



Statement of decision of the Private Rented Housing Committee under Section 26 and 27 of the Housing (Scotland) Act 2006

prhp Ref: PRHP/AB55/116/09

Re : Property at 95 Main Street, Newmill, Keith, AB55 6TS ("the Property")

The Parties:-

Mr Robert Munro residing at 95 Main Street, Newmill, Keith, AB55 6TS (represented by his agent Mr Jim McCourt of Moray Citizens Advice Bureau) ("the Tenant")

and

Mr David Carson residing at 82a Land Street, Keith, AB55 5AN ("the Landlord")

Background

1. On 4th May 2010 the Private Rented Housing Committee ("the Committee") issued a determination which decided that the Landlord had failed to comply with the duty imposed by Section 14(1) of the Housing (Scotland) Act 2006. On the same date, the Committee issued a Repairing Standard Enforcement Order ("RSEO") in respect of the Property. The RSEO made by the Committee require the Landlord to carry out such works as were necessary:-
 - (a) to stop damp penetration through the living room chimney and gable wall;
 - (b) to eradicate the rising dampness within the Property;
 - (c) to repair or replace, as appropriate, all rotten skirting boards and door frames within the living room caused by the damp penetration;
 - (d) to dry out the interior of the Property and thereafter to redecorate the interior of the living room;
 - (e) to install, in accordance with the relevant fire regulations, a hardwired interlinked smoke alarm system on both the ground and first floors of the Property;
 - (f) to ensure there are no further leaks from the exterior of the flat roof into the bathroom of the Property including the repair or replacement of the rotten barge boards on the rear extension;
 - (g) for the repair or replacement of the plasterboard ceiling within the bathroom and such subsequent redecoration works as may be required to bring the ceiling back to an appropriate standard.

2. The Committee had ordered in the RSEO that the works specified were to be carried out and completed within two months from the date of service of the RSEO.
3. On 3rd August 2010 the Committee, again comprising Mr E K Miller (Chairman and Legal Member), Mr Robert Buchan (Surveyor Member) and Mr Andy McKay (Housing Member), carried out a further inspection of the Property for the purpose of ascertaining whether the repairs required by the RSEO had been completed.

The Landlord was present during the course of the inspection and was accompanied by a Mr Ewan Chisholm. The Tenant was also present during the inspection along with Mrs Lemon (his carer) and Mr McCourt of Moray CAB.

A reconvened Hearing of the Committee had been arranged for the same day. The Hearing was held at Keith Community Centre, Keith. The purpose of the Hearing was to decide whether the Landlord had complied with the RSEO made by the Committee in terms of Section 26(1) of the Act. The Landlord and Mr Chisholm were present at the Hearing along with Mr McCourt who again represented the Tenant.

4. It had been immediately apparent from the Committee's inspection that the majority of the work specified in the RSEO had not been carried out. The Committee, therefore, proceeded to go through the list of works in the RSEO to obtain comments from the Landlord. In relation to Item (a) (damp penetration through the gable wall), the Committee were advised by the Landlord that the gable wall had been repointed and a blockage/obstruction removed from the chimney. The Committee had noted during the course of the inspection that works had been done to the exterior of the gable wall. The Committee highlighted to the Landlord that whilst they accepted that certain works had been done here it may be the case that further works would be required with the likelihood of a damp proof course requiring to be installed. The ground level on the exterior of the building was higher than that of the interior and this would still allow damp to penetrate notwithstanding the repointing works. One or two areas of the interior gable wall were beginning to show lower instrumental damp meter readings but there were still very high levels generally and this required to be addressed by the Landlord. Ongoing monitoring of this would require to take place to see if further works would be required. In relation to item (b) (rising damp), the Committee noted that no works had been carried out by the Landlord. Again the Committee had anticipated that timber specialist works would have been carried out such works as, for example, the instalment of a damp proof course. In relation to items (c) and (d) (repair/replacement of skirting boards and doorframes and drying out of the interior of the Property and redecoration), the Committee noted that the Landlord had not carried out any of these works. Item (e) (hardwired interlinked smoke alarm system) had been attended to. In relation to Item (f) (repair to flat roof and rotten barge boards), the Committee noted that some work had been done to the flashings and a couple of barge boards had been replaced. Generally the Committee felt that further investigation was still required here. The flashing and cement work around the join of the rear extension and the main building had been done poorly and the Committee felt that water penetration could still arise there. Whilst a couple of barge boards had been replaced, there was still at least one barge board that was rotten on the underside (the Chairman was able to push a pen completely through the wood). In addition the internal wall between the living room and bathroom was still showing excessively high levels of damp penetration and it appeared to the Committee there was a reasonable prospect that there was still water ingress occurring at the join of the flat roof and the main building. The Landlord would require to carry out further investigations, then dehumidify the Property to see if the moisture levels were dropping to an acceptable level. In relation to Item (g) (repair/replacement of plasterboard ceiling and redecoration in bathroom), nothing had been done in this regard.

