



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

prhp Ref: PRHP/AB55/116/09

Re : Property at 95 Main Street, Newmill, Keith, AB55 6TS ("the Property")

The Parties:-

Mr Robert Munro residing at 95 Main Street, Newmill, Keith, AB55 6TS (represented by his agent Mr Jim McCourt of Moray Citizens Advice Bureau) ("the Tenant")

and

Mr David Carson residing at 82a Land Street, Keith, AB55 5AN ("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) in relation to the house concerned, and taking account of the evidence led by the Tenant at the hearing, determined that the Landlord had failed to comply with the duty imposed by Section 14 (1)(b) of the Act.

Background

1. By application dated 2nd December 2009 the Tenant applied to the Private Rented Housing Panel for a determination of whether the Landlord had failed to comply with the duties imposed by Section 14 (1)(b) of the Housing (Scotland) Act 2006 ("the Act").
2. The application by the Tenant stated that the Tenant considered that the Landlord had failed to comply with his duty to ensure that the house meets the repairing standard and in particular that the Landlord had failed to ensure that:-
 - (a) the Property is wind and watertight and in all other respects reasonably fit for human habitation; and
 - (b) the Property has satisfactory provision for detecting fires and for giving warning in the event of fire or suspected fire.
3. By letter dated 15th February 2010 the President of the Private Rented Housing Panel intimated a decision to refer the application under Section 22 (1) of the Act to a Private Rented Housing Committee.
4. The Private Rented Housing Committee served Notice of Referral under and in terms of Schedule 2, Paragraph 1 of the Act upon both the Landlord and the Tenant.
5. Following service of the Notice the Tenant made no further written representations to the Committee other than their original application dated 2nd December 2009. The Landlord (by way of an undated letter received by the Private Rented Housing Panel on 11th March 2010), made written representations to the Committee.
6. The Private Rented Housing Committee (comprising Mr E K Miller, Chairman and Legal Member; Mr R Buchan, Surveyor Member; and Mr A McKay, Housing Member) inspected the Property on the morning of 6th April 2010. The Tenant, his agent Mr McCourt and a

Mrs Lemon (a carer/relative of Mr Munro) were present. The Landlord was not present during the inspection.

7. Following the inspection of the Property the Private Rented Housing Committee held a hearing at Keith Community Centre, Keith and heard from Tenant's agent. The Landlord was not present nor represented. The Tenant was represented by Mr McCourt.
8. The Tenant's agent submitted that it was clear that there were issues in relation to the property. Damp had been penetrating through the living room chimney/chimney wall. The situation had got so bad that the wallpaper had begun to peel off the walls. In the end the Tenant has had to strip the room of the wallpaper. The Tenant had also been without the coal fire in the living room from October although this had recently been fixed and the Tenant could now use this. The Tenant's agent also highlighted the condition of the bathroom roof. Throughout the winter there had been leaks penetrating through this and running into the bathroom. The Tenant's agent also highlighted that the Landlord had provided no smoke alarms in the Property. Work had been done previously when heating was installed in the Property. At that point cabling to run smoke detectors off had been left both on the ground and upper floors but no smoke alarms had ever been installed.

The Tenant's agent was keen to stress that Mr Munro was not wishing to be difficult or looking for any fancy improvements. He was simply looking for the Property to be brought up to a habitable standard and made wind and watertight. Mr Munro was 95 and had struggled in a damp, cold property over one of the harshest winters in recent times.

The Tenant's agent was aware that Mr Munro had been considering moving out of the Property and had been offered several other Council properties. He had recently signed to take up one of these but had subsequently changed his mind. Whilst it was possible that Mr Munro would move out at some point in the near future, he was strong willed and was keen to continue living in the Property and retain his independence. The Tenant's agent was keen to ensure, therefore, that for so long as Mr Munro wished to remain in the Property, that it was brought up to the appropriate habitable standard.

9. The Landlord had submitted an undated letter to the Private Rented Housing Panel which indicated that he was intending to start work shortly. No other submissions were received from the Landlord.

Summary of the issues

10. The issues to be determined are:-
 - (a) whether the living room chimney/chimney wall is properly wind and watertight and whether the property is suffering from damp.
 - (b) whether there are smoke alarms installed in the property in terms of the relevant fire regulations.
 - (c) whether there is a leak within the bathroom ceiling.

Findings of fact

11. The Committee finds the following facts to be established:-
 - (a) there was significant damp penetrating through the living room chimney/chimney wall to the severe detriment of the Property. The Committee also found that there was rising damp within the Property.
 - (b) the Property was in breach of the relevant fire regulations as there were no smoke alarms whatsoever installed within the Property.
 - (c) the bathroom ceiling had been leaking and was not properly wind and watertight.

