



Repairing Standard Enforcement Order

Ordered by the Private Rented Housing Committee

Re Smithy House Cottage, Main Street, Inverkip, PA16 0AS being part of the subjects described in the Disposition by Norman BATTERY Scoular and Pearl Donald Scoular in favour of James Harvie Carswell and Janet Watson Carswell and others recorded in the Division of the General Register of Sasines for the County of Renfrew on 1st February 1979 ('the Property')

The Parties:-

Angela McIntyre residing at Smithy House Cottage, Main Street, Inverkip, PA16 0AS ('The Tenant')

James Carswell residing at 2, Commoncraig Place, Inverkip, PA16 0BE ('The Landlord')

NOTICE TO

James Carswell residing at 2, Commoncraig Place, Inverkip, PA16 0BE

Whereas in terms of their decision dated 13th December 2011, the Private Rented Housing Committee 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 the Landlord has failed to ensure that the Property was wind and water tight and in all other respects reasonably fit for human habitation; that the structure and exterior of the property are in a reasonable state of repair and proper working order and that the installations in the Property for the supply of water, gas and electricity and for sanitation, space heating and heating water are in a reasonable state of repair and 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 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:-

- (1) Eradicate the dampness/ water ingress in the living room wall, the cupboard of the back bedroom, the flooring underneath the washing machine/sink and dishwasher and the kitchen wall and carry out necessary redecoration.
- (2) Repair and renew, where necessary (a) the gutter on the rear external wall of the kitchen extension (b) the connection between the kitchen waste pipe and the grilling below and (c) the connection between the bathroom waste pipe on the rear external wall of the Property and the over sized collar below to render them in proper working order.
- (3) Repair and renew the following electrical items and render the said items in proper working order such that they comply with the current electrical standards:-
 - 3.1 Repair and relocate the broken main light switch in the downstairs bathroom such that it is located out with the bathroom.
 - 3.2 Remove the double socket within the downstairs bathroom.
 - 3.3 The light switches in the Property.
 - 3.4 The broken double socket and light switch in the back bedroom.
 - 3.5 The ceiling light fitment in the front bedroom.
 - 3.6 The wiring in the Property
- 4 Effect repairs to render the WC and plumbing to the sink in the upstairs bathroom in proper working order

5 Repair or replace the boiler to render it in proper working order.

The Private Rented Housing Committee order that these works must be carried out and completed
By 29th FEBRUARY 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 13th December 2011
Chairperson,

Elizabeth G 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 Smithy House Cottage, Main Street, Inverkip, PA16 0AS ('the Property')

The Parties:-

Angela McIntyre residing at Smithy House Cottage, Main Street, Inverkip, PA16 0AZ ('The Tenant')

James Carswell residing at 2, Commoncraig Place, Inverkip, PA16 0BE ('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) of the Housing (Scotland) Act 2006 ("the 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 Act.

Background

1. By application dated 12th September 2011 the Tenant applied to the Private Rented Housing Panel for a determination of whether the Landlord has failed to comply with the duties imposed by Section 14 (1)(b) of the Act.
2. The application by the Tenant stated that she considered that the Landlord has failed to comply with his duty to ensure that the Property meets the repairing standard. She advised that the Property was not wind and watertight and in all other respects reasonably fit for human habitation; that the structure and exterior of the Property was not in a reasonable state of repair and proper working order; that the installations in the Property for the supply of water, gas and electricity and for sanitation, space heating and heating water are not in a reasonable state of repair and proper working order; that the fixtures, fittings and appliances provided by the Landlord under the tenancy were not in a reasonable state of repair and in proper working order 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 application stated:-

"All electrical work to be repaired.
Water penetration and dampness repairs.
Drains, gutters and external pipe repairs.
Water supply including pressure related issues.
Boiler repairs.
Temperature control.
White goods not working.
Infestation of slugs and mice in bathroom and kitchen.
Unable to use upstairs toilet and bath.
Unsuitable smoke detectors.
No carbon monoxide detector."

