



## Repairing Standard Enforcement Order

Ordered by the Private Rented Housing Committee

PRHP/DG13/193/11

Title Number: DMF12162

Re: The residential dwellinghouse at

1 Shielburn Cottages  
Westerkirk  
Langholm  
Dumfries and Galloway  
DG13 0NJ  
("the Property")

The Parties:-

Mr Kenny McQuillan and Mrs Erna McQuillan  
("the Tenants")

and

Ms Jacqueline Morris  
C/O C & D Property Services  
17/19 High Street  
Longtown  
Carlisle  
CA6 5UA  
("the Landlord")

### NOTICE TO THE LANDLORD

In terms of their decision dated 28 February 2012, 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 ("the Act") and in particular that the Landlord had failed to ensure that:

- (a) the Property was wind and watertight and met the standard set out in section 13(1)(a) of the Act;
- (b) the structure and exterior of the Property was in a reasonable state of repair and in proper working order and met the standard set out in section 13(1)(b) of the Act;

- (c) the fixtures, fittings and appliances provided under the tenancy were in a reasonable state of repair and in proper working order and met the standard set out in section 13(1)(d) of the Act.

The Private Rented Housing Committee now requires the Landlord to carry out such works as are 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:-

- (a) replace the putty missing in some of the windows;
- (b) carry out such works as are necessary to repair the defective seals in the double glazing units;
- (c) repair or replace the defective velux window frame in the upper hall and ensure that it is wind and water tight;
- (d) repair or replace the skirting boards in the hall area at the back door and investigate the floor structure in the corner of the side room where the floor appears to have sunk leaving a gap under the skirting board and to make good as required;
- (e) repair or replace the front and back door/door frames;
- (f) repair or replace the bathroom door frame;
- (g) repair the flushing mechanism in the WC to ensure that it is in proper working order;
- (h) replace the defective fire bricks in the fire place in the dining room;
- (i) provide the Committee with a copy of the current Electricity Safety Report and made good any defects identified in the Report;
- (j) repair and secure the fence to the rear/side of the Property to ensure that it is in a reasonable state of repair and in proper working order;
- (k) inspect the drain at the front of the Property and carry out such works as are necessary to ensure that it is in proper working order;
- (l) make good any damage resulting from the remedial works carried out in accordance with this RSEO.

The Private Rented Housing Committee order that the works specified in this RSEO be carried out and completed on or before 25 April 2012.

**A Landlord(s) or a Tenant(s) 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 RSEO 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 RSEO will be treated as having effect from the day on which the appeal is abandoned or so determined.

In witness whereof this and the preceding pages are subscribed by Ronald G Handley, Solicitor, Chairperson of the Private Rented Housing Committee at Dunbar on the twenty eighth day of February 2012 before this witness:

**J Handley** \_\_\_\_\_

witness

JANE HANDLEY

name of witness

**R Handley** \_\_\_\_\_

chairperson

23 LESLIE WAY

address of witness

DUNBAR

CHURCH 16P



**PRIVATE RENTED HOUSING COMMITTEE**

**STATEMENT OF REASONS**

**PROPERTY:**

**1 Shielburn Cottages, Westerkirk, Langholm,  
Dumfries and Galloway, DG13 0NJ**



**Decision by the Private Rented Housing Committee**

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

PRHP/DG13/193/11

Title Number: DMF12162

**Re: The residential dwellinghouse at**

**1 Shielburn Cottages  
Westerkirk  
Langholm  
Dumfries and Galloway  
DG13 0NJ  
("the Property")**

**The Parties:-**

**Mr Kenny McQuillan and Mrs Erna McQuillan  
("the Tenants")**

**and**

**Ms Jacqueline Morris  
C/O C & D Property Services  
17/19 High Street  
Longtown  
Carlisle  
CA6 5UA  
("the Landlord")**

**The Committee comprised:**

Mr Ron Handley – Chairperson  
Mr Donald Marshall – Surveyor  
Mr John Blackwood – Housing Member

**The Committee's Decision**

The Committee, having made such enquiries as it saw fit for the purposes of determining whether the Landlord had complied with the duty imposed by Section 14(1)(b) of the Housing (Scotland) Act 2006 ("the Act") in relation to the Property, and taking account of the evidence before it, unanimously determined that the Landlord had failed to comply with the duty imposed by Section 14(1)(b). The Committee therefore requires that the Landlord carry out such works as are necessary to ensure that the Property meets the Repairing Standard and that any damage caused by the carrying out of any

such works is made good. The Committee issued a Repairing Standard Enforcement Order ("the RSEO").

