



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

PRHP Ref: PRHP/RP/14/0228

Property at: The Bungalow, Airdlin Farm, Ythanbank, Ellon, AB41 7TY

The Parties

Nigel Cheshire, residing at The Bungalow, Airdlin Farm, Ythanbank, Ellon, AB41 7TY ("the tenant")

and

George Roddy Marshall, residing at Meikle Haddo, Newburgh, Aberdeenshire, AB41 6AN ("the landlord"), represented by Town and Country Lettings, 4 Victoria Street, Inverurie, AB51 3QS

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 Tenants at the hearing, determined that the Landlord has failed to comply with the duty imposed by Section 14 (1)(b) of the Act.

Background

- 1 By application dated 30 September 2014, the tenant applied to the Private Rented Housing Panel for a determination on whether the landlord has failed to comply with the duties imposed by Section 14(1)(b) of the Housing (Scotland) Act 2006.
- 2 The application by the tenant stated that the tenant considered that the landlord had failed to comply with the duty to ensure that their house meets the repairing standard and, in particular, that:
 - (a) the landlord had failed to ensure that 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; and
- (d) the 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 16 October 2014, the president of the Private Rented Housing Panel intimated a decision to refer the application under Section 22(1) of the 2006 Act to a Private Rented Housing Committee. The Committee members were:

Paul Doyle	Legal Member
Colin Hepburn	Surveyor Member
Jean Thomson	Housing Member

4 The Private Rented Housing Committee served notice of referral under and in terms of Schedule 2, Paragraph 1 of the 2006 Act on both the landlord and the tenant.

5 Following service of the notice of referral, the tenant made further written representations on 6 November 2014. The landlord made further written representations on 5 November 2014.

6 The Private Rented Housing Committee inspected the property during the morning of 3 February 2015. The landlord was present and was accompanied by Holly Cowe and Andrew Morrison from Town and Country Lettings (the letting agents instructed by the landlord). The tenant was present and welcomed committee members into the property. The inspection took place on a cold, snowy, winter morning. The tenant, first of all, led committee members to the exterior of the property to examine the gutters, downpipes, drains, roof, windows and oil storage tank, and then to the garage of the property to examine the piping for the central heating system. Committee members (and the landlord and his agents) were then invited back into the property and inspected the interior of the property.

7 Following inspection of the property, the Private Rented Housing Committee held a hearing at 11am within Ellon Community Centre, School Hill Road, Ellon, AB41 9JS. The tenant was present (and was unrepresented). The landlord was present with Ms Cowe and Mr Morrison of "Town and Country Lettings". Both the tenant and the landlord answered questions from committee members. Ms Cowe and Mr Morrison contributed on behalf of the landlord.

8 The tenant submits that there are defects in the boiler which provides for central heating and heating water because the boiler had no fuel when he moved into the property in June 2014; that the water supply is intermittent and that there have been periods when he has not had a

supply of water; that birds entered the roof space because soffit vents were missing; that the guttering outside the property is blocked, causing water to overflow into the roof space; that the shower door in the en-suite bathroom sticks; that the shower valve in the en-suite bathroom is damaged; that the WC does not work correctly and overflows; that electrical items are not PAT tested and that there is no electrical certificate for the property; that the wire vent cover for the boiler is defective; that the boiler has not been adequately serviced; that only four out of fourteen central heating radiators work correctly because radiator TRVs are jammed; that the central heating and hot water system has been incorrectly set, causing excessive use of fuel; that the central heating fuel tank is incorrectly located; that outside drains are blocked, causing water to pool and not drain away. The tenant asks for rent reduction from 11 June 2014 and for the option to terminate the lease early.

- 9 It is the landlord's position that there is no substance in the tenant's complaints, that the house meets the repairing standard & that each of the tenant's complaints has been addressed. The landlord relies on an electrical installation condition report dated 14 May 2014 and explains that the soffits had already been replaced by the tenant (the landlord offered to reimburse the tenant for the expense). It is the landlord's position that the guttering and downpipes were cleared by a contractor on 4 August 2014 and that on 6 August 2014, a separate contractor cleared all of the drains. The landlord concedes that a defect was discovered with the boiler but says that the necessary replacement works were carried out on 22 September 2014.