Further detail was provided in terms of the letter from Inverclyde Council to the Tenant dated 2nd June 2011. That letter confirmed that the Landlord had been notified of the following matters:-

1. Water leaking from the gas boiler system in the kitchen.
2. The gas fire in the living room that it is alleged not to work.
3. The lack of control to regulate the level of heat going to individual radiators throughout the property.
4. The dampness affecting the living room and the cupboard of the back bedroom.
5. The saturated kitchen floor under the washing machine/sink and the dishwasher which may be due to a leaking appliance or water entering the property from outside and which may also be encouraging a lot of slugs and slaters into the property.
6. The dishwasher and old fridge that are not working.
7. The back rain water guttering that is not connected to a downpipe causing the rain water to cascade down to a ground level drain.
8. The missing protective chimney pot and concern that birds are now nesting in the chimney.
9. The plumbing is defective in the sink and bath of the upstairs bathroom causing severe vibration of pipe work after running cold and hot water taps for a few minutes.
10. Concern about the upstairs toilet overflow running continuously if the cistern is allowed to fill up.
11. The suggestion that during heavy rain and certain wind conditions, the rain comes in the kitchen area and back bedroom window.

The letter also advised that the many electrical matters had been specified in a letter to the Landlord dated 3rd June 2011.

That letter stated that the following matters require attention:-

12. The main light switch in the downstairs bathroom was broken and contained within the bathroom.
 13. There is a double socket within the downstairs bathroom.
 14. Majority of light switches are screwed directly onto wooden door cladding- there do not appear to be any back boxes.
 15. One of the double sockets in the back bedroom was broken.
 16. In the front bedroom, there was no power to the ceiling light fitment.
 17. The back bedroom has a 13 Amp fused connection unit being used as a light switch.
 18. There was a combination/ mixture of vulcanised insulated rubber and modern PVC insulated wires entering light switches and old sockets- the condition/ connections of wiring of this age should be further investigated to ensure the safety of the electrical installation.
 19. The double socket in the back bedroom is broken.
3. 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.
 4. The Private Rented Housing Committee served Notice of Referral under and in terms of Schedule 2, Paragraph 1 of the Act upon both the Landlord and the Tenant, dated 13th October 2011.
 5. The Committee attended at the Property on 8th December 2011. The Tenant, her partner Thomas Henderson, the Landlord and his colleague Bill Reid were present. The Committee inspected the alleged defects and found as follows:-

5.1 The house is wind and water tight and in all other respects reasonably fit for human habitation

5.1.1 Dampness affecting the living room and the cupboard of the back bedroom.

The surveyor member of the Committee used his damp meter to test for dampness on the living room wall and the cupboard in the back bedroom. Both of the meter readings were in the red and measured 60 and 22 respectively, indicating that there was dampness present.

5.1.2 Saturated kitchen floor under the washing machine/ sink and dishwasher which may be due to leaking appliance or water entering the property from outside and which may be encouraging a lot of slugs and wood lice into the property.

The Committee saw that the area of floor was sodden and possibly rotten.

5.1.3 Suggestion that during heavy rain and certain wind conditions the rain comes in the kitchen area and back bedroom window.

The surveyor member of the Committee also used his damp meter to test for dampness to the kitchen wall and the area around the back bedroom window. The meter reading of the kitchen wall was in the red and measured 22, which indicated that there was dampness present. There was no evidence of dampness around the back bedroom window.

5.1.4 Infestation of slugs and mice in bathroom and kitchen.

The Tenant advised the Committee that there is a problem with infestation of slugs and mice. However the Committee saw no evidence of this at the inspection.

5.2 The structure and exterior of the house (including drains, gutters and external pipes) are in a reasonable state of repair and proper working order

5.2.1. Back rain water guttering that is not connected to a downpipe causing the rain water to cascade down to a ground level drain.

The Committee saw that the downpipe that was attached to the external kitchen wall was not connected to the guttering. Also the kitchen waste pipe drains into a surface drainage gully.

5.2.2 External pipe repairs.

The Committee saw that the external bathroom soil pipe was not sealed at the bottom as it entered the drains at ground level.

5.3 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

5.3.1 All electrical work to be repaired.

The Committee saw and acknowledged the stated defects to the electrical items detailed in the said letter from Inverclyde Council dated 3rd June 2011.

5.3.2 The plumbing is defective in the sink and bath of the upstairs bathroom causing severe vibration of pipe work after running the cold and hot water taps for a few minutes.

The Committee turned on the sink tap in the upstairs bathroom and heard a hammering noise. They also turned on the bath hot tap and filled up the bath to a reasonable level. The tap was not fully opened and the water ran hot. The Tenant acknowledged that she had been turning the tap on full on the occasions when it had run cold very quickly.

