

## **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**

**Re: Property at Ivy Cottage, Ordie, Aboyne AB34 5SL ("the Property")**

**The Parties:-**

**Nadia Melnyczuk, Ivy Cottage, Ordie, Aboyne ("the Tenant")**

**Dinnet and Kinord Estates represented by their factor Mr. R Leslie-Melville ("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 31st October 2007 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 watertight 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
  - (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
3. By letter dated *11<sup>th</sup> December 2007* 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 further written representations to the Committee received by the Committee on 28th December 2007. The Landlord did not send written representations to the Committee.
6. The Private Rented Housing Committee inspected the Property on the morning of 22nd February 2008. The Tenant and the Landlord were present during the inspection.
7. Following the inspection of the property the Private Rented Housing Committee held a hearing in the property and heard from both the Tenant and Mr. Leslie-Melville the Landlord's Factor.
8. The Tenant submitted as follows:-
- (a) The property is not wind and watertight and in particular the front door does not keep out draughts. There is dampness at the front door.
  - (b) The structure and the exterior of the house has been damaged by plants growing onto the walls and the roof has moss on the tiles.
  - (c) The water and electrical pipes are not in safe working order. Further they create noise and vibration of such intensity that the Tenant's enjoyment of her tenancy has been disturbed.
  - (d) The fireplace which houses the back boiler cannot be used because when used smoke fills the room. As a result the central heating system is not functioning.
  - (e) The ceiling fans in both kitchen and bathroom are not functioning. The bathroom

fan vents into the roof space and the kitchen fan does not work at all. The immersion heater makes a noise and the water pressure is poor.

The Tenant explained that she had carried out a great deal of unauthorised do-it-yourself work to the property in an attempt to rectify these perceived faults.

9. The Landlord submitted as follows:-

The Landlord submitted the Tenant's complaints had been thoroughly investigated by the Estate tradesmen. Such work as was required had been carried out. The Electricity Board had confirmed after an inspection in October 2007 that the small electrical appliances and the wiring were in a safe condition. Four different plumbers have certified the central heating system to be in working order. Water and electrical pipes have been earth bonded.

He submitted that any internal dampness has been caused by the Tenant's repair and maintenance work. She has sealed floor boards and skirting with inappropriate materials which do not allow the building to dry out or to breathe.

Further he told us the Tenant has dug some feet down to the foundations and covered the external air vents with kitchen foil. Any failure to meet the repairing standard is not the fault of the Landlord but is as a result of the inappropriate and unauthorised building work carried out by the Tenants.

### **Findings of fact**

10. The Committee finds the following facts to be established:-

- The tenancy is an assured tenancy
- The front door windows and roof are wind and watertight
- The structure and exterior of the house and the pipe work and gutters are in a reasonable state of repair having regard to the age and character of the house and its rural location.
- 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 fixtures and fittings and appliances provided by the Landlord under the tenancy are in a reasonable state of repair apart from the ceiling fans in the kitchen and bathroom

### **Reasons for the decision**

11. It was clear from the inspection that the property is in a reasonable state of repair. The Tenant has been troubled by noise during her tenancy. She has had the noise nuisance investigated by the Local Authority. The Local Authority has been unable to detect any problem. No other parties have heard these noises. Notwithstanding the foregoing the Tenant has been determined to track down the source of this perceived noise and to that end has ripped up floor boards, sealed up air vents and exposed pipe works.

The Landlord has sent tradesmen to investigate the source of the noise by examining the electrical, plumbing and heating systems. All tradesmen, the Electricity Board and our own Professional Member concluded that both externally and internally the property is in a reasonable state of repair and the noise cannot be attributed to electrical, plumbing or heating system failures.

The Tenant is not using the central heating system because she cannot light a fire to heat the back boiler. She stated she could not light a fire because there was a noise in the chimney and the room became smoky. She has put a sheet of metal which she found in a outbuilding up the chimney along with two supporting iron bars in an attempt to prevent smoke backing into the room.

We have taken the view that if the chimney is swept and the correct logs used there is no problem with the fireplace/chimney and indeed the central heating system has been checked by four plumbers and found to be in proper working order.

The ceiling fans in the kitchen and bathroom have both been tampered with by the Tenant who has sealed them with foil and mastic to prevent draughts. While we accept these fans do not operate in an appropriate manner we are satisfied that the Landlord is exempt from his repairing duty in this regard by virtue of Section 16(1)(b)(i). There are damp patches on the floor at the bathroom door and a small damp patch in the wall above the skirting board in the bedroom. We are satisfied having heard evidence from the Tenant that the dampness in the bathroom is historic, the floor is not drying out properly because of the plastic membrane which the Tenant has laid over the floor boards. Further, the very small damp patch in the bedroom is of little significance and is likely to have been caused by the Tenant sealing the skirting with entirely inappropriate materials. Thus we find the Landlord is exempt from any duty imposed by Section 14(1) by virtue of Section 16(1)(b)(i).

The Tenant has undertaken unauthorised investigative and repair work in the property both externally and internally. This work has not been carried out to any kind of professional standard and potentially has been very damaging to the property.

## **Decision**

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

**Right of Appeal**

14. **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**

15. 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 **A McCamley**  
Chairperson

Date 5/2/08