Summary of Issues

- 10 The issues to be determined are:
- (a) Is the house wind and water tight, and in all other respects, reasonably fit for human habitation?
 - (b) Is the structure and exterior of the house (including drains, gutters and external pipes) in a reasonable state of repair and in proper working order?
 - (c) Are the installations in the house for the supply of water, gas and electricity, for sanitation, space heating and for heating water in a reasonable state of repair and in proper working order?
 - (d) Are the fixtures, fittings and appliances provided by the landlord under the tenancy in a reasonable state of repair and in proper working order?

Findings in Fact

- 11 The Committee finds the following facts to be established:
- (a) On 11 June 2014, the landlord agreed to let the property to the tenant. A lease was entered into between the parties and a short assured tenancy in terms of Section 32 of the Housing (Scotland) Act 1988 was created. The landlord's obligations contained in that lease are consistent with the landlord's duty to repair and maintain the property in terms of Sections 13 and 14 of the 2006 Act.
 - (b) The property forms a detached bungalow, sitting within its own walled garden ground, located on a farm. The property has three bedrooms, a living room, a kitchen, conservatory and bathroom, with a garage to the side. All of the accommodation is on one floor. Access to all of the rooms (apart from the conservatory) is gained from a central hallway.
 - (c) When the tenant took entry to the property, in June 2014, he had difficulty in operating the hot water system and central heating system. The property benefits from oil fired central heating. An oil storage tank is located outside the property immediately adjacent to one of the walls to the property. On investigation, the tenant found that there was no fuel in the oil tank. At the date of inspection, the central heating and the hot water system both worked. The tenant agrees that at the date of hearing, there is no defect with the central heating system, nor in the supply of hot water.
 - (d) Since taking entry to the property, the tenant has replaced soffit vents which had been missing on the outside of the house. At the date of inspection, there is no requirement to either repair or replace soffit vents.
 - (e) The master bedroom has an en-suite bathroom attached. That bathroom has a toilet, a wash hand basin and a shower. On taking entry, the tenant found that the shower valve in the en-suite bathroom could not be manipulated. The landlord's agents arranged for a plumber to visit the property. The plumber rectified the problem with the shower valve. On a separate visit, the plumber remedied a problem with an overflow from the en-suite.
 - (f) On taking entry, the tenant found that his television signal was poor. He carried out his own works and remedied the defects and installed his own television aerial. The landlord offered to reimburse the tenant for the cost of the Aerial.
 - (g) On taking entry to the property, the tenant found that a number of radiator TRVs were jammed because of lack of use. Works

have been carried out to remedy that defect and, at the date of inspection, all of the radiators and TRVs attached to the radiators work satisfactorily.