### **The Background**

1. On 11 November 2011 the Tenants applied to the Private Rented Housing Panel ("the PRHP") for a determination as to whether or not the Landlord had failed to comply with the duties imposed by Section 14(1)(b) of the Act.
2. Following receipt of the application, the President of the PRHP intimated that the application should be referred to a Private Rented Housing Committee in accordance with Section 22(1) of the Act.

### **The Application**

3. In their application the Tenants submitted that the Landlord had failed to comply with her duty to ensure that the Property met the Repairing Standard (as defined in the Act). It was suggested that the Landlord had failed to ensure that:-
  - the Property was wind and water tight and in all respects reasonably fit for human habitation;
  - the structure and exterior of the Property (including the drains, gutters and external pipes) were in a reasonable state of repair and in proper working order;
  - the installations in the Property for the supply of water, gas and electricity and for sanitation, space heating and heating water were in a reasonable state of repair and in proper working order;
  - any fixtures and fittings provided under the tenancy were in a reasonable state of repair and in proper working order.
4. In particular the Tenants submitted in their application form that:
  - the woodwork was without paint and most of the wood was rotten;
  - the putty in the windows was missing;
  - the double glazing was old and there was condensation between the glass panes;
  - several skirting boards in the property were rotted;
  - the front door/front door frame was rotted;
  - the back door frame was rotted and had gaps in it;
  - the kitchen sink did not have an "S-pipe";
  - there was dampness in the cupboard under the kitchen sink;
  - there was damp/mould in the kitchen walls and cupboards;
  - the plaster work in a wall in the kitchen was defective;
  - the bottom of the bathroom door frame was rotten;
  - the WC did not flush properly;
  - there was dampness in the wall in the side room;
  - the wallpaper in one of the walls in the side room was coming off and the plaster was crumbling;
  - the fire bricks in the fire place (in the dining room) were defective;
  - there was no circuit breaker;
  - the boiler was not working;

- the pipes were not lagged;
- the loft hatches were not big enough;
- the gutters were leaking;
- there were loose slates on the roof;
- a dividing fence had not been erected and a fence was defective;
- the vegetable patch kept flooding;
- the drain at the front of the house was not functioning properly.

### **Summary of the issues**

5. The issue to be determined by the Committee was whether the Landlord had complied with the requirements of the Act in ensuring that the Property met the Repairing Standard.

### **The Documentary Evidence**

6. The Committee had before it documents which included Land Register documents, a copy of the Application Form (with attachments), copies of various letters sent by the PRHP to the Tenants and the Landlord, copies of e-mails of 31 October 2011, 2 and 21 November 2011 sent by the Tenants to C & D Property Services, copies of e-mails of 11 November 2011 from the Tenants to the PRHP, copies of photographs and documents relating to the Tenancy Agreement.

### **The Inspection**

7. The Committee inspected the Property on 17 February 2012 at 11.00am. The Tenants were both present at the inspection as was Mr Robin Steel from C & D Property Services.

### **The Hearing**

8. A Hearing was arranged for 12.00pm in the Eskdale Hotel, High Street, Langholm. The Tenants attended the Hearing as did Mr Robin Steele.
9. The evidence at the Hearing can be briefly summarised as follows.
10. The Chairperson welcomed the parties to the Hearing and reminded them that the issue before the Committee was whether or not the Repairing Standard had been met.
11. Mr Steele advised that the Landlord had determined the rent at a level which reflected the general condition of the Property. The Committee reminded him that the Landlord had a duty to ensure that the Repairing Standard was met and she could not "contract out" of this obligation.
12. Mr Steele accepted that some seals in the double glazed windows were defective. Mr Steel also helpfully accepted that the back and front door/door frames were in need of repair.
13. In regards to the kitchen sink, Mr Steele suggested that there didn't appear to be any evidence of dampness under the sink. Mrs McQuillan told the Committee that there had previously been dampness in the cupboard under the sink. She also suggested that the plaster in one of the kitchen walls was defective.

