



Repairing Standard Enforcement Order

Ordered by the Private Rented Housing Committee

Re 1, Main Road, Ardmish, Gigha, being part of the subjects registered in the land Register of Scotland under title Number ARG3717 ('the Property')

The Parties:-

Rudi and Aleid Kloosterhuis residing at 1 Main Road, Ardmish, Isle of Gigha ('The Tenants')

Isle of Gigha Heritage Trust, incorporated under the Companies Acts and having their registered office at Old Bank of Scotland Buildings, Stornoway, Isle of Lewis ('The Landlords')

NOTICE TO The Landlords, the said Isle of Gigha Heritage Trust

Whereas in terms of their decision dated 19th March 2012, the Private Rented Housing Committee determined that the Landlords have failed to comply with the duty imposed by Section 14 (1)(b) of the Housing (Scotland) Act 2006 and in particular the Landlords have failed to ensure that the Property was wind and water tight and in all other respects reasonably fit for human habitation and that the structure and exterior of the property are in a reasonable state of repair and proper working order.

The Private Rented Housing Committee now requires the Landlords to carry out such work as is 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:-

- (1) Repair and renew, where necessary, the roof coverings to render them wind and watertight and the Property free from damp and carry out necessary redecoration.
- (2) Effect repairs to render the living room free from draughts.
- (3) Repair the cracks in the external roughcast and repair or replace defective gutters and downpipes.
- (4) Repair or replace the chimney lining to render it in a reasonable state of repair and proper working order.
- (5) Repair or replace decayed window frames and carry out necessary repairs to the window frames to allow the windows to open with ease.
- (6) Repair or replace the entrance door, entrance door frame and threshold weather bar to render them in a reasonable state of repair and proper working order.
- (7) Repair the shed to render it in a reasonable state of repair and proper working order.

The Private Rented Housing Committee order that these works must be carried out and completed
By 30th SEPTEMBER 2012.

**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.

Signed..... **J Taylor** Date 19th March 2012
Chairperson

... **E Shedden** witness: ELIZABETH GIFFEN SHEDDEN, 65, High Street, Irvine



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

Re 1, Main Road, Ardmish, Gigha, PA41 7AA being part of the subjects registered in the land Register of Scotland under title Number ARG3717 ('the Property')

The Parties:-

Rudi and Aleid Kloosterhuis residing at 1 Main Road, Ardmish, Isle of Gigha ('The Tenants')

Isle of Gigha Heritage Trust, incorporated under the Companies Acts and having their registered office at Old Bank of Scotland Buildings, Stornoway, Isle of Lewis ('The Landlords')

Decision

The Committee, having made such enquiries as it saw fit for the purposes of determining whether the Landlords have complied with the duty imposed by Section 14 (1)(b) of the Housing (Scotland) Act 2006 ("the Act") in relation to the Property, determined that the Landlords have failed to comply with the duty imposed by Section 14 (1)(b) of the Act.

Background

1. By application dated 25th June 2011 the Tenants applied to the Private Rented Housing Panel for a determination of whether the Landlords have failed to comply with the duties imposed by Section 14 (1)(b) of the Act.

The application by the Tenants stated that they considered that the Landlords have failed to comply with their duty to ensure that the Property meets the repairing standard. They advised that the Property was not wind and watertight and in all other respects reasonably fit for human habitation and that the structure and exterior of the Property was not in a reasonable state of repair and proper working order.

In particular the application stated that:-

- 1.1 The roof is rotten and leaking and there are tiles missing. The walls and ceilings are wet and damp.
 - 1.2 There is no insulation in the living room which is draughty.
 - 1.3 There are cracks in the external walls, gutters and downpipes.
 - 1.4 The linings of the chimney are falling down.
 - 1.5 Window frames are rotten and the windows don't open.
 - 1.6 Front door is rotten and water is coming in.
 - 1.7 The shed is falling apart.
2. 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.

3. The Private Rented Housing Committee served Notice of Referral under and in terms of Schedule 2, Paragraph 1 of the Act upon both the Landlords and the Tenants, dated 6th December 2011.
4. The Committee attended at the Property on 13th March 2012. The Tenants and Lukas Lehmann, the Landlord's Development Manager, were present at the inspection.

The Committee inspected the alleged defects and found as follows:-

4.1 The roof is rotten and leaking and there are tiles missing. The walls and ceilings are wet and damp.

Mr Links, the surveyor member of the Committee used a damp meter to test for dampness in the various rooms of the Property identified in the Tenant's application. He explained that if the damp meter measured orange or red this confirmed the presence of dampness and if it measured green this confirmed that there was no dampness present.