- (h) The gutters surrounding the house are blocked by debris and vegetation. Green vegetation and moss can be seen growing at various points in the guttering around the house. The presence of vegetation, moss and debris causes the gutters to overflow. The guttering at the rear of the house is incorrectly mounted. It should fall towards the downpipe but, instead, falls away from the downpipe towards the short length of guttering over an adjacent bedroom window.
- (i) The property benefits from a private water supply (shared with a number of neighbouring properties). The landlord has discussed replacing that water supply with other neighbouring proprietors (who have an interest in the water supply) and there are plans to replace that water supply at some point in the future. On 29 April 2014, a sample of water from that supply was sent to the Aberdeenshire Council Environmental Health and Consumer Protection Services for inspection. Coliform bacteria was found in that sample of water. The sample of water provided did not conform with the Private Water Supplies (Scotland) Regulations 2006. No investigation has been carried out into the quality of water since April 2014. No works had been carried out to the water supply since April 2014.
- (j) After taking entry to the property and before the date of inspection, the tenant removed the shower door from the en-suite bathroom. That shower door now stands (on its own) in the garage to the property. Since removing the door, the tenant has erected a curtain to stop water from the shower spraying into the en-suite bathroom.
- (k) The bathroom in this property has a three piece sanitary suite. The bath is fitted with a whirlpool system. The whirlpool system is serviced by a series of jets designed to pump water into a full bath. The bath does not have a functioning plug so that it cannot be filled with water. The tenant has not been able to use the whirlpool fitting in the bath since taking entry to the property. On the balance of probabilities, it is likely that the whirlpool system will require to be serviced and cleaned before it can be used properly. The bath requires a functioning plug. The tenant complained to the landlord that the whirlpool does not work and that the whirlpool fittings are contaminated with algae. The landlord arranged for Gold Star Cleaning Services to visit the property and clean *inter alia* the surface of the bath.
- (l) Prior to the tenant taking entry to the property, the landlord provided a brand new washing machine and fridge. A

dishwasher was already in the property. On 14 May 2014, the landlord arranged for an electrical installation condition inspection. An approved contractor provided a report dated 14 May 2014. All of the electrical items inspected were found to be satisfactory, however no PAT testing has been carried out.

- (m) The boiler within the property was serviced on 30 July 2014 and is in good working order. The heating system within the property has been inspected and adjusted since the tenant took entry and is in good working order.
- (n) After the tenant took entry to the property, he reported overflowing drains to the landlord's agents. The landlord's agents instructed a drainage company to investigate and carry out any necessary repairs. On 6 August 2014, a drainage company (A1 Drainage & Plumbing Solutions) jetted and cleared the rainwater drains and found them all to be working. After they had carried out their works, they concluded that the drains were clear and working properly, but were concerned that the soak-away some distance from the property struggled to cope with extremes of weather.
- (o) On 30 September 2014, A1 Drainage & Plumbing Solutions visited the property again because the tenant was concerned that the drains were blocked and had not been cleared. A1 Drainage & Plumbing Solutions checked the drains again and were satisfied that the drains all worked properly but were concerned that the soak-away provision was not adequate for extremes of weather.
- (p) The central heating system in this property is fuelled by a Titan ES1225B oil tank. That oil storage tank is located within inches of the exterior wall of the property. The tank is now between seven and eight years old. Before the tenant took entry to the property, the lid of the tank had been removed; the tank was empty and approximately 600 litres of water accumulated in the bund. The pressure caused by the rainwater in the bund caused the shape of the tank to deform. On 22 September 2014, Tank Services Grampian inspected the tank, drained the rainwater from the tank and re-secured the lid to the tank.
- (q) The central heating oil storage tank is located very close to the central heating flue. The central heating flue becomes hot when the central heating is operating. The tank is located too close to a source of heat. It is located within 1.8 metres of the eaves of the property and within inches of the wall of the property, and cannot be adequately serviced and maintained because its close proximity to the property inhibits access to the tank.

Reasons for the decision

12 (a) When committee members inspected the property, the tenant drew committee members' attention to failures in the pointing to the window sills on the conservatory and to parts of the roof of the property. During the inspection (of both the exterior and interior of the property) the tenant complained that the windows to the conservatory did not fit properly and that he had fixed masking tape around the interior of the exterior door leading into the conservatory because of draughts. The tenant conceded that he had fitted that door (specifically because it had a cat flap) and that the door was not the landlord's door, nor was it present when he took entry to the property. The tenant accepts that he did not raise the question of the pointing to the roof and window sills, nor did he complain about the quality and fittings of the windows as part of his application.

(b) Committee members could see that there were defects to the pointing of the window sills and to the roof over the conservatory of this property, but the requirement for maintenance of the pointing is not part of this application, so that the committee's observations are entirely neutral. The landlord told us that he is keen to properly maintain the property. Committee members were assured that the landlord understands the importance of maintaining the pointing.

