



Repairing Standard Enforcement Order

Ordered by the Private Rented Housing Committee

prhp ref: RP/15/0061

Re Rowanlea, 5 Breakish, Isle of Skye, IV42 8PY, being the subjects registered in the Land Register of Scotland under title number INV 15494 ('the Property')

The Parties:-

Mrs Tracie Barker, residing at the Property ('The Tenant')

Mr Philip Kirkland, residing at 1 The Pastures, Stocksfield, Northumberland, NE43 7NG AND Ms Sarah Wilson, residing at 12 Edith Street, Dudley, Northumberland ('The Landlord')

Private Rented Housing Committee: Martin McAllister, legal member and Andrew Taylor, surveyor member.

NOTICE TO

Philip Kirkland and Sarah Wilson

Whereas in terms of their decision dated 11th August 2015 the Private Rented Housing Committee (the Committee) determined that it be appropriate for a Repairing Standard Enforcement Order to be made because the Landlord has failed to comply with the duty imposed by Section 14 (1) (b) of the Housing (Scotland) Act 2006, the Committee now requires the Landlord 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 landlord to do the following:

- 1. Engage a suitably qualified drainage professional to examine, test and report on the operation of the external drainage installation and septic tank; carry out any recommendations highlighted in that report and leave the complete soil and rainwater system in proper working order including clearing accumulated sewage at rodding eye and garden area and making good rodding eye and affected landscaping.**
- 2. Engage a suitably qualified heating engineer to reconnect the oil tank and boiler, provide a suitable base for the oil tank, fully test, service and**


commission the central heating system and leave in proper safe working order.


3. Provide and install smoke detection and alarm equipment in accordance with the British Standard on the design of fire detection installations for dwellings (BS5839 Part 6) in conjunction with the Scottish Government's Technical Handbook 2013 Domestic under Section 2 -Fire, Sub-section 2.11 Communication.

The Landlord is required to carry out the works itemised in 1- 3 inclusive within six months of intimation of the repairing standard enforcement order.

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  M MCALLISTER Date 11th August 2015
Chairperson

 P SINCLAIR witness: Paula Sinclair 51 Hamilton Street,
Saltcoats



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

prhp ref: RP/15/0061

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AND Ms Sarah Wilson, residing at 12 Edith Street, Dudley, Northumberland ('The Landlord')**

Private Rented Housing Committee: Martin McAllister, legal member and Andrew Taylor, surveyor member.

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) of The Housing (Scotland) Act 2006 ("the 2006 Act") in relation to the Property, determined that

the Landlord has failed to comply with the duty imposed by Section 14 (1)(b) of the 2006 Act and made a repairing standard enforcement order in terms of Section 24(2) of the said Act.

Background

1. By application received by the Private Rented Housing Panel on 16th February 2015 the Tenant applied for a determination of whether or not the Landlord has failed to comply with the duties imposed by Section 14 (1) (b) of the 2006 Act.
2. The application by the Tenant stated that she considered that the Landlord had failed to comply with the duty to maintain the Property to the Repairing Standard. She contended that the Property is not wind and watertight and in all respects reasonably fit for human habitation; that the structure and exterior of the house (including drains, gutters and external pipes) are not in a reasonable state of repair and in proper working order; that the furnishings provided by the landlord under the tenancy are not capable of being used safely for the purpose for which they are designed and the Property does not have satisfactory provision for detecting fires and for giving warning in the event of fire or suspected fire. In particular the Tenant stated that there is an issue with the septic tank with sewage spilling into the garden.
3. On 18th May 2015 the President of the Private Rented Housing Committee decided to refer the matter to a Private Rented Housing Committee.
4. On 8th July the Tenant submitted a letter which stated " I have given notice to end my tenancy on 21st July 2015." The Committee considered matters upon receipt of this communication and on 23rd July decided that the application should proceed to a Determination and issued a Minute of Continuation under Schedule 2 Paragraph 7(3) of the 2006 Act.

