



REPAIRING STANDARD ENFORCEMENT ORDER

BY THE

PRIVATE RENTED HOUSING COMMITTEE

PRHP Ref: prhp/PH33/149/11

PROPERTY

21 Torlundy Road, Caol, Fort William PH33 7EB registered in the Land Register for Scotland under Title Number INV19327

PARTIES

Stephen Peart, residing formerly at the property

Tenant

and

Gillian Hunter, residing formerly at 53 Drumfada Terrace, Fort William, PH33 7LA and now at 10 Cardhu Gardens, Kilmarnock, KA3 1QY

Landlord

1. **WHEREAS** in terms of their decision dated 20 March 2012 the Private Rented Housing Committee ('the Committee') determined that the landlord has failed to comply with the duty imposed by section 14(1)(b) of the Housing (Scotland) Act 2006 ('the Act') and in particular the property fails to meet the repairing standard as set out in section 13(1) of the Act.
2. The Committee now requires the landlord carry out such work as is required to ensure the property meets the repairing standard and that any damage caused as a consequence of carrying out of any works in terms of this Order are also made good before the expiry of the Completion Date.

THE ORDER

3. In particular, and without prejudice to the foregoing generality, the Committee **HEREBY ORDERS** the landlord to carry out the following repairs ('the Works');-
 1. To carry out the necessary repairs to the roughcast render on the property.
 2. To carry out necessary investigations of the apparent damp in the kitchen, bathroom and back bedroom and to carry out such work as is identified as necessary to eliminate the damp and condensation.
4. The Committee **HEREBY FURTHER ORDERS** that the Works specified in this Order must be carried out and completed before the expiry of the Completion Date of 3 months from the date of service of this Order.

RIGHT OF APPEAL

5. A landlord or tenant has the right to appeal this decision to the Sheriff by summary application within 21 days of being notified of that decision.

EFFECT OF APPEAL

6. In terms of section 63 of the Act, where such an appeal is made, the effect of the decision and of any order is suspended until the appeal is abandoned or finally determined by confirming the decision, the decision and any 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 consisting of this and the preceding two pages are subscribed as follows:-

D Preston

Chairman

25/03/12

Date of Signing

OBAN

Place of Signing

S Preston

Witness

SARICA ELIZABETH PRESTON

Name

WESTONK

Address

DUNCRAVEN ROAD

OBAN

ARGLYLL



PRIVATE RENTED HOUSING COMMITTEE

STATEMENT OF DECISION OF THE PRIVATE RENTED HOUSING COMMITTEE UNDER SECTION 26(1)) OF THE PRIVATE RENTED HOUSING PANEL (APPLICATIONS AND DETERMINATIONS)(SCOTLAND) REGULATIONS 2007

In connection with

PROPERTY:

21 Torlundy Road, Caol, Fort William PH33 7EB (hereinafter referred to as "the Property")

PARTIES

Stephen Peart, residing formerly at the property (hereinafter referred to as 'the Tenant')

and

Gillian Hunter, residing formerly at 53 Drumfada Terrace, Forth William, PH40 7LA and now at 11 Cardhu Gardens, Kilmarnock, KA3 1QY (hereinafter referred to as "the Landlord")

PRHP Reference: prhp/PH33/149/11

Decision

The Committee, having made such enquiries as is 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, determined that the Landlord had failed to comply with the duty imposed by Section 14 (1)(b) of the Housing (Scotland) Act 2006 (hereinafter referred to as "the Act").

Background

- 1. By application dated 9 August 2011 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 house is wind and watertight and in all other respects reasonably fit for human habitation.
 - (b) 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.
3. By Notice of Referral dated 16 September 2011 the President of the Private Rented Housing Panel ('the President') intimated a decision to refer the application under Section 22 (1) of the Act to a Private Rented Housing Committee.

The Committee comprised the following members:

Mr. David M Preston, Legal Member
Mr. Robert Buchan, Surveyor Member
Mr. Chris Harvey, Housing Member

4. Following service of the Notice of Referral the Tenant, by letter dated 28 September 2011 intimated that he intended to vacate the property in October 2011.
5. By Minute dated 25 November 2011, the President determined that the application should proceed in terms of Schedule 2 Paragraph 7(2)(b) of the Act, which Minute was intimated to the Landlord by letter dated 1 December 2011.
6. The Landlord has made no representations to the Committee.
7. The Private Rented Housing Committee attended at and attempted to inspect the Property at 13.00 on 20 March 2012. Neither the Landlord nor the Tenant nor any representative attended. The Committee remained at the property for a period of 20 minutes beyond the scheduled time for the inspection as notified to the Landlord.
8. Following the inspection of the Property the Private Rented Housing Committee held a hearing at An-Drachaid, Claggan Road, Fort William PH33 6PH. Neither the Landlord nor the Tenant nor any representative attended. The Committee arrived at the venue at 13.20 and remained there until 40 minutes after the scheduled time for the hearing as notified to the Landlord.
9. The Committee was satisfied that Notice had been given to the Landlord of the date, time and place of the inspection and hearing as required by the Act. It took into account the electronic evidence of receipt timed and dated 12:31 on 2 December 2011 of the recorded delivery letter dated 1 December 2011 with which was enclosed a copy of the Notice of Referral. Accordingly in the absence of any information regarding the nature and circumstances of the Landlord's absence and in the absence of any form of response from the Landlord to the Notice of Referral, the Committee determined that the Landlord had deliberately and voluntarily chosen not to attend, thereby waiving her right to appear. It was also satisfied that any adjournment would be unlikely to result in the appearance of the Landlord and determined to proceed in her absence.

Summary of issues

10. The issue to be determined was whether the property meets the repairing standard as laid down in Section 13 of the Act and whether the Landlord had complied with the duty imposed by Section 14(1)(b).

Findings in Fact

11. The Committee finds the following facts to be established:-
 - 11.1. On 6 February 2009, the Tenant entered into a lease with the Landlord for the rent of the property. This was an assured lease under the Housing (Scotland) Act 1988. The provisions in Chapter 4 of the Act apply, notwithstanding that the lease was lawfully terminated in October 2011.
 - 11.2. The Tenant duly notified the Landlord of the required works to the property.
 - 11.3. The property is a two storey terraced house.
 - 11.4. The roughcast was defective as described in the application and the photographs accompanying same and no work had been carried out to repair it.
 - 11.5. The property suffered from significant damp issues in the living room and the porch, which were in line with the reported problems.

Reasons for the decision

12. Being unable to gain access to the property, the Committee conducted an external inspection and a limited inspection through the window.
13. The external inspection enabled the Committee to see the defective roughcast as described in the application and that no remedial work had been carried out. In the absence of any contrary evidence the Committee was satisfied that the property failed to meet the repairing standard in this regard.
14. The inspection through the window enabled the Committee to identify that there was evidence of significant areas of dampness in the living room and the porch which was consistent with the terms of the application. In the absence of any contrary evidence the Committee was satisfied that the property failed to meet the repairing standard in this regard.
15. The Committee had no evidence of the issues specified in the application relating to the roof or pipework leak, the damaged ceilings, dampness around the hot water tank and the bath seals and accordingly makes no order in that regard.
16. The Committee noted that the property appeared currently to be unoccupied and had no information regarding any possible re-let. The Committee was mindful that to issue a Repairing Standard Enforcement Order would prohibit any further lease until such time as the Order had been discharged in terms of Section 28 of the Act.

Decision

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

Right of Appeal

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

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 **D Preston**
Chairperson

Date 25/03/12