5. The Committee were extremely disappointed at what they had found upon reinspection. The condition of the Property at the original inspection was amongst the poorest the Committee had ever experienced. What made matters more disappointing for the Committee was that upon reinspecting the Property so little progress had been made. The Committee had been concerned at the time of the original inspection that the 95 year old tenant had been left over a harsh winter in excessively damp conditions. The Committee had been keen for the repair works to be completed over the summer period and were concerned that nothing material had been done to date with the result that it was now August and the Tenant was facing the very real prospect of drifting into Autumn and Winter again in a property that verged on being uninhabitable. The Committee highlighted the obligations of the Landlord in relation to the Housing (Scotland) Act 2006 in general and in relation to Section 28(1) in particular, which states that it is an offence for a Landlord to fail to meet, without reasonable excuse, the terms of an RSEO. The Committee also highlighted to the Landlord their obligation to report such a failure to the local authority and the requirement for Landlords to be fit and proper persons to maintain their Landlord Registration. The Committee expressed their extreme displeasure to the Landlord at finding the Property in this condition at the date of the reinspection.
6. The Landlord accepted that he had not yet met the repairing standard. He had instructed his builder to carry out certain works but accepted that he had failed to follow up on this and to make sure that it met the required standards. He accepted that he had not fully appreciated the significance of the RSEO and had been somewhat naïve in his actions in relation to the Property. His representative Mr Chisholm also reiterated that the Landlord accepted that he had been careless in not attending to the matter properly and ensuring that the works had been carried out properly. Both the Landlord and Mr Chisholm assured the Committee that the Landlord was now fully aware of his responsibilities and would attend to the work as soon as reasonably possible. The Committee were encouraged from the submissions of the Landlord and Mr Chisholm that the Landlord did now grasp the seriousness of his position. Mr McCourt indicated again, as he had at the original Hearing, that all that the Tenant was looking for was the Property to be brought up to a reasonable standard. Although Mr Munro may not have many years left in the Property he was still entitled for the repairing standard to be met. Mr McCourt was concerned that it had drifted into August and the vast bulk of the works still needed to be attended to.

The Committee raised the question of a Rent Relief Order, which they were entitled to place on the Property of up to 90% of the rent payable under the tenancy. The Committee enquired of the Landlord whether he had any submission to make in relation to the level of rent relief the Committee might wish to make. The Landlord accepted that he had not met the repairing standard and would leave the Committee to form its own judgment in this regard.

The Committee ended the Hearing by highlighting to the Landlord that there was still a high level of work required in the Property and this would be disruptive to the Tenant. Given the Tenant's age the Committee encouraged the Landlord to be as sympathetic in this as possible. The Committee also highlighted that electrical power would require to be used in the carrying out of the works and that the Tenant should be kept free of any cost in this regard.