Inspection

5. The Committee attended at the Property on 6th August 2015 for an inspection. Mr Philip Kirkland was present. The Committee noted that the Property is a one and a half storey traditional cottage with rendered stone external walls, having a pitched slate tiled roof with dormers. At the time of inspection the weather was dry and slightly overcast. Photographs were taken and are in the schedule annexed hereto. The Committee found the following on inspection:

5.1 The septic tank is situated in ground adjoining the Property. There is a rodding eye point in the garden at the side of the front door of the Property. Evidence of waste from the septic tank was observed in the garden ground next to the rodding eye point.

5.2 The oil tank is situated at the rear of the Property. The Committee observed that the pipe from the tank to the boiler was not connected. It also observed that the tank appeared not to have been installed on a suitable base.

5.3 A battery operated smoke alarm is situated in the main living space.

5.4 The general condition of the property is untidy and there were some defects in decoration.

5.4 There are a number of matters that require maintenance and repair which appear to have been the result of the tenant's misuse of the property

5.5 There is evidence that the Tenant has moved from the Property although many of her belongings are still in it.

Hearing

6. Following the inspection of the Property the Private Rented Housing Committee held a Hearing at Broadford Hotel which was attended by the Landlord.

7. Preliminary Matter: The Committee examined the tenancy agreement and the letter of the Tenant dated 3rd July 2015. The Tenancy Agreement stated that the Lease can be brought to an end by the Tenant giving two months' notice intimating that she wants it to be brought to an end.

The Landlord indicated that he considered that the tenancy will end on 21st September 2015. The Committee came to the view that this is correct and that the Tenant is therefore still a party to the Lease and the Application.

8. The Committee had the advantage of having before it representations made by the Tenant and which were received on 23rd June 2015 and which stated that the Tenant did not want to attend a Hearing. In the representations the Tenant stated that she had made many unsuccessful attempts to have the Landlord carry out repairs. She indicated the concerns that she had for her family's poor health which she considered to be due to the poor condition of the Property. The Landlord had sent representations and copy photographs and these were before the Committee.

9. The Landlord said that he considered that he had issues with the Tenant. He said that in the eight years he has been an owner of the Property he had not had any issues with the septic tank. He said that the Tenant had complained about the septic tank and he had indicated that he would pay for a specialist contractor to inspect the system, supply a condition report and also to jet the system. He said that it is his belief that the rodding eye had been removed and a hose used which caused waste to come out of the rodding eye point and pollute the garden. He accepted that there is waste in the garden. Mr Kirkland

referred to his representations in which he referred to Scottish Water finding no fault with the system. He said that he would do all that is necessary to resolve the issue.

10. Mr Kirkland said that the Tenant had asked permission to move the oil storage tank from where it was situated adjacent to the garage. He said that he consented to this and that the Tenant wanted to do this because she alleged that oil was being stolen. Mr Kirkland said he discovered when he visited the Property the previous evening he observed that the tank had not been connected to the pipe leading to the boiler and that the heating system would therefore not operate.

11. Mr Kirkland said that there had originally been a smoke detector at the top of the stairs but that this must have been removed. He accepted that prior to commencement of a new tenancy he would require to install new smoke alarms to comply with regulations.

12. Mr Kirkland said that, if the Committee were to make a repairing standard enforcement order, that he would want time to effect any works. He said that the existing tenancy did not expire until 21st September 2015 and that there may therefore be issues with access. He also said that he lived some distance away from the Property and that this also created problems. He said that he understood that he could not enter into another tenancy until any repairing standard enforcement was discharged.

13. Summary of the issues

The Committee decided that the issues which required to be addressed are in connection with the septic tank, the heating system and the system for detecting fires.

14. Findings in fact

14.1 The drainage system is defective and there is waste matter in the garden.

14.2 The central heating system is not operational and the pipe from the oil storage tank is not connected.

14.3 There is inadequate provision for detecting fires and smoke.

15. Reasons

The inspection of the Property assisted the Committee in arriving at its findings in fact together with the representations from the Landlord and the Tenant and the evidence of Mr Kirkland.