(c) *Quantum valeat* the committee members did not see that there was any defect with the windows throughout the property. The property benefits from double glazed units. The integrity of those units has not been compromised.

(d) The tenant sets out the detail of his application on five type-written pages which accompanied the application dated 30 September 2014. The tenant told committee members, without hesitation, that a number of the items that he had originally complained about had been attended to. In particular, the tenant confirmed (both at the inspection and at the commencement of the hearing) that he is satisfied that the hot water system works; that the oil storage tank has been filled; that there is no defect with the immersion heater; that there is no defect with the actual supply of water to the property (but the tenant is still dissatisfied about the quality of the water); that the soffit vents to the outside of the house have been repaired and replaced (by the tenant himself); that the shower valve to the en-suite bathroom has been fixed and that there is no longer a problem with the WC overflow. The tenant confirmed that there is no problem with the equipment for the supply of the TV signal and that he receives a good signal. The tenant confirmed that the boiler had been serviced and works properly and that the problem with radiator TRVs has now been remedied. In his written application, the tenant complains that "*the heating system was also incorrectly set up...*". At the hearing, the tenant told us that the heating system is now correctly set up.

(e) Because appropriate attention has now been paid to each of those items and the tenant confirms that those items no longer form part of his

application, those items do not require further consideration by the committee. It is the tenant's position, however, that there are still a number of items which do require the committee's consideration.

(f) When committee members inspected the bathroom, committee members could see that the bath benefitted from a whirlpool fitting. The tenant told us that a cleaner had removed the algae at or surrounding the whirlpool nozzles. What committee members could see was a clean bath; amongst the documents placed before committee members, there are invoices from a cleaning company. The tenant demonstrated to committee members that the plug for the bath is broken and, as a result, water will not be retained in the bath. In order for the whirlpool fitting to work, the bath must be full (so that bath water can be pumped around the whirlpool apparatus and re-injected into the bath). The absence of a functioning plug prevents the use of the bath and prevents the use of the whirlpool system. The weight of evidence placed before the committee indicates that the whirlpool system has not been used since at least June 2014. The bath, together with the whirlpool system is a fitting and appliance provided by the landlord. The absence of the plug prevents it from being in a reasonable state of repair and in proper working order. In answer to questions from committee members, the landlord candidly admitted that he did not know whether or not there were defects with the whirlpool system (explaining that he had never had a bath in the property). As the system has not be used for some time, it is reasonable to require the landlord to inspect, clean and repair (if necessary) the mechanism. The Committee therefore require (as part of a Repairing Standard Enforcement Order) that a plug which properly fits the bath is supplied and that the whirlpool bath system is overhauled (as a simple exercise in maintenance) and that any repairs rendered necessary by that investigation are carried out, all within six weeks.

(g) The tenant expresses his concerns about the quality of water supply to the property. It is common ground that there is a private water supply to this property. The landlord told the committee that no works had been carried out in relation to the water supply throughout the currency of the tenancy of the property and no investigation has been carried out into the quality of the water supply, but the landlord has already started plans to replace the water supply in collaboration with other interested proprietors. The documentary evidence placed before the committee indicates that, on 29 April 2014, the Environmental Health and Consumer Protection Services of Aberdeenshire Council inspected a sample of the water from the private water supply and found that it contains coliform bacteria - and so does not comply with the Private Water Supplies (Scotland) Regulations 2006. That documentary evidence goes without challenge. The landlord candidly told committee members that he knew nothing about the quality of the water supply. The committee therefore draws the conclusion that the water supply contains coliform bacteria. The committee therefore makes a Repairing Standard Enforcement Order requiring the landlord to test the water supply and carry out any necessary works to ensure that the water supply complies with the Private Water Supplies (Scotland) Regulations 2006.

