



## Rent Relief Order

### Ordered by the Private Rented Housing Committee

prhp Ref: PRHP/IV24/124/10

Re: Property at Easter Fearn Farm Cottage, Ardgay, Sutherland, IV24 3DL ("the Property")

#### The Parties:-

MS ROMINA McNEIL residing at Easter Fearn Farm Cottage, Ardgay, Sutherland, IV24 3DL (represented by Ms Alison MacRury, Ross & Cromarty Citizens Advice Bureau, 4 Novar Road, Alness, IV17 0QG) ("the Tenant")

CHARLES WESTON BROOKE residing at Mid Fearn Lodge, Ardgay, Sutherland, IV24 3DL ("the Landlord")

#### NOTICE TO CHARLES WESTON BROOKE ("the Landlord")

Whereas in terms of their decision dated 22 September 2011 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 house 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 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 22 September 2011 before this witness:-

**S Clack**

witness

**E K Miller**

Chairman

Sheila Clack  
Secretary  
Thorntons Law LLP  
Whitehall House  
33 Yeaman Shore  
Dundee  
DD1 4BJ



## **Statement of decision of the Private Rented Housing Committee under Section 26 (1) of the Housing (Scotland) Act 2006**

**prhp Ref:** PRHP/IV24/124/10

**Re:** Property at Easter Fearn Farm Cottage, Ardgay, Sutherland,  
IV24 3DL ("the Property")

### **The Parties:-**

**MS ROMINA McNEIL** residing at Easter Fearn Farm Cottage, Ardgay, Sutherland, IV24 3DL (represented by Ms Alison MacRury, Ross & Cromarty Citizens Advice Bureau, 4 Novar Road, Ainess, IV17 0QG) ("the Tenant")

**CHARLES WESTON BROOKE** residing at Mid Fearn Lodge, Ardgay, Sutherland, IV24 3DL ("the Landlord")

### **Decision**

1. The Private Rented Housing Committee, having made such enquiries as it saw fit for the purposes of determining whether the Landlord had now complied with the Repairing Standard Enforcement Order (hereinafter referred to as "the RSEO") in relation to the Property concerned and taking account of the representations made by the parties determined that the Landlord continued to fail to comply with the terms of the RSEO. The Committee determined that no further variation of the RSEO was to be given and that a Rent Relief Order and a Report to the Local Authority were to be submitted. The Committee decided not to report the matter to the Police for a further brief period to give the Landlord one final chance to complete the works.

### **Background**

2. Reference was made to the determinations of the Committee dated 16 December 2010 and 22 June 2011. Following a telephone conference call between the Committee, the Landlord and the Tenant of 23 March 2011, it had been agreed that a specialist heating engineer's report would be obtained on the heating system within the Property to better provide the Committee with advice on whether the system met the repairing standard or not. In due course a report from T&T Fire Installation of Drumnadrochit was obtained. A copy of their report is annexed to this Decision. Following upon receipt of this specialist report on 21 June 2011, the Committee issued a Notice of a Decision to Vary on 22 June 2011. The Variation required the Landlord to carry out the following works within one month:-

- Carry out the works required by the specialist fire installation report instructed by the Committee by T&T Fire Installation Drumnadrochit dated 21 July 2011
- Replace the melted curtain track in the spare room of the Property
- Complete the sealing of the remaining gaps in the flagstones in the main room of the Property.

Following upon the period specified in the Variation of 22 June 2011 expiring the parties were requested to advise whether or not they were now agreed that all the works had been completed. The parties were not able to agree whether or not all the

works that had been done were required and whether the repairing standard was now being met.

The Committee considered that to resolve the dispute once and for all the Committee would require to attend at the Property again for another inspection and hearing. The Committee would also require to have Mr Neill of T&T Fire Installation present to give them specialist advice as to whether the heating system met the repairing standard.

3. The Committee re-inspected the Property on the morning on 22 August 2011. Present for the Committee were Mr E K Miller, Chairman and Legal Member; Mr C Hepburn, Surveyor Member; and Mr M Scott, Housing Member. The Committee were accompanied by the Clerk, Mr R Shea. The Tenant was present and was represented both by Ms Alison MacRury of Dingwall Citizens Advice Bureau and also her brother Mr John McNeil. The Landlord, Mr Brooke, was also present during the course of the inspection and was accompanied by his own heating engineer Mr Mark Cumming.

Following the inspection a Hearing was held at Altness Community Centre. All parties present at the inspection were also present at the Hearing. Due to a diary error on the part of Mr Neill of T&T Fire Installation, Mr Neil was not present at either the inspection or the Hearing. This caused some difficulty as the Committee were without the benefit of his specialist advice and lacked the specialist knowledge themselves to properly determine issues in relation to the heating system.