16. Discussion and Decision

The committee had to determine whether or not there are any of its findings in fact that constituted a failure by the landlord to ensure that the property meets the repairing standard in terms of the duty imposed by Section 14 (1) (b) of the Act. In coming to its Determination the Committee did not require to make any judgement with regard to the evidence of Mr Kirkland or the written representations of either the Landlord or the Tenant. The Committee considered that what is important is what the condition of the Property is the day that it is inspected.

The Committee had regard to the statutory guidance for smoke alarms and the revised Domestic Technical Handbook guidance. This guidance states that there should be a functioning smoke alarm in the room which is frequently used by the occupants for general daytime living purposes and that there should be a heat alarm in every kitchen. These require to be hard wired. In these two respects the Committee determined that the Property does not comply. The fact that there was waste from the septic tank in the garden and there was no way of knowing if this had been caused by actions of the Tenant or her agents or if it is because of some defect in the drainage system itself led the Committee to come to the view that the Property does not comply in this regard. The central heating system clearly cannot function without a supply of oil and therefore does not comply in this regard.

The Committee accordingly determined that the Landlord has not complied with the duties imposed by Section 14(1) (b) of the 2006 Act and determined that a repairing standard enforcement order be made in the following terms:

The Landlord is to:

- 1. Engage a suitably qualified drainage professional to examine, test and report on the operation of the external drainage installation and septic tank; carry out any recommendations highlighted in that report and leave the complete soil and rainwater system in proper working order including clearing accumulated sewage at rodding eye and garden area and making good rodding eye and affected landscaping.**
- 2. Engage a suitably qualified heating engineer to reconnect the oil tank and boiler, provide a suitable base for the oil tank, fully test, service and commission the central heating system and leave in proper safe working order.**
- 3. Provide and install smoke detection and alarm equipment in accordance with the British Standard on the design of fire detection installations for dwellings (BS5839**

**Part 6) in conjunction with the Scottish Government's Technical Handbook 2013
Domestic under Section 2 -Fire, Sub-section 2.11 Communication.**

**The Landlord is required to carry out the works itemised in 1- 3 inclusive within six months
of intimation of the repairing standard enforcement order.**

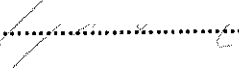
Right of Appeal

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.

M MCALLISTER

Signed 

Date 11th August 2015

Chairperson



Rowanlee, 5 Upper Breakish, Broadford, Isle of Skye, IV49 8PY
PRHP/RP/15/0061
Schedule of Photographs - Inspection Date 6/8/2015



The property



Excrement at septic tank rodding eye



Excrement at septic tank rodding eye

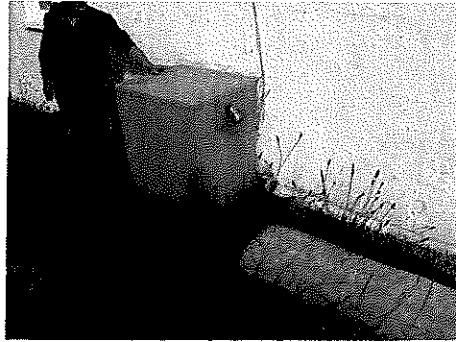


Repositioned oil tank

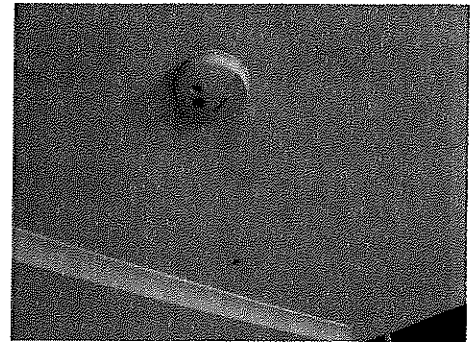
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Broken oil feed pipe from tank to boiler



Central Heating Boiler



Battery powered smoke alarm



General Condition



General Condition



General Condition



General Condition



General Condition



General Condition

Mark G. G. G.