

Determination by Private Rented Housing Committee

Statement of Decision of the Private Rented Housing Committee

(Hereinafter referred to as "the Committee")

Under Section 24(1) of the Housing (Scotland) Act 2006

Case Reference Number: PRHP/TD12/15/10

Re:- Property at 2 Butterlaw Farm Cottages, Coldstream, Berwickshire, TD12 4HQ ("**the property**")

The Parties:-

John Davidson residing at 2 Butterlaw Farm Cottages, Coldstream, Berwickshire, TD12 4HQ ("**the tenant**")

And

R G Russell & Company Limited, Simprim Farm, Coldstream, Berwickshire, TD12 4HG ("**the landlords**")

The Committee comprised:-

Mr James Bauld	- Chairperson
Mr Donald Marshall	- Surveyor member
Mr John Blackwood	- Housing member

Decision

The Committee unanimously decided that the landlords had failed to comply with the duties imposed by Section 14(1) of the Housing (Scotland) Act 2006 ("the 2006 Act"). The Committee accordingly proceeded to make a repairing standard enforcement order (RSEO) as required by Section 24(2) of the 2006 Act

Background:-

1. By application dated 25 January 2010, the tenant applied to the Private Rented Housing Panel ("PRHP") for a determination that the landlords had failed to comply with the duties imposed by Section 14 (1) of the 2006 Act.
2. The application made by the tenant stated that the tenant considered that the landlords had failed to comply with their duty to ensure that the house met the repairing standard and a list of defects was attached to the application.
3. The tenant provided evidence of that these defects had been previously notified to the landlords at the landlords' address. Notification had been made to the landlords by letter from Scottish Borders Council dated 18th December 2009 and by letter from the tenant dated 22nd December 2009. Copies of the relevant letters were produced by the tenant.

4. The President of the Private Rented Housing Panel decided to refer the application under Section 22 (1) of the 2006 Act to a Private Rented Housing Committee ("a Committee"). Notice of that referral was sent to the tenant and the landlords on 3rd February 2010.
5. On 19 March 2010, the Committee wrote to the landlords and the tenant indicating that an inspection and hearing would take place on 23 April 2010. Subsequent to that correspondence, representations were received from the landlords requesting that hearing and inspection be postponed. The Committee agreed to postpone the inspection and the inspection and hearing were rearranged for 2 July 2010.
6. The Committee inspected the property on the morning of 2 July 2010. The tenant was not present during inspection but was represented by his niece Miss Janet Colvine who was a tenant of the next door property at 3 Butterlaw Farm Cottages. The landlords were represented by Mr Hugh Russell and Mrs Jane Russell who were directors of the landlords. Subsequent to the inspection a hearing took place within Coldstream Community Centre on the afternoon of 2 July 2010. The parties were again represented by the same persons.

Evidence

7. The evidence before the Committee consisted of:-
 - Application form;
 - Extract of title from the Register of Sasine
 - Letters from the tenant to the landlords
 - Letter from Scottish Borders Council to the landlords
 - Written representations from the landlords dated 18 June 2010 with various attached papers

Summary of issues

8. The issues complained of in the application before the Committee can be summarised as follows:-
 - The property was not wind and water tight
 - The property required a new front door
 - All windows within the property required to be re-puttied and repainted
 - All windows within the property failed to open to allow ventilation
 - There was a lack of sockets within the property
 - The property required new kitchen units
 - The toilet base within the property was cracked
 - There were no smoke detectors fitted within the property
 - There was dampness throughout the property
 - Smoke was escaping from the base of the chimney for the property
 - The hot water tap within the property did not work in the bathroom
 - There was woodworm throughout the property; and
 - There was no means of heating water within the property

During the course of inspection the Committee viewed the property and noted the general standard of repair of the property. The Committee also asked the tenant's representative and the landlords for comments at various points during the inspection.

The Hearing

9. The hearing took place in Coldstream Community Centre on the afternoon of 2 July. This application was linked to another application for the adjoining property tenanted by Ms Janet Colvine. Ms Colvine was representing the tenant of this particular property and

also representing herself in her own application. Accordingly the hearing dealt with both properties simultaneously. Neither the tenant's representative nor the landlords had any objection to this course of action being followed.

