



Repairing Standard Enforcement Order

Ordered by the Private Rented Housing Committee

prhp ref: RP/15/0179

Re Gun Cottage, Midfearn, Ardgay, Sutherland, IV 24 3DL as described within this Order ('the Property')

The Parties:-

Mrs Rosalie Webster, residing at the Property ("The Tenant")

Mr Charles Weston Brooke, residing Midfearn Lodge, Ardgay, Sutherland, IV24 3DL as agent for his son John Weston Brooke ('The Landlord')

NOTICE TO

Mr Charles Weston Brooke as agent for John Weston Brooke

Whereas in terms of their decision dated October 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 (the Act) and, in particular, that the Landlord has failed, in terms of Section 13 of the said Act to ensure that the house is wind and watertight and in all other respects reasonably fit for human habitation and that the house has satisfactory provision for detecting fires and for giving warning in the event of fire or suspected fire; Now Therefore the Private Rented Housing Committee requires the Landlord to carry out such work as is necessary for the purposes of ensuring that the Property meets the repairing standard in terms of the Act and that any damage caused by the carrying out of any work in terms of this Order is made good.

The Property is the dwellinghouse known as Gun Cottage, Midfearn, Ardgay, Sutherland, IV 24 3DL being

ALL and WHOLE the subjects known as and forming Gun Cottage comprising (One) the subjects more particularly described in, disposed by and shown delineated in red on the plan labelled "Gun Cottage Plan" annexed and signed as relative to Disposition by Charles Weston Brooke in favour of Mrs Tanya Elizabeth Brooke dated 27th August and recorded in the Division of the General Register of Sasines applicable to the County of Ross and Cromarty on 5th October both in the months 2012 (a one half pro indiviso share) and (Two) the subjects more particularly described in, disposed by and shown delineated in red on the plan labelled " Gun Cottage Plan" annexed and signed as relative to

the Disposition by Charles Weston Brooke in favour of the Trustees of Charles Weston Brooke dated 7th August and recorded in the said Division of the General Register of Sasines on 11th October both months in the year 2012 (a one half pro indiviso share)

In particular the Private Rented Housing Committee requires the following:

**(One) The Landlord is to repair or replace the window in the principal bedroom to ensure that the window closes effectively and is wind and watertight.
(Section 13(1) (c) of the Act).**

**(Two) The Landlord is to install appropriate heat and smoke alarms to comply with the requirements of the revised Domestic Technical Handbook issued by Scottish Government's Building Standards Division (Technical Handbooks 2013:- Domestic-Fire)
(Section 13(1) (f) of the Act).**

**(Three) The Landlord is to obtain advice from a suitably qualified and experienced damp specialist to investigate the cause of dampness and act on the recommendations to carry out necessary works to rectify the dampness.
(Section 13(1) (c) of the Act).**

The committee determined that the repairing standard enforcement requires to be complied with by 15th December 2015.

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.

Martin Joseph McAllister

Signed...

..... Date 20th October 2015

Martin Joseph McAllister
Chairperson

Kirsty McDonald

....
Street, Saltcoats

..witness: Kirsty McDonald, solicitor, 51 Hamilton



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

prhp ref: RP/15/0179

Re Gun Cottage, Midfearn, Ardgay, Sutherland, IV243DL ('the Property')

The Parties:-

Mrs Rosalie Webster, residing at the Property ("The Tenant")

Mr Charles Weston Brooke, residing Midfearn Lodge, Ardgay, Sutherland, IV24 3DL as agent for his son John Weston Brooke ('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) of The Housing (Scotland) Act 2006 ("the 2006 Act") in relation to the Property, determined that the Landlord has failed to comply with the duty imposed by Section 14 (1)(b) of the 2006 Act and made a repairing standard enforcement order in terms of Section 24(2) of the said Act.

Background

1. By application dated 9TH June 2015 the Tenant applied to the Private Rented Housing Panel for a determination of whether the Landlord has failed to comply with the duties imposed by Section 14 (1) (b) of the 2006 Act.
2. The application by the Tenant stated that she considered that the Landlord has failed to comply with his duty to ensure that the Property meets the repairing standard. She contended that the Property is not wind and watertight and in all respects reasonably fit for human habitation; that the structure and exterior of the house (including drains, gutters and external pipes) are not in a reasonable state of repair and in proper working order;

that the installations in the Property for the supply of water, gas and electricity and for sanitation, space heating and heating water are not in a reasonable state of repair and in proper working order; that fixtures, fittings and appliances provided by the landlord under the tenancy are in a reasonable state of repair and in proper working order and that the house does not have satisfactory provision for detecting fires and for giving warning in the event of fire or suspected fire.