(h) Committee members saw moss and vegetation blocking the gutters around this house at the inspection. The landlord was asked whether or not he had seen the vegetation in the gutters and he conceded that he had. The landlord explained that he had the gutters cleared in or about August 2014. Committee members have no doubt that that is correct, but time has moved on. The gutters have become choked again and it is once again time that the vegetation, moss and other debris now contained within the gutters is removed to prevent the gutters from overflowing. Committee members could see that there is a section of guttering which runs the wrong way. Instead of running towards the downpipe, the gutter (to the rear of the property runs) towards the eaves. The alignment of that guttering should be adjusted. The committee therefore make a Repairing Standard Enforcement Order requiring that the choked gutters be cleared and any necessary alignment of the guttering to ensure an efficient run of water is carried out.

(i) The tenant complains that the door to the shower within the en-suite bathroom is faulty, complaining that it "*sticks*". When committee members inspected the en-suite bathroom, they could see that the shower door has been removed. Committee members could see the shower door standing on its own in the garage to the property. The tenant himself told us that it was the tenant who removed the shower door and fitted a curtain instead. The difficulty for committee members is that, on inspection, committee members could not see that the shower door sticks because the shower door was not fitted. The shower door had been removed by the tenant, not by the landlord. The shower door is part of an installation provided by the landlord, but because it has been removed and was not available for proper inspection by committee members, the committee cannot make a finding in fact that there is any defect in the shower door.

(k) The tenant complains that no electrical appliances have been PAT tested. The landlord concedes that no PAT testing has been carried out. It is, however, the landlord's position that PAT testing is not necessary because the majority of the appliances were brand new at the tenant's date of entry. The landlord produces a certificate of electrical compliance dated 14 May 2014. The Electrical Equipment Safety Regulations 1994 impose a duty on the landlord to ensure that all electrical appliances supplied as part of the tenancy are regularly PAT tested and safe. The committee accepts that the landlord did not understand the requirement to carry out PAT testing, but the requirement cannot be ignored and, as part of the Repairing Standard Enforcement Order, the committee requires the landlord to carry out PAT testing of all the electrical appliances supplied as part of this tenancy.

(l) The tenant is concerned about the quality of the drains and complains that the grey water overflow from the kitchen is blocked and one of the external drains remains blocked. The documentary evidence placed before us indicates that, in August and September 2014, the landlord instructed a drainage contractor to clear the drains and address the concerns of the tenant. At inspection, the tenant drew committee members' attention to one particular drainage cover and complained that the drain was blocked. The documentary evidence indicates that the drainage contractor jetted the drains

in August 2014 and found on, 30 September 2014, that the drains were running clear and were not blocked, but that the source of an overflow at the drains was an inadequacy in a soak-away some distance from the property.

(m) Without the benefit of a camera inspection of the drains, committee members cannot say whether the drains are or are not blocked. On the balance of probabilities, the weight of evidence indicates that the drains are not blocked and that the drainage system works - but that the soak-away cannot cope with the extremes of weather experienced in the winter. The committee comes to the conclusion that the supply of drainage meets the repairing standard set out in the Housing (Scotland) Act 2006.

(n) It is clear from the evidence placed before committee members that the relationship between the landlord and the tenant has deteriorated. It is equally clear to committee members that the landlord is keen to (and has tried to) honour his obligations as a landlord and is keen to maintain his own property. With that in mind, the committee are confident that the landlord will want to investigate the adequacy of the soak-away serving this property.

(o) The remaining item is the oil storage tank for the central heating system. Committee members could see at inspection that the oil storage tank is located within inches of the side wall of the property and within approximately one metre of the central heating flue. When the tenant complained to the landlord about various matters concerning the oil storage tank, the landlord arranged inspection by Tank Services Grampian Ltd. A copy of their report dated 22 September 2014 is amongst the documents placed before the committee. The author of the report quite clearly states that the tank is "*located too close to a heat source i.e. the flue*". The author of the report highlights other deficiencies in the tank.

