



## Repairing Standard Enforcement Order

Ordered by the Private Rented Housing Committee

**prhp Ref:** PRHP/RT/16/0183

**Re:** Property at The Annexe, Drumlovat, Longside, AB42 4YE

**Title No:** ABN81383

**The Parties:-**

**ABERDEENSHIRE COUNCIL, Gordon House, Blackhall Road, Inverurie, AB51 3WQ (“the Third Party Applicant”)**

**MRS SUSAN PATERSON, formerly residing at The Annexe, Drumlovat, Longside, AB42 4YE (“the Tenant”)**

**MR LEON MARK BINGHAM and MRS ZENA BINGHAM, 51 Aldene Road, Sheffield, S6 4BR (“the Landlords”)**

**NOTICE TO MR LEON MARK BINGHAM AND MRS ZENA BINGHAM (“the Landlords”)**

Whereas in terms of their decision dated 2 August 2016, 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 that the Landlords have failed to ensure that:-

1. The house is wind and water tight and in all other respects reasonably fit for human habitation;
2. 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. Any fixtures, fitting and appliances provided by the landlord under the tenancy are in a reasonable state of repair and in proper working order;
4. The house has satisfactory provision for detecting fires and for giving warning in the event of fire or suspected fire; and

the Private Rented Housing Committee now requires the Landlords to carry out such work as is necessary for the purposes of ensuring that the house concerned 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:-

- (a) To repair or replace the locking mechanism of the doors leading from the conservatory to the garden to ensure that the doors are in a reasonable state of repair and in proper working order and are capable of being opened, closed and locked properly.
- (b) To repair the external walls of the conservatory to ensure that no water penetration occurs and to render them properly wind and water tight;
- (c) To obtain a report from a suitably qualified electrician on the heating and hot water systems and to repair or replace the heating and hot water systems to ensure that they are in a reasonable state of repair and in proper working order. The Landlords are to exhibit such a report to the Committee.
- (d) To repair or replace the lawnmower to ensure that it is in a reasonable state of repair and in proper working order.
- (e) To install sufficient smoke alarms and heat detectors that are mains wired and interlinked and otherwise comply with the requirements of the relevant fire legislation.

- (f) To produce a clear Electrical Installation Condition Report from a suitably qualified electrician confirming that the electrical systems within the property are in proper working order and comply with the relevant regulations with no items marked as category 1 or category 2. The Landlords are to exhibit such clear Electrical Installation Condition Report to the Committee.

The Private Rented Housing Committee order that the works specified in this Order must be carried out and completed within the period of 8 weeks from the date of service of this Notice.

**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.

In witness whereof these presents typewritten on this and the preceding page are executed by Gillian Coutts Buchanan, Solicitor, Whitehall House, 33 Yeaman Shore, Dundee, DD1 4BJ, Chairperson of the Private Rented Housing Committee at Dundee on 2 August 2016 before this witness:-  
G Buchanan

— witness

— Chairperson

Jenni Lynch  
Secretary  
Thorntons Law LLP  
Whitehall House  
33 Yeaman Shore  
Dundee DD1 4BJ



## Statement of decision of the Private Rented Housing Committee under Section 24 (1) of the Housing (Scotland) Act 2006

prhp Ref: PRHP/RT/16/0183

Re : Property at The Annexe, Drumlovat, Longside, AB42 4YE  
Land Register Title No. ABN81383 ("the Property")

The Parties:-

**ABERDEENSHIRE COUNCIL**, Gordon House, Blackhall Road, Inverurie, AB51 3WQ  
("the Third Party Applicant")

**MRS SUSAN PATERSON**, formerly residing at The Annexe, Drumlovat, Longside, AB42 4YE ("the Tenant")

**MR LEON MARK BINGHAM and MRS ZENA BINGHAM**, 51 Aldene Road, Sheffield, S6 4BR ("the Landlords")

### Decision

The Committee, having made such enquiries as it saw fit for the purposes of determining whether the Landlords had complied with the duty imposed by Section 14(1)(b) in relation to the house concerned, and taking account of the evidence led by the Third Party Applicant at the hearing (the Tenant having previously removed from the Property and not therefore being a participating party to the application), determined that the Landlords had failed to comply with the duty imposed by Section 14(1)(b) of the Act. The Committee therefore issues a Repairing Standard Enforcement Order.

