



## Repairing Standard Enforcement Order

Ordered by the Private Rented Housing Committee

**prhp Ref: PRHP/RT/16/0185**

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

**Title No: ABN81383**

**The Parties:-**

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

**MS GRAINNE CURTIS residing at 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. 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;
4. Any fixtures, fitting and appliances provided by the landlord under the tenancy are in a reasonable state of repair and in proper working order; and
5. The house has satisfactory provision for detecting fires and for giving warning in the event of fire or suspected fire; and
6. The house has satisfactory provision for giving warning if carbon monoxide is present in a concentration that is hazardous to health.

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 install sufficient smoke alarms and heat detectors that are mains wired and interlinked and otherwise comply with the requirements of the relevant fire legislation;
- (b) To repair or replace the patio doors leading from the kitchen to the driveway to ensure that the doors are in a reasonable state of repair and in proper working order, are watertight and capable of being opened, closed and locked properly;
- (c) To repair or replace the shower pump in the cupboard in the hall to ensure that it is in a reasonable state of repair and in proper working order;

- (d) To repair or replace the ceiling lights in the kitchen to ensure that they are in a reasonable state of repair and in proper working order;
- (e) To repair or replace the garage door to ensure that it is in a reasonable state of repair and in proper working order and to ensure that it opens and closes properly;
- (f) To replace the missing balustrades on the right side of the decking and to each side of the wooden stair leading to the decking from the garden to ensure that the decking is in a reasonable state of repair and in proper working order;
- (g) To install sufficient supports to properly support the oil tank at each end and in the middle thereof and to undertake such additional works as are necessary for the oil tank and the supporting structure to comply with relevant legislation and, if necessary, to replace the oil tank;
- (h) To carry out such works as are necessary to clear the drains in the driveway to ensure that the driveway gulley is in a reasonable state of repair and in proper working order;
- (i) To repair or replace the fence panel behind the previously fallen tree in the garden to ensure that the fence panel is in a reasonable state of repair and in proper working order;
- (j) To repair or replace the lawnmower to ensure that it is in a reasonable state of repair and in proper working order;
- (k) To install a carbon monoxide detector in the living room to comply with the requirements of the relevant legislation; and
- (l) To produce a clear Electrical Installation Condition Report from a suitably qualified electrician confirming that the electrical systems and portable appliances supplied by the Landlords 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/16/0185

Re : Property at 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")

MS GRAINNE CURTIS, residing at, 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 and the Tenant at the hearing, 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.
  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 24<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 Tenant, by emails dated 30 June and 18 and 20 July 2016, made written representations to the Committee. The Landlords, by e-mails dated 20<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 but was represented by her daughter, Ms Molly Curtis.
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, and the Tenant by telephone conference. The Landlords were not present or represented .
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 repair.
  - (c) That the patio doors are leaking and require repair.
  - (d) That the shower motor is leaking and requires repair and that adjacent flooring is warped as a result.
  - (e) That the garage door does not open and close properly and requires repair.
  - (f) That the outside decking is unsafe and requires repair.
  - (g) That the oil tank is bulging and requires repair or replaced.
  - (h) That the kitchen lights require repair.
  - (i) That the outside drain is blocked and floods the driveway. The drains also overflow during or after rainfall when the dishwasher or washing machine are used.
  - (j) That a tree in the rear garden has blown down damaging the fence and that the tree requires to be removed and the fence repaired.

- (k) That the Landlords had failed to provide an Electrical Installation Condition Report and PAT Report.
- (l) That the Landlords had failed to provide an inspection/service report for the oil heating system.
- (m) 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 the Tenant is lying about the lawnmower.
- (b) That on several occasions the Tenant has refused access to the garage where the lawnmower is stored preventing any repairs being carried out. It has therefore been impossible to repair the lawnmower.