10. At the hearing Ms Colvine as the tenant's representative was asked to set out what remedies she sought and what works she considered still required to be carried out to 2 Butterlaw Farm Cottages. She indicated that in her view the property required to be upgraded and that the property required to be made generally sound and wind and watertight. She indicated that the electrical circuitry and electrics generally throughout the property required to be upgraded as nothing had been done to them since 1959. She indicated that the kitchen area required to be fixed as it simply consisted of two sinks and three shelves. There was no smoke alarm within the property. She indicated that the windows within the property did not open and did not allow for ventilation. She also pointed out that there were problems with the water supply within the property and problems with the cistern within the bathroom.
11. The landlords were then asked to set out their position to the Committee. The landlords indicated they believed that 2 Butterlaw Farm Cottages was not being used as anything other than a storage facility and that Mr Davidson would spend most of his time in Ms Colvine's property at 3 Butterlaw Farm Cottages. The landlords indicated the property had fallen into disrepair because of the tenants' lack of maintenance and they believed that it was the tenant's responsibility to maintain the property. They indicated that they had purchased the properties in 1983 when they had acquired Butterlaw Farm and that they were aware that the properties had sitting tenants. There were no tenancy agreements provided to them in 1983 and they have never provided a tenancy agreement to the tenants since that time. There was no condition of any tenancy agreement which placed any obligation on the tenant to carry out maintenance. The landlords had understood that the cottages would previously have been tied cottages linked to agricultural workers working on Butterlaw Farm. They accepted that the tenancies were no longer linked to employment and that those who were tenants had tenancy rights. The landlords indicated their belief that it was the tenant's responsibility to do interior painting and decorating and to take care of the doors and windows and that they had failed to do so. They also indicated that so far as they could see the garden had been allowed to go to rack and ruin and that the tenants had not taken care of it in any way.
12. The landlords were then questioned by the Committee members with regard to some of the matters contained within their written representations. In their written representations the landlords had indicated that they did not believe that they had been given a reasonable time to carry out the required works. In their letter they indicated that they had only first become aware of difficulties when they had received the letter from the tenant dated 22nd December 2009 and a letter from Scottish Borders Council dated 18th December 2009. The application to the Panel was made on 25th January 2010. The landlords believed that this did not give a reasonable period of time for the works to be carried out as this included a period of time over Christmas and New Year and that additionally there had been exceptionally severe weather in the area at that time with the farm itself virtually cut off with snow and ice. The landlords were asked to consider whether they still believed that at the date of the hearing, namely 2 July 2010, that they had not been given reasonable time to carry out any necessary repair works. They were asked what action they had taken since receiving notification in December. The landlords indicated that they had sent various tradesmen to the property including a plumber, two builders, a joiner and an electrician. They had given them copies of the letter from Scottish Borders Council and had asked them to go into the property and to check it out and to provide a quote. They had received no quotations. At this point the tenant representative was asked to confirm whether anyone had attended. She indicated that some people had attended at the property and had looked both at cottage number 2 and number 3. She had shown the persons round. With regard to the electrician she indicated his name was Les Tate and he had indicated that the job to repair the electrics was too big for him and required to be carried out by some other firm. She indicated that although tradesmen would arrive she was never given any advance warning that they would appear and would never be told when they would come. She accepted that some

pointing had been carried out to the rear of the building at number 3 but not at number 2. After some questioning the landlords accepted that a period in excess of 6 months would be a reasonable time to carry out almost any repair.