### Background

1. By application received on 9<sup>th</sup> May 2016 the Third Party Applicant applied to the Private Rented Housing Panel for a determination of whether the Landlords 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 Third Party Applicant stated that the Third Party Applicant considered that the Landlords had failed to comply with their duty to ensure that the house meets the Repairing Standard and in particular that the Landlords had failed to ensure that:-
  1. The house is wind and water tight and in all other respects reasonably fit for human habitation.
  2. 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.
  3. Any fixtures, fittings and appliances provided by the landlord under the tenancy are in a reasonable state of repair and in proper working order
  4. Any furnishings provided by the landlord under the tenancy are capable of being used safely for the purpose for which they are designed; and
  5. The house has satisfactory provision for detecting fires and for giving warning in the event of fire or suspected fire.

6. The house has satisfactory provision for giving warning if carbon monoxide is present in a concentration that is hazardous to health.
3. By letter dated 18<sup>th</sup> May 2016 a Convenor with delegated powers under Section 96 of the Housing (Scotland) Act 2014 intimated a decision to refer 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 each of the Third Party Applicant, the Landlords and the Tenant.
5. Following service of the Notice of Referral the Landlords, by e-mail dated 15<sup>th</sup> July 2016, made written representations to the Committee.
6. The Committee issued a Notice of Direction to the Landlords dated 21<sup>st</sup> June 2016 which required the Landlords to provide by midday on Friday 15<sup>th</sup> July 2016:-

The most recent Electrical Installation Condition Report prepared by a suitably qualified electrician to confirm the current condition of electrical systems in the Property.

7. The Private Rented Housing Committee (comprising Miss G Buchanan, Chairperson and Legal Member, and Mr M Andrew, Surveyor Member) inspected the Property on 21<sup>st</sup> July 2016. Photographs were taken and a Schedule of Photographs is attached. At the inspection the Third Party Applicant was represented by Ms Melanie Booth. The Landlords were not present or represented. The Tenant was not present or represented. Access to the Property was provided by Mr Darren Taylor.
8. At the time of the inspection it was fair and dry.
9. Following the inspection of the Property the Private Rented Housing Committee held a hearing at Palace Hotel, Prince Street, Peterhead, AB42 1PL and heard from the Third Party Applicant's representative, Ms Melanie Booth. The Landlords were not present or represented. As the tenancy had been terminated prior to the hearing, the Tenant was not a participating party in the application and was not in attendance.
10. In terms of their application, the Third Party Applicant submitted as follows:-
  - (a) That the smoke detection systems within the Property required upgraded.
  - (b) That the lawnmower required repaired.
  - (c) That the conservatory doors are insecure and require repaired.
  - (d) That the conservatory roof is leaking and requires repaired.
  - (e) That there is damp in the conservatory that requires eliminated.
  - (f) That the hot water continually heats unless switched off at the mains which results in the heating not operating. The hot water and heating systems therefore require repair.
  - (g) That the outside drain is blocked resulting in raw sewage leaking.
  - (h) That an electrical cable runs from the outside wall of the conservatory into the living room.

- (i) That the Landlords had failed to provide an inspection/service report for the oil heating system.
- (j) That the Landlords had failed to provide an Electrical Installation Condition Report and PAT Report.
- (k) That there is not satisfactory provision for giving warning if carbon monoxide is present in a concentration that is hazardous to health.

11. The Landlords submitted as follows:-

- (a) That they have been unable to gain access to the Property for some time, the Tenant having moved out without letting the Landlords know where the keys had been left and failing to respond to calls, messages, e-mails etc.
- (b) That on establishing that the tenant of the adjacent main house, Mrs Curtis, held the keys she refused access to the Property and has changed the locks to the garage where the lawnmower is stored preventing any repairs being carried out.
- (c) That Mrs Curtis refuses to answer calls, messages, e-mails etc and will not answer her door.
- (d) That it has been very difficult to arrange any tradesmen to attend at the Property to undertake any work despite having instructed electricians and tradesmen to do so.

#### **Summary of the issues**

12. The issues to be determined are:-

- (a) Whether the Property has satisfactory provision for detecting fires and for giving warning in the event of fire or suspected fire all as required by the relevant legislation.
- (b) Whether the lawnmower is an appliance provided by the Landlord and whether the lawnmower is in a reasonable state of repair and in proper working order.
- (c) Whether the conservatory doors are secure and in a reasonable state of repair and in proper working order.
- (d) Whether the conservatory roof is wind and water tight.
- (e) Whether there is dampness in the conservatory such that repairs are required to make the conservatory wind and water tight,
- (f) Whether the heating and hot water systems are in a reasonable state of repair and in proper working order.
- (g) Whether there is a requirement to provide an inspection/service report for the oil heating system.
- (h) Whether there is a requirement to provide an Electrical Installation Condition Report and PAT report.
- (i) Whether the Property requires provision for giving warning if carbon monoxide is present in a concentration that is hazardous to health and, if so, whether there is satisfactory provision therefore.

