



Repairing Standard Enforcement Order

Ordered by the Private Rented Housing Committee

PRHP/TD5/108/11

Title No. ROX666

Re: The residential dwelling house at

6 Fairnington Farm Cottages

Maxton

Kelso

TD5 8NT

("the Property")

The Parties:-

**Mr and Mrs Hugh Tawse resident at the Property
("the Tenants")**

and

Mr Nigel Stuart Salvesen

Fairnington House

Maxton

Kelso

TD5 8NT

("the Landlord")

NOTICE TO THE LANDLORD

Whereas in terms of their decision dated sixth October 2011, the Private Rented Housing Committee determined that the Landlord had failed to comply with the duty imposed by Section 14 (1)(b) of the Housing (Scotland) Act 2006 and in particular that the Landlord had failed to ensure that the Property was water tight and in all respects reasonably fit for human habitation.

The Private Rented Housing Committee now requires the Landlord to carry out such works as are necessary for the purposes of ensuring that the Property 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 Landlords to:-

- (a) carry out such works as are necessary to ensure that the dampness is eradicated in the rear wall in the living room and the rear and west wall in the ground floor bedroom and;

(b) make good any damage to the plasterwork and the decorations resulting from the remedial works carried out in accordance with this Order.

The Private Rented Housing Committee order that the works specified in this Order must be carried out and completed within the period of three months from the date of service of this Notice.

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 this and the preceding pages are subscribed by Ronald G Handley, solicitor, chairperson of the Private Rented Housing Committee at Dunbar on the sixth day of October 2011 before this witness:

Jane Handley
Witness
JANE HANDLEY name in full

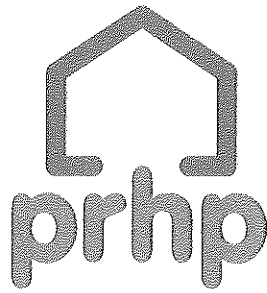
R G Handley
Chairperson

23 LESLIE WAY address of witness

DUNBAR

EH42 1GP

COLLEGE MANAGER occupation



PRIVATE RENTED HOUSING COMMITTEE

STATEMENT OF REASONS

PROPERTY:

6 Fairnington Farm Cottages, Maxton, Kelso, TD5 8NT



Decision by the Private Rented Housing Committee

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

PRHP/TD5/108/11

Re: The residential dwellinghouse at

**6 Fairnington Farm Cottages
Maxton
Kelso
TD5 8NT
("the Property")**

The Parties:-

**Mr and Mrs Hugh Tawse resident at the Property
("the Tenants")**

and

**Mr Nigel Stuart Salvesen
Fairnington House
Maxton
Kelso
TD5 8NT
("the Landlord")**

The Committee comprised:

**Mr Ron Handley – Chairperson
Mr George Campbell – Surveyor
Mr Jim Riach – Housing Member**

The Committee's Decision

The Committee, having made such enquiries as it saw fit for the purposes of determining whether the Landlord had complied with the duty imposed by Section 14(1)(b) of the Housing (Scotland) Act 2006 ("the Act") in relation to the Property, and taking account of the evidence before it, unanimously determined that the Landlord had failed to comply with the duty imposed by Section 14(1)(b). The Committee therefore requires that the Landlord carry out such works as are necessary to ensure that the Property meets the Repairing Standard and that any damage caused by the carrying out of any

such works is made good. The Committee issued a Repairing Standard Enforcement Order.

The Background

1. On 21 May 2011 the Tenants applied to the Private Rented Housing Panel ("the PRHP") for a determination as to whether or not the Landlord had failed to comply with the duties imposed by Section 14(1)(b) of the Act.
2. Following receipt of the application, the President of the PRHP intimated that the application should be referred to a Private Rented Housing Committee in accordance with Section 22(1) of the Act.

The Application

3. In their application the Tenants submitted that the Landlord had failed to comply with his duty to ensure that the Property met the Repairing Standard (as defined in the Act). It was suggested that the Landlord had failed to ensure that the Property was wind and water tight and in all respects reasonably fit for human habitation.
4. In particular the Tenants submitted in their Application Form that there was dampness in the living room and the downstairs bedroom.