The Committee inspected the following rooms to determine if there was dampness present:-

4.1.1 Kitchen

There was evidence of dampness in the ceiling. The damp meter reading was between 20 and 26, in the red range, confirming the presence of dampness.

4.1.2 Bedroom

There was evidence of dampness, including the presence of black mould, in the ceiling and wall of the built in wardrobe. The damp meter reading was off the scale confirming the presence of dampness.

4.1.3 Bathroom

There was evidence of dampness, including the presence of black mould, in the polystyrene ceiling tiles and the wall. The damp meter reading was off the scale confirming the presence of dampness.

4.1.4 Dining Room

There was evidence of dampness in the ceiling. The damp meter reading was off the scale confirming the presence of dampness.

4.1.5 Bedroom off Dining Room

There was evidence of dampness in the ceiling and the wall. The damp meter readings were:

Ceiling: between 17 and 20, in the orange range.

Wall: above 28, in the red range.

Ingo of the window: off the scale.

Confirming the presence of dampness.

4.1.6 Bedroom in the Attic (South most room)

There was evidence of dampness in the ceiling and the floor. The damp meter readings were off the scale confirming the presence of dampness.

4.1.7 Bedroom in the Attic (North most room)

There was evidence of dampness to the wall forming the gable end.

The damp meter reading was between 23 and 25 confirming the presence of dampness.

4.2 No insulation in the living room which is draughty.

Whilst the weather was calm at the time of the inspection the parties confirmed that there is fibreglass insulation in the attic space above the living room, the room is very draughty as the room is not windproof and draughts enter through the joints in the wooden cladding on the walls.

4.3 There are cracks in the external walls, gutters and downpipes

There are extensive cracks in the external rendering. Mr Links, the surveyor member of the Committee tapped the rendering and advised that the roughcast was not bossed. The Tenant explained that the rainwater runs over the gutters and into the cracks in the rendering. The gutters and downpipes were cracked and in need of repair.

4.4 The linings of the chimney are falling down

The Tenants advised that they had been unable to use the open fire in the living room as sections of the cement chimney lining had fallen down. The Committee saw that sections of the cement chimney liner were lying on the hearth.

4.5 Window frames are rotten and the windows don't open

The Committee inspected the following rooms to determine the condition of the windows:

4.5.1 Living Room

The window frame was rotten.

4.5.2 Dining Room

The window was sealed up and could not be opened. There was no evidence of rot.

4.5.3 Bathroom

The window opened freely and there was no evidence of rot internally. However the external sill was rotten.

4.6 Front door is rotten and there is water coming in

The Committee saw that the front door and door frame are rotten and the weather bar is detached.

4.7 The Shed is falling apart

The Committee saw that there are both domestic and business items stored in the shed. The door and general structure of the shed is dilapidated. The door had been nailed shut. Mr Lehman advised that this was a temporary measure to make it secure.

5. Following the inspection of the Property the Private Rented Housing Committee held a hearing at The Gigha Hotel, Isle of Gigha.

The Tenants and the Landlords' representatives Lukas Lehmann, the Landlord's Development Manager and Alexander MacNeill, the Chairman of the Isle of Gigha Heritage Trust were present.

As a general matter Alexander MacNeill explained that the Landlords are a Trust. They have a rolling programme of repairs. The highest priority repairs are completed first and they apply for grant funding on a case by case basis to enable the repairs to proceed. Also there is no building company on the Island and the builders on the mainland are inundated with work due to the unusually bad weather over the winter. Generally builders are not keen to come to the island and repairs take longer to complete than for properties located on the mainland.

In relation to the matters detailed in the Tenants' application the Landlords' representatives and the Tenants advised as follows:

5.1 The roof is rotten and leaking and there are tiles missing. The walls and ceilings are wet and damp.

Mr Lehmann explained that he had instructed a builder to inspect the roof. The builder carried out some repairs approximately two weeks ago when some of the slates had been replaced. Sloan Builders are due to return to the Property later in the week to carry out further repairs. He confirmed that it is virtually impossible to keep the property completely wind and watertight without replacing the roof. He also suggested that the property is not heated and ventilated properly and the Tenants use of the Property has contributed to the damp problems. However he accepted that there is penetrating damp from the roof and perhaps the rendering.