14. In regards to the WC, Mr McQuillan suggested that it did not flush properly. In relation to the side room, Mr Steele accepted that it was necessary to re-align the skirting board and the floor boards to correct the existing gap.
15. The Committee advised the parties that in the course of the inspection it appeared that some of the fire bricks (in the fire place in the dining room) required to be replaced.
16. Mrs McQuillan advised that her main concern regarding the loft hatch was that the hatch openings were not large enough and consequently it would not be possible to install insulation materials in the loft. She was not sure if the electrical system met the required standards but accepted that it appeared to function properly. Mr Steele advised that he would make available a copy of the Electricity Safety Report.
17. The Committee asked Mr and Mrs McQuillan to elaborate on the difficulties they had been experiencing with the boiler. Mrs McQuillan advised that although the boiler had been replaced and functioned properly, she did not think that it was large enough to heat the Property adequately. Mr Steele advised that those who had installed the boiler had advised that it had the appropriate capacity for the Property. An Energy Performance Certificate was produced at the Hearing.
18. In relation to the exterior of the Property, Mr McQuillan accepted that although some slates were loose/missing, there had been no water ingress. Mr Steele accepted that some slates were loose/missing.
19. Mr McQuillan then told the Committee that the fence to the field at the rear of the Property was not secure. In response Mr Steele thought that the fence was adequate for its purpose. Mr McQuillan told the Committee that the drain at the front of the Property did not function properly.
20. The Chairperson advised the parties that it appeared to the Committee that the Repairing Standard had not been met and that it was likely that an RSEO would be issued. This would require the Landlord to complete remedial works within a given timescale. The parties were requested to notify the Committee if it appeared that the remedial works could not be completed within the timescale allowed by the Committee. This would afford the Committee an opportunity of deciding if it was appropriate to allow further time for the works to be completed.

### **Findings**

21. The Committee found the following facts to be established:

- The Property is a two storey, semi-detached cottage. The Property is located in a rural area and is positioned at the foot of a small hill. It is surrounded by a garden area.



- The Property is heated by an oil fired boiler which was installed after the date of the Tenants' application to the PRHP.
- The external woodwork (in particular the eaves) will require to be painted in the near future. At the time of the inspection the external wood work met the Repairing Standard.
- There is putty missing in some of the windows. These windows are not wind and water tight and they do not meet the Repairing Standard. The seals in some of the double glazing units are defective resulting in condensation between the glass panes. These windows do not meet the Repairing Standard. The velux window in the upper hallway is not wind and water tight and does not meet the Repairing Standard.
- The skirting boards in the hall area at the back door are rotted and not in a reasonable state of repair. In the side room there is a gap between the skirting board and the floor. These skirting boards are not in a reasonable state of repair and do not meet the Repairing Standard.
- Parts of the front and back door/door frame are rotted and require to be replaced or repaired. They do not meet the Repairing Standard.
- The kitchen sink is in a reasonable state of repair and in proper working order.
- There is no evidence of dampness in the cupboard under the kitchen sink.
- There is no evidence of dampness or mould in the kitchen walls and cupboards.
- The plaster work in a wall in the kitchen is exposed but there was no evidence to show that there was dampness in this wall.
- Parts of the bathroom door frame are rotted and require to be replaced or repaired. It does not meet the Repairing Standard.
- The WC does not always flush properly. It is not in proper working order and does not meet the Repairing Standard.
- There is no evidence of dampness in the walls in the side room.
- Some of the fire bricks in the fire place (in the dining room) are defective and require to be replaced. They do not meet the Repairing Standard.
- The installations for the supply of electricity in the Property were not noted to be faulty and appeared to be in proper working order.
- Since the date of the Tenants' application, the boiler has been replaced and is in proper working order.