5.3.3 Concern about the upstairs toilet over flow running continuously if the cistern is allowed to fill up.

The Tenant advised that she had turned off the stop cock to the WC in the upstairs bathroom shortly after moving into the Property and she had not used the WC since. At the inspection the Landlord turned on the stop cock and the WC Cistern filled up. It did not overflow above the top of the cistern but there was a leak on the floor.

5.3.4 Water leaking from gas boiler system in the kitchen.

At the inspection the Tenant explained that there is a leak from the boiler when it is switched on. The Tenant switched on the boiler with some difficulty and there was evidence that water had been leaking from the boiler.

5.3.5 Gas fire in the living room not working.

The Tenant advised the Committee that the Gas Board had disconnected the gas supply to the gas fire with the result that the gas fire no longer worked.

5.3.6 Lack of control to regulate the level of heat going to individual radiators.

The Tenant explained that the radiators are either on or off. It is not possible to turn individual radiators off or regulate the temperature of individual radiators. The landlord showed the Committee that the boiler has a thermostat control which regulates the temperature of the whole central heating system.

5.4 Any fixtures, fittings and appliances provided by the landlord under the tenancy are capable of being used safely for the purposes for which they are designed

5.4.3 Dish washer and old fridge are not working.

The Tenant showed the Committee the dishwasher and explained that it had not been plumbed in since she had moved into the Property. She also explained that the Landlord had purchased a new fridge but had not removed the old fridge which no longer worked.

5.5 The house has satisfactory system for detecting fires etc

5.4.1 Unsuitable smoke detectors

The Committee saw that there are three battery operated smoke alarms in the Property.

5.4.3 No Carbon Monoxide Detector

This matter was self evident.

6. Following the inspection of the Property the Private Rented Housing Committee held a hearing at The Gamble Halls, Gourrock.

At the hearing Mrs Taylor, the chairperson of the Committee, intimated that she had acted as the Landlord's Solicitor over twenty years ago, she had not acted for him since that time and she wished it to be minuted that in view of this passage of time there was no conflict of interest in her being the chairperson of this Committee.

In relation to the matters detailed in the Tenant's application the parties advised as follows:

6.1 The house is wind and water tight and in all other respects reasonably fit for human habitation

6.1.1 Dampness affecting the living room and the cupboard of the back bedroom.

The Tenant's partner advised the Committee that the dampness in the cupboard of the back bedroom was a result of the chimney not having been sealed.

The Landlord advised the Committee that he had replaced the roof in 2008 at a cost of approximately £11,000. Also he has instructed John Hamil, a local builder to carry out the necessary repair.

6.1.2 Saturated kitchen floor under the washing machine/ sink and dishwasher which may be due to leaking appliance or water entering the property from outside and which may be encouraging a lot of slugs and wood lice into the property.

The Tenant's partner suggested that the dampness under the washing machine/sink and dishwasher may have come from the faulty washing machine which overflowed when it was used. He advised that the washing machine had last been used over two months ago. The Landlord agreed that it was likely that the dampness came from the washing machine.

The parties accepted that there was no evidence of an infestation of slugs and mice at the property at the time of the inspection.

6.1.3 Suggestion that during heavy rain and certain wind conditions the rain comes in the kitchen area and back bedroom window.

The Tenant's partner and the landlord suggested that the dampness in the kitchen wall may be due to the choked valley gutter. However the parties acknowledged that there was no evidence of dampness at the back bedroom window.

6.1.4 Infestation of slugs and mice in bathroom and kitchen.

As mentioned above, the parties accepted that there was no evidence of an infestation of slugs and mice at the property at the time of the inspection.

6.2 The structure and exterior of the house (including drains, gutters and external pipes) are in a reasonable state of repair and proper working order

6.2.1. Back rain water guttering that is not connected to a downpipe causing the rain water to cascade down to a ground level drain.

And

6.2.2 External pipe repairs.

The Tenant's partner advised that a 45 degree bend section of the gutter on the external wall of the kitchen extension is missing. Also the Kitchen waste pipe meets the grilling at ground level and there is no connection and the bathroom waste pipe on the rear external wall of the property fits into an over sized collar but has not been sealed.

The Landlord advised that the grill from the drain cover was tucked behind the downpipe. He acknowledged that it hadn't been fitted and was confirmed that he was happy to attend to this.