Reasons for the decision

12. The Committee reached its decision based on the evidence obtained by the Committee at the inspection on 6th April 2010. The Committee inspected the living room at the Property. The Surveyor Member carried out various damp meter measurements within the living room, primarily around the chimney wall. Damp levels were so high they were generally off the scale of the damp meter equipment used. In places the wall was wet to the touch. The Committee also found that the damp within the Property was not only being caused by the living room wall but also by rising damp within the Property. Again, damp meter readings confirmed this. The Committee did note that the Landlord had, within the last week or two erected scaffolding at the chimney wall and had removed some of the render from this wall. No proper remedial works had started at the time of the inspection however. Although the Tenant had not complained of rising damp as well as the penetrating damp, the Committee were satisfied that the Tenant had complained of damp generally and therefore it was appropriate for the Landlord to address both the penetrating and rising damp as part of a Repairing Standard Enforcement Order.

Significant damage had occurred to the decoration within the living room and to skirting boards and door frames, again as a direct result of the high level of damp within the Property.

In relation to the smoke alarms, the Committee inspected the Property in this regard. It was clear that there were no smoke alarms installed in breach of the regulations although there was wiring in place for this to be done. The Committee noted that the Landlord would require to carry out the installation of smoke alarms on the ground and upper floors. These would require to be hard wired and interlinked.

Lastly the Committee inspected the bathroom. It was evident that there had been water ingress in the past although on the date of the inspection itself the bathroom roof was dry. The plasterboard ceiling was bowed and would require to be repaired or replaced. The Committee also inspected externally the flat roof above the bathroom. It was apparent that somewhere within the flat roof, water was making ingress and this would require to be repaired or replaced. There were also rotten barge boards, primarily at the join with the main part of the Property and water ingress could be occurring there.

Overall the Committee were extremely dissatisfied that the Landlord had not carried out works sooner. It was clear that the Property was damp and it was disappointing that an elderly 95 year old gentleman had been left in a very damp property over an extremely harsh winter.

Decision

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

Right of Appeal

16. 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

17. 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..... 5/5/2010



Repairing Standard Enforcement Order

Ordered by the Private Rented Housing Committee

prhp Ref: PRHP/AB55/116/09

Re : Property at 95 Main Street, Newmill, Keith, AB55 6TS ("the Property")

Sasine Description: ALL and WHOLE the property known as and forming 95 Main Street, Newmill, Keith being the subjects more particularly described in and disposed by Disposition in favour of Mrs Mary Anne Milton or Beattie recorded in the General Register of Sasines for the County of Banff on 25th November 1948 under exception of the subjects referred to in Disposition by the Executor of Lilius McDonald or Carson formerly of 95 Main Street, Newmill in favour of Richard Gallicker recorded in the Division of the General Register of Sasines for the County of Banff on 2nd August 2000.

The Parties:-

Mr David Carson residing at 82a Land Street, Keith, AB55 5AN ("the Landlord")

Mr Robert Munro residing at 95 Main Street, Newmill, Keith, AB55 6TS (represented by his agent Mr Jim McCourt of Moray Citizens Advice Bureau) ("the Tenant")

NOTICE TO DAVID ALLAN CARSON ("the Landlord")

Whereas in terms of their decision dated 4 May 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 has failed to ensure that:-

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

the Private Rented Housing Committee now requires the Landlord to carry out such work as is necessary for the purposes of ensuring that the house concerned 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:-

- (a) to carry out such works as are necessary to stop damp penetration through the living room chimney and living chimney wall;
- (b) to carry out such works as are necessary to eradicate the rising dampness within the Property;
- (c) to repair or replace, as appropriate, all rotten skirting boards and doorframes within the living room caused by the damp penetration;
- (d) To carry out such other works as are generally necessary to dry out the interior of the Property and thereafter to redecorate the interior of the living room;
- (e) To install, in accordance with the relevant fire regulations, a hardwired interlinked smoke alarm system on both the ground and first floors of the Property;
- (f) To carry out such works as are necessary to ensure there are no further leaks from the exterior of the flat roof into the bathroom of the Property including the repair or replacement of the rotten barge boards on the rear extension;

- (g) The repair or replacement of the plasterboard ceiling within the bathroom and such subsequent redecoration works as may be required to bring the ceiling back to an appropriate standard.

The Private Rented Housing Committee order that the works specified in this Order must be carried out and completed within the period of 2 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 these presents type written on this and the preceding page(s) 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 4 May 2010 before this witness:-

L Johnston

_____ witness

E Miller

Chairman

✓
L
Lindsay Johnston
Whitehall House
33 Yeaman Shore
Dundee
DD1 4BJ

Legal Secretary