Given that all other parties were present the Committee agreed, however, to carry on with the inspection and the heating to try and clarify the various issues.

The Committee noted during its inspection that the curtain track had been reinstated. The Tenant confirmed that she was happy with this. The Committee accordingly noted that this was no longer an issue that need to be addressed by them.

The Committee inspected the floor of the Property. It was apparent that the gaps had been sealed. The Tenant's brother was of the view that this had not been done adequately in places and there was a fall between two of the slabs in front of the fire which the Tenant's brother claimed represented a trip hazard. The Committee were satisfied, having inspected the floor that the gaps between the flagstones had been filled to a satisfactory, if mediocre, standard. The fall between the slabs was very minor and the Committee did not consider that it represented a material trip hazard. Accordingly the Committee were also satisfied that this aspect of the repairing standard had now been met.

The Committee then considered the heating system and the four points that had been highlighted in the T&T Fire Installation Report. The Landlord advised that he felt the stove that had been installed was appropriate. He accepted that when originally installed it had been too powerful and that it had simply been boiling hot water and overflowing. To alleviate the pressure three radiators had been installed. There was a discussion at the Hearing whether or not a fourth radiator could be installed and whether the Tenant had requested it or not. The Committee did not wish to become involved in this debate but did note that the Landlord was happy to install the fourth radiator if it was necessary to make the system comply. The Tenant and her agent's views were that the stove installed was still simply too powerful. The Tenant indicated that the stove would generate 45,000 BTU whereas the three radiators and hot water tank would not require anywhere near this amount of BTU. Adding a fourth radiator would make no material difference.

The Committee noted that the primary flow and return had been in 22mm and had been replaced with 28mm as required by the T&T Report. The Tenant, however, had issues with the number of turns/bends in the piping that led to the hot water tank and that the fact that these had been soldered. They had concerns as to whether these would be sufficient in the longer term. The Landlord and his heating engineer took the view that they were sufficient.

In relation to the recommendation in the T&T Fire Installation Report that the chimney needed to be lined with twin wall liner and insulated with vermiculite, the Landlord's engineer took the view that this was not the case. He had carried out a smoke test when installing the stove and there was sufficient draw for the chimney not to need to be lined. The Tenant took the view that it was required in terms of the heating engineer's report and therefore should have been done.

The Committee noted that a vent had been installed but in the kitchen wall. The Landlord took the view that as there was no doorway between the lounge and the kitchen this was adequate. The Tenant was unhappy with this as it prohibited her putting up a door or curtain between the kitchen and lounge. It was some way from where the fire was and was also an open vent that simply let cold air into an already very cold room.

The Committee noted that without the benefit of a heating engineer they were unable to determine on the day whether or not compliance with the repairing standard had been met. The heating engineer had also used the word "recommend" in relation to the four items at the end of his report. Clarification was required from the heating engineer as to whether these items were in fact recommendations of good practice or whether they were mandatory requirements to ensure compliance with the relevant regulations.

The Landlord indicated that he was keen to see a resolution to these matters and was quite happy for the Tenant to choose a specialist heating engineer of her own and to instruct him, with the Landlord meeting the cost. The Tenant, however, was not prepared to do this. The Committee confirmed to the Landlord that it was his responsibility to ensure compliance with the repairing standard and the Tenant was entitled to look to him to carry out the works. The Tenant's agent Ms MacRury indicated that she was concerned that the non-attendance by the heating engineer was because he had been "got at" by the Landlord and was now not keen to be involved in the process. The Committee were also aware that the Landlord had been dissatisfied with the heating engineer in that he took the view that the heating engineer had been persuaded by and listened too much to the Tenant whilst at the heating engineer's original inspection.

The Committee indicated that they would investigate with the heating engineer whether his list of items were recommendations or requirements. They would also consider whether the heating engineer was in a position to continue in the process. The Committee highlighted that the heating engineer was employed by the Committee to provide advice and it was therefore not appropriate for the parties, as the Landlord had done in the past, to contact him direct or to seek to try and persuade him to a particular point of view. The Chairman highlighted to both parties that they should not contact the heating engineer direct.

The Committee drew the Hearing to a conclusion at this point and intimated to both parties that they would liaise further with the heating engineer to clarify matters. The Committee would then consider the various issues and decide how matters would proceed from this stage.