The Tenants explained that the difficulties with the roof have been ongoing for over three years. They do not accept that their use of the property contributes to the damp problems.

5.2 No insulation in the living room which is draughty.

The Tenants explained that when the wind is in a southerly direction the living room is very draughty. They had obtained a report from the Energy Saving Trust but were unable to apply for the grant as they had been advised that the Landlords would have to submit the application.

Mr Lehmann explained that he has asked Sloan Builders to have another look at the matter of insulation of the living room when they are next on the island. He suspects that it will be necessary to insulate the walls with Kingspan insulation.

5.3 There are cracks in the external walls, gutters and downpipes.

The Tenants explained that they suspect that some of the dampness in the property may be due to the cracks that are in the rendering.

Mr Lehmann accepted that there are cracks in the rendering. He explained that some repair works have been carried out to the gutters and he believes that they are in a satisfactory condition.

5.4 The linings of the chimney are falling down.

The Tenants advised that Peter McAllister, employed by the blacksmiths in Campbeltown, had advised that the chimney was condemned.

Mr Lehmann and Mr MacNeill advised that they did not accept this. They did not believe that Peter McAllister was qualified to make this judgement. They accepted that the practical solution is to install a multifuel stove and new steel chimney liner.

5.5 Window frames are rotten and the windows don't open.

The Tenant confirmed that all the windows in the property open apart from the window in the dining room.

5.6 Front door is rotten- water is coming in.

Mr Lehmann accepted that the front door needs to be replaced.

5.7 Shed is falling apart.

The Tenant acknowledged that there would be no grants available to meet the repair costs of the shed.

Mr Lehmann questioned whether the shed was covered by the obligations of the Repairing Standard. Mrs Taylor, the chairperson, explained that the definition of 'a house' in section 194 of The Housing (Scotland) Act includes any outhouse etc capable of being occupied or enjoyed together with the living accommodation and therefore the shed was included in the Repairing Standards obligations.

Mr Lehmann then confirmed that he would be prepared to carry out the works necessary to render the shed wind and watertight.

In relation to the estimated timeframe that it would take to complete the repairs the Tenants explained that they would not wish to increase the costs to the Landlords by there being two stages of repairs. The temporary repairs and then the general refurbishment of the Property. Mr Lehmann advised that there is one grant available from Argyll and Bute Council after 1st April 2012. The application to the Scottish Executive for the Energy Efficiency Grant has not been processed yet. Also as the work is being done on an island an additional 2 to 3 months

must be added to the estimated time to complete the work. Further, if the work has to be completed before the grants are available additional time must be allowed to complete the detailed funding application process.

6. Summary of the issues

The issues to be determined are:-

6.1 The Property is not wind and watertight and in all other respects reasonably fit for human habitation (Section 13(1)(a) of The Housing (Scotland) Act 2006).

Whether the condition of the roof, walls and ceilings and draught proofing in the living room result in the Property not being wind and water tight and in all other respects reasonably fit for human habitation.

6.2 The structure and exterior of the Property was not in a reasonable state of repair and proper working order (Section 13(1)(b) of The Housing (Scotland) Act 2006).

Whether the condition of external walls, gutters and downpipes, linings of the chimney, the window frames, windows, front door and shed result in the Property not being in a reasonable state of repair and in proper working order.

7. Findings of fact

The committee found:-

7.1 The Property is not wind and watertight and in all other respects reasonably fit for human habitation (Section 13(1)(a) of The Housing (Scotland) Act 2006).

The condition of the roof, walls and ceilings and draught proofing in the living room result in the property not being wind and watertight and in all other respects reasonably fit for human habitation.

7.2 The structure and exterior of the Property was not in a reasonable state of repair and proper working order (Section 13(1)(b) of The Housing (Scotland) Act 2006).

The condition of external walls, gutters and downpipes, linings of the chimney, the window frames, windows, front door and shed result in these items not being in a reasonable state of repair and proper working order.

Decision

8. The Committee accordingly determined that the Landlord had failed to comply with the duties imposed by Sections 13 (1)(a) and 13(1)(b) of the Act, as stated.

9. The Committee proceeded to make a Repairing Standard Enforcement Order as required by section 24(1). The Committee accepted the Landlords' submissions regarding the potential time that it would take for repairs to be completed and made provision for this by allowing them until 30th September 2012 for the works to be completed.

10. The decision of the Committee was unanimous.

Right of Appeal

11. 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

12. 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

J Taylor


..... Date 19th March 2012