6.3 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

6.3.1 All electrical work to be repaired.

The Tenant's partner advised that he is concerned about the safety of the wiring system in view of the terms of the report on the electrical system prepared by Inverclyde Council dated 3rd June 2011.

The Landlord advised that he accepted that the wiring was not to the current standards. He confirmed that he had instructed GEM Electricals, Largs to repair the electrical items in the Property.

6.3.2 The plumbing is defective in the sink and bath of the upstairs bathroom causing severe vibration of pipe work after running the cold and hot water taps for a few minutes.

And

6.3.3 Concern about the upstairs toilet over flow running continuously if the cistern is allowed to fill up.

The Tenant confirmed that she was now happy with the condition of the plumbing to the bath and she wished to withdraw this part of her application.

The Tenant's partner advised that the problem with the plumbing to the sink was the hammering noise that occurs when the tap is turned on. He acknowledged that the WC was leaking at the inspection.

The Landlord explained that Main Street Inverkip has water pressure problems caused by switching of the water supply between Loch Thom and the Daff Reservoir. He suggested that the switching process may cause dirt to enter the system. He also advised that he had induced the leak to the WC at the inspection when he opened the stop cock and filled up the cistern.

He confirmed that he was happy to attend to the repair of the WC. In connection with the hammering noise from the sink he explained that if the tap was fully turned on the hammering would not occur, although he acknowledged that this had not been demonstrated at the inspection.

6.3.4 Water leaking from gas boiler system in the kitchen.

The Landlord gave the Committee the current gas safety Certificate dated 20th June 2011 which confirmed that the boiler was safe.

6.3.5 Gas fire in the living room not working.

The Tenant advised that she did not want the gas fire to be connected and she wished to withdraw this part of the application.

6.3.6 Lack of control to regulate the level of heat going to individual radiators.

The Tenant's partner advised that the central heating is either all on or all off. It was not possible to turn off part of the system or regulate the temperature of the individual radiators.

The Landlord advised that as far as he was aware there was no legal requirement to have individual thermostats on the radiators. Notwithstanding this fact he explained that he was happy to install them.

6.4 Any fixtures, fittings and appliances provided by the landlord under the tenancy are capable of being used safely for the purposes for which they are designed

6.4.1 Dish washer and old fridge are not working.

The Tenant's partner advised that the dishwasher had never been plumbed in. A replacement fridge had been provided by the landlord but the old fridge had not been removed.

The Landlord advised that the lease was an unfurnished let and he was happy to remove both appliances. The Tenant confirmed that this matter should be withdrawn from the application.

6.5 The house has satisfactory system for detecting fires etc

6.5.1 Unsuitable smoke detectors

The Tenant advised that at the commencement of the tenancy there were no smoke alarms in the Property.

The Landlord explained that at the commencement of the Tenancy there were battery operated smoke alarms in the vicinity of the kitchen area of the Property. He never removed any smoke alarms.

His colleague Bill Reid confirmed this. He also provided a letter from Bridgene McKelvie dated 20th November 2011 confirming this.

6.5.2 No Carbon Monoxide Detector

The parties acknowledged that there are no carbon monoxide detectors in the Property.

The Landlord advised that he wished to speak to the Committee privately about the title of the Property. The Committee explained that the hearing was a public hearing any anything that he wished to say would have to be said in the presence of the Tenant and her partner. After consideration he explained that there was an ongoing dispute regarding the title of the Property. He showed the Committee correspondence from his Solicitor concerning this. However he acknowledged that he considered himself to be Landlord of the Property, he had signed the lease with the Tenant and when the Tenant paid rent he received the rent payments.

Summary of the issues

7. As stated above, the Tenant confirmed at the inspection and the hearing that she wished to withdraw from the application the complaints about the condition of the plumbing to the bath, the condition of the dishwasher and the old fridge and the condition of the gas fire in the living room.

Therefore the issues to be determined are:-

- 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).

Whether the condition of the dampness in the living room wall and the cupboard at the back of the bedroom, the condition of the flooring underneath the washing machine/sink and dishwasher and the alleged water ingress to the kitchen area and back bedroom window result in the Property not being wind and water tight 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).

Whether the condition of the back rain water guttering and connections, the external soil pipe from the bathroom and the external kitchen waste pipe result in the Property not being in a reasonable state of repair and in proper working order.