- Although small, the loft hatches are in proper working order.
- Since the date of the Tenants' application, the gutters have been cleaned/repaired and are in proper working order.
- Some of the roof slates are loose/missing. However there is no evidence of water ingress and consequently the roof is in a reasonable state of repair.
- At the time of entering the Tenancy Agreement, there was no dividing fence between the Property and the adjoining dwelling house.
- The fence to the field at the rear of the Property is not in a reasonable state of repair. It does not meet the Repairing Standard.
- The vegetable patch (within the garden area at the side of the Property) is damp. This is mainly due to the locality in which the Property is situated.
- The drain at the front of the Property requires to be cleared and is not functioning properly. It does not meet the Repairing Standard.
- The Property is not wind and watertight and does not meet the standard set out in section 13(1)(a) of the Act.
- The structure and exterior of the Property is not in a reasonable state of repair and not in proper working order and does not meet the standard set out in section 13(1)(b) of the Act.
- Some of the fixtures, fittings and appliances provided by the Landlord under the tenancy are not in a reasonable state of repair and not in proper working order and do not meet the standard set out in section 13(1)(d) of the Act.

#### **Reasons for the Decision**

22. It was clear during the course of the inspection that the external woodwork (in particular the eaves) will need to be painted in the near future. However the condition of the external woodwork does not result in water ingress and although somewhat unsightly, the external wood work meets the Repairing Standard.
23. The Committee noted that there was putty missing in some of the windows and that the seals in some of the double glazing units were defective. Mr Steele accepted that remedial works were required. Moreover the velux window in the upper hallway was not wind and water tight.
24. It was clear from the inspection that the skirting boards in the hall area at the back door were rotted and that there was a gap between the skirting board and the floor boards in the side room. Similarly parts of the front and back door/door frame were rotted and require to be replaced or repaired.

25. Whilst it was suggested in the application form that there was no S-bend under the kitchen sink, it was clear to the Committee that there was a trap and that the kitchen sink was in proper working order. The Committee found no evidence of dampness in the cupboard under the kitchen sink. Similarly the Committee found no evidence of dampness or mould in the kitchen walls or cupboards.
26. The Committee noted that plaster work in a wall in the kitchen was exposed and unsightly. However there was no evidence to show that there was dampness in this wall.
27. The Committee accepted that parts of the bathroom door frame were rotted and will need to be replaced or repaired. As indicated, it was suggested in the Application Form that the WC does not always flush properly. It appeared to the Committee from the inspection that this was so.
28. The Committee found little or no evidence of dampness in the walls in the side room.
29. At the time of the inspection the coal fire in the dining room was operating. However it appeared that some of the fire bricks in the fire place were defective and require to be replaced.
30. Although Mrs McQuillan expressed some concerns about the electrical system, she accepted that she had not experienced any problems with the system. It appeared to the Committee that the installations for the supply of electricity in the Property were adequate and appeared to be in proper working order. However the Committee considered that it was appropriate to order the Landlord to make available a copy of the current Electricity Safety Report and to remedy any faults identified in the Report.
31. Although small, the loft hatches are in proper working order.
32. The Tenants accepted that since the date of their application to the PRHP, the boiler has been replaced. Whilst they had concerns regarding the capacity of the boiler, it was clear to the Committee that the boiler was in proper working order.
33. Since the date of the Tenants' application, the gutters have been cleaned/repainted by the Tenants and are in proper working order.
34. It was accepted by Mr Steele that some of the roof slates are loose/missing. However Mr McQuillan accepted that there was no water ingress and consequently the roof is in a reasonable state of repair.
35. There is no dividing fence between the Property and the adjoining dwelling house but there was no such fence at the time the Tenants entered into the Tenancy Agreement.

36. In the course of the inspection the Committee noted that the fence at the rear of the Property was not secure and not in a reasonable state of repair.
37. The vegetable patch is damp. However, as indicated, the Property is located in a rural area at the foot of a small hill. It seemed to the Committee that the vegetable patch would inevitably be damp particularly during periods of heavy rainfall.
38. It was not raining at the time of the inspection but the Committee had little reason to doubt Mr McQuillan's claim that the drain at the front of the Property did not function properly.

**Decision**

39. The Committee determined that the Landlord had failed to comply with the duty imposed by section 14(1)(b) of the Act.
40. The Committee proceeded to make a Repairing Standard Enforcement Order as required by section 24(1) of the Act.
41. The decision of the Committee was unanimous.

**Right of Appeal**

42. A Landlord(s) or Tenant(s) aggrieved by the decision of a PRHP Committee may appeal to the Sheriff by summary application within 21 days of being notified of that decision.

**Effect of section 63**

43. 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. 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 ..... **R Handley** ..... Date 28 February 2012  
Chairperson