



Decision by the Private Rented Housing Committee

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

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

The Parties:-

**Ms Romina McNeill resident at the Property
("the tenant")**

and

**Mr Charles Brooke
Mid Fearn Lodge
Ardgay
Sutherland
IV24 3DL
("the landlord")**

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 written evidence before it, the Committee 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 carries out such work as is necessary for ensuring that the Property meets the Repairing Standards and that any damage caused by the carrying out of any work in pursuance of this Order is made good. The Committee issued a Repairing Standard Enforcement Order as annexed to this Statement of Reasons.

The Background

- 1. On 26 November 2009 the tenant 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.

The Application

2. In her application the tenant 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). In particular the landlord had failed to ensure that the Property was wind and water tight and in all respects reasonably fit for human habitation, the structure and exterior of the Property (including the drains, gutters and external pipes) were in a reasonable state of repair and in proper working order and that all fixtures, fittings and appliances provided under the tenancy were in a reasonable state of repair and in proper working order. The tenant also submitted that the installations in the Property for the supply of water, gas and electricity and for sanitation, space heating and heating water were not in a reasonable state of repair and in proper working order. It was suggested that the Property did not have satisfactory provision for detecting fires and for giving warning in the event of a fire or a suspected fire.
3. Following receipt of the tenant's 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.
4. The Committee served Notice of Referral on the landlord and the tenant in accordance with the terms of Schedule 2, Paragraph 1 of the Act.

The Evidence

5. The Committee had various documents before it including a copy of the tenant's application (to the PRHP), copies of various e-mails, letters from Ross and Cromarty Citizens Advice Bureau and a letter to the tenant from the Highland Council (dated 14 August 2009).
6. A Hearing was held in West End Community Centre, Alness after the inspection. The tenant did not attend the Hearing but she was represented by Ms McCrury from Citizens Advice and by her brother, Mr McNeill. The landlord also attended the Hearing.

The Inspection

7. The Committee inspected the Property on 12 March 2010 at 10.45am. The tenant, her brother and Ms McCrury were present during the inspection as was the landlord.

The Hearing

8. Mr McNeill advised the Committee that there was still dampness within the living room (following a recent minor flood). Ms McCrury told the

Committee that the Property had been affected by significant flooding in 2006 and 2007. Mr McNeill suggested that although remedial works had been attempted by the landlord, they had proved ineffective. Mr Brooke explained that the Property was in a low lying area and efforts had been made to improve the drainage - other houses in the area were also affected by flooding. He submitted that management of the culverts was important as was ensuring that the drains were regularly cleaned. He told the Committee that he had pressure cleaned the drains on 11 March 2010. Mr McNeill advised the Committee that as a consequence of past flooding, the appellant had had to dispose of some of her furniture which had been damaged.

9. The Committee advised the parties that if it was determined that the Repairing Standard was not met, a Repairing Standard Enforcement Order would be issued. This would require the landlord to carry out such work as was necessary to ensure that the Repairing Standard was met.

Summary of the issues

10. 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 Standards.

Findings of fact

11. The Committee found the following facts to be established:-
 - Ms Romina McNeill is the tenant of the Property which is owned by the landlord. The Property is a two storey, detached cottage with a hallway, two living rooms, two bedrooms, a kitchen and bathroom.
 - The roof of the Property is a traditional slate roof with stone ridge tiles. The Property (in common with neighbouring properties) is located in a low lying area of ground at the foot of a hill. The ground floor of the Property is at the same level as the ground around it.
 - The Property is double glazed.
 - Whilst at the time of the application there was no hot water available to the tenant in the Property, works had been carried out to remedy this and the installation for heating water was in proper working order.
 - The Property does not have a central heating system but is heated by two wood burning stoves (one in each living room). One of the wood burning stoves has recently been replaced. These stoves are in a reasonable state of repair and in proper working order.
 - The landlord has provided insulation in the loft area. The insulation has been properly installed.
 - The ceiling light fitting in the bathroom functions properly as does an external light.
 - There are gaps/holes in the skirting boards, walls and some of the floorboards in the Property.

- The Property was built without a damp proof membrane. This is consistent with properties of this age and form of construction.
- The smoke alarms are not mains wired and are not connected to each other.