- 7.3 That the installations in the Property for the supply of water, gas and electricity and for sanitation, space heating and heating water are not in a reasonable state of repair and proper working order (Section 13(1)(c) of The Housing (Scotland) Act 2006).

Whether the condition of the electrical installations in the Property; the plumbing to the sink in the upstairs bathroom and the WC in the upstairs bathroom; the boiler and also the lack of individual thermostats result in the said items not being in a reasonable state of repair and proper working order.

7.4 The Property does not have satisfactory provision for detecting fires and for giving warning in the event of fire or suspected fire (section 13(1)(f) of The Housing (Scotland) Act 2006).

Whether there were battery operated smoke alarms installed in the Property at the commencement of the tenancy on 1st July 2009 and whether there is satisfactory provision for detecting fires and for giving warning in the event of fire or suspected fire.

7.5 Carbon Monoxide Detector

Whether it is a requirement of the Repairing Standard for the Property to be fitted with a carbon monoxide detector.

Findings of fact

8 The committee found:-

8.1 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).

There was no evidence of dampness in the area around the back bedroom window. However the dampness in the living room wall, the cupboard at the back of the bedroom, the damp condition of the flooring underneath the washing machine/sink and dishwasher and also the water ingress to the kitchen wall does result in the Property not being wind and watertight and in all other respects reasonably fit for human habitation.

8.2 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 missing 45 degree bend section of the gutter on the external wall of the kitchen extension, the configuration of the Kitchen waste pipe and the grilling below at ground level and the absence of a sealed connection between the bathroom waste pipe on the rear external wall of the Property and the over sized collar below results in these items not being in a reasonable state of repair and proper working order.

8.3 That the installations in the Property for the supply of water, gas and electricity and for sanitation, space heating and heating water are not in a reasonable state of repair and proper working order (Section 13(1)(c) of The Housing (Scotland) Act 2006).

8.3.1 The electrical defects listed in the letter from Inverclyde Council dated 3rd June 2011 namely:-

'the main light switch in the downstairs bathroom was broken and contained within the bathroom; there is a double socket within the downstairs bathroom; majority of light switches are screwed directly onto wooden door cladding- there do not appear to be any back boxes; one of the double sockets in the back bedroom was broken; in the front bedroom, there was no power to the ceiling light fitment; the back bedroom has a 13 Amp fused connection unit being used as a light switch; there was a combination/ mixture of vulcanised insulated rubber and modern PVC insulated wires entering light switches and old sockets and the broken double socket in the back bedroom' results in these items not being in a reasonable state of repair and proper working order.

- 8.3.2 The hammering noise from the plumbing to the sink of the upstairs bathroom and the leak from the WC in the upstairs bathroom results in these items not being in a reasonable state of repair and proper working order.
- 8.3.3 The leak from the boiler results in it not being in a reasonable state of repair and proper working order.
- 8.3.4 The lack of control to regulate the level of heat going to individual radiators does not result in the radiators not being in a reasonable state of repair and proper working order.

8.4 The Property does not have satisfactory provision for detecting fires and for giving warning in the event of fire or suspected fire (section 13(1)(f) of The Housing (Scotland) Act 2006).

The Committee accepted the corroboratory evidence provided by the Landlord to the effect that there were battery operated smoke alarms in the Property at the commencement of the tenancy. Therefore they had been installed before 3rd September 2007 and were presently in working order. Accordingly the existing battery operated smoke alarms in the Property comply with the current regulations and the Property does have a satisfactory provision for detecting fires and for giving warning in the event of fire or suspected fire.

However it was noted that the Landlord agreed to have a hardwired smoke alarm system installed.

8.5 Carbon Monoxide Detector.

The Committee determined that it was not a requirement of the Repairing Standard for the Property to have a Carbon Monoxide Detector.

Decision

- 9. The Committee accordingly determined that the Landlord had failed to comply with the duties imposed by Sections 13 (1)(a), 13(1)(b), 13(1)(c) and 14 of the Act, as stated.
- 10. The Committee proceeded to make a Repairing Standard Enforcement Order as required by section 24(1). The Repairing Standard enforcement Order has a time limit of the 29th February 2012 for the Landlord to carry out works necessary to bring the property up to the Repairing Standard.
- 11. The decision of the Committee was 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 Taylor

Signed
Chairperson

..... Date 13th December 2011