12. The Tenant submitted as follows:-

- (a) That she had asked the Landlords to provide a heat detector in the kitchen and smoke detectors in each of the lounge and dining room.
- (b) That the lawnmower was supplied by the Landlords in Spring 2015. A couple of months after being delivered and whilst in use the back tyre had fallen off the rim which left the lawnmower unstable. The Tenant advised the Landlords and sent photographs. The Landlords advised they would arrange repairs. This never happened.
- (c) That since moving into the Property, every time it rains the patio doors from the kitchen to the driveway leak and leave a large puddle on the kitchen floor. The leak is worse if the wind is blowing the rain down the drive towards the house. The Landlords arranged a tradesman to repair the locks. The Tenant advised of the doors leaking and the tradesman attached clips to the doors which prevent the doors from rattling but do not stop the leaks.
- (d) That the shower pump in the hall cupboard leaks which has caused the wooden laminate flooring in the hall to warp. When intimated to the Landlords it was denied there was any problem.
- (e) That the garage door has been faulty since the Tenant moved into the Property and gets stuck both when open and closed. The Landlords have failed to repair the door despite being asked to do so.
- (f) That the wooden decking outside the Property has been faulty since the Tenant moved in. The railings around the decking had nails sticking out of them which was hazardous. The Landlords were asked to carry out repairs. A person called Darren Taylor attended on the instructions of the Landlords and took down those parts of the railing that had nails sticking out. The Tenant was advised that wood had been ordered for repairs but nothing has been done. In particular the steps from the garden to the decking now have no handrails and are unsafe to use.
- (g) That suppliers of oil have intimated that the oil tank is in need of additional support. The Landlords were advised of this but have done nothing in response. The oil suppliers are presently refusing to put any oil in the tank in case the tank bursts causing oil to spill. This issue is urgent.
- (h) That the ceiling lights in the kitchen have not worked since the Tenant moved into the Property other than the largest ceiling light above the kitchen sink. Replacement bulbs in that largest light repeatedly blow. Putting replacement bulbs in the other ceiling lights does not make them work at all.

- (i) That during periods of heavy rain the drains in the driveway overflow. The drains also overflow when the dishwasher or washing machine are used. Attempts have been made to fix the drains without success. The Landlords suggested the Tenant was responsible for the blocked drains by using baby wipes. The Tenant denies this to be the case. When flooded the water in the drive can be ankle deep preventing access in and out of any car parked in the drive.
- (j) That a tree in the garden blew down in November 2015. The Landlords were advised and they arranged for Darren Taylor to attend. He removed that part of the tree that had blown over. The fence behind the fallen tree was damaged as a result and has not been repaired.
- (k) That there has never been any difficulty in the Landlords or their tradesmen having access to the Property and the garage for repairs to be carried out. The Tenant has asked for 24 hours notice of access being required.
- (l) That it is not correct for the Landlords to state that the Tenant has refused to answer calls or other communications.
- (m) That the Landlords have never attended at the Property since the tenancy began.

**Summary of the issues**

13. 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 patio doors from the kitchen are wind and watertight and in a reasonable state of repair and in proper working order.
- (d) Whether the shower pump in the hall cupboard is in a reasonable state of repair and in proper working order and, if not, whether any consequential damage has been caused to the adjacent laminate flooring which requires repair or replacement.
- (e) Whether the garage door opens and closes correctly and is in a reasonable state of repair and in proper working order.
- (f) Whether the wooden decking is in a reasonable state of repair, safe to use, and in proper working order.
- (g) Whether the oil tank is in a reasonable state of repair, safe to use and in proper working order.
- (h) Whether the ceiling lights in the kitchen are in a reasonable state of repair and in proper working order.
- (i) Whether the drains in the driveway are in a reasonable state of repair and in proper working order.
- (j) Whether the fallen tree is in a reasonable state of repair.
- (k) Whether the fence onto which the tree fell is in a reasonable state of repair and in proper working order.

- (l) Whether there is a requirement to provide an Electrical Installation Condition Report and PAT report.
- (m) Whether there is a requirement to provide an inspection/service report for the oil heating system.
- (n) 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**

14. 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 lounge and no heat detector in the kitchen.
- (c) That there are two hard wired smoke detectors 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 patio doors from the kitchen are not wind and watertight, allow rainwater to leak into the kitchen and are therefore not in a reasonable state of repair or in proper working order.
- (f) That the shower pump in the hall cupboard leaks when in use and is not therefore in a reasonable state of repair or in proper working order.
- (g) That water from the leaking shower pump has caused minor warping of the adjacent laminate flooring in the hall.
- (h) That the garage door does not open correctly in that if opened fully it does not close and is therefore not in a reasonable state of repair or in proper working order.
- (i) That the wooden decking is unsafe in that there are no balustrades to the right of the decking nor on either side of the steps leading to the decking from the garden and that the decking is therefore not in a reasonable state of repair or in proper working order.
- (o) That the oil tank is not sufficiently supported to bear the weight of the tank and its contents. The oil tank is therefore not in a reasonable state of repair or in proper working order.
- (p) That the ceiling lights in the kitchen do not operate and are therefore not in a reasonable state of repair or in proper working order.
- (q) That the drains in the driveway are blocked or otherwise obstructed and are therefore not in a reasonable state of repair or in proper working order.
- (r) That the fallen part of the tree has been removed.
- (s) That the fence panel onto which the tree fell is broken and requires to be repaired or replaced.
- (t) That a PAT report is required for the kettle and toaster supplied by the Landlords.