In particular the application stated that:-

- 2.1 Loft insulation requires to be completed.
 - 2.2 Windows require to be repaired or replaced.
 - 2.3 The outside wall requires rendering and a chimney requires to be pointed.
 - 2.4 Dampness requires to be dealt with
 - 2.5 A chimney cowl requires to be replaced.
 - 2.6 Broken gutters require to be repaired or replaced.
 - 2.7 A report requires to be done on the condition of the septic tank.
 - 2.8 Smoke alarms require to be fitted and there are no carbon monoxide detectors or fire extinguishers.
 - 2.9 Door handles require to be repaired or replaced.
 - 2.10 The central heating system requires to be serviced.
 - 2.11 External paintwork requires to be done.
 - 2.12 Some roof slates require to be replaced.
3. The President of the Private Rented Housing Panel, having considered the application, referred the application under Section 22 (1) of the Act to a Private Rented Housing Committee. The Committee comprises of Martin McAllister (Chairperson), Mark Andrew (Surveyor Member) and Ahsan Khan (Housing Member).
 4. The Private Rented Housing Committee served a Notice of Referral under and in terms of Schedule 2, Paragraph 1 of the Act upon both the Landlord and the Tenant, dated 17th August 2015. In the Minute of Decision in respect of this Notice of Referral, the President of the Private Rented Housing Panel determined that the paperwork comprising the application to be those documents received between 10th June 2015 and 7th August 2015.
 5. The Committee attended at the Property on 6th October 2015 for an inspection. The Tenant was present and was represented by Mr Smith of CAB who was accompanied by Mr Connell, also of CAB. The Landlord was present and was represented by Mr Robertson. The Committee noted that the Property is a substantial detached stone built house with slated roof. The Property's accommodation comprises twelve apartments. A schedule of external and internal photographs is attached to this Determination. The committee found the following:-

6. Findings on Inspection

6.1 Loft Insulation

This had been done to a satisfactory standard.

6.2 Windows

Some windows showed signs of decay but all apart from one were functioning appropriately. The window in the principal bedroom does not fully close and there is a consequent draught.

6.3 Outside Walls and chimney pointing.

It was noted that there were some defects in pointing and a relatively small crack in a gable wall. It was noted that a chimney showed signs of requiring to be pointed.

6.4 The Dampness

Extensive dampness was noted in a ground floor room at the gable wall and above the radiator. The surveyor member found high damp readings and the committee noted that paintwork had been damaged. The readings suggested that this is not rising dampness and was coming from above or outside. It was noted from inspection of the outside walls in this area that there is a considerable amount of ivy growing up the walls.

6.5 Chimney Cowl

No chimney cowl was observed on any chimney.

6.6 Gutters and downpipes

No evidence of defects was noted.

6.7 Septic tank

Parties advised that the septic tank had been emptied.

6.8 Smoke Detection

Two hard wired and interconnected smoke alarms were noted. One was in the downstairs hallway and one was in an upstairs corridor. No heat alarm or carbon monoxide alarm was noted.

6.9 Door handles

The door handles were found to function but it was noted that some brass handles were loose.

6.10 Central Heating

The oil fired central heating system was functioning.

6.11 External Paintwork

This was found to be satisfactory although signs of deterioration were noted.

6.12 Roof Slates

There was found to be one missing slate on the rear elevation.

7. The Hearing

Following the Inspection, a Hearing took place at Bonar Bridge Community Hall. The Tenant and Landlord were present and gave evidence. Messrs Robertson, Smith and Connell who had been present at the Inspection also attended the Hearing.

8. The Issues

Sections 13(1)(a),(b),(c),d) and (f) of The Housing (Scotland) Act 2006 provide that the Property must be wind and watertight and in all respects reasonably fit for human habitation, that the structure and exterior of the house (including drains, gutters and external pipes) are to be in a reasonable state of repair and in proper working order, that 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, that any fixtures, fittings and appliances provided by the landlord under the tenancy are in a reasonable state of repair and in proper working order and that the house has satisfactory provision for detecting fires and for giving warning in the event of fire or suspected fire.

The Committee had before it the application and copies of the Landlord's representations.

9. Preliminary Matters

The Landlord advised that he no longer owned the property and had transferred it to his son but that he acted as his agent and dealt with all matters in connection with the Property. He said that his son is fully aware of the application to the Private Rented Housing Panel. Parties agreed that there is no Tenancy Agreement and that it is An Assured Tenancy.