13. The landlords were then questioned about the second query raised in the written representations that the repairs being sought by the tenant did not fall within the repairing standard. The landlords indicated they did not believe that the kitchen and bathroom were part of the landlords' remit. They indicated that they did not think that the landlords would be expected to maintain the interior of a property and that they would expect the tenant to do so. The landlords also indicated their belief that these tenancies were subject to agricultural law and that normal housing law would not apply. They had bought the farm with sitting tenants. After further questioning from members of the Committee the landlords indicated they believed that cottage number 2 ought to be closed down and it would be better if the person living there looked for alternative accommodation.
14. The landlords were then questioned specifically on certain aspects of the repairs being sought. Firstly they were asked whether they believed the electrics within the property satisfied the repairing standard. It was accepted that the current electrical wiring and installation within this property had been installed in 1959 and consisted of one socket per room. The landlords conceded it would be better to have more than one socket and thought that at least two would be the minimum in a small room and more in a larger room. The landlords conceded that they had never at any time since purchasing the property had any testing done to the electrical wiring or installations.
15. The landlords were then asked about the lack of a presence of a smoke alarm within cottage number 2 and indicated they were surprised that the tenant had not put one in themselves more than 10 years ago. On being asked whether they had fulfilled their duty in terms of the Repairing Standard they indicated that they were waiting for a central heating system to be installed in cottage number 2 and that when that heating system was installed a smoke alarm would be installed linked to that system. They were aware that their application had been made in February for Scottish Government grant to install a central heating system and had simply decided to wait and assumed the smoke alarm would be installed then.
16. The landlords were then questioned regarding the windows within the property and they accepted that the windows did not seem to open and that they appeared to have been painted on the outside which had caused them to become stuck. On questioning the landlords accepted that it was probably more than 10 years since the exterior windows had been painted.
17. The landlords were then questioned with regard to the smoke escaping from the base of the chimney pot at number 2 and they accepted that must be the case if the tenant was saying so. The landlords also accepted that the hot water tap in 2 Butterlaw Farm Cottages did not work and that they would arrange to have that checked.

Findings of Fact

18. Having considered all the evidence the Committee found the following facts to be established:-
 - a) The subjects of let comprised a farm cottage in a building which is approximately 100 years old. The building consists of 4 cottages in a terrace and the building is 2 stories in height. 2 Butterlaw Farm Cottage consists of 2 rooms on the ground floor with windows to the front, a kitchen/scullery to the rear of the property with windows to the rear, and a small corridor leading between the front room and the kitchen/scullery. There is also a door to the rear garden of the property on the ground floor. In addition there is a small storage room and a coal cellar. On the upstairs floor there are 2 bedrooms each with windows to the front and a bathroom with a window to the rear.

Each of these rooms are accessed from a hall which runs the length of the building at the rear and which has two metal framed skylight windows.

- (b) The electrical system within the property was installed in 1959. The system provided one electrical socket in each room. No works had been done since that date to upgrade the system or to carry out any rewiring.
- (c) There was no central heating system within the property.
- (d) There was no smoke alarm within the property.
- (e) The windows within the property were wooden framed, sash and case windows. They were single glazed. Generally the windows were in a very poor state of repair and externally required to be repainted and resealed. The windows did not appear to be wind and water tight.
- (f) The cistern within the bathroom did not function properly and the hot water tap within the bathroom did not work properly to deliver water at an appropriate pressure.
- (g) The windows within the property could not be opened to allow proper ventilation.
- (h) generally the whole property was in a poor state of repair.

The Committee took the view that the property was not wind and water tight, was not in all respects reasonably fit for human habitation and that the installations within the property for the supply of water and electricity and for sanitation were not in a reasonable state of repair and were not in proper working order. The Committee also took the view that the house had no provision for detecting fires and for giving warning in the event of fire or suspected fire.

Reasons for Decision

- 19. The Committee considered the various issues set out above and the evidence led at the hearing. The Committee also considered what had been noted during the course of their inspections.
- 20. The Committee took the view that this property fell short of the tolerable standard set out in the Housing (Scotland) Act 1987. Section 86 of that Act, as amended by Section 11 of the 2006 Act, requires that a house, to meet the tolerable standard, must have, inter alia, satisfactory provision for ventilation and heating, satisfactory thermal insulation, satisfactory facilities for cooking of food within the house and, in the case of a house having a supply of electricity, that the electrical installations within the house comply with the relevant requirements and that those relevant requirements are that the electrical installation is adequate and safe to use. The Committee took the view that the house fell short of the tolerable standard in all of these respects. The house being short of the tolerable standard the Committee took the view that the house could not be said to be "in all other respects reasonably fit for human habitation" which is the Repairing Standard test set out in Section 13(1)(a) of the 2006 Act. Additionally the Committee took the view that the electrical installations within the house fell short of the Repairing Standard set out in Section 13(1)(c) of the 2006 Act in that those installations were not in a reasonable state of repair and as no work had been done to them since 1959 and no certification had been produced by the landlords indicating that these electrics and the electrical installation were safe and fit to use.
- 21. The Committee were also satisfied that the windows within the property were not wind and water tight and that they required substantial external work to make them so. The tenants agreed during the hearing that they would be responsible for interior decoration once the windows had been made wind and water tight by the landlords. The Committee were satisfied that substantial work would be required to this property to allow it to meet the Repairing Standard. In addition to the matters mentioned above, the Committee also

took the view that works would be required to repair the chimney, the cistern and the hot water taps.

