



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

prhp Ref: PRHP/IV2/24/09

Re : Property at 27D Ardconnel Street, Inverness, IV2 3HA ("the Property")

**The Parties:-**

**DONALD BAIN, residing at 27D Ardconnel Street, Inverness ("the Tenant")**

**JOHN WEST and ANNETTE HEATHER WEST, Spouses residing together at Hillmond,  
Stratherrick Road, Inverness ("the Landlords")**

**Background**

1. On 2 October 2009 the Private Rented Housing Committee ("the Committee") issued a Determination which decided that the Landlords had failed to comply with the duty imposed by Section 14(1) via 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 required the Landlords to carry out such works as are necessary to:-
  - (a) to re-site the television cable entering the lounge/bedroom window of the Property to ensure that the window can open and close properly and to repair or replace the handle/catch on the said window;
  - (b) to repair or replace the kitchen window to ensure that it is proper working order and properly wind and water tight;
  - (c) to obtain and fit an appropriate floor covering for the kitchen floor in the Property;
  - (d) to obtain and fit an appropriate replacement floor covering in the lounge/bedroom of the Property;
  - (e) to fill and repair all holes in the walls of the lounge/bedroom and to decorate the walls and ceilings to an appropriate standard;
  - (f) to repair or replace the lock on the entrance to the Property to ensure that it is in proper working order and locking properly;
  - (g) to ensure that all loose and missing slates on the roof of the larger property of which the Property forms part are repaired, re-sited or replaced as appropriate;
  - (h) to repair or replace the guttering at the rear of the Property to ensure that the current sag in the guttering is fixed;
  - (i) to carry out such works as are necessary to ensure that there is no pooling of water outside the rear entrance door;

- (j) to carry out such works as are required to properly affix the toilet bowl in the upstairs toilet to the floor, to ensure that all leaks, be it from the sanitary ware and/or from the roof are fixed, and to make good all damage caused to the walls and ceiling of the rear extension caused by water ingress and damp penetration;
  - (k) to properly install and fix a ceiling above the upstairs toilet in the rear extension.
  - (l) to provide and install a suitable system of heating within the rear extension so as to reduce the risk of the system freezing in all but the most inclement of weather and to render the internal temperature within the extension capable of being increased to a level appropriate for human habitation and use.
2. The Private Rented Housing Committee ordered that the works specified in the RSEO were to be carried out and completed within 4 calendar months from the date of service of the Notice. Notice of the RSEO was effected by service on the Landlords on 2 October 2009.
  3. On 19 February 2010, the Committee, comprising Mr E K Miller (Chairman and Legal Member), Mr Colin Hepburn (Surveyor Member) and Mrs Linda Robertson (Housing Member) accompanied by the Clerk, Mrs Sara James carried out a further inspection of the Property for the purpose of ascertaining whether the said repairs required by the RSEO had been completed. During the course of the inspection the Committee noted that items (a), (b), (c), (d), (h) and (i) had not been carried out. In relation to item (e) the holes in the walls of the lounge/bedroom had been carried out with some stripping back works had been carried out but this had not been completed.

In relation to item (f) this had been carried out as had items (j) (subject to redecoration work required to make good the area where an old toilet cistern had been removed) and (k). In relation to item (g) there were still one or two loose and missing slates on the roof of the larger Property which required to be dealt with. In relation to item (l) there had been low level tubular heating installed in both toilets. Tubular heating had also been installed in the shower room but these had not been connected up.

