

Determination 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 : Property at Hatton Smithy Cottage, Inverarity, By Forfar ("the Property") being All and Whole the lands and estate of Rennie-Fotheringham and others, being the lands and others particularly described in Not. Instrument in favour of Trustees of Thomas Frederick Scrymsoore Fotheringham, recorded in the General Register of Sasines on 27 September 1864.

The Parties:-

Mr John Dunsmuir, Hatton Smithy Cottage, Inverarity, By Forfar ("the Tenant")

Fortherinham Estates Co Ltd., c/o Bidwells, 5 Athol Place, Perth ("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 property, and taking account of the evidence led by both the Landlord and the Tenant at the hearing and their written representations, Determined that the Landlord has failed to comply with the duty imposed by Section 14 (1)(b) of the Housing (Scotland) Act 2006. (hereinafter referred to as "the Act") in that the Landlord has failed to ensure that the house is wind and watertight and in all other respects reasonably fit for human habitation, and that the structure and exterior of the house, (including drains, gutters and external pipes) are in a reasonable state of repair and in proper working order.

Background

1. By application dated 18 January 2010, the Tenant applied to the Private Rented Housing Panel for a determination as to whether the Landlord had failed to comply with the duties imposed by Section 14(1)(b) "the Act".
2. The application by the Tenant stated that he considered the Landlord had failed to comply with the duty to ensure that the house meets the repairing standard and in particular that the Landlord had failed to ensure compliance with Section 13(1)(a) and (b) of the Act. The Tenant's complaint related to the flooding of the property caused by a lack of a proper drainage system and disrepair to the rhones.
3. The President of the Private Rented Housing Panel intimated a decision to refer the application under Section 23(1) of the Act to a Private Rented Housing Committee.
4. The Committee carried out an inspection on 8 April 2010 and thereafter held a hearing at Whitfield Community Centre, Dundee. The Tenant was present at the inspection and the hearing and the Landlord was represented by Mr Galloway of Bidwells.
5. The Committee heard submissions from the Landlord and the Tenant.

Submissions for the Tenant

6. Mr Dunsmuir explained that the problem occurred at the rear and sides of the house. When it rained for a prolonged period of time the water went to the lowest point and built up at the back of the house and then went under the house and came up through the floors. This resulted in his carpets being soaked and affected the bathroom, kitchen and one of the bedrooms. Mr Dunsmuir explained that at the back of the house there was rubble from steadings which had been knocked down some years ago and the area was like a marsh. There had also been a problem with flooding at the road but this problem had been rectified by work carried out with the co-operation of the Landlord and the Local Council Roads Department. Mr Dunsmuir pointed out that the property had a lot of vents low down in the walls and the water came through the vents. There was also a problem with water running off the side of the rhones, which added to the build up of water. Mr Dunsmuir referred to the photographs which were taken about a week and a half ago when there had been snow, showing large areas of water at the back of the house and also under the floor in the bathroom. Mr Dunsmuir also showed the Committee a newspaper cutting from 1990, which showed that there had been a problem as far back as then. The problem had been getting worse recently as there was now more rainfall.

Submissions for the Landlord

7. Mr Galloway stated that there was no dispute with regard to the fact that there was a problem with flooding at the property. He explained that the parties were before the Committee today because the Landlord had been sluggish in sorting matters out. He explained that the Landlord had been evaluating the property and looking at what could be done and had considered doing renovation to the property at the same time. Mr Galloway explained that the Landlord would be happy to renovate the property but this would result in an increase of rent thereafter. Mr Galloway stated that he suspected that the water table had risen which had led to further problems recently. He suggested that a drain/ditch at the back and east of the property would alleviate the problem. He submitted that it would be necessary to scrape the rubble away to below the air vents in the walls and then put in a drain to catch the water. He however stated that the Landlord would need to evaluate the situation as there was not much of a run off and the foundations of the house were below ground level. In connection with the rhones, Mr Galloway stated that it was accepted that there is a downpipe missing and that another one required to be fitted, which would tie into any drain. Mr Galloway clarified that it would not be necessary for the Tenant to vacate the house while the work to resolve the flooding was undertaken.

Decision

8. It was clear from the site inspection and the evidence led at the hearing that there was a significant problem with flooding at the property. There was standing water under the floor boards in the bathroom and the area to the back of the property was subject to flooding and was in a waterlogged condition. It was also clear from the photographs provided by the Tenant that when there was a lot of rain, large areas of water collected at the back of the property which then went under the house and came up through the floor boards in the lower part of the house. The Landlord accepted that there was a problem and had evaluated the position and suggested how to rectify it. The Landlord also confirmed that it would not be necessary for the Tenant to move out to enable the works to be done. It was clear to the Committee that the present state of the property did not meet the Repairing Standard and was a breach of Section 13(1)(a) and (b) of the Act.
9. The Committee accordingly made a Repairing Standard Enforcement Order in respect of the rhones and the drainage system.

10. The Committee consider that this work should be able to be undertaken within a period of 3 months
11. The decision of the Committee is unanimous.

Right of Appeal

12. **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

- 13 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.

J Lea

Signed Date: 27 April 2010
Chairperson

A Repairing Standard Enforcement Order

Ordered by the Private Rented Housing Committee

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The Parties:-

Mr John Dunsmuir, Hatton Smithy Cottage, Inverarity, By Forfar ("the Tenant")

Fortherinham Estates Co Ltd., c/o Bidwells, 5 Athol Place, Perth ("the Landlord")

Whereas in terms of their decision dated 27 April 2010, The Private Rented Housing Committee having 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 comply with a duty to ensure that the house is wind and water tight and in all other respects reasonably fit for human habitation, and that the structure and exterior of the house (including drains, gutters and external pipes) are in a reasonable state of repair and in proper working order.

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 of the work in terms of this Order is made good.

In particular, the Private Rented Housing Committee requires the Landlord to:-

1. Repair and upgrade the rainwater fittings to provide effective dispersal of rainwater.
2. Upgrade the existing drainage system and / or install an adequate drainage system to prevent flooding to the property.

The Private Rented Housing Committee orders that the work specified in this order be must be carried out and completed within a period of 3 months of the date of service of this notice.

A landlord or a tenant aggrieved by this 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 variation is suspended until the appeal is abandoned or finally determined, and where the appeal is abandoned or finally determined by confirming the decision, the variation 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 page are executed by Judith V Lea, solicitor, Unit 3.5 The Granary Business Centre, Coal Road, Cupar, Fife, KY15 5YQ, chairperson of the Private Rented Housing Committee at Cupar on 27 April 2010 before this witness:-

R Graham
..... Witness

J Lea
..... Chairman

Rachel Graham
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