22. The decision of the Committee was unanimous.

Rights of Appeal

23. A landlord or tenant aggrieved by the decision of the Committee may appeal to the Sheriff by summary application within 21 days of being notified of that decision.
24. The appropriate respondent in such appeal proceedings is the other Party to the proceedings and not the PRHP of the Committee which made the decision.

Effects of Section 63

25. Where such an appeal is made, the effect of the decision and of any Order made in consequence of it is suspended until the appeal is abandoned or finally determined.
26. Where the appeal is abandoned or finally determined by confirming the decision, the decision and the Order made in consequence of it are to be treated as having effect from the day on which the appeal is abandoned or so determined.

J Bauld

Signed....

James Bauld, Chairperson

Date... 13 July 2010.

Signature of Witness... G Williams

Date... 13/7/2010

Name: Gillian Williams

Address: 7 West George Street, Glasgow, G2 1BA

Designation: Senior Court Administrator

Repairing Standard Enforcement Order

Ordered by the Private Rented Housing Committee

Case reference number : PRHP/TD12/15/10

Re:- Property at 2 Butterlaw Farm Cottages, Coldstream, Berwickshire TD12 4HQ ("the property")

The Parties:-

John Davidson, residing at 2 Butterlaw Farm Cottages, Coldstream, Berwickshire TD12 4HQ
("the tenant")

and

RG Russell and Co Ltd, Simprim Farm, Coldstream, Berwickshire TD 12 4HG
("the landlords")

Notice to RG Russell and Co Ltd

Whereas in terms of the decision dated 6th July 2010 the Private Rented Housing Committee determined that the landlord had failed to comply with the duty imposed by Section 14(1)(b) of the Housing (Scotland) Act 2006 and in particular the landlords had failed to ensure that:-

- (a) the house is wind and watertight and in all respects reasonably fit for human habitation
- (b) the installations in the house for the supply of water, gas and electricity and for sanitation, space heating and heating water are in a reasonable state of repair and in proper working order
- (c) the house has satisfactory provision for detecting fires and for giving warning in the event of fire or suspected fire.

The Private Rented Housing Committee now requires the landlords to carry out such work as is necessary for the purpose of ensuring that the house concerned meets the repairing standard and that any damage caused by the carrying out of the works in terms of the order is made good.

In particular the Private Rented Housing Committee requires the landlords to carry out the following work

- Restore the cistern and hot water tap within the bathroom to proper working order
- To install a working smoke alarm within the property in accordance with current standards
- To make all windows wind and water tight
- to carry out repairs to the property to eradicate dampness
- To carry out repairs to the exterior doors to make them wind and watertight
- To instruct a suitably qualified electrician to carry out a periodic inspection report certifying that all electrical fittings and wiring within the property are safe

The Private Rented Housing Committee orders that the works specified in this order must be carried out within two months of the date of this Order with the exception of the requirement to install a working smoke alarm which requires to be carried out within 28 days of the date of this Order.

A landlord or tenant aggrieved by the decision of the Committee may appeal to the Sheriff by summary application within 21 days of being notified of that decision. The appropriate respondent in such appeal proceedings is the other party to the proceedings and not the PRHP or the Committee which made the decision.

Where such an appeal is made the effect of the decision or of the order is suspended until the appeal is abandoned or finally determined. Where the appeal is abandoned or finally determined by confirming the decision, the decision and the order are to be treated as having effect from the day on which the appeal is abandoned or so determined.

Signed.....
J Bauld
James Bauld, Chairperson

Date..... *13 July 2010*

Signature of Witness..
G Williams

Date..... *13/7/2010*

Name: Gillian Williams

Address: 7 West George Street, Glasgow, G2 1BA

Designation: Senior Court Administrator