(p) It is not common to see an oil storage tank so close to the house it serves and so close to a source of heat. The landlord's own contractor clearly thinks that the oil storage tank is too close to the property. The oil storage tank is an installation forming part of the system for the supply of space heating. It is also an appliance provided by the landlord. The weight of evidence indicates that it is in the wrong place and that, in the interests of safety, it should be relocated. The committee therefore make a Repairing Standard Enforcement Order, requiring the landlord to relocate and, if necessary, replace the oil storage tank.

(q) When we consider all of these matters, we come to the conclusion that:

- the house is wind and water tight, and in all other respects, reasonably fit for human habitation
- the gutters are not in a reasonable state of repair and in proper working order

- the installations in the house for the supply of electricity and space heating are not in a reasonable state of repair and in proper working order, and
- some of the appliances provided by the landlord under the tenancy are not in a reasonable state of repair and are not in proper working order.

(r) The committee therefore makes a Repairing Standard Enforcement Order.

Decision

13. The Committee accordingly determined that the Landlord has failed to comply with the duty imposed by Section 14 (1)(b) of the Act.

14. The Committee proceeded to make a Repairing Standard Enforcement Order as required by section 24(1). (Delete if not appropriate).

15. The decision of the Committee is unanimous.

Right of Appeal

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

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. **Paul Doyle**
Chairperson

Date. 27/2/2015



Repairing Standard Enforcement Order

Ordered by the Private Rented Housing Committee

PRHP Ref: PRHP/RP/14/0228

Property at: The Bungalow, Airdlin Farm, Ythanbank, Ellon, AB41 7TY

The Parties

Nigel Cheshire, residing at The Bungalow, Airdlin Farm, Ythanbank, Ellon, AB41 7TY ("the tenant")

and

George Roddy Marshall, residing at Meikle Haddo, Newburgh, Aberdeenshire, AB41 6AN ("the landlord"), represented by Town and Country Lettings, 4 Victoria Street, Inverurie, AB51 3QS

NOTICE TO George Roddy Marshall, residing at Meikle Haddo, Newburgh, Aberdeenshire, AB41 6AN ("the landlord"),

Whereas in terms of their decision dated 27 February 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:-

- (a) The gutters to the exterior of the house are not in a reasonable state of repair and in proper working order in terms of section 13(1)(b) of the Act
- (b) The installations in the house for the supply of water, gas and electricity and for sanitation, heating and heating water in a reasonable state of repair and in proper working order in terms of section 13(1)(c) of the Act.
- (c) The Fixture , fittings and appliances provided by the landlord under the tenancy are not in a reasonable state of repair and in proper working order in terms of section 13(1)(d) of the Act

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:-

- (a) To clear choked gutters surrounding the property and to adjust the alignment of the guttering to ensure an adequate run to the downpipes within six weeks of the date of service of this order;

- (b) To provide a properly fitting bath plug and to investigate, overhaul and carry out any necessary repair to the whirlpool mechanism serving the bath within six weeks of the date of service of this order;
- (c) To test the quality of the water supplied to the property and to carry out any necessary repairs, alterations and adaptations to the water supply system to eradicate the presence of coliform bacteria in the water supplied to the property, within three months of the date of service of this order;
- (d) To carry out PAT testing of the electrical equipment provided by the landlord and to deliver a PAT test report to the Private Rented Housing Panel, 450 Argyle Street, Glasgow, G2 8LH, within six weeks of the date of service of this order;
- (e) To relocate the oil storage tank to a position at least two metres from the exterior wall of the property and to carry out any necessary work to repair or to replace the oil storage tank, within three months of the date of service of this order.

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 are executed by Paul Doyle, solicitor, 24 Haddington Place, Edinburgh, chairperson of the Private Rented Housing Committee at Edinburgh on 27th February 2015 before this witness:-

Kirsten Boettcher witness

Paul Doyle chairman

KIRSTEN BOETTCHER
Secretary
24 Haddington Place
Edinburgh

Edinburgh 27 February 2014
Certified a True Copy

Paul Doyle
24 Haddington Place
Edinburgh