The Tenant agreed that some matters raised in her application had been dealt with satisfactorily. She said that loft insulation had been fitted and that, although she was not able to climb a ladder to check matters, she accepted the surveyor member's views after inspection that the loft had been properly insulated. The Tenant said that the septic tank had been emptied. She said that the gutters and downpipes had been cleared and seemed to be working effectively although she thought that there were still some leaks. The Tenant said that missing slates had been replaced and an extractor fan installed in the bathroom. In all the foregoing matters the Tenant confirmed that she was satisfied with the position.

10. Committee's Findings

10.1 With the exception of the bedroom window the Committee considered that the windows are in satisfactory condition. Some clearly showed evidence

of a little rot and some would benefit from some painting but they worked effectively. The window in the Tenant's bedroom is of a hopper style with a design that allows the window to be closed in two positions. The first allows a ventilation gap and the second allows the window to be completely closed. The window can only be closed to the first setting which means that the window cannot be fully closed. This causes a draught.

10.2 There is a minor crack at a gable wall and some pointing is needed on external walls and a chimney.

10.3 There is dampness in two walls of the downstairs room at the gable of the Property. This room appears to be used as a store. There is extensive ivy on the outside walls which corresponds with the area where the dampness is.

10.4 There is no cowl on any chimney. There had been a cowl which had been removed by the landlord. The chimney is not currently used and there is an electric fire in the fireplace.

10.5 There are two smoke alarms. There are no alarms in either the kitchen or the Tenant's principal living space. There are insufficient alarms in the Property.

10.6 There are some internal door handles which are loose.

10.7 The central heating system functions and its servicing is dealt with by the Tenant.

10.8 The external paintwork was last done some years ago. It shows signs of deterioration.

11. Evidence and Reasons

11.1 The Tenant said that she thought the window frames were "rotting quietly" but accepted that, with the exception of her bedroom window, they worked effectively. She said that she cannot fully close her bedroom window. The Committee also noted this in the Inspection. The Landlord agreed that work had to be done to the window and he thought that the hinge is probably to blame.

11.2 The Committee noted in the Inspection that there was a small crack on the gable and that some repointing of the walls seemed to be needed. It also noted that a chimney needs to be pointed. The Tenant said that these things did not affect her enjoyment of the property but that she had reported them because she thought that the Landlord would want to repair his property.

11.3 The Committee noted extensive dampness in the downstairs room which is at the gable end. High damp meter readings were noted. The Tenant explained that it had formerly been a stable and had been incorporated into the house and that she and her late husband had created a room. The Committee had noted the existence of a radiator which the Tenant said she has at the frost setting. The Landlord said that he thought that the fact that the tenant did not heat the room contributes to the dampness. He also said it is possible that the extensive ivy on the outside walls also contributes to the dampness problem. The Tenant said that the wall has always been damp and has been so since she and her husband commenced their tenancy. She said that when they arrived at the Property there had been no ivy and the wall had been damp. The Tenant said that she would be very upset if the ivy were to be removed. The Tenant's evidence was that the room has never really been used as a living space and is currently used by her son to store his tools.

11.4 The Tenant and Landlord agreed that a chimney cowl had been removed by the landlord because it was at a dangerous angle. This had been some years ago. The Tenant said that, although she did not use the chimney and there is an electric fire in the relevant fireplace and the Property also has oil fired heating, she may use the chimney in the future if there is a power cut. The Landlord said that he had not replaced the cowl because the Tenant had not been using a solid fuel fire and he said that he thought the chimney would still function effectively without a cowl. The Tenant said that she did not think that the chimney should be open possibly allowing birds to nest. The Landlord said that many chimneys are open.

11.5 The Committee observed at the Inspection that two smoke alarms had been fitted. There is no heat alarm in the kitchen. The Tenant said that she spends most of her time in the kitchen during the day and in her workshop upstairs in the evening. It was accepted by both parties that there are no alarms in either of these apartments. The Landlord and Mr Robertson both said that anything needing to be done to comply with regulations would be completed.

11.6 The Tenant said that she likes the original brass handles that are on some of the internal doors but that she fears one day that a handle will become detached. The Landlord said that he felt minor adjustment is required and he suggested that the Tenant's son could do this. The Committee noted on inspection that the handles worked but were a little loose. The Tenant accepted that they did work.

11.7 The Tenant accepted that the heating system works but said that she has paid for servicing and Mr Smith, on her behalf, said that he thinks this is something that should be attended to by the Landlord. The Landlord said that he did not consider that he was getting sufficient rent for him to pay for such matters as this.

11.8 The Tenant said that the external paintwork had last been done some nine years ago. She said that it is flaking in some places but does not affect

her way of life. The Landlord said that he thought the paintwork is adequate and that it is not on his list to do immediately. He said that, if a higher level of rent was being paid, such things may be attended to. The Committee noted on inspection that there was some evidence of deterioration in the paintwork.