#### **Findings of fact**

13. The Committee finds the following facts to be established:-

- (a) That, notwithstanding the Notice of Direction dated 21<sup>st</sup> June 2016, the Landlords had failed to provide to the Committee a current Electrical Installation Condition Report prepared by a suitably qualified electrician.
- (b) That the provision within the Property for detecting fires and for giving warning in the event of fire or suspected fire is not satisfactory in that there is no smoke detector in the living room and no heat detector in the kitchen.
- (c) That there is a hard wired smoke detector in the hall.
- (d) That the lawnmower is an appliance provided by the Landlords under the tenancy that requires to be replaced or repaired due to not being in proper working order.
- (e) That the conservatory doors are not in a reasonable state of repair and in proper working order in that the locking mechanism does not operate and the doors are therefore insecure.
- (f) That there is no evidence of any leak from the conservatory roof.
- (g) That there is dampness in the internal walls of the conservatory caused by cracks in the harling and cracks in the render of the brick courses.
- (h) That there is no electrical cable running from the conservatory to the living room.
- (i) That the blocked drain in the driveway had been resolved.
- (j) That no PAT report is required.
- (k) That no carbon monoxide detector is required in the Property.

**Reasons for the decision**

14. The Property is a single storey house annexed to the larger main house known as Drumlovat. The Property is situated within a substantial garden and shares the use of the garage with and situated adjacent to the main house.

On inspection, a hardwired smoke detector was found in the hall. However, there was no smoke detector in the living room nor any heat detector in the kitchen. At the time of the Committee's inspection an electrician was in attendance at the Property and was undertaking works on the instructions of the Landlords, the precise details of which were not known to the Committee. The smoke detection system within the Property is therefore not satisfactory and does not meet the Repairing Standard.

On inspection, the engine of the ride-on lawnmower operated correctly. However, the wheels would not turn forwards or backwards. The lawnmower therefore requires to be repaired or replaced and does not presently meet the Repairing Standard. The lawnmower was provided by the Landlords for the use of the Tenant and also the tenant of the adjacent main house.

The conservatory doors were found to be held closed by bolts which had been fixed to the top and bottom thereof. The integral locking mechanism of the doors did not operate. The doors are therefore insecure and are not in a reasonable state of repair and in proper working order in breach of the Repairing Standard..

Despite recent heavy rainfall, the Committee was unable to identify any defect with the conservatory roof which showed no signs of disrepair and there were no signs of internal water damage.

The internal walls of the conservatory were found to have been freshly painted. Behind the radiator in the conservatory the internal wall was black. Using a damp meter evidence

of dampness was found on the internal walls to a distance of approximately 2 inches from the floor and to each side of the doors leading from the conservatory to the garden. On examination externally, cracks were found in the harling and also in the render along the lines of the brick courses. The conservatory is therefore not wind and water tight and does not meet the Repairing Standard.

At the time of the inspection by the Committee there was found to be no electrical cable running from the conservatory to the lounge.

The Third Party Applicant's representative confirmed that the blocked drain in the driveway had been cleared and was no longer an issue that required the Committee's attention.

The Committee, in the absence of any current Electrical Installation Condition Report, could not assess whether or not the heating and hot water systems are in a reasonable state of repair and in proper working order.

There were no portable appliances found within the Property and therefore no PAT report is required.

In the absence of any gas appliances, internal oil or gas fired boiler, solid fuel stove or open fire within the Property, no carbon monoxide detector is required.

The Committee considered how long was required for the works identified to be carried out and determined that 8 weeks would be sufficient.

#### **Decision**

15. The Committee accordingly determined that the Landlords had failed to comply with the duty imposed by Section 14(1)(b) of the Act.
16. The Committee proceeded to make a Repairing Standard Enforcement Order as required by section 24(1).
17. The Committee proceeded to serve notice upon Aberdeenshire Council as required by section 24(6).
18. The decision of the Committee was unanimous.

#### **Right of Appeal**

19. **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**

20. 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.

G Buchanan

Signed .....  
Chairperson



..... Date 2/8/16 .....

Schedule of photographs of The Annexe, Drumlovat, Longside, Peterhead, AB42 4YE

PRHP/RP/16/0183



Patio doors bolted with tower bolts – 3 point lock inoperable.

Damp found in walls on both sides (freshly painted)





Cracked harling at corner and to courses in plaster below.



Lawn mower. Starts but does not engage wheels to run.

Photographs taken on 21<sup>st</sup> July 2016; M H T Andrew FRICS FAAV