Reasons for the decision

12. During the course of the inspection the tenant confirmed that there was an adequate supply of hot water. It was suggested in the application form that the installation in the Property for the supply of electricity was not in proper working order. At the inspection the Committee enquired of the tenant as to what the specific difficulties were. Mr McNeill (on behalf of the tenant) advised that the light in the bathroom and an external light were not working. However the Committee noted that the light in the bathroom appeared to be functioning properly as did the external light. The Committee noted that although there were two external lights, one of them had clearly not been used for some considerable time and was redundant. The Committee was satisfied that the electrical system was in a reasonable state of repair and in proper working order.
13. It was suggested (in the application form) that the Property was infested with mice. The Committee saw little evidence to support this claim and indeed Mr McNeill accepted that a residential property in a rural location would inevitably be affected by such difficulties. However the Committee noted that there were holes in the floorboards and walls and gaps in the skirting boards which would allow mice to enter the Property. The Committee noted that an external ventilator grill was missing below the living room window which could admit mice and other vermin to the fabric of the Property. The Committee considered that work should be carried out to remedy these defects.
14. It was submitted in the application form that the heating system was inadequate. The Committee noted that since the date of the application, the landlord had installed a new wood burning stove and stainless steel flue liner within the living room. The landlord told the Committee that this stove had been installed by properly qualified workmen and the Committee had little reason to doubt this. Whilst the Property does not have the benefit of central heating, the Committee was satisfied that the installations in the Property for the supply of heating were in a reasonable state of repair and in proper working order. The stoves (if properly used) would heat the Property adequately.
15. In the application form the tenant suggested that the Property had not been insulated. However it was clear to the Committee that the loft had been properly insulated.
16. It was clear to the Committee that the Property (and the surrounding properties) was in an area of low lying ground. The Committee accepted that the Property had experienced a minor flood shortly before the inspection. However it was likely that exceptional weather conditions had

contributed to that flood. As indicated, reference was made at the Hearing to previous floods in 2006 and 2007. However since these floods some efforts have been made to remedy the problems. These efforts involved the installation of culverts to an adjoining roadway (to deflect water away from the Property) and the cleaning of the external drains. Given the frequency of the flooding and that works had been executed to alleviate the problems, the Committee was satisfied that at the time of the inspection the Property was water tight and in all other respects reasonably fit for human habitation. In reaching this conclusion the Committee took account of the age, character and locality of the Property.

17. In her application form the tenant suggested that the Property did not have satisfactory provision for detecting fires and giving warning in the event of a fire or suspected fire. In the course of the inspection the landlord indicated that he intended to "mains wire" the smoke alarms. The Committee determined that the landlord be required to carry out such works as may be necessary to ensure that the system for detecting fires and given warning in the event of a fire or suspected fire complied with all relevant Regulations.

Decision

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

Right of Appeal

21. 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

22. 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....
Chairperson

R Handley

Date..... 24 / March / 2010



Repairing Standard Enforcement Order

Ordered by the Private Rented Housing Committee

**Re: The residential dwellinghouse at
Easter Fearn Farm Cottage
Ardgay
Sutherland
IV24 3DL
("the Property").**

The Parties:-

**Ms Romina McNeill resident at the Property
("the tenant")**

and

**Mr Charles Brooke
Mid Fearn Lodge
Ardgay
Sutherland
IV24 3DL
("the landlord")**

NOTICE TO THE LANDLORD

Whereas in terms of their decision dated 24 March 2010, 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 and in particular that the landlord had failed to ensure that:-

- (a) the Property was wind tight and in all respects reasonably fit for human habitation;
- (b) the Property has satisfactory provision for detecting fires and for giving warning in the event of a fire or a suspected fire.

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 landlord to:-

- (a) repair the gaps/holes in the skirting boards, walls and the floorboards in the Property and replace the external grill below the living room window;
- (b) ensure that the smoke alarms installed within the Property are in accordance with the recommendations contained in BS 5839, Part 6.

The Private Rented Housing Committee order that the works specified in this Order must be carried out and completed within the period of one month 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 these presents typewritten on this and the preceding page are subscribed by Ronald G Handley, solicitor, chairperson of the Private Rented Housing Committee at Edinburgh on the 24 day of March 2010 before this witness:-

M Beveridge

R Handley

Witness

chairperson

Martin Beveridge name in full

% Edinburgh Council address of witness

City chambers

High Street Edinburgh

Solicitor Occupation