12. Submissions

The Landlord said that if a Fair Rent is paid he would be able to do more work and it was explained to him that, if he wanted the level of rent to be examined, he would have to make the appropriate application. The Landlord said that he is anxious to ensure that things could continue to be done to maintain the good relationship he has with the Tenant.

Mr Smith said that he considered that the emptying of the septic tank should be done on a regular basis and that the Landlord should pay for the servicing of the central heating.

13 Deliberations.

The Committee considered whether or not any defects it found established brought the Property below the repairing standard in terms of the 2006 Act. The Committee found the evidence of both the Tenant and landlord to be credible and it did not have to identify any issues where it had to make a decision on the reliability of evidence. Both were fair in what they said and clearly had a good relationship notwithstanding the application. In respect of the Findings it had made, the Committee considered that a repairing standard enforcement order should be made in respect of some matters. It first of all identified matters where it considered that, although there may be defects, they did not bring the Property below the repairing standard. There are defects in pointing and work requires to be done to the chimney and external walls but the Committee did not consider the matter significant enough to make a repairing standard enforcement order especially since there was no evidence that it is causing issues internally and the Tenant stated that the defects were not affecting her use of the Property.

The chimney cowl had been removed from a chimney not in use. It is still not in use and the members of the Committee were not persuaded that it should be replaced only to facilitate the use of a fireplace in an emergency or to prevent the possibility of birds nesting. There was also no evidence that the fireplace would not work effectively without the cowl.

Whilst the Committee accepted that some door handles were loose they do function and their condition does not bring the Property below the repairing standard.

The heating system does work and the Committee did not consider that the Landlord required to pay for its servicing in terms of his obligation to maintain the property to the repairing standard.

The Committee accepted that some of the external paintwork required to be attended to but formed the view that the level of deterioration was not significant.

There is a degree of rot in some of the windows but it is not significant enough to affect the windows' operation.

The window in the principal bedroom does not close properly and this means that there is a draught. The Committee determined that the Landlord should repair or replace this to ensure that the window is draught free.

The Property does not comply with current regulations in relation to smoke detection. There should be a smoke alarm in the room frequently used by the Tenant for general living purposes and a smoke alarm in every circulation space, such as hallways and landings. The Committee observed that the size of the Property is such that more than one alarm may be required in each corridor. There should be a heat alarm in the kitchen. There are insufficient alarms and the Committee determined that the Landlord should install sufficient to comply with regulations.

There is undoubtedly dampness in the downstairs room at the gable of the building. The Committee considered that lack of heating did not help the level of dampness but that this alone was not the cause. It seemed to the members of the Committee that an appropriate specialist should be engaged to investigate the cause of the dampness. The Committee considered it possible that the source of the problem may be the external pointing and stonework and it is likely that the growing ivy may have to be removed. The Committee determined that the Landlord should follow recommendations of the specialist to eradicate the dampness. In coming to its determination the Committee considered, on balance, that it is appropriate to make a repairing standard enforcement order notwithstanding the fact that the room is currently used as a store. It is part of the Property and part of the tenancy. The Committee also noted the views of the Tenant in respect of the ivy.

The Committee considered that the work should be completed by 15th December 2015. It appreciated that the work in relation to the dampness may take longer but considered that, if the Landlord had difficulties meeting the terms of the repairing standards enforcement order in this regard, he could make a submission to the Committee seeking an extension.

Decision

The Committee accordingly determined that the Landlord has failed to comply with the duties imposed by Section 14(1)(b), of the Act, as stated.

12 .The Committee proceeded to make a Repairing Standard Enforcement Order as required by section 24(1) and 24(2) of the 2006 Act in the following terms:

(One) The Landlord is to repair or replace the window in the principal bedroom to ensure that the window closes effectively and is wind and watertight.

(Section 13(1) (c) of the Act).

(Two) The Landlord is to install appropriate heat and smoke alarms to comply with the requirements of the revised Domestic Technical

**Handbook issued by Scottish Government's Building Standards Division
(Technical Handbooks 2013:- Domestic-Fire)
(Section 13(1) (f) of the Act).**

**(Three) The Landlord is to obtain advice from a suitably qualified and experienced damp specialist to investigate the cause of dampness and act on the recommendations to carry out necessary works to rectify the dampness.
(Section 13(1) (c) of the Act).**

In view of the nature of the failure to meet the Repairing Standard as defined in the 2006 Act, the committee determined that the repairing standard enforcement order requires to be completed by 15th December 2015.

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.

Martin Joseph McAllister

Signed .
Martin J. McAllister
Chairperson

.Date 20th October 2015