Subsequent to the Hearing the Committee received further information from the heating engineer as to what works were required. In relation to the stove the heating engineer advised that this was simply too large for the Property. It was a very powerful stove that would be more appropriate to supply a 4 bedroom house. It could easily run 10-12 radiators. As a result it would always simply boil the water rather than heating it and was not appropriate in the circumstances. In relation to the primary flow and return, the Committee advised the heating engineer that this had now been installed in the appropriate width. There was a remaining issue in relation to the soldering. The engineer was unable to comment without seeing it whether this was appropriate or not. In relation to the chimney and whether it required to be lined

and insulated, the heating engineer had advised that he was of the view that the stove would not draw particularly well and would benefit from being lined. He did accept it was not a mandatory requirement if there was sufficient draw but in his view it would be better to have done this.

In relation to the vent installed in the kitchen, the heating engineer advised that this was a bit of a grey area. Technically it was within the same airspace but it did prevent the Tenant ever separating off the area. It would generally be considered good practice to install the vent as near as possible to the stove.

Subsequent to the Hearing the Committee received an email from the Landlord who advised that he had spoken to the heating engineer, Mr Neil, who had agreed to act on his behalf and carry out the works in his report. The Committee were more than a little vexed by the Landlord's actions given that they had specifically stated during the Hearing that the heating engineer was not to be contacted. The Committee considered whether they had any objection to Mr Neil carrying out the work on behalf of the Landlord. Notwithstanding that they had previously intimated to the parties that the heating engineer represented the Committee they were prepared to allow Mr Neil, the heating engineer, to carry out the works on behalf of the Landlord. Both parties had previously queried his independence and going forward the Committee felt his position had been compromised. Accordingly at the next point that a re-inspection was required the Committee would instruct a further independent heating engineer to advise the Committee and to inspect the further works carried out by the Landlord.

**For future reference both the Landlord and Tenant are advised that they are not to approach the second heating engineer to be appointed by the Committee. The new heating engineer will represent the Committee and will report to the Committee alone. No contact is to be made with the heating engineer. At any re-inspection of the Property by the second heating engineer the engineer will be accompanied by a member of the Committee to ensure there is no unwarranted interference by either of the parties.**

The Committee considered the options open to them. It was apparent that the heating system did not yet comply with the relevant regulations and therefore the repairing standard. The Committee could either grant a Variation of the RSEO to give the Landlord further time to complete the works. Alternatively the Committee could take the view that the Landlord had failed to comply with the RSEO without reasonable excuse and could impose a Rent Relief Order on the Landlord until such time as compliance was achieved.

The Committee considered that in the circumstances a Rent Relief Order at 90% was appropriate. The Landlord had failed to properly comply the Committee's requirements. He had had ample opportunity to attend to this and whilst he had made efforts to do so the approach had been somewhat haphazard. There had been various safety issues which the Tenant had been exposed to and the Tenant had been without a proper heating system for some considerable time. The Committee were aware that the Tenant paid a small rental and therefore a 90% Order was also required to encourage the Landlord to do the works.

For the record the works that the Committee consider to be outstanding are:-

- An appropriate size stove to be installed.
- The soldering on the flow and return pipes to be checked to ensure that it is appropriate.
- The chimney to be lined with twin wall liner insulated with vermiculite if sufficient draw is not available.
- A vent installed in the lounge itself.

The Committee thought it unreasonable that the Tenant could not provide a covering or door between the lounge and the kitchen and, in any event, felt the vent was too far away to be of any practical effect.

Given the fact that a second engineer would be looking at matters the Committee would encourage the Landlord to carry out quality workmanship in relation to the system to minimise any risk of there being outstanding items at a further re-inspection. The Committee were also of the view that at any reinspection a test would require to be carried out by way of the setting and lighting of a fire to ensure there was sufficient draw and that the stove worked properly when operated correctly.

The Committee considered what other steps they would require to take. The Committee are required, where an RSEO has not been complied with without reasonable excuse, to refer the matter to the local authority. The Committee resolved to do so. It is also a criminal offence under the Act where a Landlord fails to comply with an RSEO without reasonable excuse. The Committee considered whether to report the matter to the Police at this stage. After some deliberation the Committee decided to refrain from reporting to the Police at the present time on the basis that the Landlord had made efforts, albeit insufficient ones to date, to comply with the RSEO. The Committee reserved, however, their right to make a complaint to the Police should the works not be completed shortly.

#### **Decision**

4. The Committee decided that the RSEO had not been complied with, the Committee resolved to issue a Rent Relief Order at 90% and to report the matter to the local authority. The Committee determined not to report the matter to the Police at this stage.
5. The decision of the Committee was unanimous.

#### **Right of Appeal**

6. 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**

7. 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 K Miller Date 22/7/11  
Chairperson .....