(u) That a carbon monoxide detector is required in the lounge of the Property.

#### **Reasons for the decision**

15. The Property is a single storey house situated within a substantial garden and shares the use of the garage with the adjacent house known as the Annexe, Drumlovat.

On inspection, two hardwired smoke detectors were found in the hall. However, there was no smoke detector in the lounge nor any heat detector in the kitchen. 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 Annexe.

The patio doors leading from the kitchen were found to be held closed not only by the locking mechanism but by additional clips which had been fixed to the top and bottom thereof. However, the clips do not prevent the ingress of rainwater from around the doors which are not properly fitted and sealed. The patio doors are therefore not in a reasonable state of repair and in proper working order in breach of the Repairing Standard.

On inspection the shower pump in the hall cupboard was found wet to the touch. On the shower being turned on water was observed running from the shower pump onto the floor of the cupboard. The wood effect laminate flooring in the hall was also noted to be very slightly warped adjacent to the hall cupboard door. The shower pump is not in a reasonable state of repair and does not meet the Repairing Standard.

The garage door was found to open but not to its fullest extent due to the runner on the left hand side of the garage door not having a sufficient "stop" at the end to prevent the door sliding off the runner and becoming stuck. The door was found to close properly. The garage door is not in a reasonable state of repair and in proper working order. The garage door does not therefore meet the Repairing Standard.

On inspection the wooden decking outside the Property was found to have no balustrades on either side of the wooden steps leading from the garden to the decking making the steps hazardous. The balustrade to the right side of the decked area was also found to have been removed. The decking is not in a reasonable state of repair and in proper working order and does not meet the Repairing Standard.

The oil tank was found to be supported by bricks at either end thereof but was unsupported in the middle. Whilst the oil tank was not observed to be bulging at the time of the inspection there was very little oil in the tank and the Committee was satisfied that the oil tank would likely bulge if full or almost full. The oil tank and supporting structure is therefore not in a reasonable state of repair and in proper working order and does not meet the Repairing Standard.

None of the ceiling lights in the kitchen were found to work. The lights are therefore not in a reasonable state of repair and in proper working order. The lights therefore fail to meet the Repairing Standard.

The Committee observed two drains in the driveway, one drain being beneath the kitchen window and the other being situated towards the middle of the drive. The Committee did not observe any flooding at the time of the inspection but was satisfied that any flooding would be caused due to a blockage in the pipework.



That the fallen part of the tree in the garden had been removed and was not present at the time of the Committee's inspection. The fence panel behind the fallen tree was observed to be damaged and in need of repair. The fence panel was not in a reasonable state of repair and did not therefore meet the Repairing Standard

The Committee, in the absence of any current Electrical Installation Condition Report and PAT report, could not assess whether electrical systems are in a reasonable state of repair and in proper working order and whether electrical appliances provided by the Landlords to the Tenant are safe to use.

A carbon monoxide detector is required in the lounge of the Property.

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

### **Decision**

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

### **Right of Appeal**

20. **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**

21. 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 .....  
Chairperso

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

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

PRHP/RP/16/0185



Bottom of Kitchen door showing gap at base and clip on right hand door.



Kitchen light fittings. None in working order



Shower pump. Note leakage from pump which runs under laminate floor



Floor of passage outside shower pump.



Garage door – left hand stop end to track missing



Garage door – right hand stop in position



Yard and kitchen drain.



Patio fencing. Section removed on right hand side



Patio steps. Fence and handrail to each side missing



Garden fence. Panel damaged to rear of tree.



Oil tank supported on 2 piers.



Lawn mower. Starts but does not power the wheels to drive

Photographs taken on 21<sup>st</sup> July 2016

M H T Andrew FRICS FAAV