Determination and Reasons

7. The Committee considered the evidence obtained at their reinspection of the Property. The Committee determined that in terms of Section 26(1) of the Act the Landlord had failed to comply with the RSEO. Other than the smoke alarms and some works to the gable wall none of the items listed in the RSEO had been dealt with. The Landlord should have been able to address these timeously following upon the original service of the RSEO. The Committee were of the view that the Landlord had approached compliance with the RSEO in a wholly inappropriate fashion. He had either simply not paid enough attention to the RSEO and read the terms of it properly or had ignored it. Neither was an acceptable situation. Whilst the Committee were encouraged that the Landlord had taken

onboard the seriousness of the matter at the Hearing and would hopefully attend to the works the Committee were still extremely disappointed that matters had come to this stage. Overall, the Committee were satisfied that there was clear and uncontested evidence that the majority of the required repairs had simply not been carried out.

The Committee considered whether a Rent Relief Order should be made in terms of Section 27 of the Act and determined that such an Order should be made given the Landlord's failure to comply with the RSEO without reasonable excuse. The Committee then went on to consider the amount by which any rent payable under the tenancy in question should be reduced. The Committee noted that they were entitled to reduce the rent payable under the tenancy by up to 90%. The Committee noted that the rent payable under the tenancy was £28 per week. The Committee considered the impact of the number of repairs which were still required in the Property and the Tenant's reasonable enjoyment of the Property. In coming to their decision the Committee took account of those elements of the RSEO that had been dealt with by the Landlord timeously. The Committee were of the view that given the seriousness of the repairs that were still required to be carried out, the excessive levels of damp and rot in the Property, the extent of the disturbance to the Tenant and the fact that he had already had to suffer material inconvenience for a considerable period of time, that the appropriate action would be to reduce the rent payable under the tenancy by the maximum permitted, 90% per month. The Committee considered that the Rent Relief Order should be effective from 28 days after the last date on which the decision to make the Rent Relief Order could be appealed under Section 64 of the Act.

Decision

8. The Committee having made such enquiries as was fit for the purposes of determining whether the Landlord had complied with the RSEO in relation to the Property concerned, and taking account of the evidence led by both the Landlord and the Tenant's representative at the Hearing, determined that the Landlord had failed to comply with the RSEO in terms of Section 26(1) of the Housing (Scotland) Act 2006 and that a Notice of the failure be served on the Local Authority in which the Property is situated.
9. The Committee proceeded to make a Rent Relief Order in terms of Section 27 of the Act, which Order shall take effect 28 days after the last date on which the decision to make the Rent Relief Order may be appealed under Section 64 of the Act.
10. The decision of the Committee was unanimous.

Right of Appeal

11. 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

12. 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.

E Miller

Signed Date..... 17/8/2010
Chairperson



Rent Relief Order

Ordered by the Private Rented Housing Committee

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The Parties:-

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and

Mr David Carson residing at 82a Land Street, Keith, AB55 5AN ("the Landlord")

NOTICE TO DAVID CARSON ("the Landlord")

Whereas in terms of their decision dated 4 May 2010 the Private Rented Housing Committee ("the Committee") determined in terms of Section 26(1) of the Housing (Scotland) Act 2006 (the "said Act") that the Landlord has failed to comply with the Repairing Standard Enforcement Order in relation to the property made by the Committee.

The Committee determined to make a Rent Relief Order in terms of Section 27 of the said Act reducing the rent payable under the tenancy for the house by an amount of 90% of the rent which would, but for the order, be payable. The rent reduction will take effect 28 days after the last date on which the decision to make the Rent Relief Order may be appealed under section 64 of the said Act.

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. Where the appeal is abandoned or finally determined by confirming the decision, the Rent Relief Order will take effect 28 days after the date on which the appeal is abandoned or the decision is confirmed.

In witness whereof these presents type written on this and the preceding page(s) are executed by Ewan Kenneth Miller, solicitor, Whitehall House, 33 Yeaman Shore, Dundee, DD1 4BJ, chairperson of the Private Rented Housing Committee at Dundee on 17 August 2010 before this witness:-

L Johnston

Witness

E Miller

Chairman

Lindsay Johnston
Legal Secretary
Whitehall House
33 Yeaman Shore
Dundee
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