4. A reconvened Hearing of the Committee had been arranged for the same day. The Hearing was held in The Spectrum Community Centre, Inverness. The purpose of the Hearing was to decide whether the Landlords had complied with the RSEO made by the Committee in terms of Section 26(1) of the Act. Mr Bain was present and represented himself. Mr West appeared for himself and Mrs West.
5. The Landlords were asked to make representations to the Committee regarding the works that had not been completed. In relation to item (a) (re-siting of television cable) the Landlords advised that with the onset of digital TV he was in the course of having a new system installed that ran internally and in due course the cable could be removed entirely from the window. The Tenant confirmed that this was the case and that he was happy that new internal cabling was being installed. The Committee noted that in due course the Landlords would still require to remove the television cable and ensure that the window could open and close properly in line with the terms of the RSEO. The catch/handle of the window would still need to be repaired or replaced. In relation to items (b), (c), (d) and (e) the Landlords advised that he had been unable to complete these works due to the failure of the Tenant to give access. The Landlords advised that the Tenant had had a number of other engagements and access had not been able to be taken (although it was clear that some access must have been allowed as there had been work carried out in stripping the walls and ceiling in the lounge/bedroom and filling in the holes and also repairing the lock on the entrance to the Property). The Tenant was adamant that he had made himself available. He was not currently employed and was therefore at the Property the vast bulk of the time. The handyman used by the Landlords lived in the same block and therefore it was easy for him to speak to the Tenant and to arrange access as

appropriate. Both parties indicated to the Committee that they could provide evidence that they had endeavoured to arrange access and both undertook to provide the Committee with this information as soon as possible after the Hearing. The Chairman warned both parties that it was incumbent upon them to act reasonably in both arranging the repairs and giving access. There was both a time and financial cost to the public purse if further inspections and hearings had to be arranged. It was unacceptable that the works had not been done within what had been a generous timescale. Subsequent to the hearing both parties submitted copies of correspondence between them and also their agents. The Committee were unable to determine conclusively from this correspondence with whom responsibility for the failure to have the internal works done lay with

The Committee accepted that item (f) (repair/replace lock to the entrance to the Property) had been carried out appropriately.

In relation to item (g) the Landlord acknowledged that there were one or two loose and missing slates on the roof and he would require to deal with these. In relation to item (h) the Landlords advised that when the guttering had been about to be replaced that it had turned out that the board behind this was rotten and would not hold new brackets. The board would also need to be replaced. The Committee pointed out that they had given a very generous 4 months to carry out the works here and that if the Landlords had commenced the repair works timeously then this issue need not have arisen. In relation to item (i) (works required to stop pooling of water outside the rear entrance door) the Landlords had carried out no works. The Landlords queried during the course of the Hearing what works were required. Mr Hepburn confirmed that it was not for the Committee to advise him on this but it would need to be some raising of the level or a drain installed to improve this area. In relation to item (j) the Landlords confirmed that rather than fix the toilet bowl in the upstairs toilet they had simply replaced it. The Committee was satisfied that this was now not leaking. The Committee noted that the damage to the wall around the original toilet cistern had not been made good and that the Landlord would need to attend to this. The Committee had noted that the damage caused by previous water ingress to the walls and ceilings of the rear extension had been made good and some redecoration had been carried out. The Committee noted, however, that the quality of this work was barely adequate and that it had only been done within the last day or so. Nonetheless it did just meet the repairing standard. In relation to item (l), the Committee accepted that tubular heating had been installed in both toilets and shower rooms. The Landlords had advised that he had not yet connected up the two in the shower room as parts had not yet been obtained but that he would do this as soon as possible. The Tenant advised that the heaters in the shower rooms had only been installed just prior to the Committee's arrival for the reinspection.

6. The Tenant was asked if he wished to make any further representations on the Landlords comments regarding the outstanding works. The Tenant reiterated his point that he had made himself available for access and there was no difficulty in relation to this. He also highlighted the last minute nature of the works, which had only been done within the last day or so.

#### **Determination and Reasons**

7. The Committee considered the evidence and representations and decided in terms of Section 26(1) of the Act that the Landlords had failed to comply with the RSEO. In relation to items (a)-(e) it appeared that there may have been some issue in relation to access. The Committee were unable to determine whether access had been made available or not but on this occasion would give the Landlords the benefit of the doubt and disregard this aspect of the Landlord's failure to comply with the RSEO. The Committee accepted that item (f) (repair of the lock) had been dealt with properly. The Committee were clear that no works had been carried out in relation to items (g), (h) and (i) and that the Landlords had simply not undertaken the necessary works timeously. In relation to item (j) generally this had been complied with although redecoration by the area where the old

toilet cistern had sat required to be carried out. In relation to item (k) the Committee accepted that this had been carried out satisfactorily.

