlord brought to the hearing drawings which were approved for building warrant purposes which show the sound insulation measures employed. He confirms that the House and the other properties were constructed in accordance with those drawings. He has discussed the noise with his architect who cannot identify either the explanation for the apparent travel of sound nor any cost effective solution. The Landlord has not had similar noise complaints from other Tenants, even in terraces where similar loft conversions are in place.

### **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:

The Landlord and the Tenant entered into a Tenancy agreement in respect of the House on 8 and 12 April 2013.

The Tenant has occupied the House from 23 April 2013 and remains in occupation.

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 a series of emails including those dated 19 June; 5 and 7 August and 21 December 2014.

The inspection on 3 June 2015 revealed:

The House is an end terraced bungalow which was built around 1999. The walls are of timber framed construction, clad externally with timber weatherboarding. The roof is pitched and clad with cedar shingles. Accommodation comprises Entrance Hall, Front Right

Bedroom, Lounge with kitchen on semi open plan, Shower room, Rear Bedroom, Front Left Bedroom.

The House (in common with the adjacent bungalows) was designed and constructed to allow for the future conversion of the loft for habitation. The loft space is floored and lined and has velux windows installed. Access is via a pull down ladder.

The House is one of a terrace of three bungalows. The House is situated at one end of the terrace. No.11 is at the far end of the terrace and No.12 is positioned between the House and No. 11.

The terrace of which the House forms part is one of several similar terraces erected at the same time using similar construction methods as part of a single development.

The loft space of No.11 has been converted into living space and includes a bathroom and two bedrooms.

The loft space of No.12 has not been converted and is in a similar condition to No.13.

The exterior cladding has localised areas of flaking paint, mainly affecting the window sills and door thresholds. A joint in the wood cladding on the rear elevation has been sealed with silicone.

There was no evidence of the presence of gaps/holes in the roof beyond those which appeared to be a feature of its design. Internally, there was no evidence of water ingress to the loft space or ground floor ceiling areas.

In the living room, a small area of mould could be observed in the corner of the ceiling with further localised mould around the back door. Evidence of damage by moisture could be seen in the laminate flooring adjacent to the back door, in the form of slightly raised joints.

In the bedrooms, small areas of mould growth were evident on the corners of the ceilings close to the exterior walls.

Use of a damp meter revealed no significant levels of dampness in or around the areas of wall, ceiling and floor where mould was observed.

## Reasons for the Decision

### 1 The need for painting of the timber cladding and that some cladding had split

We observed that some sections of the cladding would benefit from re-painting but accept the current condition is fair and that the benefit of painting would be cosmetic. The cladding is performing as designed. The presence of splits, in so far as they were observed, appear to be a natural feature of the wood cladding, which is designed to allow for some movement.

We find there to be no breach of the repairing standard.

### 2 The condition of the roof which allows the entry of insects

The cedar tiles are operating as designed and will have a natural bevelled or warped shape. No significant gaps or routes for ingress of insects were observed beyond those which may be found in any tiled roof. The occasional presence of insects such as wasps is a reflection of the semi-rural location of the House.

We find there to be no breach of the repairing standard.

### 3 Heating not working

This aspect of the application was withdrawn and so we do not require to make any finding.

### 4 Problems caused by water ingress

We found no evidence of water ingress. Use of a damp meter revealed no significant levels of dampness in or around the areas of wall, ceiling and floor where mould was observed. The mould observed was present on or close to exterior walls and, it seems to us, is the result of condensation from normal living activities. Water observed by the Tenant and historic water marks are the result of condensation forming and trickling down the internal walls.

The House is modern and generally in good condition. It appears to be capable of being heated and ventilated appropriately. Trickle vents are present in the windows and the windows are capable of being opened.

The Tenant and his wife report having made significant efforts to ventilate the property by regularly opening windows and the back door although they were concerned by the cost of the electric heating.

There was no evidence of water ingress at the back door and the damaged flooring there appears to have been caused by moisture carried in on the feet of those using the back door, including the family's pet dog.

We find there to be no breach of the repairing standard.

#### 5 Inadequate sound proofing

The construction drawings provided by the Landlord show appropriate sound insulation and show physical separation of the construction elements of the House from those of the adjoining properties. The House appears to have been constructed in accordance with the plans.

Adequate soundproofing arrangements appear to have been made. There was no evidence on inspection of unacceptable or unusual sound ingress.

The sound from No.11's upstairs bathroom which is complained of would have to pass through the internal bathroom wall within No.11, through the wall between No.11 and No.12; across the width of the attic of No.12; through the wall between No.12 and the House and then through the ceiling of the House to enter the Tenant's bedroom. That would be an unusually long journey for the sound to travel, apparently bypassing the various obstacles to its progress.

We can find no evidence of any inadequacies in the construction or design of the House.

We find there to be no breach of the repairing standard.

#### **Observations**

An additional photograph was submitted to us by the Tenant via the office of the PRHP in the days following the inspection and hearing. As the inspection and hearing had been completed, we elected not to consider that photograph as additional evidence as there was a risk of prejudice occurring to the Landlord. If we had done so, however, it would have made no difference to our conclusions as it appears to show water streaks caused by condensation.

#### **Decision**

The Committee, considering the terms of section 13(3) of the Act, determined that the Landlord had not failed to comply with the duty imposed by section 14(1)(b) 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.

# J. McHugh

John McHugh  
Chairperson

Date: 16 June 2015