The Evidence

5. The Committee had before it documents which included Land Register documents, a copy of the Application Form, a Determination by a Private Rented Housing Committee dated 11 November 2010 (relative to the Property), a Repairing Standard Enforcement Order dated 18 November 2010 and a Certificate of Completion dated 14 March 2011. Also before the Committee was a Survey Report of 9 June 2011 from Biokilcrown, various letters sent by the PRHP to the Tenants and the Landlord and letters from the representatives of the Landlord and the Tenant.

The Inspection

6. The Committee inspected the Property on 29 September 2011 at 11.00am. The Tenants and the Landlord were present at the inspection.

The Hearing

7. A Hearing was arranged for 12.00pm in the Buccleuch Arms Hotel. The Tenants and the Landlord attended the Hearing. The parties were not represented.
8. The Chairperson welcomed the parties to the Hearing and reminded them that the issue before the Committee was whether or not the Repairing Standard had been met. The Chairperson advised that whilst the Tenants suggested that they were entitled to compensation (because

of dampness in the Property), this was not a matter which could be determined by the Committee.

9. Mr Salveson advised the Committee that he accepted the terms of the report from Biokilcrown but submitted that he had been attempting to gain access to the Property since June 2011 to commence the remedial works required to alleviate the dampness. These works would take 5 days and the contractor had previously indicated that he was available to carry out the works in the third week of October. Mr and Mrs Tawse told the Committee that their daughter occupied the bedroom on the ground floor (one of the rooms affected by the dampness). Whilst alternative temporary accommodation had been offered to her to allow the works to be carried out, it was considered that the accommodation which had been offered was inadequate.
10. The Chairperson advised the parties that the Committee accepted that the Repairing Standard had not been met and reminded both parties of the importance of making appropriate arrangements to allow the remedial works to be commenced and completed. The parties were also reminded that the remedial works would require to be completed within a period of time fixed by the Committee and that the Property would thereafter be re-inspected. The parties were requested to notify the Committee if it appeared that the works could not be completed within the timescale allowed by the Committee. This would afford the Committee an opportunity of deciding if it was appropriate to allow further time for the works to be completed. The Committee also reminded the parties that tenants should take reasonable steps to ensure that the remedial works can be facilitated.

Summary of the issues

11. The issue to be determined by the Committee was whether the Landlord had complied with the requirements of the Act in ensuring that the Property met the Repairing Standard.

Findings

12. The Committee found the following facts to be established:
 - The Property is a two storey terraced cottage built of stone with a slated roof. The accommodation on the ground floor comprises a kitchen, living room and bedroom.
 - There is dampness in the rear wall in the living room and the ground floor bedroom and on the west (left) wall of the bedroom (assumed chimney breast).
 - The Property is not water tight and does not meet the standard set out in section 13(1)(a) of the Act.

- The Landlord has instructed a Survey Report and estimate for the treatment of rising damp.

Reasons for the Decision

13. In the course of the inspection the Committee noted that there was dampness in the rear wall of the living room and the rear wall of the ground floor bedroom. It was also noted that the Landlord had instructed a Survey Report and estimate for the treatment of rising damp, a copy of which was made available to the Committee. Moreover the Landlord accepted the terms of the Survey Report and acknowledged that this was a matter which required to be resolved.
14. The Committee accepts that the rooms affected by dampness will require to be vacated to allow the remedial works to be carried out. The Committee noted that there have been difficulties resolving the issue of alternative accommodation whilst the works are being executed. The Committee respectfully reminds the parties of the duty incumbent on a landlord to ensure that a dwelling house meets the Repairing Standard but reminds the parties that a landlord is not to be treated as having failed to comply with this duty where the purported failure occurred only because he/she lacked the necessary rights (of access or otherwise) despite having taken reasonable steps for the purpose of acquiring those rights.

Decision

15. The Committee determined that the Landlord had failed to comply with the duty imposed by section 14(1)(b) of the Act.
16. The Committee proceeded to make a Repairing Standard Enforcement Order as required by section 24(1) of the Act.
17. The decision of the Committee was unanimous.

Right of Appeal

18. A Landlord(s) or Tenant aggrieved by the decision of a PRHP Committee may appeal to the Sheriff by summary application within 21 days of being notified of that decision.

Effect of section 63

19. 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 decision and the Order will be treated as having effect from the day on which the appeal is abandoned or so determined.

Signed **R G Handley** Date 6 OCTOBER 2011
Chairperson