In relation to item (l) although some works had been carried out by the Landlords the Committee were not satisfied that the provisions of the RSEO had been complied with. The relevant provision of the RSEO stated that the Landlords were "to provide and install a suitable system of heating within the rear extension so as to reduce the risk of the system freezing in all but the most inclement of weather and to render the internal temperature within the extension capable of being increased to a level appropriate for human habitation and use". Subsequent investigation by the Committee indicated that the tubular heating that had been installed by the Landlords was most typically used in greenhouses, outbuildings, attic spaces to raise the temperature sufficiently to prevent frost damage. The Committee were of the view that there were two parts to provision (l). The first of these was to ensure that there was no risk of freezing in the rear extension and they were satisfied that these low level tubular heaters would, once properly connected up, be sufficient for the first part of provision (l). However, the second part of provision (l) required the temperature to be capable of being increased to a level appropriate for human habitation and use. There were no thermostatic or timing controls available to the Tenant and the level of heat generated by the system that had been installed was not appropriate to render the extension fit for human habitation and use. Although this part of the building was a single brick rear extension and a shared area with the other tenants in the building it was, nonetheless, the only sanitary facility available to the Tenant as there were none within his Property. Accordingly the Committee were of the view that the sanitary areas in the rear extension needed to be capable of being heated to the standard one would normally expect of sanitary facilities in properties in Scotland in general. Better and additional levels of heating were required that were capable of being thermostatically controlled and set by timers in order that the Tenant, and indeed others within the larger property, could adjust the temperature in order to have a reasonable level of comfort. The Committee noted that on the day of the re-inspection the internal temperature at midday in the extension was still very cold despite two of the tubular heaters being on. It was inconceivable to the Committee that any normal person would be able to shower, wash and use the toilet facilities in anything approaching a reasonable degree of comfort in the winter months. The Committee were concerned at the failure of the Landlords to take sufficient steps to render the internal temperature fit for human habitation and use.

The Committee were of the view that the Landlords had approached compliance with the RSEO in a piecemeal and minimalistic fashion and had not provided the Committee with sufficient justifiable reasons for not carrying out the said repairs to the communal areas. Overall there was clear and uncontested evidence that a significant number of the required repairs had simply not been carried out at all.

8. 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 Landlords 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. In doing so the Committee considered the impact of the number of repairs which were still required in the Property and the Tenants reasonable enjoyment of the Property. In coming to their decision, the Committee disregarded those requirements of the RSEO that had not been complied with due to the potential difficulties of access to the Tenants property. However the bulk of the repairs in relation to the common areas and the sanitary facilities had not been carried out so that in the circumstances the Committee determined that an appropriate reduction in rent would be to reduce the rent payable under the tenancy by 50% per month. The Committee considered that the Rent Relief Order should be effective from 28 days after the last day in which the decision to make the Rent Relief Order may be appealed under Section 64 of the Act.

**Decision**

9. The Committee having made such enquiries as is fit for the purpose of determining whether the Landlords had complied with the Repairing Standard Enforcement Order in relation to the Property concerned, and taking account of the evidence led by both the Landlords and Tenant at the Hearing, determined that the Landlords 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.
10. 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.

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.

Signed ....  
Chairperson

**E Miller**

..... Date..... 2/3/2010 .....



## Rent Relief Order

**Ordered by the Private Rented Housing Committee**

prhp Ref: PRHP/IV2/24/09

Re : Property at 27D Ardconnel Street, Inverness, IV2 3HA ((hereinafter referred to as "the house"))

The Parties:

**DONALD BAIN, residing at 27D Ardconnel Street, Inverness ("the Tenant")**

**JOHN WEST and ANNETTE HEATHER WEST, Spouses residing together at Hillmond, Stratherrick Road, Inverness ("the Landlords")**

### **NOTICE TO JOHN WEST and ANNETTE HEATHER WEST ("the Landlord")**

Whereas in terms of their decision dated 2 March 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 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 50% 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 Chairperson of the Private Rented Housing Committee at Dundee on 2 March 2010.

Before this witness:-

**L Johnston**

Witness   
Lindsay Johnston  
Whitehall House  
33 Yeaman Shore  
Dundee  
DD1 4BJ  
Legal Secretary

**E Miller**

Chairman